

## REGULATION OF THE BEVERLY 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;<sup>1</sup>

Whereas, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence;<sup>4</sup>

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;<sup>5</sup>

Whereas, the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;<sup>6</sup>

Whereas, cigars and cigarillos, can be sold in a single “dose;” and enjoy a relatively low tax as compared to cigarettes;<sup>7</sup>

Whereas, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;<sup>8</sup>

Whereas, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits

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<sup>1</sup> U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> CDC, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, (2010), [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

<sup>3</sup> U.S. Dep’t of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* at 13 (Executive Summary).

<sup>5</sup> *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).

<sup>6</sup> Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data/>).

<sup>7</sup> CDC, *Youth Risk Behavior: Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>).

<sup>8</sup> U.S. Dep’t of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) ([www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf)).

that can lead to long-term addiction;<sup>9</sup>

Whereas, the U.S. Surgeon General recognized in his 2014 report 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;<sup>10</sup>

Whereas, ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021;<sup>11</sup>

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;<sup>12</sup>

Whereas, the New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students,<sup>13</sup> which is incompatible with the sale of tobacco and nicotine products;

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;<sup>14</sup>

Whereas, the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;<sup>15</sup>

Whereas, tobacco retailers are more prevalent in underserved communities, especially in

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<sup>9</sup> Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Dep’t of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012)

[www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>10</sup> See fn. 3 at p. 85.

<sup>11</sup> MA YRBS 2017

<sup>12</sup> 310 CMR 30.136

<sup>13</sup> New England Commission on Higher Education, *Standards for Accreditation* at 24 (2021), <https://www.neche.org/resources/standards-for-accreditation>.

<sup>14</sup> Ying-Chih Chuang et al., *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) J. Epidemiol Cmty Health 568 (2005) (doi: 10.1136/jech.2004.029041); Shelley D. Golden et al., *County-level associations between tobacco retailer density and smoking prevalence in the USA*, 2012, 17 (101005) Prev. Med. Rep. (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Eric C. Leas et al., *Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States*, 179(3) JAMA Intern Med., 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); JG Lee et al., *Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis*. Tobacco Control. Published Online First: 03 September 2021; LR Reitzel et al., *The effect of tobacco outlet density and proximity on smoking cessation*. American Journal of Public Health. 2011, 101(2):315-320; L Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools?* Preventive Medicine. 2008, 47(2): 210-4.

<sup>15</sup> LJ Finan et al., *Tobacco Outlet Density and Adolescents’ Cigarette Smoking: A Meta-Analysis*, 28(1) Tob Control. 27 (2019) (doi: 10.1136/tobaccocontrol-2017-054065); Abdel Magid HS et al., *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*, 66(4) J. Adolescent Health 423 (2020) (doi: 10.1016/j.jadohealth.2019.09.004).

neighborhoods with a higher proportion of African American or Hispanic residents;<sup>16</sup>

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;<sup>17</sup>

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.”<sup>18</sup>

Now, therefore it is the intention of the City of Beverly Board of Health to regulate the sale of tobacco products and to amend the Board’s regulations that went into effect June 1, 2019.

**B. Authority:**

This regulation is promulgated pursuant to the authority granted to the Beverly Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of Health may make reasonable health regulations".

**C. Definitions:**

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

**Adult-only retail tobacco store:** An establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, and in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times. An adult-only retail tobacco store must maintain a valid permit, issued by the Board, for the retail sale of tobacco products. Any establishment that possesses or is required to possess a retail food permit shall not be considered an adult-only retail tobacco store.

**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.

**Board:** the Beverly Board of Health.

**Business day:** any day of the week, inclusive of Saturday and Sunday, during which a retail establishment is open.

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<sup>16</sup> Siahpush M. et al., *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*, 124(9) Pub. Health 525 (2010) (doi: 10.1016/j.puhe.2010.04.010); Lee JG, et al., *Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPiRE Study*, 71(5) J. Epidemiol Cmty Health 487 (2017) (doi: 10.1136/jech-2016-208475); D.O. Fakunle et al., *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*, Ethn Health. 1 (2019) (doi: 10.1080/13557858.2019.1620178).

<sup>17</sup> Ribisl KM, et al., *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*, 19(2) Nicotine Tobacco Res. 239 (2017) (doi: 10.1093/ntr/ntw185); HG, Henry et al., *Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019)*, 110 (4) Am J. Pub. Health 547 (2020) (doi: 10.2105/AJPH.2019.305512); A.E. Myers et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 Prev. Med. 67(2015) (doi: 10.1016/j.ypmed.2015.01.025).

<sup>18</sup> Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).

Characterizing flavor: means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable before or during consumption of a tobacco product including, but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, 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 M.G.L. c. 64C, § 1.

Cigarette: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (2) little cigars, which shall mean rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1). The word "cigarette" shall include within its meaning, without limitation, little cigars and smokeless tobacco; and the words "smokeless tobacco" shall mean snuff, snuff flour and any other tobacco or tobacco product prepared in such manner as to be suitable for chewing, including, but not limited to cavendish, plug, twist and fine-cut tobaccos.

Component part: Any element of a tobacco 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. Such term shall include a smoke constituent, defined as any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

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

Distinguishable: Perceivable by either the sense of smell or taste.

Educational institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: An individual or person who performs a service for compensation, or volunteers, for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.

**Employer:** An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time including the City of Beverly.

**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 such 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 M.G.L. c. 112, or a retail establishment that provides pharmaceutical goods and services and 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 offices, optician/optometrist offices and dentist 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. The term 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 pre-filled and sealed by the manufacturer and not intended to be open 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.

**Non-residential roll-your-own (RYO) machine:** A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not non-residential RYO machines.

**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.

**Self-service display:** Any display from which customers may select a tobacco product without assistance from store personnel.

**Tobacco product:** a 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, electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, or e-liquids or other similar products regardless of nicotine content that rely on vaporization or aerosolization. “Tobacco product” includes any component or part 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 solely for such approved purpose.

**Vending machine:** Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco product.

**D. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute tobacco products within the City of Beverly without first obtaining a tobacco product sales permit issued annually by the Board. Such permit shall only be issued to owners of permanent, non-mobile locations, and permit holders may only sell tobacco products at the location specified in the permit.
2. As part of the permit application process, a copy of this regulation shall be provided to the applicant. An applicant must sign a statement declaring that the applicant has read this regulation and that the applicant is responsible for instructing any and all employees or other personnel who may conduct tobacco product sales regarding this regulation and applicable federal, state and local law concerning the sale of tobacco.
3. An applicant for a permit to sell tobacco products must provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a tobacco product sales permit will be issued.
4. Every retail establishment that sells tobacco products must obtain and display a separate permit. A retail establishment with more than one location must obtain and display separate permits at each location.
5. A tobacco product sales permit issued pursuant to this regulation is non-transferable upon the sale of a permitted establishment without permission from the Board. A new owner of an establishment that sold tobacco products under the prior owner's permit must apply for a new permit within thirty (30) days of acquiring the business. The purchaser shall not sell tobacco products until the transfer of the permit is approved by the Board. No new permit will be issued to a new owner unless and until all outstanding penalties incurred by the previous business owner are satisfied in full. Failure to submit a completed application within thirty (30) calendar days of purchase will result in the retirement of the permit held by the previous owner.

6. Issuance of a tobacco product sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of the permitted retail establishment to ensure compliance with this regulation.
  7. A tobacco product sales permit will not be renewed if the permit holder has failed to pay any fine issued pursuant to this regulation and the time period to appeal the fine has expired and/or the permit holder has not satisfied any outstanding permit suspension.
  8. An applicant for a tobacco products sales permit shall pay an application fee in an amount to be determined annually by the Board.
  9. A tobacco product sales permit shall not be issued to any new applicant for a retail establishment that is located within five hundred (500) feet of a public or private elementary or secondary school measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
10. Maximum number of tobacco product sales permits.
- i. At any given time, there shall be no more than thirty-nine (39) tobacco product sales permits issued in Beverly. No applications to renew a permit shall be denied pursuant to this subsection, however any permit holder who fails to renew their permit within thirty (30) days of expiration shall be treated as a new permit applicant.
  - ii. At any given time, there shall be no more than two (2) tobacco product sales permits issued to adult-only retail tobacco stores. These permits shall count towards the maximum number of permits allowed in the city pursuant to subsection (i).
  - iii. Any applicant who purchases or acquires an existing business with a tobacco product sales permit at the time of the sale or acquisition must apply within thirty (30) calendar days of such sale or acquisition for the permit held by the seller if the applicant intends to sell tobacco products. Such applicant may only apply for a tobacco product sales permit for an adult-only retail tobacco store if the seller possessed the same.
  - iv. The Board may from time to time change the maximum allowable number of tobacco product sales permits by a vote to be taken at an open public meeting of the Board.
  - v. As of the effective date of this regulation, any permit surrendered, revoked or not renewed, either because a permit holder no longer sells tobacco products or because a permit holder has closed the permitted business, shall return to the Board and shall be permanently retired by the Board and the total allowable number of tobacco product sales permits established in subparagraph (i) shall be reduced by the number of retired permits.

vi. Relocation of Business.

- a. Notwithstanding the cap on the total allowable number of permits established in subsection (i), the owner of a business holding a valid tobacco product sales permit may transfer such permit to a new location of the permitted business, subject to approval by the Board, provided that the business relocates within Beverly and remains under the same ownership. The new location may not be within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the new location.
- b. An application to transfer a permit to a new location must be made no later than thirty (30) calendar days after relocation of the business. A business may not sell tobacco products at the new location until the transfer of the permit has been approved by the Board. Failure to submit a completed application within 30 days of relocation will result in the retirement of the permit issued for the previous location.
- c. All fines and suspensions must be satisfied prior to a transfer.
- d. This section applies to the relocation of a permitted business only, and does not apply to the expansion of a business, such as the opening of a second retail location.

**E. Tobacco Sales to Persons Under the Age of 21 Prohibited:**

1. No person shall sell tobacco products or permit tobacco products to be sold to a person under the age of twenty-one (21).
2. No permit holder, or employee shall allow the entry of persons under the Age of 21 into an Adult-only Retail Tobacco Store at any time.
3. Required Signage:
  - i. In conformance with M.G.L. c. 270, § 7, all permit holders shall cause the conspicuous posting of a copy of M.G.L. c. 270, § 6 in a retail shop or other place used to sell tobacco products, along with such signage as may be developed by the Massachusetts Department of Public Health disclosing referral information for smoking cessation resources. Such signage may be made available from the Board and shall be at least 48 square inches and shall be posted in such a manner 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 4 feet or greater than 9 feet from the floor. The permit holder shall also cause the conspicuous posting of any additional signs required by the Department of Public Health. All permit holders displaying hand-rolled cigars or manufactured cigars outside of their original package for sale must display a sign containing one of the warning statements required by 940 CMR 22.04 in a clear and conspicuous format, a minimum of 50 square inches in size, and in a location readily visible to the consumer in conformance with 940 CMR 22.06 (2)(e).

- ii. The permit holder shall cause a conspicuously posted sign in any retail shop or other place used to sell tobacco products that rely on vaporization or aerosolization, a conspicuously posted sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place 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.
- iii. An adult-only retail tobacco store permit holder shall conspicuously post signage at all public entrances stating that "Entry of persons under the age of 21 is prohibited at all times."
4. Identification. Any person selling or distributing tobacco products shall verify the age of a purchaser of tobacco products by means of a valid government-issued photographic identification containing the purchaser's date of birth and demonstrating that the purchaser is at least 21 years old. Verification is required for any person under the age of 27.
5. All retail sales of tobacco products must be in person between the seller and the buyer and occur at a permitted location.

**F. Sale of Cigars:**

1. No person shall sell or distribute or cause to be sold or distributed an individual cigar having a retail price of less than two dollars and fifty cents (\$2.50).
2. No person shall sell or distribute or cause to be sold or distributed any original, factory-wrapped package of two or more cigars having a retail price of less than five dollars (\$5.00).
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 outside the boundaries of Beverly.
4. The Board may amend this regulation from time to time to adjust the dollar amounts in this section to reflect changes in the applicable consumer price index.

**G. Sale of Flavored Tobacco Products Prohibited.**

It shall be a violation of this regulation to sell or distribute or cause to be sold or distributed any flavored tobacco product except in a permitted adult-only retail tobacco store.

**H. Sale of Blunt Wraps Prohibited.**

It shall be a violation of this regulation to sell or distribute blunt wraps in Beverly.

**I. Free Distribution and Coupon Redemption Prohibited.**

It shall be a violation of this regulation to:

1. distribute or cause to be distributed any free samples of tobacco products within Beverly;
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 a tobacco product without charge or for less than the listed or non-discounted price; or
3. sell a tobacco product to a consumer through any multi-pack discount (e.g., "buy-two-get-one-free") or otherwise provide or distribute to a consumer 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.
4. Subsections 2 and 3 shall not apply to products prohibited by Massachusetts state law from being sold as loss leaders and for which a minimum retail price is required by law.

**J. Out-of-Package Sales Prohibited.**

1. The sale or distribution of tobacco products in any form other than the original, factory-wrapped package is prohibited. No tobacco product may be repackaged for retail sale. No person may sell or distribute or cause to be sold or distributed any individual cigarette or package of cigarettes containing fewer than twenty (20).
2. A retailer of liquid nicotine containers must comply with the provisions of 310 CMR 30.000.
3. A retailer of nicotine sold in a liquid or gel substance must comply with 940 CMR 21.05, which requires that any liquid or gel containing nicotine be contained in a child-resistant package that, at a minimum, meets the standards for special packaging set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 *et seq.*

**K. Self-Service Displays Prohibited.**

Self-service displays of tobacco products are prohibited. Humidors, including but not limited to walk-in humidors, must be kept locked.

**L. Tobacco Vending Machines Prohibited.**

Vending machines containing tobacco products are prohibited.

**M. Non-Residential RYO Machines Prohibited.**

Non-residential RYO machines are prohibited.

**N. Prohibition of the Sale of Tobacco Products by Health Care Institutions.**

No health care institution located in Beverly shall sell tobacco products or cause tobacco products to be sold. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell tobacco products or cause tobacco products to be sold.

**O. Prohibition of the Sale of Tobacco Products by Educational Institutions.**

No educational institution located in Beverly, or any retail establishment operating on the property of an educational institution, shall sell or cause tobacco products to be sold.

**P. Prohibition on the Sale of Controlled Substances**

It shall be a violation of these regulations for a permit holder to engage in the sale or distribution of any Controlled Substance, as defined in 21 USC Section 812 and M.G.L. c. 94C, without the required state registration.

**Q. Massachusetts State Law and Regulation Incorporated by Reference.:**

Except as otherwise provided in this regulation, the sale or distribution of tobacco products in Beverly is subject to the requirements and prohibitions established in M.G.L. c. 270, §§6, 6A, 7, 28 and 29 and G.L. c. 112, §61A. All permit holders must comply with 940 CMR 21.00 Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts; 940 CMR 22.00 Sale and Distribution of Cigars in Massachusetts; and 105 CMR 665.00 Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems. A violation of any provision of the foregoing not inconsistent with this regulation shall be a violation of this regulation.

**R. Enforcement and Penalties:**

1. Any permit holder found in violation of any provision of this regulation shall receive a notice of violation from the Board or the Board's designated agent.
2. The following fines and actions apply against any permit holder who violates this regulation provided, however, that such fines related to any violation within a retail establishment shall apply against the permit holder and not an employee thereof:
  3. Any violation of this regulation shall be punishable by:
    - i. a fine of one thousand dollars (\$1000.00) in the case of a first violation, and if a first violation involves the sale of tobacco products to a person under the age of 21, the violator's tobacco product sales permit shall be suspended for three (3) consecutive business days pursuant to 105 CMR 665.040(D);
    - ii. a fine of two thousand dollars (\$2000.00) in the case of a second violation within 36 months of a previous violation, and a suspension of the violator's tobacco product sales permit for seven (7) consecutive business days; and
    - iii. a fine of five thousand dollars (\$5000.00) in the case of a third or subsequent violation within a thirty-six (36) month period, and a suspension of the violator's tobacco product sales permit for thirty (30) consecutive business days.

4. Every day that a violation exists shall be deemed to be a separate offense. Separate but simultaneous violations shall be treated as separate violations. Multiple permit suspensions may not be served concurrently.

5. Any person who receives notice of a violation of this regulation may request a hearing before the Board. The request must be made in writing and filed within seven (7) days of the date the violation notice was received.

6. Upon accrual of four (4) violations of this regulation within a thirty-six (36) month period, or upon the commission of two (2) or more egregious violations of this regulation within thirty-six (36) months as determined by the Board, the Board may issue a notice of intent to revoke and shall hold a hearing in accordance with this regulation and, after such hearing, may permanently revoke any tobacco sales permit held by the violator.

7. Before suspending or revoking a tobacco product sales permit, the Board shall provide notice of the intent to suspend or revoke such permit, which notice shall contain the reasons therefor and shall establish a time and date for a hearing, to be held no earlier than seven (7) days from the date of the notice. The permit holder or their designee shall have the opportunity to be heard and shall be notified of the Board's decision and the reasons therefor in writing. If after hearing, the Board finds that a violation of this regulation occurred, the Board shall suspend or revoke the subject permit. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings concerning the same offense. Upon suspension or revocation of a tobacco product sales permit, all tobacco products must be removed from the retail establishment. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

8. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to an additional suspension of all Board-issued permits for thirty (30) consecutive business days.

9. Complaints and Investigations.

- i. The authority to inspect retail establishments operating in Beverly for compliance and to enforce this regulation shall be held by the Board and its designated agents.
- ii. Any person may register a complaint with the Board and its designated agents to initiate an investigation and enforcement of this regulation by the Board.
- iii. Refusal by a permit holder or the employee of a permit holder to cooperate with an inspection or investigation pursuant to this regulation shall result in the suspension of the tobacco product sales permit for thirty (30) consecutive business days.

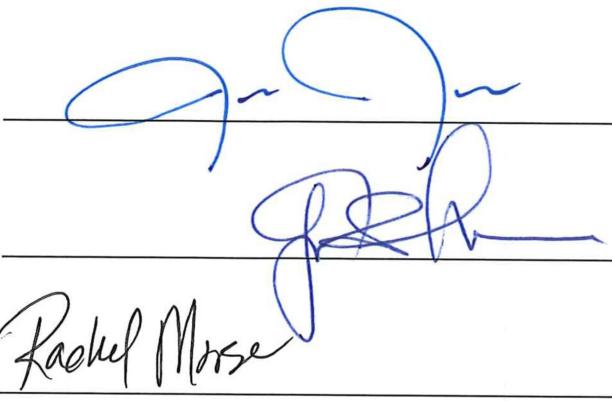
10. The fines and penalties established herein shall not limit the Board's ability to suspend or permanently revoke a tobacco product sales permit when, in the discretion of the Board, the circumstances or events underlying any violation warrant such suspension or revocation.

**S. 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.

**T. Effective Date:**

This regulation shall take effect on June 21st, 2023.



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Rachel Morse

Justin T. Jordan, MD, MPH, Chair  
Sheryl R. Silva, MD, MPH, Member  
Rachel E. Morse, Esq., Member

Enacted: April 1, 1996

Amended: August 1, 2003, September 15, 2014, June 28, 2017, May 23, 2019 and June 1, 2019.