

City of Newton Health and Human Services Department
Regulation Governing Tobacco and Nicotine Delivery Product Sales and Permits
10/16/19

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 development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence⁴;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁵;

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent⁶;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking⁷;

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”⁸.

Now, therefore it is the intention of the Newton Health and Human Services Department to regulate the sale of Tobacco Products and Nicotine Delivery Products and to protect the health and welfare of the general public in the City of Newton from the harmful effects of smoking and secondhand smoke.

B. Authority:

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 *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁵ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁶ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

⁷ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

⁸ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

This regulation is promulgated pursuant to the authority granted to the Newton Health and Human Services Department by Massachusetts General Laws Chapter 111, Section 31 and Chapter 270, Section 22(j).

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings set forth below:

Adult-Only Retail Tobacco Store or Retail Nicotine Delivery Product Store: An establishment that is not required to possess a retail food permit whose only purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, or nicotine delivery products, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age of twenty-one (21) is prohibited at all times, and maintains a valid tobacco and nicotine delivery product sales permit.

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-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, with or without nicotine. 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. "E-Cigarette" includes any component or part of an e-cigarette, including but not limited to, pods, vape juice containers and cartridges.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

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.

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: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

D. Number of Permits:

1. *Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits:* At any given time, there shall be no more than forty-three (43) Tobacco and Nicotine Delivery Product Sales Permits issued in accordance with Newton Ordinances, Section 20-2, subsection D, reduced by the number of permits not renewed pursuant to Section (2) below. No permit renewal will be denied based on the requirements of this section 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.

2. As of October 24, 2018, any permit not renewed either because a retailer no longer sells tobacco products and/or nicotine delivery products, as defined herein, or because a retailer closes the retail business, shall be returned to the Newton Health and Human Services Department and shall be permanently retired by the Department, and the total allowable number of Tobacco and Nicotine Delivery Product Sales Permits under Section (1) shall be reduced by the number of the retired permits.

3. *Maximum Number of Retail Tobacco Stores or Retail Nicotine Delivery Product Stores (age 21+):* At any given time, of the allowed Permit number in Section (1) above, there shall be no more than two (2) Tobacco and Nicotine Delivery Product Sales Permits issued to Retail Tobacco Stores or Retail Nicotine Delivery Product Stores, per the definition, in Newton. 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.

4. A Tobacco and Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school or after school program, as measured by a straight line from the nearest point of the property line of the school/program to the nearest point of the property line of the site of the applicant's business premises.

5. A Tobacco and Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco and Nicotine Delivery Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco and Nicotine Delivery Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

6. Applicants who purchase or acquire an existing business that holds a valid Tobacco and Nicotine Delivery 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 and/or nicotine delivery products, as defined herein. Such applicant may choose to apply for a Tobacco and Nicotine Delivery Product Sales Permit for a Retail Tobacco Store or Retail Nicotine Delivery Product Store if the Current Permit Holder possessed the same or if a Tobacco and Nicotine Delivery Product Sales Permit for a Retail Tobacco Store or a Retail Nicotine Delivery Product Store is available per section (3) above.

E. Sale of E-Cigarettes Restricted:

No person shall sell or distribute or cause to be sold or distributed any E-Cigarette, as defined herein, except in adult-only Retail Tobacco or Nicotine Delivery Product Stores. This restriction shall not apply to products sold or distributed at licensed Medical Marijuana Treatment Centers (MGL Ch. 94I) or licensed Marijuana Establishments (MGL Ch. 94G).

F. Smoking Bars Prohibited:

Smoking in “Smoking Bars,” as defined in Massachusetts General Law, Chapter 270, Section 22, including but not limited to those establishments commonly known as “Hookah Bars,” or “Cigar Bars,” is prohibited in the City of Newton and such establishments cannot possess a valid Tobacco Sales and Nicotine Delivery Product Permit as required by Newton Revised Ordinances, 2012, Section 20-2, as amended by Ordinance A-42, (06-16-2014).

G. Violations:

A person who violates the provisions of this regulation shall be subject to penalties found in Newton Revised Ordinances, Section 20-2.

H. Separate Violations:

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

I. Enforcement:

Enforcement of this regulation shall be by the Newton Health and Human Services Department or its designated agent(s).

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

J. 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.

K. Effective Date:

This regulation shall take effect on December 16, 2019.

Deborah C. Youngblood, Commissioner