

At a regularly scheduled meeting on January 17, 2023¹⁸ the Board of Health amended the Board of Health regulations Section 8 Smoking as follows:

Section 8 Smoking and Tobacco Products

8.0 Definitions: Smoking shall mean the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco product designed to be combusted and inhaled, or relies on vaporization or aerosolization, including marijuana. (as defined herein).

Component part: Any element of a tobacco product or delivery system, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

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.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream 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.

Distinguishable: Perceivable by either the sense of smell or taste.

Electronic Nicotine Delivery System means an electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or **another substance** to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization. This term shall include such devices whether they are manufactured or marketed and sold as e-cigarettes, e-cigars, e-pipes or under any other product name provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part, or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved 105 CMR: DEPARTMENT OF PUBLIC HEALTH purpose.

E-cigarette: Any electronic nicotine delivery 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 or marketed and sold as e-cigarettes, e-cigars, e-pipes or under any other product name. (Proposed to strike this section, e-cigarettes will be replaced with the term Electronic Nicotine Delivery System throughout these regulations.

Marijuana or "Marihuana" includes all parts of the any plant of the genus Cannabis.

Health Care Institution: Any entity, person, or group of persons that provides health care services and employs health care providers subject to licensing under G.L. c. 112, §§ 1, et seq., or a retail establishment or business that provides pharmaceutical goods and services and is subject to 247 CMR 6.00. Such persons and entities shall include, but not be limited to, hospitals, clinics, urgent care facilities, health centers, drug stores, pharmacies, physician's offices, optician's or optometrist's offices, and dental offices.

Nicotine Delivery Product: Any article, item or product made wholly or in part of a tobacco substitute or containing nicotine. This definition shall not apply to any product which is approved or certified by a regulatory agency as a tobacco use cessation or other medical purpose product and which is marketed and sold exclusively for such purpose.

Retail Tobacco Store: As defined in G.L. c. 270, §22. and an establishment 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 of 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 Wilmington Board of Health.

Flavored Tobacco and Nicotine 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.

Flavored Nicotine Delivery Product: Any nicotine delivery product, as defined herein, including **electronic nicotine delivery systems**, as defined herein 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 nicotine delivery product, including e-cigarettes as defined herein, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product, that the product has or produces a characterizing flavor shall constitute presumptive evidence that the product is a flavored nicotine delivery product, including **electronic nicotine delivery systems**, as defined herein.

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 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.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

Tobacco Product: Any product which contains tobacco or nicotine in any form, including but not limited to cigarettes, **electronic nicotine delivery systems**, cigars, pipe tobacco, chewing tobacco, and snuff.

Rolling Papers: Sheets, rolls, tubes, cones, or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly smoked herbs.

Self Service Display: A Self-Service Display is any display from which customers may select or make a tobacco product without access from an employee or store personnel.

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.

Schools: Public or private elementary or secondary schools.

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; **electronic nicotine delivery systems** or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" 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.

8.0.1 The use of **electronic nicotine delivery systems** is prohibited wherever smoking is prohibited per section 8 of the Wilmington Board of Health regulations.

8.1 Recreational marijuana use is prohibited wherever smoking is prohibited per section 8 of the Wilmington Board of Health Regulations.

8.2 No person shall smoke in any public elevator, supermarket, retail store, retail tobacco store, retail food store, restroom, or at any open meeting of a governmental body in the Town of Wilmington. No person shall smoke in any interior common area of any multiple dwelling unit.

8.3 No person shall smoke in any public building, museum, library, taxi, train, public transportation including platforms, public areas of all buildings which includes but is not limited to banks, financial institutions, commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity, group child care center, day care center, or waiting area of a health care facility, except in any private area which has been specifically designated as a smoking area for employees at the discretion of the manager of the building. No person shall smoke within a school building, within a school facility, on a school bus or on school grounds.

8.4 Smoking is prohibited in any restaurant or other such establishment open to the general public that sells food products. The operator of any food establishment shall conspicuously post such notice or signs indicating that smoking is prohibited therein. Any person who smokes in a food establishment shall be subject to a fine of \$50.00. Any operator of any food establishment who does not comply with this provision shall be subject to a fine of \$50.00.

8.5 In the case of hotels, motels and inns, a minimum of 75% of the total number of guestrooms shall be designated as non-smoking. The rooms so designated will have signs posted indicating the smoking is prohibited therein. Room designations shall be made and provided to the Board of Health at the time permits are issued. No changes in room designation can take place without prior approval of the Board of Health.

8.6 No person shall sell or offer for sale any tobacco product that has been removed from its original package or offer for sale any cigarette package that contains fewer than twenty (20) cigarettes.

8.7 No person shall sell any tobacco products, or nicotine delivery products, or give any such products, to any person under the age of 21 years. The minimum legal sales age in the Town of Wilmington is 21. The fine for the sale or gift of a tobacco product or nicotine delivery product to a person under the age of 21 shall be \$300.00 (see Section 8.22). Each retailer shall verify by means of valid government-issued photographic identification that each person purchasing tobacco is 21 years of age or older. No such verification is required for any person who reasonably appears to be 30 years of age or older. (*effective November 1, 2015*)

8.8 Existing vending machines dispensing tobacco products shall be located in plain view and control of a responsible employee, and all such vending machines must be equipped with a lock-out device approved by the Board of Health. Sale of a tobacco product to a minor by means of a vending machine is punishable by a fine of \$300.00. A second offense within a two year period shall be punishable by removal of the tobacco vending machine(s) for a period of one (1) year. A third offense within the same two-year period shall be punishable by permanent removal of the tobacco vending machine. After the effective date of this regulation, any new installation of a vending machine dispensing tobacco products shall be prohibited.

8.9 In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously in any place which sells tobacco products by the operator thereof.

8.10 A separate notice shall be posted at all of the cash registers and on any vending machine such that it may be readily seen by a person standing at or approaching the cash register or vending machine. Such notice shall directly face the patrons and shall not be obstructed from view, and shall be in two contrasting colors, at least 48 square inches in area, and able to be read at a distance of five (5) feet. Such notice shall state that the sale of any tobacco product to

persons under age 21 is illegal. The owner or other person in charge of a shop or other place used to sell nicotine delivery products shall also conspicuously post a sign stating that "The sale of nicotine delivery products to persons under 21 years of age is prohibited." All vending machines containing tobacco products, as defined herein, are prohibited.

8.11 Self-service displays of tobacco products are prohibited. Displays of tobacco products, including humidors, must be under the direct supervision of an employee and may be located only in an area behind or above the sales counter or courtesy desk counter area. Walk-in humidors must be located immediately adjacent to the cash register so as to prevent access without age verification. A Commercial Roll-Your-Own (RYO) machine is a mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

The following shall apply to Commercial Roll-Your-Own ("RYO") machines:

8.11.1 A Commercial RYO machine must be operated from within a locked area or have a lockout device on the machine to be unlocked by a store employee. Commercial RYO machines can only be operated by a customer after they have been granted access (unlocking) by an employee or store personnel, otherwise they would be considered self-service and prohibited. Customers must be 21 years of age or older to use the machine. Customer access to the RYO area can only be made by providing a store employee with proper identification showing that the consumer is 21 years of age or older. A store employee shall provide access to the locked RYO area or to the lockout device and provide instruction to the customer. The RYO area must be cleaned by store personnel only after every use and prior to use for the next customer. Cigarette product contact surfaces shall be cleaned with a disinfectant cleaner. Disposable clean collection boxes or bags must be used to collect product.

The fine for the violation of any of the above shall be \$100.00 for each violation, each day constituting a separate violation.

8.12 No person shall distribute tobacco products or other products containing tobacco free of charge.

8.13 No person shall sell, offer for sale, or display tobacco or nicotine delivery products within the Town of Wilmington, including sales by vending machine, without a valid tobacco sales permit issued by the Board of Health. This shall not apply to wholesale sales to retail establishments. (1/1/97) Penalties: Unless otherwise specified, the penalty for violation under this Section 8.13 shall be \$250.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.

8.13.1 No health care institution located in Wilmington shall sell or cause to be sold tobacco products or nicotine delivery products. (*effective November 1, 2015*)

8.14 The fee for a tobacco sales permit shall be \$ 200.00. (1/23/06)

8.15 A tobacco sales permit shall not be transferable. (1/1/97)

8.16 Any tobacco sales permit shall expire at the end of the calendar year in which it was issued. (1/1/97)

8.17 Each retail location shall be required to obtain a separate tobacco sales permit. (1/1/97)

8.18 The tobacco sales permit shall be posted in a conspicuous place at the point of sale. (1/1/97)

8.19 A tobacco sales permit shall not be issued to persons under the age of Twenty-one. (11/1/2015)

8.20 The fine for the sale of tobacco products without a tobacco sales permit shall be \$250.00. (1/1/97)

8.21 The Board of Health may revoke any tobacco sales permit for violation of these regulations. (1/1/97)

8.22 The penalties for violation of these tobacco regulations by a holder of a tobacco sales permit shall be according to the following table: (1/1/97)

First Violation:

Sale of tobacco to a person under 21 years of age	\$300.00
Other violation	50.00

Second Violation (within 12 months of the first violation):

Sale of tobacco to a person under 21 years	\$300.00
Other violation	50.00
Suspension of the tobacco sales permit for a period not to exceed 7 days	

Third and Subsequent Violation (within 12 months of any prior violation):

Sale of tobacco to a person under 21 years	\$300.00
Other violation	50.00

Suspension of a tobacco sales permit for a period of not less than 7 days and not to exceed one year.

8.23 Smoking and the use of any tobacco product(s) and marijuana is hereby prohibited in Wilmington at town-owned playgrounds, parks, beaches, beach areas, recreational areas and facilities. The penalties for violation shall be \$50.00 for each violation. The Police Department, Board of Health Agent or it's designee shall enforce the regulation.

8.24 Sale of Flavored Tobacco Products Prohibited: No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, flavored nicotine delivery product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer, do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010).

October 15, 2018

8.25 Limiting the Number of Tobacco Product Sales Permits Issued in the Town of Wilmington. As of *September 18, 2018* the Wilmington Board of Health shall not issue a Tobacco Product Sales Permit to a first-time permit applicant with a new business. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his/her permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 60 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and failure to meet this deadline will result in the Buyer being treated as a first-time permit applicant.

8.26 Cigar Sales Regulated:

1. 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 \$3.00 (three dollars) or more.

2. 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 \$5.00 (five dollars) or more.