FY 2027 SAMPLE REGULATION RESTRICTING THE SALE OF NICOTINE PRODUCTS

CHECKLIST FOR POLICY DECISIONS:

1. No permit renewal if outstanding fines exist (§E.6)	YES	NO
2. No permit renewal if three sales to persons under 21 (§E.7)	YES	NO
3. No sales to the following persons (select one):		
Any person under the age of 21 (___)		
*Nicotine Free Generation (___)		
4. No new permits within (---) feet of a school (§E.8)		
1,000 (___) | 2,000 (___) | 3,000 (___) | or more (___)	YES	NO
5. No new permits within (---) feet of an existing retailer (§E.8)	YES	NO
1,000 (___) | 2,000 (___) | 3,000 (___) | or more (___)		
6. Cap and/or reduce number of permits (§E.10)	YES	NO
Simple Cap (___) | Reducing Cap (___)		
7. Ban Smoking Bars (§F)	YES	NO
8. Include minimum cigar package size/price (§H)	YES	NO
9. Oral Nicotine Pouches (§G)		
Prohibit more than 6 mg of nicotine per pouch	YES	NO
Sale restricted to adult only retailers	YES	NO
10. Ban blunt wraps (§K)	YES	NO
11. Ban free distribution of tobacco products (§L.1)	YES	NO
12. Ban redemption of coupons (§L.2)	YES	NO
13. Ban self-service displays (§N)	YES	NO
14. Ban tobacco product sales in educational institutions (§R)	YES	NO
15. Fining Structure System (§T)	YES	NO
Separate State and Local Fines (___) | One Set of Fines (___)		
16. Tolling periods for local violations (§S)	YES	NO
State level at 36 months (___) | Over 36 months (___)		
17. Choose suspension periods (§T)		
First violation: 1 day (___) | 3 days (___) | 7 days (___)		
Second violation: 3 days (___) | 7 days (___) | 14 days (___)		
Third or more violations: 7 days | 14 days (___) | 30 days (___)		
18. "Shall" vs. "May" language for suspensions (§T)	SHALL	MAY

*Nicotine Free Generation allows retailers to sell nicotine products to anyone who was 21 years of age or older on an effective date. For everyone else, now and in the future, retailers will never be allowed to sell nicotine products to them.

YELLOW highlighted sections are language copied from the latest state law and DPH regulation.

GREEN highlighted sections are uniquely local policy decisions (most are on the above checklist) to be made by the Board of Health.

NO COLOR indicates that Boards of Health have previously adopted language.

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Regulation of the [city/town] 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;[1]

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

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;[5]

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;[6]

Whereas, cigars and cigarillos, can be sold in a single "dose;" and enjoy a low tax as compared to cigarettes;[7]

Whereas, spitless tobacco, including oral nicotine pouches, sales have increased from 100,000 units a year in 2018 to over 700,000 units a year by 2023; and the current use among Massachusetts high school students increased from 1% in 2019 to 3.2% in 2023;[8]

Whereas, nicotine use in any form during adolescence can cause addiction and can harm parts of the brain that control attention, learning, memory, mood, and impulse control. Nicotine use may also increase adolescents' risk of future addiction to other drugs;[9]

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[1] 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.
[2] 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/.
[3] 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.
[4] Id. *at* 13 (Executive Summary).
[5] *United States v. Phillip Morris,* 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).
[6] 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/).
[7] CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: http:www.cdc.gov/mmwr/pdf/ss/ss5905.pdf).
[8] Massachusetts Dept. of Public Health, *Updated Presentation: Monitoring the Impacts of MA Flavored Tobacco Law* (2024).
[9] Campaign for Tobacco Free Kids, *The Rise of Products Using Synthetic Nicotine* (2021) (https://assets.tobaccofreekids.org/factsheets/0420.pdf)

Whereas, spitless tobacco, in particular nicotine salt packages, provides a discrete, cheap nicotine delivery system;[10]

Whereas, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;[11]

Whereas, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are "starter" products that help establish smoking habits that can lead to long-term addiction;[12]

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;[13]

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste;"[14]

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;[15]

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;[16]

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;[17]

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[10] Ibid.

[11] 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).

[12] Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), 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.

[13] *See* fn. 3 at p. 85.

[14] 310 CMR 30.136

[15] 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.

[16] 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).

[17] 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.,

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;[18]

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."[19]

Now, therefore it is the intention of the **[city/town]** Board of Health to regulate the sale of tobacco products.

B. **Authority:**

This regulation is promulgated pursuant to the authority granted to the **[city/town]** Board of Health by 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 words shall have the following meanings:

Adult-Only Retail Tobacco Store (also known as "Retail Tobacco Store" in G.L. c. 270): An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that does not sell food, beverages or alcohol, that does not have a lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the **[city/town]** Board of Health and applicable state licenses. The entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

Blunt Wrap: Any product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, which may be used by the consumer to wrap or contain loose tobacco or other fillers.

Bona Fide Purchaser for Value: A bona fide purchaser is someone who exchanges value for property without any reason to expect irregularities in the transaction.

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.

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).

[18] 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).

[19] *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

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 thereof, including, but not limited to, tastes or aromas 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.

Child-Resistant Package: Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under G.L. c. 64C, §1, Paragraph 1. Tobacco leaf in kits or roll-your-own packages shall be considered "blunt wraps" for the purpose of this regulation.

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, which 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 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.

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals that uses the services of one (1) or more employees.

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 a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. Health care institutions include but are not limited to hospitals, clinics, health centers, pharmacies, drug stores, doctors' offices, and dental offices. **[Exempted from state law G.L. c. 112, §61A, but may be included in local regulations:** A retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution].

Liquid Nicotine Container: A package:

1. from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and
2. that is used to hold a soluble nicotine in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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 stated price, and before the application of any discounts or coupons.

Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products is not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products. A manufacturer documentation must:

1. Be written by the manufacturer of the product(s).
2. Certify that the product(s) listed in the documentation are neither flavored nor have a characterizing flavor as defined by 105 CMR 665.005.
3. Include an attestation clause indicating that the "letter is true and accurate."
4. State that the "manufacturer will immediately provide an updated letter to correct any inaccuracy."
5. State that the person signing the letter "is authorized on behalf of the manufacturer to sign the letter."

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6. Contain a signature of the manufacturer's corporate officer or an owner; and

7. For any Electronic Nicotine Delivery System product, certify that it does not have a nicotine content greater than 35 milligrams per milliliter. The content amount must be in "milligrams per milliliter." If the nicotine content is documented in a separate letter, the above-listed requirements must be included in that separate letter.

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 can make cigarettes, cigars, or other tobacco products. RYO machines located in private homes used solely for personal consumption are not Non-Residential RYO machines.

Oral Nicotine Pouches: Pre-portioned pouches containing nicotine and other ingredients, intended to be used between the cheek and gum to deliver nicotine.

Permit Holder: Any retailer 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 their business agent.

Retailer: Any person, 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.

Retail Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves, which do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. [**NOTES**: This relates to flavor enhancers, see last sentence of Tobacco Product Flavor Enhancer definition. Adding this definition will permit banning flavored non-tobacco, non-nicotine wraps such as hemp wraps.]

Self-Service Display: Any display including an unlocked humidor regardless of size from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the **[City/Town]** of **[city/town]**; and (v) maintains a valid license issued by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars," "hookah bars" and "vape bars."

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

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Tobacco Product: A product containing or 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 nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that "tobacco product" shall also include any component, part or accessory of a tobacco product; and provided further, that "tobacco product" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the 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 products available, as defined herein.

D. **No Tobacco Sales to Persons [under Twenty-One (21) Years Old]** OR **[Born on or after January 1, 2006.]**

1. No retailer or person shall sell or provide a tobacco product to a person [under twenty-one (21) years old] or [born on or after January 1, 2006].
2. Required Signage:
   a. All retail establishments, **[including smoking bars and adult-only retail tobacco stores]** shall conspicuously post signage, made available from the **[city/town]** Board of Health. Such signage shall include: (i) referral information for smoking cessation resources; (ii) a statement that sale of tobacco products, including e-cigarettes, [to someone younger than 21 years of age] or [to a person born on or after January 1, 2006 is prohibited; (iii) health warnings associated with using electronic nicotine delivery systems; and (iv) except in the case of smoking bars, notice to consumers that the sale of flavored tobacco products are prohibited at all times. Such signage 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 feet or greater than nine feet from the floor. The signage may be in a form developed and made available by the Massachusetts Department of Public Health.
   b. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."
   c. All smoking bars and those adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall

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warn persons entering that smoking and vaping may be present on the premises and provide information concerning the health risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

3. Identification:
   a. Each person selling or distributing tobacco products shall first verify the age of **every** purchaser of tobacco products by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is [21 or older] or [born before January 1, 2006].
   b. Each person admitting entrance into a smoking bar or adult-only retail tobacco store shall first verify the age of **every** person entering is 21 or older by means of a valid government-issued photographic identification containing the bearer's date of birth.

4. All retail sales of tobacco products, as defined herein, must be face to face between seller and buyer and occur at a permitted location.

E. **Tobacco Product Sales Permit:**

1. No retailer or person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the **[City or Town]** of **[city/town]** without first obtaining a Tobacco Product Sales Permit issued annually by the **[city/town]** Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in **[city/town]** are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in **[city/town].**
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the **[city/town]** regulation. **The applicant acknowledges tobacco retailers must comply with all federal, state, and local laws, rules, regulations, and requirements.** Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for tobacco product sales regarding federal, state and local laws, **rules, regulations, and requirements** about the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The [city/town] Board of Health shall determine the fee annually. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also be displayed conspicuously at the retail establishment.
5. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.

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6. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

7. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person [under the age of 21] or [born after January 1, 2006] three times within the previous permit year and the time to appeal has expired. The violator may request a hearing in accordance with subsection 6 of the Violations section.

8. Retail Density.

   a. A new Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within _____ feet **[For example 1,000, 2,000, 3,000 feet or more]** 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 applicant's business premises

   b. A new Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within _____ feet **[For example 1,000, 2,000, 3,000 feet or more]** of an existing retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

   c. If the purchaser of a business with a valid tobacco sales permit pursuant to Section E.9 or the current holder of tobacco sales permit changes the location of the business, the new location shall be subject to the retail density requirements of Section E.8.

9. Sale of Business.

   a. Notwithstanding a cap on the total number of permit holders, the seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health, as required herein.

   b. The purchaser shall apply for the transfer of the permit no later than (30) calendar days after said purchase. The purchaser shall not sell tobacco products until the **transfer of the permit is approved by the Board of Health**; and

   c. All fines and suspensions of the previous owner must be satisfied prior to the sale.

10. Maximum Number of Tobacco Product Sales Permits.

    [Basic Cap] **[Option 1: If adopting this option, delete Option Two]**

    a. At any given time, there shall be no more than **[number (XX)]** Tobacco Product Sales Permits issued in **[city/town]**. Any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

    b. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis.

    c. Applicants on the waiting list shall be responsible for ensuring up to date contact information has been provided to the _____ Board of Health. [**NOTE: This is the**

"basic" cap. When a town has the maximum number of permittees allowed, a waiting list should be started with the name and contact information of prospective tobacco retailers who are waiting to be contacted when a permit becomes available.]

[Retiring Cap] **[Option 2: If adopting this option, delete Option 1]**

a. As of the effective date of this regulation, there shall be no more than _____ Tobacco Product Sales Permits issued in _____.

b. Any permit surrendered, revoked or not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, or because the retailer fails to renew their permit within thirty (30) calendar days of its expiration, shall be returned to the **[city/town]** Board of Health and shall be permanently retired by the Board of Health

F. **Prohibition of Smoking Bars:**

Smoking Bars are prohibited in the **[City/Town]** of **[city/town]. [If this section is adopted, delete language in the "required signage: section relative to smoking bars].**

G. Oral Nicotine Pouches

[No retailer or person shall sell or distribute or cause to be sold or distributed oral nicotine pouches with a nicotine content greater than 6 mg/per individual pouch.]

OR

[The sale or distribution of oral nicotine pouches is restricted to adult only retail tobacco stores]

H. **Cigar Sales Regulated:**

1. No retailer or person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents ($2.90) or more.

2. No retailer or 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 five dollars and eighty cents ($5.80) 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 **[city/town].**

4. The **[city/town]** Board of Health 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.

I. **Sale of Flavored Tobacco Products Prohibited:**

No retailer or person, as defined herein, shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any

flavored tobacco product enhancer, as defined herein, **(NOTE: If the municipality permits smoking bars add this phrase [**except in smoking bars for on-site consumption only]).

Retailers must obtain Manufacturer Documentation as described in Section C, certifying that all products possessed, held, kept, sold, or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

Note that a Manufacturer's Documentation IS NOT conclusive evidence that a product is unflavored. A board of health may conduct a smell/taste test to determine if a manufacturer's documentation misrepresents whether a product is flavored.

J. **Nicotine Content in Electronic Nicotine Delivery Systems:**

No retailer or person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores or smoking bars.

Retailers must obtain Manufacturer Documentation verifying that all electronic nicotine delivery products possessed, held, kept, sold, or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electron nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

K. **Prohibition of the Sale of Blunt Wraps:**

No retailer or person shall sell or distribute blunt wraps in **[city/town].**

L. **Free Distribution, Coupon Redemption and Discount Pricing:** No retailer or person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein.
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, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, through any discount (e.g., "buy-two-get-one-free") if the sale reduces the price of a pack to less than the listed or non-discounted price.

M. **Out-of-Package Sales:**

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging, or dispensing of any tobacco product, as defined herein, for retail sale. No retailer or person, as defined herein, shall possess, hold, keep, sell, or distribute or cause to be possessed, held, kept, sold, or distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, Massachusetts Hazardous Waste Regulations.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained

in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C.§§1471 through 1476 and 16 CFR §1700 *et seq*."

4. No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

N. **Self-Service Displays:**

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

Adult-Only Retail Tobacco Stores are exempt from this section.

O. **Vending Machines:**

All vending machines containing tobacco products, as defined herein, are prohibited.

P. **Non-Residential Roll-Your-Own Machines:**

All Non-Residential Roll-Your-Own machines are prohibited.

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

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

R. **Prohibition of the Sale of Tobacco Products by Educational Institutions:**

No educational institution located in **[city/town]** shall sell or cause to be sold tobacco products, as defined herein, including by any person or retailer on the property of an educational institution.

S. **Incorporation of State Laws and State Regulations:** The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to those provisions found at G.L. c. 270, §§6, 6A, 7, 28, 29 and G.L. c. 112, §61A.

1. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 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.<

T. **Violations:**

[Choose Option 1 or Option 2, below. Delete the unchosen option.]

[Option 1: This fining structure creates separate fines for State Laws and Local Policies. The fines for violations of State Laws are $1,000/$2,000/$5,000. The fines for violations of

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Local Policies are $100/$200/$300. The lower fines for Local Policies allow for boards of health to use the non-criminal ticketing procedure to issue fines violations of Local Policies. See the checklist below for State Laws and Local Policies.]

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate G.L. c. 270, §§6, 28, 29 and 105 CMR 665.000, the following penalties apply:

   a. In the case of a first violation, a fine of one thousand dollars ($1,000.00) for a State Law violation and one hundred dollars ($100.00) for a Local Policy violation shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21 the Tobacco Product Sales Permit shall be suspended for **[BOH decision: either state language: "up to 30 consecutive business days" or choose a specific day duration between 1 - 30 consecutive business days.]**

   b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars ($2,000.00) for a State Law violation and two hundred dollars ($200.00) for a Local Policy violation shall be issued and the Tobacco Product Sales Permit **[shall / may]** be suspended for _____ days **[choose a specific day duration: one (1) to seven (7) or more]** consecutive business days.

   c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars ($5,000.00) for a State Law violation and three hundred dollars ($300.00) for a Local Policy violation shall be issued and the Tobacco Product Sales Permit **[shall / may]** be suspended for _____ days **[choose a specific day duration: seven (7) days to thirty (30) or more] consecutive business days**.

2. List of State Laws and Local Policies:

Policies Subject to State Law Fines

- Tobacco and Vape Sales to persons under 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §28)
- Penalties for sales to a person under 21 of Tobacco/Vape products (105 CMR 665.045)
- Local Tobacco Sales Permit suspension for a first violation for sales to a person under 21 of Tobacco/Vape products (105 CMR 665.040(d)
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §29)

Policies Subject to Local Policy Fines

- Nicotine Free Generation / Sales to persons born on or after January 1, 2006
- Prohibition of the Sale of Blunt Wraps
- Ban on Smoking Bars
- Cigar Sales Regulated, including minimum sales price regulations.
- Tobacco Product Sales in Health Care Institutions as more broadly defined than in state law.
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Display of MA Department of Revenue license(s)
- No Local Tobacco Sales Permit
- Retailer Density Minimums
- Transfer of Permit in Sale of Business
- Restricting the Nicotine Content of Oral Nicotine Pouches

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- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a person under the age of 21 into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))
- Other state laws
- Restricting Oral Nicotine Pouches to Adult-Only Retail Tobacco Stores
- Other local policies

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Product Sales Permit.
4. Failure to cooperate or interference with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days for each suspended permit. Multiple suspensions of Board of Health-issued permits shall not be served concurrently.
6. A permit issued pursuant to this regulation may be suspended, revoked, or not renewed for any of the following reasons:
    a. Violation of the permit holder of any provision of state or local laws and/or regulations.
    b. Fraud, misrepresentation, false material statement, concealment, or suppression of facts by the permit holder in connection with an application for a permit or for renewal thereof.
7. The **[city/town]** Board of Health 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 a hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the **[city/town]** Board of Health shall impose fines and/or suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
8. For purposes of such fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

[Option 2: This fining structure creates separate fines for State Laws and Local Policies. The fines for violations of State Laws are $1,000/$2,000/$5,000. All fines for violations of

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Local Policies are $1,000.00. The reason for capping fines for violations of Local Policies at $1,000 is that Mass. Gen. Law c. 111, §31, which gives a board of health legal authority to enact this local regulation, caps fines at not more than $1,000. NOTE: The filing of a criminal complaint will be necessary to enforce the $1,000 fine amount for violations of a Local Policy. See the checklist of State and Local Policies included below.]

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation the violator shall receive:

   a. In the case of a first violation, a fine of one thousand dollars ($1,000.00) for a State Law or Local Policy violation shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, or [born on or after January 1, 2005] the Tobacco Product Sales Permit shall be suspended for _____ days.**[BOH decision: either state language: "up to 30 consecutive business days" or choose a specific day duration between 1 - 30 consecutive business days.]**

   b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars ($2,000.00) for a State Law violation and one thousand dollars ($1,000.00) for a Local Policy violation shall be issued and the Tobacco Product Sales Permit [shall/ may] be suspended for_____ days **[choose a specific day duration: one (1) to seven (7) or more]** consecutive business days.

   c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars ($5,000.00) for a State Law violation and one thousand dollars ($1,000.00) for Local Policy violation shall be issued and the Tobacco Product Sales Permit [shall/may] be suspended for _____ days **[choose a specific day duration: seven (7) days to thirty (30) or more] consecutive business days**.

2. List of state laws and local policies:

POLICIES SUBJECT TO STATE LAW FINES

FINES FOR THE BELOW-LISTED STATE LAWS MAY BE ISSUED AFTER AN ADMINISTRATIVE HEARING BY THE BOARD OF HEALTH

- Tobacco and Vape Sales to persons under 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §28)
- Penalties for sales to a person under 21 of Tobacco/Vape products (105 CMR 665.045)
- Local Tobacco Sales Permit suspension for a first violation for sales to a person under 21 of Tobacco/Vape products (105 CMR 665.040(d)
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))

POLICIES SUBJECT TO LOCAL POLICY FINES

FINES FOR THE BELOW-LISTED LOCAL POLICIES MUST BE ENFORCED THROUGH AN APPLICATION FOR A CRIMINAL COMPLAINT

- Nicotine Free Generation / Sales to persons born on or after January 1, 2006
- Prohibition of the Sale of Blunt Wraps
- Ban on Smoking Bars
- Cigar Sales Regulated, including minimum sales price regulations.
- Tobacco Product Sales in Health Care Institutions as more broadly defined than in state law.
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Display of MA Department of Revenue license(s)
- No Local Tobacco Sales Permit
- Retailer Density Minimums

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- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §29)
- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a person under the age of 21 into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))
- Other state laws
- Transfer of Permit in Sale of Business
- Restricting the Nicotine Content of Oral Nicotine Pouches
- Restricting Oral Nicotine Pouches to Adult-Only Retail Tobacco Stores
- Other local policies

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health [shall/may] hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
4. Failure to cooperate or interfere with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while their permit is suspended shall be subject to the suspension of all Board of Health-issued permit for thirty (30) consecutive business days for each suspended permit. Multiple suspensions of Board of Health-issued permits shall not be served concurrently.
6. A permit issued pursuant to this regulation may be suspended, revoked, or not renewed for any of the following reasons:
   a. Violation of the permit holder of any provision of state or local laws and/or regulations.
   b. Fraud, misrepresentation, false material statement, concealment, or suppression of facts by the permit holder in connection with an application for a permit or for renewal thereof.
7. The **[city/town]** Board of Health 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 a hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the **[city/town]** Board of Health shall impose fines for the above-listed state violations and suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined

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herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

8. For purposes of such fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

U. **Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in G.L. c. 40, §21D where the penalty calls for a monetary fine not exceeding three hundred ($300) dollars.

V. Separate Violations:

Each day any violation exists shall be deemed to be a separate offense.

W. **Enforcement:**

Enforcement of this regulation shall be by the **[city/town]** Board of Health or its designated agent(s).

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the **[city/town]** Board of Health or its designated agent(s).

X. **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.

Y. **Effective Date:**

This regulation shall take effect on _____, 2026.

This regulation shall take effect on January 1, 2027. [If enacting the Nicotine Free Generation].

_____

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This information is being provided for legal educational purposes only and is not to be construed as legal advice. Legal advice can only be provided by your municipal attorney.

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