

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

(Effective February 15, 2016)

APPROVED:



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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 twenty-one 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. **Blunt Wrap** – Cigarette-like rolling paper that is thick and dark and usually made from tobacco leaves. Blunt wraps come in flavored varieties and are heavily marketed to the youth and often used as drug paraphernalia.
3. **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.
4. **Characterizing Flavor** – A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either

prior to or during consumption of a tobacco product or nicotine delivery product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco or nicotine delivery product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

5. **Cigar** – Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece.
6. **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”).
7. **Component Part** – Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
8. **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, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.
9. **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, e-hookah, or under any other product name.
10. **Educational Institution** – Any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
11. **Employee** – An individual who performs services for an employer in exchange for wages or profit.
12. **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.

13. **Flavored Tobacco Product** – Any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim 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 flavored.

14. **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 Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

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 such as the nicotine patches, nicotine lozenges, and nicotine gum. Nicotine delivery products include, but are not limited to, e-cigarettes, e-hookah, nicotine liquid, nicotine juice, nicotine water, and nicotine hand gel. Nicotine Delivery products include any product that can deliver nicotine to the user through the inhalation of vapor, and includes any component of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately.

15. **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.

16. **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.

17. **Retail Tobacco Store** – A retail establishment which 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 paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of twenty-one (21) is prohibited at all times.
18. **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.
19. **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 twenty-one (21) 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.
20. **Tobacco Product** – A cigarette, cigar, chewing tobacco, pipe tobacco, bidi, snuff, other tobacco or nicotine delivery product in any form.

SECTION III. SALE OF TOBACCO PRODUCTS

A. Permitting

1. 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.
2. No retailer or retail establishment shall sell tobacco or nicotine delivery products without first obtaining a Permit for Location and Sale of Tobacco Products.

3. A permit fee as determined by the Boston Public Health Commission's Executive Director shall be assessed annually.
4. Permit applications and renewal applications are granted at the discretion of the Tobacco Prevention & Control Program, and may be denied upon consideration of previous violations of this Regulation or other applicable law by the applicant establishment or an individual associated with the retailer. A permit may be denied if a permit holder has failed to pay outstanding fines.
5. An application for a Permit for Location and Sales of Tobacco Products shall include the following:
 - a a completed Location and Sales of Tobacco Products Permit Application;
 - b a check or money order made payable to the Boston Public Health Commission for the applicable permit fee.
 - c a signed and dated Owner/Operator Statement; and
 - d for all retailers selling tobacco products regulated by the Massachusetts Department of Revenue (DOR), 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.
6. 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.
7. A Permit for Location and Sales of Tobacco Products is non-transferable. A new owner of an establishment that sells tobacco, including 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. Proof of sale and bona fide change of ownership may be requested. An application for a Permit for Location and Sales of Tobacco Products may be denied for failure to prove a bona fide change of ownership. If any fine(s) or suspension(s) remain from the previous ownership, the sale of any tobacco products is prohibited during the pendency of the new Permit for Location and Sales of Tobacco Products application.

8. A Permit for Location and Sales of Tobacco Products shall expire on December 31st of each calendar year and is subject to renewal annually.
9. A Permit for Location of Sales of Tobacco 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:
 - a. driver's License;
 - b. a Massachusetts Liquor Identification Card;
 - c. a Massachusetts Identification Card;
 - d. a Passport Issued by the United States or a government that is officially recognized by the United States;
 - e. a Passport Card for a Passport issued by the United States; and
 - f. a Military Identification Card.

C. Sales Restrictions

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 above \$2.50;
 - b. a double cigar package must retail above \$5.00; and
 - c. a triple cigar package must retail above \$7.50.
 - d. all cigar packages of four or more cigars must retail above \$2.50.
2. Cigars sold with special promotional offerings are not excluded from this requirement.

3. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed an individual cigarette or bidi or any package that contains fewer than twenty (20) cigarettes or bidis.
4. No educational institution located in the City of Boston shall sell or cause to be sold tobacco products, including nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.
5. No health care institution located in the City of Boston shall sell or cause to be sold tobacco products, including nicotine delivery products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.
6. No retailer, retail establishment, or other individual or entity shall sell or cause to be sold blunt wraps.
7. A retailer, retail establishment, or employer shall not allow an employee or other individual to sell a tobacco product in accordance with this regulation until such employee or individual has signed a statement acknowledging that he/she has read and understands the Youth Access Regulation. A copy of such statement of acknowledgment shall be placed on file with the retailer, retail establishment, or employer.

D. Self-Service Displays and Vending Machines

1. 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).
2. 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).

E. Flavored Tobacco Restrictions

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco product to a consumer. This provision shall not apply to a retail tobacco store or smoking bar as defined by this regulation.
2. As guidance, the Tobacco Control Program will maintain or make available a list of products that it has found to meet the definition of flavored tobacco product as defined by this Regulation and Guidelines. Such list will be posted on the Tobacco Control Program's page at <http://bphc.org/tobaccocontrol>, and will be available by request to the Tobacco Control Program.
3. The appearance of a product on the list creates a presumption that the product is subject to the sales restrictions set forth in the Regulation. Products that are not on the list may be found to violate the regulation if they are determined to have a characterizing flavor as defined by the Regulation and Guidelines. Any entity wishing to submit recommendations regarding additions or deletions from the product list shall address those recommendations to the Tobacco Control Program.
4. Existing retailers that are designated as adult-only retailers for the purposes of the Workplace Smoking Regulations, including smoking bars, and adult-only retail tobacco stores will be presumed to be adult-only retail tobacco stores for the purposes of being authorized to sell flavored tobacco products.
5. A retailer seeking to be deemed an adult-only retail tobacco store for the purposes of being authorized to sell flavored tobacco products after February 15, 2016 shall present a statement of intent to be deemed an adult-only facility to the Tobacco Control Program demonstrating intent to comply with the following requirements:
 - a. The retailer must verify the age of all patrons immediately upon entry into the store and will be responsible for ensuring that no person under the age of 21 enters or remains in the physical space where the retailer is located. A BPHC-issued sign to this effect must be posted on each entrance to the retail establishment. Retailer employees hired before the effective date of February 15, 2016 are granted an exemption from the age of entry restriction.

- b. The retailer must annually demonstrate that revenue generated from the sale of any products other than tobacco products, including nicotine and paraphernalia, is merely incidental to the sale of tobacco. For the purposes of this determination, tobacco, nicotine, and paraphernalia, must be shown to be equal to or greater than ninety percent (90%) of the establishment's total combined revenue. The retailer shall provide documentation, at initial application and when renewing annually, that products other than tobacco products, including nicotine products, and paraphernalia constitute less than 10% of revenues. The Tobacco Control Program may also conduct visual inspection to determine whether the primary purpose of the establishment is to sell tobacco products.
 - c. An adult-only retail tobacco store seeking to be deemed as such after February 15, 2015 may not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license. If a retailer operates their business in a shared space with another business, they cannot be authorized to sell flavored tobacco products.
6. In keeping with the Workplace Smoking Regulation, smoking, as defined in that Regulation, will not be allowed in any retail tobacco store that came into existence after November 2008.

SECTION IV. 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 21 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 21, 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 21. This includes e-cigarettes. Retailers can be fined up to \$800 for selling these products to persons under the age of 21.

To report a violation, call the Boston Public Health Commission Tobacco Prevention and Control Program at 617-534-4718.”

B. Smoking Bars and Businesses Exempt from Workplace Smoking Regulation

1. 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 twenty-one may enter the premises.”

3. 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).

C. Retail Tobacco Stores

1. Retail Tobacco Stores that are exempt from the restriction on the sale of flavored tobacco products must post the following notice, which may be revised by the Tobacco Control Program from time to time, at all entrances:

“Persons under the age of 21 are not permitted to enter this establishment.”

SECTION V. 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. 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 may be deemed to constitute a violation of the Regulation. 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. Upon the fifth and subsequent violation within a twenty-four (24) month period, Tobacco Control may permanently revoke a Permit for Location and Sales of Tobacco Products. If a Permit for Location and Sales of Tobacco Products is not revoked, a retailer may be subject to a repeat fine of up to eight hundred dollars (\$800.00) and a sixty (60) consecutive business day suspension of the Permit and Sales of Tobacco Products.

7. All tobacco and/or nicotine delivery products must be removed from the retail establishment, building and property containing the retail establishment, during a period of suspension. The products cannot be covered up or stored within the establishment, property, or building or located anywhere on the premises.
8. 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 may result in suspension of a Permit for Location and Sales of Tobacco/Nicotine Products.
9. 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
 - b. Alternatively, notice may be mailed within seven (7) days by first-class mail to the owner, business agent, or other person having control of the retail establishment, smoking bar, or retail tobacco store.
10. 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.
11. 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 VI. APPEALS

All citations and fines issued pursuant to the Regulation may be appealed in accordance with the Youth Access Regulation.