

**City of Newton Health and Human Services Department**  
**Regulation Governing Tobacco and Nicotine Delivery Product Sales and Permits**  
**2/15/23**

**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 throat;<sup>1</sup>

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development,<sup>3</sup> may have lasting adverse consequences for brain development, and that it is addiction to nicotine that keeps youth smoking past adolescence;<sup>4</sup>

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 smokers;<sup>5</sup>

Whereas 18.1% 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%;<sup>6</sup>

Whereas the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;<sup>7</sup>

---

<sup>1</sup> U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm)

<sup>2</sup> CDC, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, (2010), [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

<sup>3</sup> U.S. Dep’t of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* At 13 (Executive Summary).

<sup>5</sup> *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).

<sup>6</sup> CDC (2014) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2014: 63 (SS04)). Retrieved from [www.cdc.gov](http://www.cdc.gov)

<sup>7</sup> Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data>).

Whereas cigars and cigarillos can be sold in a single “dose;” and enjoy a relatively low tax as compared to cigarettes;<sup>8</sup>

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;<sup>9</sup>

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;<sup>10</sup>

Whereas 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;<sup>11</sup>

Whereas ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schoolers, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021;<sup>12</sup>

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.”<sup>13</sup>

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.

---

<sup>8</sup> CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>).

<sup>9</sup> U.S. Dep’t of Health and Hum. Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) ([www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf)).

<sup>10</sup> Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Dep’t of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012) [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>11</sup> See fn. 3 at p. 85.

<sup>12</sup> MA YRBS 2017

<sup>13</sup> *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

**B. Authority:**

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.

*Change in Ownership:* The sale, merger, transfer, or other change in ownership or ownership structure of an entity.

*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 entity owning an establishment that is engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit.

*Person:* A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

*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 thirty-eight (38) Tobacco and Nicotine Delivery Product Sales Permits issued in accordance with Newton Ordinances, Section 20-2, subsection D, reduced by the number of permits retired pursuant to Section D(2) below.
2. Any permit surrendered, revoked, or 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 expire and 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 D(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 D(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.

#### **E. Permit Expirations and Renewals**

1. All permits shall be renewed annually. Applications for permit renewal shall be submitted no later than 30 days prior to the expiration of the permit. No person shall sell or otherwise distribute tobacco or nicotine delivery products within the city after their permit has expired until their application for renewal has been approved. Failure to apply for renewal within 30 days after the expiration of a permit will result in the permit being retired under Section D(2) above.
2. A Tobacco and Nicotine Delivery Product Sales Permit shall expire upon the Change in Ownership of an existing entity that holds a valid Tobacco and Nicotine Delivery Product Sales Permit. Such a Permit shall not be retired under Section D(2) above, provided that the resulting entity reapplies for the Tobacco and Nicotine Delivery Product Sales Permit no later than 30 days after said Change in Ownership. Failure to reapply for the permit within that time period will result in the permit being retired under Section D(2) above.

**F. 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).

**G. 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).

**H. Violations:**

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

**I. Separate Violations:**

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

**J. 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 may 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 4/3/23.

Linda Walsh, Commissioner