

**DRAFT Regulation of the Westminster Board of Health
Prohibiting the Sale of Tobacco Products**

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development³;

Whereas nicotine is a highly addictive drug and one that causes cardiovascular disease⁴;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

Whereas 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 one⁵;

Whereas 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.”⁶;

Whereas electronic cigarettes are products that deliver nicotine to the lungs;

Whereas the American Heart Association is concerned that electronic cigarette use can serve as a gateway to re-initiation of smoking by ex-smokers and normalize smoking behavior⁷;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

³ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ US Department of Health and Human Services. *The health consequences of smoking—50 years of progress: A report of the surgeon general*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 17. Chapter 5 (2014). Available at: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/sgr50-chap-5.pdf> (Accessed September 25, 2014).

⁵ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

⁶ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

⁷ Bhatnagar A, Whitsel LP, Ribisl KM, Bullen C, Chaloupka F, Piano MR, Robertson RM, McAuley T, Goff D, Benowitz N. *Electronic Cigarettes: A Policy Statement From the American Heart Association*. *Circulation*. August 24, 2014. Available at: <http://circ.ahajournals.org/content/early/2014/08/22/CIR.000000000000107> (Accessed September 24, 2014).

Whereas for a sizeable number of smokers, electronic cigarette use will lead to dual use with cigarettes rather than quitting⁸;

Whereas recent data from the National Youth Tobacco Survey shows that youth who had never smoked conventional cigarettes but who used e-cigarettes were almost twice as likely to have intentions to smoke conventional cigarettes as those who had never used e-cigarettes⁹; and

Whereas the largest tobacco company in the United States provides this warning on its e-cigarette replacement cartridge pack: "WARNING: This product is not a smoking cessation product and has not been tested as such. This product is intended for use by persons of legal age or older, and not by children, women who are pregnant or breast feeding, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medicine for depression or asthma. Nicotine is addictive and habit forming, and it is very toxic by inhalation, in contact with the skin, or if swallowed. Nicotine can increase your heart rate and blood pressure and cause dizziness, nausea, and stomach pain. Inhalation of this product may aggravate existing respiratory conditions. Ingestion of the non-vaporized concentrated ingredients in the cartridges can be poisonous."¹⁰;

Whereas the second largest tobacco company in the United States provides this warning on its digital vapor cigarette: VUSE is a tobacco product because the nicotine used in this product is extracted from the tobacco plant. No tobacco product has been shown to be safe and without risks. This tobacco product contains nicotine which is addictive. This product is intended for use only by adult tobacco consumers and is not intended for persons who are pregnant or breast feeding; persons who have an unstable heart conditions, high blood pressure, or diabetes; or persons who are at risk for heart disease or are taking medicine for depression or asthma. Keep out of reach of children."¹¹

Now, therefore it is the intention of the Westminster Board of Health to prohibit the sale of tobacco products, as defined herein, in the Town of Westminster.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Westminster Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

⁸ World Health Organization. Electronic nicotine delivery systems. Conference of the Parties to the WHO Framework Convention on Tobacco Control. July 21, 2014. Available at: http://apps.who.int/gb/ftc/PDF/cop6/FCTC_COP6_10-en.pdf?ua=1 (Accessed September 25, 2014).

⁹ Bunnell R., Agaku I, Apelberg B, Craaballo R, Kikng B, Arazola R, Corey C, Coeman B, Dube S 1–8
doi:10.1093/ntr/ntu166, National Youth Tobacco Survey, 2011-2013. Nicotine & Tobacco Research. 2014 1–8
doi:10.1093/ntr/ntu166. September 16, 2014

¹⁰ MarkTen electronic cigarette replacement cartridge package, Manufactured for Nu Mark LLC, Richmond, VA. Nu Mark is an Altria company, 2014.

¹¹ VUSE rechargeable digital vapor cigarette, ©RJRVC 2013, Winston-Salem, NC 27102, USA.

C. Definitions:

For the purpose of this regulation, the following words 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.

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 Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

E-Cigarette: Any product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name.

Permit Holder: Any person engaged in the sale or distribution of tobacco products, as defined herein, who applies for and receives Tobacco Sales Permit or any person who is required to apply for either a Tobacco Sales Permit pursuant to these regulations, 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.

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, blunt wraps, 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, as defined herein.

D. Tobacco Product Sales Prohibited:

As of **EFFECTIVE DATE**, no person shall sell tobacco products or permit tobacco products, as defined herein, to be sold in the Town of Westminster.

E. Tobacco Product Sales Permit and Product Sales Permits:

All Tobacco Sales Permits and/or Nicotine Delivery Product Sales Permits shall expire on **EFFECTIVE DATE**. No new permits or renewal of existing permits shall occur after this date.

F. Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products as defined herein.

G. Vending Machines:

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

H. Violations:

1. 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. The violator shall receive:

- a. In the case of a first violation, a fine of three hundred dollars (\$300.00).
- b. In the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and all Board of Health-issued permits shall be suspended for seven (7) consecutive business days.
- c. In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and all Board of Health-issued permits shall be suspended for thirty (30) consecutive business days.
- d. In the case of further violations or repeated, egregious violations of this regulation within a twenty-four (24) month period, the Board of Health may revoke all Board of Health-issued permits.

2. Refusal to cooperate with inspections pursuant to this regulation shall be subject to the suspension of all Board of Health-issued permits for thirty (30) consecutive business days.

4. The Westminster Board of Health shall provide notice of the intent to suspend or revoke any Board of Health-issued 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 Westminster Board of Health shall suspend or revoke the Board of Health-issued permit(s) if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination

notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

I. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

J. Enforcement:

Enforcement of this regulation shall be by the Westminister Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Westminister Board of Health or its designated agent(s) and the Board shall investigate.

K. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

L. Effective Date:

This regulation shall take effect on _____, 2015 and replaces all previous Westminister Board of Health regulations pertaining to the sale of tobacco products and/or nicotine delivery products.

1. _____

2. _____

3. _____