Important information for Newton tobacco/nicotine delivery product permit holders
August 21, 2019

Please see the attached draft public health regulation restricting sales of electronic cigarettes to adult-only (21+) stores.

A public listening session regarding this regulation will be held Thursday October 3, 2019 from 7 to 9 p.m. in City Council Chambers at Newton City Hall, 1000 Commonwealth Ave. Newton, MA 02459.

The draft regulation will be posted on our website at www.newtonma.gov/health along with frequently asked questions as they come to our attention.

If you would like to provide written feedback about this proposed regulation, please email health@newtonma.gov before 5:00pm on Friday October 4, 2019.

If you would like to provide verbal feedback, please come to the public listening session on Oct. 3.

If you have additional questions, please call 617-796-1420.
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\(^1\);

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin\(^2\) 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 adolescence\(^4\);

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\(^5\);

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 11\(^{th}\) grade males this rate was nearly 30 percent\(^6\);

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking\(^7\);

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.

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\(^8\) 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 and in Newton Revised Ordinances, Sec. 20(2)(b):

*Adult-Only Retail Tobacco Store:* An establishment that is not required to possess a retail food permit whose only purpose is to sell or offer for sale 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 device, not approved by the United States Food and Drug Administration, 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 any liquid, regardless of nicotine content, or solid 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 Stores.

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
JOIN US!

PUBLIC LISTENING SESSION

A public health regulation is proposed to restrict e-cigarette sales to adult only (21+) stores.
Share your opinion.

OCTOBER 3 @ 7 PM
CITY COUNCIL CHAMBERS

Newton City Hall
1000 Commonwealth Ave, Newton, MA

View a draft of the regulation at www.newtonma.gov/health
Can't make it? Email your opinion to health@newtonma.gov

The location of this meeting is wheelchair accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the City of Newton's ADA/Sec. 504 Coordinator, Jin Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The City's TTY/DD direct line is: (617) 796-1089. For the Telecommunications Relay Service (TRS), please dial 711.