

TOWN OF WEST SPRINGFIELD
BOARD OF HEALTH

RECEIVED

TOBACCO ACCESS REGULATIONS

-2 P 3:42

BOH Regulation #102

TOWN CLERK'S OFFICE
WEST SPRINGFIELD

§ 102.1 PURPOSE.

The purpose of this regulation is to protect the health of the employees and general public in Town of West Springfield.

§ 102.2 AUTHORITY.

These regulations are promulgated under the authority granted to the Town of West Springfield Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 and Massachusetts General Laws Chapter 270, Section 22(j).

§ 102.3 DEFINITIONS.

- A. **Adult-Only Retail Tobacco Store** – An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of twenty one (21) is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Town of West Springfield Board of Health.
- B. **Board of Health or Board** – The Town of West Springfield Board of Health.
- C. **Compensation** – Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.
- D. **E-Cigarette** – Any product that can deliver nicotine to the user through inhalation of vapor or aerosolization. Electronic cigarette devices include any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately. This term includes such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. It does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold or prescribed solely for the approved purpose.
- E. **Employee** – An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a de minimus amount of time.
- F. **Employer** – An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal

entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of West Springfield.

- G. **Enclosed** – A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.
- H. **Outdoor Space** – An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.
- I. **Smoking (or Smoke)** – The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.
- J. **Smoking Bar** – An establishment that primarily is engaged in the retail sale of tobacco products, including electronic cigarettes, for consumption by customers on the premises and is required by Mass. General Law Ch. 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”, “hookah bars” and “vape bars”.
- K. **Tobacco Product** – Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, 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.
- L. **Workplace** – An indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

§ 102.4 **SMOKING PROHIBITED.**

- A. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

- B. Smoking is hereby prohibited in Town of West Springfield in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law”).
- C. Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited:
- i. At any establishment (including but not limited to smoking bars, adult-only retail tobacco stores, outdoor spaces of restaurants, bars, taverns, etc.) located on a parcel which is within 250 feet (to be measured in a straight line from the nearest points of each property line) of a parcel occupied by:
 - a) A public or private elementary, junior high, middle, vocational or high school;
 - b) A day-care center or early education facility;
 - c) A park, playground or structure for religious worship; or
 - d) Any facility intended principally as a place for on-site services for children or wherein children commonly congregate in a formal, structured or scheduled manner.
 - ii. Within fifty (50) feet of the entrance to a municipal building entrance;
 - iii. In all municipally owned parks and playgrounds;
 - iv. On all municipally owned athletic fields;
 - v. On or in all municipally owned beaches and swimming areas;
 - vi. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 102.4(c) of this regulation.

§ 102.5

ENFORCEMENT.

- A. **Suspensions or Revocations.** If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- B. **Non-Criminal Disposition.** The provisions of these Regulations may also be enforced through any other lawful means in law or in equity by the Board of Health or the Mayor or their duly authorized agents, and by any available means in law or equity, including but not limited to enforcement by noncriminal disposition pursuant to G.L. c. 40, §21D and Chapter 1, Article II of the Ordinances of the Town of West Springfield. Each day a violation exists shall constitute separate violation. When enforced through noncriminal disposition, the penalties shall be as follows:
- vii. One Hundred Dollars (\$100.00) for the first offense;
 - viii. Two Hundred Dollars (\$200.00) for the second offense; and
 - ix. Three Hundred Dollars (\$300.00) for the third and all subsequent offenses.
- C. Only offenses which have occurred within the two (2) years preceding the date of violation shall be used in calculating the number of offenses for purposes of this section.
- D. The Board may use its discretion in determining whether the facts surrounding an offense warrant a penalty which is more lenient or severe than that suggested in

subsection (A), and the provisions of subsection (A) shall not be construed so as to limit the Board's authority to consider alternative dispositions, or further conditions on a license, or alternate penalties.

§ 102.6 **SEVERABILITY.**

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

§ 102.7 **CONFLICT WITH OTHER LAWS OR REGULATIONS.**

Notwithstanding the provisions of Section 102.4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

Per order of the West Springfield Board of Health, approved on the 17th day of October 2018 by a vote of two (2) in favor and zero (0) opposed.



David A. Higgins, Chairperson

10/17/18

Date



Lida Francoeur

Approved as to form:



Kate R. O'Brien, Town Attorney

10/30/2018

Date

Pursuant to Executive Order #104, I hereby approve / disapprove of the Board of Health's acceptance of the above.



Mayor William C. Reichelt

10/31/18

Date

TOWN OF WEST SPRINGFIELD
BOARD OF HEALTH

RECEIVED

TOBACCO SALES REGULATIONS
BOH Regulation # 103

2018 NOV -2 P 3:42

TOWN CLERK'S OFFICE
WEST SPRINGFIELD

§ 103.1 PURPOSE.

The purpose of this regulation is to protect the health of the employees and general public in Town of West Springfield by regulating the sale of tobacco products.

§ 103.2 AUTHORITY.

These regulations are promulgated under the authority granted to the Town of West Springfield Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31.

§ 103.3 DEFINITIONS.

- A. **Adult-Only Retail Tobacco Store** – An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of twenty one (21) is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Town of West Springfield Board of Health.
- B. **Board of Health or Board** – The Town of West Springfield Board of Health.
- C. **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 to be filled by the consumer with loose tobacco or other fillers (regardless of content) and not to be used by the consumer as a final product.
- D. **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.
- E. **Characterizing Flavor**– A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.
- F. **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 Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

- G. **Component Part**– Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- H. **Constituent** – Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.
- I. **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.
- J. **Distinguishable** – Perceivable by either the sense of smell or taste.
- K. **Educational Institution** – Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
- L. **Employee** – An individual or person who performs a service for compensation for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a de minimus amount of time.
- M. **Employer** – An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of West Springfield.
- N. **Flavored Tobacco Product** – any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.
- O. **Health Care Institution** – An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

- P. **Liquid Nicotine Container** – A bottle or other vessel which contains nicotine in liquid or gel form, whether combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.
- Q. **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.
- R. **Minimum Legal Sales Age (MLSA)** – The age an individual must be before that individual can be sold a tobacco product in the municipality.
- S. **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.
- T. **Permit Holder** – Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.
- U. **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.
- V. **Self-Service Display** – Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.
- W. **Schools** – Public or private elementary or secondary schools.
- X. **Smoke Constituent** – Any chemical or chemical compound in mainstream or side stream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.
- Y. **Smoking Bar** – An establishment that primarily is engaged in the retail sale of tobacco products, including electronic cigarettes, for consumption by customers on the premises and is required by Mass. General Law Ch. 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”, “hookah bars” and “vape bars”.

- Z. **Tobacco Product** – Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, 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.
- AA. **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, as defined herein.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

§ 103.4 **TOBACCO SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE PROHIBITED.**

- A. **Minimum Age.** No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual’s parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Town of West Springfield is twenty-one (21). Notwithstanding the foregoing, the prohibition on sales of tobacco products to persons under the age of twenty-one (21) shall not prohibit such sales to persons who attained the age of eighteen (18) before December 31, 2018.
- B. **Required Signage.**
 - i. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Town of West Springfield Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it 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. The notice shall be placed at a height of not less than 4 feet and not greater than 9 feet from the

floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05 (2) (e).

- ii. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Town of West Springfield Board of Health that discloses current referral information about smoking cessation.
- iii. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as “tobacco products”, at retail shall conspicuously post a sign stating that “The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of twenty one (21) 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 it 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 (4) feet or greater than nine (9) feet from the floor.
- iv. Owners or other persons in charge of a shop may meet the requirements of this Section with a single sign containing all of the required language, provided it meets the content and size requirements of each required sign.

C. **Identification.** Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years old or older or who attained the age of eighteen (18) before December 31, 2018. Verification is required for any person under the age of twenty-seven (27).

D. **Face-to-Face Sales.** 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.

§ 103.5 **TOBACCO PRODUCT SALES PERMIT.**

A. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of West Springfield without first obtaining a Tobacco Product Sales Permit issued annually by the Town of West Springfield Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of West Springfield are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in the Town of West Springfield.

- B. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Town of West Springfield regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
- C. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
- D. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for any permit shall be determined by the Town of West Springfield Board of Health annually with the approval of the Mayor.
- E. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- F. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- G. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
- H. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA three (3) or more times within the previous permit year and the time period to appeal has expired. The violator may request a hearing before the Board regarding the non-renewal.
- I. Maximum Number of Tobacco Sales Permits.
 - i. At any given time, there shall be no more than fifty (50) Tobacco Product Sales Permits issued in Town of West Springfield (reduced by the number of permits not renewed pursuant to subsection (ii) below). At any given time, there shall be no more than ten (10) Temporary Tobacco Product Sales Permits issued in Town of West Springfield. 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 thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a

waiting list and will be eligible to apply for a permit on a “first-come, first-served” basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.

- ii. As of January 1, 2019, 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 Town of West Springfield Board of Health.
- iii. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within two hundred fifty (250) feet of a public or private elementary or secondary school as 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 premises.
- iv. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the applicant intends to sell tobacco products, as defined herein.

§ 103.6 CIGAR SALES REGULATED.

- A. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.
- B. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.
- C. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the Town of West Springfield.
- D. The Town of West Springfield Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

§ 103.7 FREE DISTRIBUTION AND COUPON REDEMPTION. No person shall:

- A. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
- B. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or

- C. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
- D. Sections B and C shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

§ 103.8 OUT-OF-PACKAGE SALES.

- A. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
- B. A retailer of liquid nicotine containers must comply with the provisions of 310 CMR 30.000, et seq. and must provide the Town of West Springfield Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
- C. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700, et seq."

§ 103.9 SELF-SERVICE DISPLAYS.

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

§ 103.10 VENDING MACHINES.

All vending machines containing tobacco products, as defined herein, are prohibited.

§ 103.11 NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES.

All Non-Residential Roll-Your-Own machines are prohibited.

§ 103.12 PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY HEALTH CARE INSTITUTIONS.

No health care institution located in Town of West Springfield shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution

within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

§ 103.13 **PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY EDUCATIONAL INSTITUTIONS.**

No educational institution located in Town of West Springfield shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

§ 103.14 **INCORPORATION OF ATTORNEY GENERAL REGULATION 940 CMR 21.00.**

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”).

§ 103.15 **ENFORCEMENT.**

A. **Responsibility.** It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation.

B. **Suspensions or Revocations.**

- i. Permit holders in violation of these Regulations or any other relevant state or local law or regulation may be subject to the following enforcement actions:
 - a) First offense: warning to seven (7) day suspension of Tobacco Product Sales Permit.
 - b) Second offense: warning to thirty (30) day suspension of Tobacco Product Sales Permit.
 - c) Third offense: warning to revocation of Tobacco Product Sales Permit.
- ii. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
- iii. Any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
- iv. The Town of West Springfield Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be

notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Town of West Springfield Board of Health may suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

- C. **Non-Criminal Disposition.** The provisions of these Regulations may also be enforced through any other lawful means in law or in equity by the Board of Health or the Mayor or their duly authorized agents, and by any available means in law or equity, including but not limited to enforcement by noncriminal disposition pursuant to G.L. c. 40, §21D and Chapter 1, Article II of the Ordinances of the Town of West Springfield. Each day a violation exists shall constitute separate violation. When enforced through noncriminal disposition, the penalties shall be as follows:
- i. One Hundred Dollars (\$100.00) for the first offense;
 - ii. Two Hundred Dollars (\$200.00) for the second offense; and
 - iii. Three Hundred Dollars (\$300.00) for the third and all subsequent offenses.
- D. Only offenses which have occurred within the two (2) years preceding the date of violation shall be used in calculating the number of offenses for purposes of this section.
- E. The Board may use its discretion in determining whether the facts surrounding an offense warrant a penalty which is more lenient or severe than that suggested in subsection (B), and the provisions of subsection (B) shall not be construed so as to limit the Board's authority to consider alternative dispositions, or further conditions on a license, or alternate penalties.

§ 103.16 **SEVERABILITY.**

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

Per order of the West Springfield Board of Health, approved on the 17th day of October 2018 by a vote of two (2) in favor and zero (0) opposed.



David A. Higgins, Chairperson

10/17/18

Date



Lida Francoeur

Approved as to form:




Kate R. O'Brien, Town Attorney

10/30/2018

Date

Pursuant to Executive Order #104, I hereby approve / disapprove of the Board of Health's acceptance of the above.



Mayor William C. Reichelt

10/31/18

Date