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

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; 

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

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; 

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 percent; 

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

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”.

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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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-cigs, 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
Proposed E-cigarette Regulation
Frequently Asked Questions
Updated 10/1/19

1. **Why is Newton proposing this new regulation?**
   Youth e-cigarette use nationwide has increased dramatically, and Newton is not immune. Newton’s Fall 2018 Youth Risk Behavior Survey indicated use of electronic tobacco products was far more common than use of cigarettes, with 2% of middle school students and 15% of high school students reporting current use (below the MA high school rate of 20%), peaking at 18% among 11th and 12th graders, and up substantially since first being assessed in 2016 (middle school – 0.2% to 2%, high school – 4% to 15%). The survey also indicated Newton Youth feel that electronic tobacco products are easier to obtain than other substances – 66% of high school students think it would be easy to obtain electronic tobacco products, compared to 63% for alcohol, 50% for marijuana, 39% for cigarettes, and 25% for prescription drugs not prescribed to them. An April 2018 survey conducted by the Truth Initiative found that the most common way youth got JUUL (a popular e-cigarette brand) is through physical retail locations. 74 percent of youth said that they obtained JUUL at a store or retail outlet. E-cigarettes are particularly harmful to youth because their brains are still developing. Significantly reducing the number of e-cigarette retailers in Newton will help prevent youth access to these harmful products.

2. **What is a retail tobacco store or retail nicotine delivery product store?**
   An establishment that is not required to possess a retail food permit whose primary 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 entry of persons under the age of twenty-one (21) is prohibited at all times, and maintains valid tobacco and nicotine delivery product sales permit. Newton has two of these stores.

3. **What does it mean to restrict sales to retail tobacco store or retail nicotine delivery product stores?**
   E-cigarettes would no longer be sold in Newton convenience/grocery/liquor or other types of stores. Only the 2 Newton stores who already meet the definition would be allowed to sell e-cigarettes, a product they already sell.

4. **Won’t Newton just get a lot more 21+ stores if this regulation takes effect?**
   No. Newton’s October 2018 permit regulation capped the total number of retail tobacco/nicotine delivery product stores to only two.
5. **What is a Public Listening Session?**
This is an opportunity for people to express their opinions on this new proposed regulation and suggest anything else they would like added or things they would like changed. Those choosing to speak will be heard by Newton’s Public Health & Human Services Commissioner Deborah Youngblood and members of her staff. There will be no presentation and no questions answered at this session. Comments will be considered by city officials after the session and the regulation may be revised based on feedback.

6. **How can I speak at the Public Listening Session?**
A paper sign-up sheet for speakers will be available in City Council Chambers beginning at 6:30 p.m. Speakers will have either 2 minutes to speak. If you run out of time or are unable to attend, you may submit written comments to health@newtonma.gov through October 4 at 5 p.m.

7. **When would this regulation take effect?**
December 16, 2019. No Newton tobacco/nicotine retailers (other than the two adult only stores) would be allowed to sell e-cigarettes beginning December 16, 2019. A notice of the new regulation would be published in the Newton Tab in mid-October, giving retailers two months to plan for this change. Retailers were first notified of this possible change in June 2019 by mail with their new sales permits. This six-month timeline was designed to allow retailers to plan future e-cigarette purchases in anticipation of this possible change.

8. **Could the regulation change from this draft version?**
Yes. The purpose of the public listening session is to allow retailers and the public to provide feedback on this proposed regulation. Additionally, the regulation is still undergoing internal review and additional changes may be made.

9. **What are the yellow highlighted sections in the regulation?**
Newton currently has two tobacco/nicotine related regulations that were previously adopted and are already in effect. Adding the e-cigarette restriction would result in a third regulation. For clarity, staff decided to combine the two existing regulations into this new draft with the additional e-cigarette restriction. The yellow highlighted sections indicate the new draft regulation language.

10. **Aren’t you going to hurt Newton small businesses?**
We are interested to hear from Newton retailers about the anticipated impact this regulation would have on their business. This information would be weighed with the importance of protecting the health of Newton teens.
11. What would be the penalties for stores who violate this regulation?

The penalties are the same as those listed in Newton’s tobacco/nicotine ordinances, Chapter 20-2.
- First violation: $100
- Second violation: $200 and 7-day permit suspension
- Third violation: $300 and 30-day permit suspension

12. How will you know if stores violate the regulation?

The HHS department regularly conducts both retail inspections and compliance checks in all Newton tobacco/nicotine stores. A retail inspection is when the inspector visits the store unannounced, and reviews compliance with tobacco/nicotine related requirements. Specific products offered for sale are examined. Most violations of this new regulation would be revealed during this type of inspection. Compliance checks are when an underage youth visits a store unannounced and attempts to purchase tobacco/nicotine products. Stores may be issued violation notices (with penalties described above) as a result of both types of enforcement.

13. Will the temporary statewide ban on all sales of vaping products affect this regulation?

Not at this time. The HHS Department is moving forward with public listening session on Oct. 3 and continues to welcome input and questions. If the regulation goes into effect in mid-October, enforcement would begin in mid-December. The temporary statewide ban currently is in effect until January 25, 2020. The statewide ban supersedes local regulations. Once the statewide ban is lifted if no other statewide orders are issued, and if Newton’s regulation is implemented, vaping product sales would begin again in Newton in late January 2020, but only in the two 21+ stores and in any state licensed marijuana establishment.

Have a question? Email health@newtonma.gov