

Regulation of the Concord Board of Health Restricting the Sale of Tobacco Products

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 approximately 90% of smokers begin smoking before the age of 25, and more than 5 million young adults ages 25 and under smoke;

Whereas Coupons or other means, instruments or devices that allow for the procurement of Tobacco Products or Nicotine Delivery Products for free or at a reduced or discounted price or the procurement of cigarettes at a price below the minimum retail price counteract the effects of increased prices in deterring or discouraging smoking;

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

Whereas the U.S. Surgeon General has recognized 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;

Whereas medically vulnerable individuals are significantly affected by smoking and use of other Tobacco Products and these individuals are more likely to visit health care institutions, including pharmacies;

Whereas research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;

Whereas policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;

Now, therefore it is the intention of the Board to regulate the sale of Tobacco Products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Concord Board of Health by, among other things, M.G.L. c. 111, § 31, which states “Boards of health may make reasonable health regulations”.

C. Definitions:

For the purpose of this Regulation, the following capitalized words shall have the following meanings:

Adult-Only Retail Tobacco Store: An establishment:

1. that does not share space with another business;
2. that has a separate public entrance;
3. that is not required to possess a retail food permit, restaurant license, liquor license, or lottery license;
4. whose primary purpose is to sell or offer for retail sale, but not for resale, tobacco products or tobacco product paraphernalia;
5. in which the entry of persons under the age of twenty-one (21) years old is prohibited at all times; and
6. which maintains a valid Tobacco Products Sales Permit from the Board, as well as any applicable state licenses.

Board: The Concord Board of Health or its designee.

Blunt Wrap: Any Tobacco Product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual that has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco imparted or detectable either prior to or during consumption of a Tobacco Product or Component Part, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, menthol, mint, wintergreen, alcoholic beverage, herb or spice; provided, however, 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.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts law.

Component Part: Any element of a Tobacco Product or Nicotine Delivery Product, 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.

Coupon: Any card, paper, note, form, statement, ticket, or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer to receive an article, service or accommodation without charge or at a discount price.

Electronic Nicotine Delivery System: Any electronic device composed of a mouthpiece, heating element, and battery or electronic circuits that provides a vapor of liquid nicotine to the user or relies on vaporization of solid nicotine or any other liquid. Electronic Nicotine Delivery Systems include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens, and other similar devices that rely on vaporization or aerosolization by any other product name. Electronic Nicotine Delivery Systems also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately. An Electronic Nicotine Delivery System 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.

Flavored Tobacco 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.

Health Care Institution: An individual, partnership, association, corporation or trust, or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under G.L. c. 112, or a retail establishment that provides pharmaceutical goods and services and that is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor's offices, and dentist's offices.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a Tobacco Product. A Liquid Nicotine Container does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a Tobacco Product if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Listed or Non-Discounted Price: The higher of the price listed for a Tobacco Product on its package or the price listed on any related shelving, posting, advertising or display at the place

where the Tobacco Product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or Coupons.

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 tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual that produces Cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that can make cigarettes, Cigars or other Tobacco Products.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine.

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 that is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her Business Agent.

Retail Tobacco Store: A retail establishment in the Town of Concord, other than an Adult-Only Retail Tobacco Store, for which a Permit Holder has a valid Tobacco Product Sales Permit in accordance with this Regulation.

Self-Service Display: Any display from which a person may select and purchase Tobacco Product without assistance.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any Component Part to the smoke or that is formed by the combustion or heating of tobacco, additives or other Component Part.

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; or Electronic Nicotine Delivery Systems, liquid nicotine, Nicotine Delivery Products, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco Product" includes any Component Part or accessories 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 exclusively for the approved purpose.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to product 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 Sales Permit: A permit issued to a retail establishment in the Town of Concord in accordance with this Regulation that permits the holder to sell certain varieties of Tobacco Products.

Tobacco Vending Machine: Any automated or mechanical self-service device which, upon insertion of any form of payment, dispenses or makes cigarettes or any other Tobacco Products.

D. No Tobacco Sales to Persons Born on or after January 1, 2004:

1. No person shall sell or provide a Tobacco Product to a person born on or after January 1, 2004.
2. All retail sales of Tobacco Products must be face-to-face between the seller and the buyer and occur at a permitted Retail Tobacco Store or Adult-Only Retail Tobacco Store.
3. Each person selling or distributing Tobacco Products shall verify that every purchaser is born on or before January 1, 2004 by means of a valid government-issued photographic identification containing the bearer's date of birth.
4. Required Signage:
 - a. As required by M.G.L. c. 270, § 7, all Adult-Only Retail Tobacco Stores and Retail Tobacco Stores shall post signage provided by the Massachusetts Department of Public Health (DPH) and made available from the Board. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sales of Tobacco Products to a person born on or after January 1, 2004 is prohibited; (iv) health warnings associated with using Electronic Nicotine Delivery Systems; and (v) notice to consumers that the sale of Flavored Tobacco Products is prohibited. The notice shall be at least 48 square inches and shall be posted conspicuously by the Permit Holder in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
5. Additional Signage:
 - a. All Adult-Only Retail Tobacco Stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by the DPH on the exterior of the door providing entrance warning persons entering that smoking and vaping may be present on the premises and providing information concerning the health risks associated with secondhand smoke and the use of Tobacco Products, including Electronic Nicotine Delivery Systems. Such sign shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. Such signage shall state that "No person younger than twenty-one (21) years old is permitted on the premises at any time."

6. Entrance to an Adult-Only Retail Tobacco Store must be secure so that access is restricted to employees and to those 21 years old or older. Nobody under the age of 21 may work at an Adult-Only Retail Tobacco Store.

7. Each person admitting entrance into an Adult-Only Retail Tobacco Store shall verify that every person entering is twenty-one (21) or older by means of a valid government-issued photographic identification containing the bearer's date of birth.

E. General Regulation of Tobacco Product Sales or Distribution:

1. No person shall sell, offer for sale, or otherwise distribute Tobacco Products without first obtaining a Tobacco Product Sales Permit issued annually by the Board. Only owners of establishments with a permanent, indoor, non-mobile location in Concord are eligible to apply for a permit and sell Tobacco Products at the specified location in Concord.

2. On or after the Effective Date, no Person shall sell or distribute or cause to be distributed any other Tobacco Product except in a Retail Tobacco Store or in an Adult-Only Retail Tobacco Store.

3. Each applicant for a Tobacco Products Sale Permit must provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, to the Board before a Tobacco Product Sales Permit may be issued.

4. A Permit Holder shall display its Tobacco Product Sales Permit conspicuously in the permitted establishment.

5. Permit Holders shall pay an annual fee to hold a Tobacco Product Sales Permit. The fee shall be established by the Board annually and published on the Town's website.

6. Application for and acceptance of a Tobacco Products Sale Permit constitutes a Permit Holder's consent to unannounced, periodic inspections of a Permit Holder's establishment by the Board to ensure compliance with this Regulation.

7. A Permit Holder must request that the Board renew its Tobacco Product Sales Permit within thirty (30) days of the Tobacco Product Sales Permit's expiration. A Permit Holder that fails to seek renewal of its Tobacco Product Sales Permit within thirty (30) days of its expiration will be treated as a first-time applicant.

8. There shall be no more than fourteen (14) Tobacco Product Sales Permits issued in the Town of Concord, of which no more than two (two) shall be issued to operate Adult-Only Retail Tobacco Stores. Any Tobacco Product Sales Permit that is not properly renewed pursuant to this regulation, except a Tobacco Product Sales Permit issued to an Adult-Only Retail Tobacco Store, shall be permanently retired by the Board, and may not be issued to any other Person.

9. A Tobacco Product Sales Permit will not be renewed if the Permit Holder has failed to pay all fines issued by the Board and the time period to appeal said fines has expired, or if the Permit Holder has not satisfied any outstanding permit violations.
10. A Tobacco Product Sales Permit will not be renewed if the Board receives documented evidence that the Permit Holder has sold a Tobacco Product to a person born on or after January 1, 2004 three or more times within the previous permit year.
11. Tobacco Product Sales Permits are non-transferable. A new owner of an establishment that sells Tobacco Products must apply for a new permit. No new Tobacco Product Sales Permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
12. Self-Service Displays of Tobacco Products, Tobacco Vending Machines, and Non-Residential Roll-Your-Own machines are prohibited.
13. All humidors, including but not limited to walk-in humidors, must be locked.
14. The sale or distribution of Blunt Wraps is prohibited in the Town of Concord.
15. Permit Holders must obtain manufacturer documentation certifying that all Tobacco Products sold or distributed do not meet the definition of a Flavored Tobacco Product or Tobacco Product Flavor Enhancer. The Permit Holder must maintain a record of the certification documentation submitted by the manufacturer for each Tobacco Product sold or offered for sale and provide such records to the Board upon request.
16. Permit Holders must obtain manufacturer documentation indicating the nicotine content expressed as milligrams per milliliter for each Electronic Nicotine Delivery Product to be sold or distributed. The Permit Holder must maintain a record of the nicotine content submitted by the manufacturer and provide such records to the Board upon request.

E. 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 three dollars (\$3.00) 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 ten dollars (\$10.00) or more.
3. This Section shall not apply to a person or entity engaged in the business of selling or distributing Cigars for commercial purposes to another person or entity engaged in the business of selling or distributing Cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Concord, and to all Adult-Only Retail Tobacco Stores and Retail Tobacco Stores.

4. The Board may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this Regulation.

F. Use of Electronic Nicotine Delivery Systems in Certain Locations Prohibited:

The use of all Electronic Nicotine Delivery Systems are prohibited wherever smoking is prohibited within the Town of Concord per M.G.L. Ch. 270, § 22, the Concord Smoke Free Workplace Law, or any other federal, state or local law.

G. Free Distribution and Coupon Redemption Prohibited:

No person shall:

1. Distribute or cause to be distributed, any free samples of Tobacco Products;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any Coupon that provides any Tobacco Product without charge or for less than the Listed or Non-Discounted Price; or
3. Sell a Tobacco Product to consumers through any multi-pack discounts (e.g., “buy-two-get-one-free”) or otherwise provide or distribute to consumers any Tobacco Product without charge or for less than the Listed or Non-Discounted Price in exchange for the purchase of any other Tobacco Product.

H. Out-of-Package Sales; Liquid Nicotine Containers; Electronic Cigarette Cartridges:

The sale or distribution of Tobacco Products in any form other than an original factory-wrapped package, including the repackaging or dispensing of any Tobacco Product for retail sale, is prohibited. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

Permit Holders that sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000 and must provide the Board with a written plan for disposal of Liquid Nicotine Containers, including disposal plans for any breakage, spillage or expiration of Liquid Nicotine Containers.

No Permit Holder shall refill an Electronic Cigarette cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

I. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No Health Care Institution located in the Town of Concord shall sell or cause to be sold Tobacco Products. No retail establishment that operates or has a Health Care Institution within it, including, without limitation a pharmacy, drug store, optician, or optometrist, shall sell or cause to be sold Tobacco Products.

J. Incorporation of Federal, State Laws and State Regulations:

Each Permit Holder shall be responsible for its Business Agents' and employees' compliance with all federal, state and local laws applicable to the sale of Tobacco Products, including this Regulation, including without limitation the provisions of M.G.L. c. 270, §§ 6, 6A, 7, 28, 29; M.G.L. c. 112, § 61A; 105 CMR 665.00; 940 CMR 21.00; and 940 CMR 22.00.

K. Violations:

1. It shall be the responsibility of the establishment, Permit Holder and/or its Business Agent to ensure compliance with all Sections of this Regulation. For violations of this Regulation, the violator shall receive:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1000.00). If the violation is the sale of a Tobacco Product to a person born on or after January 1, 2004, the Tobacco Product Sales Permit shall be suspended for three (3) consecutive business days per 105 CMR 665.040(d).
 - b. In the case of a second violation within 36 months of the date of the current violation, a fine of two thousand dollars (\$2,000.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a 36-month period, a fine of five thousand dollars (\$5,000.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
2. Each day any violation exists shall be deemed to be a separate offense.
3. Failure to cooperate with inspections pursuant to this Regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
4. The Board shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The Permit Holder or its Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and the reasons therefor in writing. After a hearing, the Board may suspend or revoke the Tobacco Product Sales Permit if the Board finds that a violation of this Regulation occurred. All Tobacco Products shall be removed from the permitted establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all Tobacco Products shall constitute a separate violation of this Regulation.

L. Enforcement:

Enforcement of this Regulation shall be by the Board or its designee.

Nothing in these Regulations shall be construed to limit or negate the Board's or any other entity's authority to seek other or additional enforcement or penalties authorized by any other

federal, state, or local law or regulation. The Board’s election of one remedy shall not preclude enforcement through any other lawful means.

M. 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.

N. Effective Date:

This Regulation, as amended, shall take effect on October 15th, 2024 (the “Effective Date”) and replace all prior versions of the Board’s regulations regarding the sale of Tobacco Products.

Approved October 15th 2024 by Board of Health Members: Dr. Randy Kring, Dorothy Bernard,
Kurt Herman, James Whalen, RN, and Portia Keady.