

**GUIDELINES FOR THE IMPLEMENTATION AND
ENFORCEMENT OF BOSTON PUBLIC HEALTH COMMISSION'S
REGULATION LIMITING TOBACCO AND NICOTINE ACCESS
BY YOUTH ("YOUTH ACCESS REGULATION")**

(Effective May 15, 2012)

APPROVED: _____ /s/

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SECTION I. PURPOSE

The Boston Public Health Commission has determined that regulation of the sale of tobacco products is necessary to protect the health of youth under the age of eighteen from the risk of addiction and life threatening disease. These guidelines are promulgated to set forth the implementation and enforcement procedures of the Boston Public Health Commission's Regulation Limiting Tobacco and Nicotine Access by Youth (hereinafter "Regulation").

SECTION II. DEFINITIONS

1. **Bidi (also spelled "beedie")** – A product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*), or any product that is offered to, or purchased by, consumers as bidis.
2. **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.
3. **Cigar** – Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece.
4. **Cigarette** – Shall be defined as that term is defined in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §1331 et seq. ("FCLAA").
5. **E-Cigarette** – Any electronic device 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 or solid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

6. **Employee** – An individual who performs services for an employer in exchange for wages or profit.
7. **Employer** – An individual, partnership, association, corporation, trust, school, college, university or other educational institution, or other organization or entity, including a public or private authority or municipal or other governmental agency that regularly engages the services of one (1) or more employees.
8. **Nicotine Delivery Product** – Any manufactured article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed medical provider or a product that has been approved by the U.S. 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, nicotine water, and nicotine hand gel. A nicotine delivery product does not include a product that has been approved by the U.S. Food and Drug Administration for sale as a smoking cessation aid such as the Nicotine Patch, Nicotine Lozenges, and Nicotine Gum.
9. **Retailer** – Any person or entity who sells tobacco or nicotine delivery products to individuals in the City of Boston, or who operates a facility located within the City of Boston where tobacco product vending machines are located.
10. **Retail Establishment** – Any physical place of business or section of a physical place of business where tobacco or nicotine delivery products are offered to consumers. The term shall include those portions of any physical place of business where vending machines that dispense tobacco products are located.
11. **Retail Tobacco Store** – An establishment for which a retail food permit is not required, in which the sale of other products is incidental, in which the entry of persons under the age of eighteen (18) is prohibited, and whose primary purpose is to sell or offer for sale (but not for resale) to consumers tobacco products and paraphernalia.
12. **Self-Service Display** – A display from which customers may select a tobacco or nicotine delivery product without assistance from an employee, including, but not limited to, commercial roll your own tobacco machines, but excluding vending machines.
13. **Smoking bar** – An establishment whose business is primarily devoted to the serving of tobacco products for consumption by guests on the

premises, in which the serving of food or alcohol is only incidental to the consumption of such tobacco products, and in which the entry of persons under the age of eighteen (18) is prohibited at all times. The establishment must annually demonstrate that revenue generated from the serving of tobacco products is equal to or greater than sixty percent (60%) of the total combined revenue generated by the service of such tobacco products, beverages, and food. Revenue considered as evidence for the purpose of this regulation shall be that used in calculating the meal tax amount filed on Massachusetts Department of Revenue Form MAB-4, Line 1 for the preceding four filings and those used in calculating the cigar and smoking tobacco excise tax amount filed on Massachusetts Department of Revenue Form Cigar-1 for the preceding four filings.

14. **Tobacco Product** – A cigarette, cigars, chewing tobacco, pipe tobacco, bidi, snuff, or any other tobacco in any form.

SECTION III. APPLICATION OF REGULATION

This Regulation applies to all retailers, retail establishments, retail tobacco stores, smoking bars, and other individuals or entities selling tobacco and/or nicotine delivery products. If an individual or entity believes that it is not a retailer, retail establishment or retail tobacco store as defined in the Regulation, such entity may request a ruling by the Tobacco Control Program.

SECTION IV. SALE OF TOBACCO/NICOTINE DELIVERY PRODUCTS

A. Application and Permit

1. No retailer or retail establishment shall sell tobacco or nicotine delivery products without first obtaining a Permit for Location and Sale of Tobacco/Nicotine Delivery Products.
2. An application for a Permit for Location and Sales of Tobacco/Nicotine Delivery Products shall include the following:
 - a. a completed Location and Sales of Tobacco/Nicotine Delivery Products Permit Application;
 - b. a check or money order made payable to the Boston Public Health Commission for the applicable permit fee of:
 - i. \$100 for retailers who wish to sell either tobacco products **or** nicotine products; and
 - ii. \$150 for retailers who wish to sell tobacco **and** nicotine delivery products;

- c. a signed and dated Owner/Operator Statement; and
 - d. **REQUIRED FOR TOBACCO SALES PERMIT APPLICATIONS ONLY:** a copy of the retailer's DOR Cigarette and/or Cigar Retailer's License Form CT-3T or other proof thereof as accepted by the Tobacco Control Program.
3. A completed application, including the Owner/Operator Statement and CT-3T, and permit fee must be mailed to the Boston Public Health Commission, 1010 Massachusetts Avenue Boston, MA 02118, Attn: Revenue Dept./Tob.
 4. A Permit for Location and Sales of Tobacco/Nicotine Delivery Products is non-transferable. A new owner of an establishment that sells tobacco/nicotine delivery products shall apply for a new permit. A new permit application submitted pending review or adjudication of a violation of this Regulation is subject to approval by the Tobacco Control Program and may be delayed. Proof of sale may be requested.
 5. A Permit for Location and Sales of Tobacco/Nicotine Delivery Products shall expire on December 31st of each calendar year and is subject to renewal annually.
 6. A Permit for Location of Sales of Tobacco/Nicotine Delivery Products must be displayed in a manner conspicuous to employees and patrons at all times.

B. Identification

1. The Regulation requires examination of a valid government-issued photographic identification prior to the sale of a tobacco product to a person appearing twenty-seven (27) years of age or younger. Acceptable forms of identification include, but are not limited to:
 - a. government-issued driver's license;
 - b. Massachusetts identification card;
 - c. passport; and/or
 - d. other identification card issued by a state or federal government that displays a person's photograph, name, address, date of birth, physical description, and signature.

2. A student identification card shall not be considered a valid form of identification.

C. Cigar Packaging

1. A retail establishment must sell cigars in an original package of at least 4 unless the retail price meets the following minimum retail pricing requirements:
 - a. a single cigar package must retail higher than \$2.50;
 - b. a double cigar package must retail higher than \$5.00; and
 - c. a triple cigar package must retail higher than \$7.50.
2. Cigars sold with special promotional offerings are not excluded from this requirement.

D. Self-Service Displays

1. *Tobacco Products*
 - a. A retailer, retail establishment, or other individual may not sell or cause to be sold a tobacco product from a self-service display unless the sale is in strict compliance with the requirements set forth in 940 CMR 21.04(2) and 940 CMR 22.06(2).
 - b. In addition to the City of Boston Code, Ordinances, Chapter XVI, subsection 16-40.2(d), the Attorney General regulations ban vending machines containing tobacco products, except in establishments licensed to sell alcohol for consumption on the premises. There are three requirements for all vending machines containing tobacco products. First, they must feature lock-out devices requiring an employee to unlock the vending machine for each sale. Second, they must be located where all sales are easily observed by an employee. Third, they must display a sign stating that minors are not permitted to purchase tobacco and notifying customers of the lock-out device. See 940 CMR 21.04(4) and 22.06(4).
2. *Nicotine Delivery Products*
 - a. The sale of nicotine delivery products by self-service display is prohibited unless such sale is in strict compliance with the requirements for self-service tobacco sales as set forth in 940 CMR 21.04(2).

SECTION VI. SIGNAGE

A. Retail Establishment

1. A retailer, retail establishment, or other individual or entity must obtain and post, a notice of the minimum age sales law. This notice must be posted at each cash register, informing customers that state law prohibits the sale of tobacco products to any person under the age of 18 years. A forty-eight square inch sign created by either the Massachusetts Department of Public Health or Boston Public Health Commission must be posted at the cash register that handles the greatest volume of tobacco product sales. The sign must face customers at a height of between four to nine feet from the ground. All other cash registers in a retail establishment must display the same message in a smaller nine square inch sign facing the customer.
2. A retailer, retail establishment, or other individual or entity must obtain and post, in a clear and conspicuous manner, signage that discloses current information for reporting violations of the provisions of M.G.L. c. 270 §6 as follows:

“To report illegal sales of tobacco or nicotine delivery products to persons under the age of eighteen, call the Boston Public Health Commission Tobacco Prevention and Control Program at (617) 534-4718.”

3. A retailer, retail establishment, or other individual or entity must obtain and post signage in a clear and conspicuous manner that discloses current referral information about smoking cessation, which may be revised by the Tobacco Control Program at its discretion.
4. A retailer, retail establishment, or other individual or entity wishing to sell nicotine delivery products must obtain and post the following notice, in a clear and conspicuous manner, which may be revised by the Tobacco Control Program from time to time:

“It is illegal to sell non-FDA approved Nicotine Delivery Products to persons under the age of 18. This includes e-cigarettes. Retailers can be fined up to \$800 for selling these products to minors. To report a violation, call the Boston Public Health Commission at 617-534-4718.”

B. Retail Tobacco Store/Smoking Bar

1. Retailer tobacco stores and smoking bars must post the following notice, which may be revised by the Tobacco Control Program from time to time, at all entrances:

“WARNING! This establishment contains tobacco smoke. There is no safe level of exposure to tobacco smoke. Exposure is known to cause cancer and heart disease. No person under the age of eighteen may enter the premises.”

2. Massachusetts Attorney General regulations require that any retail tobacco store or smoking bar that sells hand rolled, cigars, or that exhibits for purchase manufactured cigars outside of their original package must display a state-mandated warning about cigar consumption in a sign at least 50 square inches in size. See 940 CMR 22.06 (2)(e).

SECTION VII. ENFORCEMENT

1. It shall be the responsibility of the retailer, retail establishment, or other individual or entity having control of such establishment to ensure compliance with all sections of this Regulation.
2. Owners, business agents, or other persons having control of a retail establishment are encouraged to seek the assistance of the Tobacco Control Program for advice or guidance on the regulation.
3. Owners, business agents, or other persons having control of a retail establishment who observe or are made aware of a violation of the Regulation should take all reasonable steps to ensure that the violation is not repeated.
4. The Tobacco Control Program may deem a retailer, retail establishment, retail tobacco store, or smoking bar as irresponsible if found to have engaged in threatening and harassing conduct, including, but not limited to, intimidation of a compliance officer and/or refusing to allow a compliance officer access to the premises. In such instances, the retailer, retail establishment, retail tobacco store, or smoking bar is subject to permit revocation.
5. A single inspection or investigation may result in multiple citations if multiple violations are found and correspond to different sections or elements of the Regulation. Each calendar day a retailer, retail establishment, individual, or entity operates in violation of any provision of this regulation shall be deemed a separate violation.

6. All tobacco and/or nicotine delivery products must be removed from the retail establishment during a period of suspension. The products cannot be covered up or stored within the establishment.
7. Fines shall be paid within twenty-one (21) days of the date of receipt of the citation. Failure to pay a fine within twenty-one days will result in suspension of a Permit for Location and Sales of Tobacco/Nicotine Products.
8. Notice of a citation may be provided within two (2) business days of the violation by:
 - a. In hand service to the owner, employer, business agent, or other person having control of the retail establishment, smoking bar, or retail tobacco store; or within seven (7) days by
 - b. First class mail to the owner, business agent, or other person having control of the retail establishment, smoking bar, or retail tobacco store.
9. Fines must be paid by mail in the form of a check or money order made payable to the “Boston Public Health Commission”, Tobacco Control Program, 1022 Massachusetts Avenue, Boston, MA 02118. If a check is returned for insufficient funds or account closure, an additional \$25.00 fee will be assessed. In the case of a returned check, all subsequent fines levied must be paid by money order.
10. Complaints regarding violation of this Regulation may be submitted in writing to the Tobacco Control Program, 1022 Massachusetts Avenue, Boston, MA 02118 or by calling 617-534-4718.

SECTION VIII. APPEALS

All citations and fines issued pursuant to the Regulation may be appealed in accordance with the Boston Public Health Commission’s Administrative Appeal Procedures and the Tobacco Control Administrative Hearings & Appeals Procedures. A copy of the procedures may be obtained at www.bphc.org or at the Tobacco Control Program, 1022 Massachusetts Avenue, Boston, MA 02118.