

Noise Control

§ 34. Regulation of Construction Noise

Mercury Fever Thermometers

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§ 1. Enforcement

Unless specifically provided otherwise herein, the provisions of this chapter shall be enforced by the commissioner of public health, the director of public health, the commissioner of inspectional services, the building commissioner, the director of housing, any duly authorized member of the department of inspectional services, by any police officer, or by any other officer or employee of the city specifically authorized in writing by the city manager. Any such enforcing officer or person may utilize any and all available methods of enforcing the provisions of this chapter including, but not limited to: criminal process, non-criminal disposition, the issuance of orders or any other administrative actions.*

*Amended July 20, 2010 #9057

§ 2. [Reserved] – Amended July 20, 2010 #9057

§ 3. Tobacco Products Control Ordinance - Amended November 24, 2015 - 202

(a) *Statement of Purpose.*

The city of Worcester, acting by and through its City Council, hereby 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) There are an estimated 31,488 smokers who reside in the city of Worcester;
- (4) 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%;
- (5) Lung cancer incidence is 19% higher among males in Worcester compared to the state level – The age-adjusted lung cancer incidence (per 100,000) for males is 97.6 in Worcester and 82.2 in Massachusetts;
- (6) Lung cancer incidence is 19% higher among females in Worcester compared to the state level - The age-adjusted lung cancer incidence (per 100,000) for females is 70.8 in Worcester and 665.5 in Massachusetts;
- (7) Mortality from lung cancer is 17% higher in Worcester compared to Massachusetts;
- (8) Tobacco causes an estimated 438,000 deaths annually in the United States and over 8,000 deaths annually in the commonwealth of Massachusetts;
- (9) 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;
- (10) 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;
- (11) 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;
- (12) There are certain tobacco products such as blunt wraps that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia;
- (13) Among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station;
- (14) The U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;
- (15) The U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle and high school students tripled from 2013 to 2014;

(16) Nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;

(17) The Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste” (310 CMR 30.136);

(18) In a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one;

(19) According to the CDC’s youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days was 10.8% in 2013;

(20) In Massachusetts, youth use of cigars and smokeless tobacco (12.3%) is higher than the rate of current cigarette use (10.7%) for 2013 and has remained elevated since 2009;

(21) 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.”;

Now, Therefore, the city council of the city of Worcester, in recognition of the death and devastating effects of tobacco products on the residents of the city of Worcester, is compelled to exercise the authority granted it under its city charter to protect and promote the public health and the authority granted it by the Federal Family Smoking Prevention and Tobacco Control Act of 2009, P.L. 111-31, to regulate the sale of tobacco products.

(b) ***Definitions.*** For purposes of this section the following words and phrases shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Board of Health (or “board”): the public body re-established under Chapter 120 of the Acts of 2014 and Article Six of the Home Rule Charter, as described in further detail in section 14 of Article 10 of Part Two of the Revised Ordinances of the city of Worcester.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under G.L. c. 64C, § 1, Paragraph 1.

Coupon: Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Director: the director of public health in the division of public health in the department of health & human services of the city of Worcester;

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for compensation for an employer at the employer's workplace and as otherwise defined in section twenty-two (a) of chapter two hundred seventy of the General Laws.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including the city of Worcester or any agency or authority thereof, which uses the services of one (1) or more employees and as otherwise defined in section twenty-two (a) of chapter two hundred seventy of the General Laws.

Health Care Provider - Institutional: An individual, partnership, association, corporation, trust, or any person or group of persons that provides an institutional setting for the delivery of health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under G.L. c. 112. *Health Care Provider - Institutional* includes, but is not limited to, hospital and all associated doctor offices, medical practices, pharmacies, clinics, optician/optometrist offices and dentist offices located within any hospital complex.

Health Care Provider – Non-Institutional: An individual, partnership, association, corporation, trust, or any person or group of persons which is subject to the provisions of 247 CMR 6.00 or that owns or operates any stand-alone health care facility, including, but not limited to, any health center or clinic, doctors office, optician/optometrist office, dentist offices, and any retail establishment that provides pharmaceutical goods and services, and any pharmacy located within any Institutional HealthCare Provider.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product. The term does not include a

container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Minor: Any individual under the age of eighteen (18).

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

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.

Regulations: Legally binding and enforceable provisions, requirements and prohibitions adopted by the board of health pursuant to any lawful authority it may possess, including authority derived from this ordinance and/or pursuant to section thirty-one of chapter one hundred and eleven of the General Laws.

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.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

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.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products.

(c) *Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited.*

- (1) No retailer shall sell, attempt to sell, or otherwise distribute or attempt to distribute a tobacco product to a minor.
- (2) The minimum legal sales age in the city of Worcester is eighteen.
- (3) No retailer shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a

notice at least six inches by eight inches in size which is clearly visible to anyone purchasing such products and which states:

“Whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of eighteen or, not being his parent or guardian, who gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of eighteen (18) shall be punished by a fine of three hundred (\$300) dollars for any offense.”

(4) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the city that discloses current referral information about smoking cessation.

(5) The owner or other person in charge of a shop or other place used to sell tobacco products shall conspicuously post a sign stating that **“The sale of tobacco products, including e-cigarettes, to anyone under the age of 18 years is prohibited.”** The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

(6) *Identification:* Each retailer selling or distributing tobacco products shall verify the age of the purchaser by means of valid government-issued photographic identification showing the purchaser is not a minor. Verification is required for any person under the age of twenty seven.

(7) All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

(d) ***Smoke Free Workplace/Municipal Buildings.*** Smoking or otherwise consuming any tobacco product or any other combustible product is hereby prohibited in the municipal buildings and workplaces located the city of Worcester in accordance with section twenty-two of chapter two hundred seventy of the General Laws (commonly known as the “Massachusetts Smoke-free Workplace Law”). For the purposes of this section, municipal buildings shall include any building owned or leased by the city of Worcester, its agencies and authorities, including, but not limited to, City Hall, Union Station and all city libraries. Any person who violates the provisions of this subsection shall be fined \$100.00. The foregoing prohibition notwithstanding, the Worcester Redevelopment Authority is not prohibited from authorizing the operation of a hookah bar within commercially leased premises at Union Station.

(e) ***Smoking Prohibited at Certain Entrances and Exits.***

Smoking, or otherwise consuming any tobacco product or any other combustible product, is also hereby prohibited in the following:

(1) within fifty (50) feet of all municipal building entrance and exit ways. For the purposes of this section, municipal buildings shall include any building owned or leased by the city of Worcester, its agencies and authorities, including, but not limited to, City Hall, Union Station (including its bus terminals) and all city libraries.

(2) (a) on the property or campus that contains any Health Care Provider – Institutional; or, (b) on the grounds of any city-owned library; provided, that, the health care provider or library shall install appropriate signage and/or demarcations giving notice of any such no-smoking, tobacco free area; and, provided further, that, in addition to the campus-wide and library grounds prohibitions, smoking or otherwise consuming any tobacco product or any other combustible product that forms smoke is prohibited within fifty (50) feet of every entrance and exit way of every Health Care Provider - Institutional or city-owned library regardless of whether such fifty foot zone extends to any adjoining property, including any adjoining public or private street.

(3) within fifty (50) feet of any entrance and exit way of a Health Care Provider – Non-Institutional; provided, that, such Health Care Provider shall install appropriate signage and/or demarcations giving notice of any such no-smoking, etc., area; and, provided further, that no ash tray or similar receptacle shall be located within such 50 foot area.

(4) As provided below, any person who violates the provisions of this subsection shall be issued a civil citation carrying a penalty of \$100.

(f) ***Smoking Prohibited at Certain Municipal Owned Establishments.*** In addition to any location governed by the Massachusetts Smoke-free Workplace Law, smoking tobacco, consuming tobacco products, or smoking any combustible product that forms smoke, is hereby prohibited in city owned parks and playgrounds, including the City Hall Common; city or publically-owned athletic fields, beaches and other swimming areas; any open space preservation or similar areas in which the city holds any property interest; and, any, bus, taxi area, including any bus shelter waiting area.

(g) ***Smoking Bars.*** The operation of “smoking bars”, as defined in section twenty-two of chapter two hundred seventy of the General Laws, which includes but is not limited to those establishments that are commonly known as “cigar bars” and “hookah bars,” are hereby further regulated such that they shall:

- (1) comply with all of the requirements of section twenty-two of chapter two hundred seventy of the General Laws, including any regulations adopted thereunder;
- (2) comply with the terms and conditions set out in any regulations promulgated by the board of health to minimize the damage to public health and the health of patrons using the services of a smoking bar;
- (3) prohibit the entry of minors at all times,
- (4) maintain a valid permit issued by the board of health, or a designee,
- (5) provide the director at the time of its first filing of its application with proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a permit may be issued; and,
- (6) post signs at conspicuous locations warning patrons of the dangers of environmental tobacco smoke in the manner and form specified by the board of health, or a designee, at all entrances and on all tobacco selection menus.

(h) ***Sale and Distribution of Tobacco Products Regulated***

- (1) No retailer may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes, including single cigarettes.
- (2) All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only exception is self-service displays that are located in facilities where the retailer ensures that no minor is present, or permitted to enter, at any time.
- (3) No retailer shall sell, attempt to sell, or otherwise distribute tobacco products in any building or facility owned or operated by the city.
- (4) No retailer shall distribute, or cause to be distributed, any free samples of tobacco products.
- (5) No retailer shall accept or redeem any coupon that provides any tobacco product without charge or for less than the listed or non-discounted price.

(6) No retailer shall sell a tobacco product to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

(7) No health care provider, institutional or non-institutional, shall sell tobacco products or cause or allow tobacco products to be sold on its premises. No retail establishment that operates maintains or employs a health care provider within it, such as a pharmacy or drug store, shall sell tobacco products or cause tobacco products to be sold.

(8) No educational institution shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

(9) No retail establishment or entity shall sell or cause to be sold blunt wraps.

(10) All tobacco vending machines are prohibited in the city of Worcester.

(11) No retailer shall sell or distribute tobacco products in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product for retail sale.

(12) A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the director with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

(13) All Non-Residential Roll-Your-Own machines are prohibited.

(i) ***Tobacco Product Sales Permit.***

(1) No retailer shall sell or otherwise distribute tobacco products within the city of Worcester without first obtaining a permit issued annually by the board of health, or its designee. Only owners of establishments with a permanent, non-mobile location in Worcester are eligible to apply for a permit and sell tobacco products at a specified location in Worcester. The board of health, or its designee, shall issue a permit to any applicant only after determining that the applicant demonstrates compliance with this ordinance and any regulations the board of health may adopt to implement this ordinance.

- (2) As part of the permit application process, the applicant will be provided with this ordinance. Each applicant is required to sign a statement declaring that he or she has received the ordinance and agrees to be responsible for instructing all employees engaged in tobacco product sales about state law governing tobacco product sales and this ordinance. No permit holder shall allow any employee to sell tobacco products until the employee acknowledges, in writing, receipt of this ordinance and the state law regarding the sale of tobacco, a copy of which will be placed on file in the office of the employer and made available to the director upon request.
- (3) Each applicant shall provide the director with proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a permit may be issued.
- (4) The board of health, or its designee, shall issue permits to any applicant only after the director determines that the application is in compliance with this ordinance and any rules or regulations the board of health implementing this ordinance. The first permit issued to any applicant shall be an “initial” permit, which shall expire on the thirty-first day of December next after the date of issuance. Thereafter, permits issued shall be an “annual” permit which shall be valid for one calendar year beginning on the first day of January and ending on the thirty-first day of December. The “annual” permit is renewable to the same permit holder each year by the thirty-first day of December upon receipt of an application in compliance with this ordinance and the applicable rules and regulations. Any permit holder that fails to renew a permit by the thirty-first day of December and continues to operate shall be subject to penalty and enforcement under this section.
- (5) A separate permit is required for each retail establishment selling tobacco products.
- (6) Each permit shall be displayed at the retail establishment in a conspicuous location and consistent with regulations adopted by the board of health.
- (7) Permits holders shall have no property interest in any permit issued under this ordinance. No permit shall be transferable, except as set forth herein.
 - (A) Permits may be transferred incident to the relocation of a retail establishment by the existing permit holder upon prior written notification to the director of the relocation and any change in address.

- (B) No existing permit may be transferred unless and until all requirements of this ordinance and any regulations are satisfied and any outstanding penalties are satisfied in full.
- (8) A permit will not be renewed or transferred if the permit holder has failed to pay any outstanding fines, penalties or fees due to the city of Worcester for any reason unless such fines, penalties or fees are the subject of a lawful and pending legal appeal.
- (9) A permit will not be renewed or transferred if the permit holder has sold a tobacco product to a minor three times within the previous twenty-four months and the time period to appeal has expired. Any violator may request a hearing to refute such allegations in accordance with section (j) of this ordinance.
- (j) ***Fines, Penalties and Enforcement Authority.***
- (1) This ordinance may be enforced by civil process, criminal process or by non-criminal disposition as provided in General Laws, Chapter 40, § 21D.
- (2) The provisions of this ordinance may be enforced by any authorized agent or officer of the city of Worcester on any public property, on any private property which is subject to any permit required by this ordinance or any private property which is open to public use.
- (3) Every day or part thereof in which any person is in violation of these provisions shall constitute a single and separate offense.
- (4) Any person who violates any provision in any of the following subsections of this ordinance:
- (d) *Smoke Free Workplace/Municipal Buildings,*
 - (e) *Smoking Prohibited at Certain Entrances and Exits, or*
 - (f) *Smoking Prohibited at Certain Municipal Owned Establishments,*
- shall be punished with a civil penalty of \$100.
- (5) Any person who violates any provision in any of the following subsections of this ordinance:
- (c) *Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited),*
 - (g) *Smoking Bars,*
 - (h) *Sale and Distribution of Tobacco Products Regulated, or*
 - (i) *Tobacco Product Sales Permit,*

shall be punished with a civil penalty of \$300 or a criminal fine of up to \$300.

- (6) In addition to the monetary fines and penalties described above, any person who violates any of the provisions of subsections (g), (h) or (i) of this ordinance shall be subject to the suspension or revocation of any permit issued under authority of those subsections by the board of health as further provided herein.
- (7) Refusal to cooperate with inspections pursuant to this ordinance shall result in the suspension of the permit for up to thirty consecutive business days.
- (8) In addition to the fines and penalties set forth above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended or revoked shall be subject to the suspension or revocation of all board of health issued permits for thirty consecutive business days.
- (9) The director shall provide notice of the intent of the board of health to suspend or revoke any permit, which notice shall contain the reasons therefor together with documentation of the alleged violations. The notice shall establish a time and date for a hearing which date shall be no earlier than seven days after the date of said notice. The hearing shall be conducted by the board of health, or its designee, as the board in its sole discretion may determine. The alleged violator, permit holder or its business agent and legal counsel shall have an opportunity to be heard at such hearing. The alleged violator or permit holder shall be notified of the decision and the reasons therefore in writing. For purposes of any such suspension or revocation, the board of health, or its designee, shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the General Laws for the same offense. All tobacco products shall be removed immediately from the retail establishment upon suspension or revocation of any tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance with each day constituting a separate offense punishable by a fine or penalty of \$300 or by injunctive relief.

§ 4. Use of Gasoline Motors on Patch Reservoir

- (a) No person shall operate or allow to be operated a gasoline motored or diesel powered boat or other type of gasoline powered vehicle upon Patch Reservoir.
- (b) Any person who violates the provisions of this section shall be punished by a fine of three hundred dollars for each violation.
- (c) The provisions of this section shall not apply to any emergency vehicles.

§ 5. Temporary Fencing