

Regulation of the Worcester Board of Health Restricting the Number of Tobacco Product Sales Permits

A. Statement of Purpose:

Whereas, the City of Worcester Board of Health makes the following findings:

1. There exists conclusive and voluminous evidence that tobacco causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;
2. The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development, and that it is addiction to nicotine that keeps youth smoking past adolescence;
3. Research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;
4. The density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;
5. Tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;
6. Policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;
7. There are an estimated 31,488 smokers who reside in the city of Worcester;
8. 18.1% of adults in the city of Worcester over 18 years of age smoke, a level which is 21% higher than the statewide average of 15%;
9. Lung cancer incidence is 19% higher among males in Worcester compared to the state level;
10. Lung cancer incidence is 19% higher among females in Worcester compared to the state level;
11. Mortality from lung cancer is 17% higher in Worcester compared to Massachusetts;
12. The death rate of Worcester residents from tobacco on a per capita basis is approximately 250 individuals annually, or five human lives lost per week.
13. At least one-half of all smokers begin smoking before the age of eighteen and an estimated 3,000 minors begin smoking every day in the United States;
14. The sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on

the safe and effective use of medication;

15. The Massachusetts Supreme Judicial Court has held that "...[t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means."

Whereas, the City Council of the City of Worcester has enacted Chapter 8, §3 of the Revised Ordinances of the City of Worcester, the Tobacco Products Control Ordinance, to protect and promote the public health through regulation of the sale of tobacco products; and

Whereas, the Worcester Board of Health has determined that additional regulations are necessary and appropriate in order to realize the protection and promotion of the public health contemplated;

Now therefore, in addition to the requirements set forth in Chapter 8, § 3, of the City's Revised Ordinances related to Tobacco Product Sales Permits and Smoking Bars, the Worcester Board of Health hereby adopts the following regulations applicable to the sale and use of tobacco products.

B. Authority and Application:

This regulation is promulgated pursuant to the authority granted to the Worcester Board of Health (the "Board") by Chapter 120 of the Acts of 2014 and Article Six of the Home Rule Charter.

This Regulation shall not apply to any pending application for a Tobacco Product Sales Permit, including those designated as Smoking Bars, which has been submitted as of the date of adoption of this Regulation, or to any applicant or business who has received a conditional approval of a Tobacco Product Sales Permit by the Board of Health as of the date of adoption of this Regulation.

C. Definitions:

For the purpose of this regulation, the definitions found in Chapter 8, § 3(b) of the Revised Ordinances of the City of Worcester shall apply; and additionally, the following words shall have the following meanings:

Permit: The tobacco product sales permit issued by the board of health pursuant to this ordinance.

Permit Holder: Any person engaged in the sale or distribution of tobacco products that applies for and receives a tobacco product sales permit, or any person that is required to apply for a Tobacco Product Sales Permit pursuant to this ordinance, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the city.

Retailer: shall mean any person who is the owner or operator of any establishment in the business of selling or distributing tobacco products.

Schools: Public or private elementary or secondary schools.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by G.L. c. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, vaped, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

D. Tobacco Product Sales Permit Regulated.

1. Maximum Number of Tobacco Product Sales Permits

(a) At any given time, there shall be no more than two hundred thirty-five (235) Tobacco Product Sales Permits issued, fifteen (15) of which shall be issued to Smoking Bars pursuant to Section 3(e) of Chapter 8 of the General Revised Ordinances.

(b) [INSERT CAPPING OPTION]

(c) Transfer of Permits. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition may apply, within sixty (60) days of such sale or acquisition, for a transfer of the permit, in accordance with Chapter 8, Section 3(h) of the General Revised Ordinances of Worcester.

2. Retail Density

(a) As of the effective date of this regulation, no Tobacco Product Sales Permit shall be issued to a retail location within a radius of five hundred (500) feet of an existing Retailer who holds a valid Tobacco Sales Permit. The five hundred (500) foot distance shall be measured by a straight line from the nearest point of the property line of the existing Retailer to the nearest point of the property line of the site of the applicant’s business.

(b) [INSERT CAPPING OPTION]

(c) As of the effective date of this regulation, no Tobacco Product Sales Permit shall be issued for a retail location within a radius of five hundred (500) feet of a public or private, primary or secondary school. The five hundred (500) foot distance shall be measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant’s business.

E. Smoking Bars Regulated.

1. Maximum Number of Smoking Bars with a Tobacco Product Sales Permits.

- (a) At any given time, there shall be no more than **fifteen (15)** Tobacco Product Sales Permits issued to Smoking Bars in Worcester.
- (b) Any permit holder who fails to renew its Annual Permit within sixty (60) days of the expiration shall be treated as a first-time applicant.
- (c) Transfer of Permits. Applicants who purchase or acquire an existing Smoking Bar business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition may apply, within sixty (60) days of such sale or acquisition, for a transfer of the permit, in accordance with Chapter 8, Section 3(h) of the General Revised Ordinances of Worcester.

F. Effective Date:

Date of Adoption: _____, 2023

This regulation shall take effect on _____, 2023.

Board of Health

Capping Options to Consider:

1. “Basic” Cap: At any given time, there shall be no more than [number (XX)] Tobacco Product Sales Permits issued in the city. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within x days of expiration will be treated as a first-time permit applicant. **NOTE: This is the “basic” cap. City has the maximum number of permittees allowed, a waiting list should be started with the name and contact information of prospective tobacco retailers who are waiting to be contacted when a permit frees up.**
2. “Advanced” Cap: As of [date], any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits shall be reduced by the number of the retired permits. **NOTE: This is the “advanced” cap which has a maximum number of permits to be issued, does not provide for a waiting list, and automatically reduces the cap number when a retailer chooses to stop selling tobacco and returns their permit to the town. The only way a new retailer can obtain a permit would be to buy an existing business.**
3. Dual Cap: At any given time, of the allowed Permit number in subsection (a) above, there shall be no more than [number (XX)] Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, per the definition, in city. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within x days of expiration will be treated as a first-time permit applicant. **NOTE: This is a sub-cap that can be used with either the “basic” cap in subsection a OR the “advanced” cap in subsection b. It would provide a maximum number of permits within the general cap number that can go to qualifying “adult-only Retail Tobacco Stores” (which includes both tobacconists and vape shops). Smoking Bars****