A Nicotine-Free Generation Policy Guide for Massachusetts Cities and Towns

Co-authored by staff from:
Massachusetts Association of Health Boards,
Massachusetts Health Officers' Association,
Massachusetts Municipal Association, and
The Public Health Advocacy Institute at Northeastern University School of Law

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INTRODUCTION

This guide document provides an overview of the public health policy known as Nicotine Free Generation ("NFG"). Massachusetts state law allows for the sale of tobacco products or other products that contain nicotine (together referred to in this guidance document as "Nicotine Products") to someone who has attained the age of 21. NFG uses a very different approach.

Here is how NFG works:

> ***NFG allows retailers to sell 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.***

NFG slowly phases out the sale of Nicotine Products. Retailers do not lose *any* existing customers and are afforded many years to slowly transition their businesses away from Nicotine Products. This is because the market for such sales is reduced gradually as the legal buyers become an ever-decreasing portion of the population. Over time, a municipality adopting NFG achieves the important public health benefit of ending all sales of Nicotine Products.

Of course, any public health approach to tobacco control must be comprehensive to be effective. No single policy is a panacea. The adoption of other evidence-based policies for reducing the harm caused by tobacco, in addition to NFG, is critical. For example, all tobacco retailers should be locally licensed and subject to periodic inspections. Another important local policy, for example, is to require a minimum distance between tobacco retailer stores because people living in areas where tobacco retail stores are packed closely together are disproportionally harmed by tobacco. Check the FY2025 Sample Regulation Restricting the Sale of Nicotine Products contained in Appendix A of this guidance document for more information on local model policies that can be implemented along with NFG.

The accessibility and affordability of nicotine cessation services is another important consideration. Most individuals addicted to nicotine want to quit. With counseling and other cessation services, they are much more likely to overcome their nicotine addiction and successfully quit. Most insurance, including MassHealth, cover all FDA-approved stop-smoking medicines.

Appendices

This guidance document includes the following resources:

Appendix A - FY2025 Sample Regulation Restricting the Sale of Nicotine Products

Appendix B – New England Journal of Medicine Article on NFG

Appendix C – Health Equity and Community Inclusion Checklist

Policy Language

In 2021, a lawsuit was brought challenging NFG in the first town in which it was adopted, Brookline. Details of that lawsuit and the resulting court decision are discussed later in this guide. Importantly, the court's decision provides guidance on how the policy language for NFG should be drafted.

The NFG policy language, in general, is straightforward. It merely replaces the minimum age language with the NFG effective date language, as show in the following example:

> No person shall sell or provide a tobacco product to a person ~~under twenty-one (21) years old~~ **born on or after [birthdate].**

What birthdate should be used? The birthdate should be exactly 21 years before the date NFG becomes effective. For example, if NFG becomes effective on January 1, 2025, the person drafting the NFG policy language should use the birthdate of January 1, 2004. Remember that NFG applies to those who are under the age of 21 and all future generations. It should not apply to those who can lawfully be sold tobacco products in the municipality prior to the effective date.

In addition to setting the birthdate, as shown above, most local regulations include signage requirements that will need to be updated. Here is an example:

> All retail establishments shall conspicuously post signage, made available from the Board of Health. Such signage shall include: (i) a copy of G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, ~~to someone younger than 21 years of age~~ **to a person born on or after [Effective Birthdate]** is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) 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.

Lastly, when considering NFG, it is also important to consider other important tobacco control policies. Massachusetts is fortunate to have state-level restrictions on the sale of all flavored Nicotine Products including menthol flavors, no sales in healthcare facilities and pharmacies, and comprehensive clean indoor air protections that include smoking and vaping. There is, however, much more that can be done to strengthen policy and ensure compliance at the local level. All of this can be done in conjunction with NFG to help reduce the harm caused by Nicotine Products in the community.

Local policy starts with requiring retailers that sell Nicotine Products to obtain a license and to be subject to regular retail store inspections by the municipality to ensure that retailers are not running afoul of either local policy or state laws. Retail store inspections provide opportunities for retailer education, warnings regarding noncompliance, fines when appropriate, and in egregious examples of repeated violations, suspension or revocation of a license. A checklist of other local policies is included with **The FY2025 Sample Regulation Restricting the Sale of Nicotine Products** in Appendix A of this guidance document.

COMMON ARGUMENTS AND RESPONSES

The manufacturers, distributors and retailers of Nicotine Products and their trade associations have always actively opposed local regulations that limit, in any way, the sale of tobacco products. The NFG policy is no exception. Here are some common arguments in opposition to NFG and responses to such arguments to consider:

1. **Argument:** NFG will hurt small businesses.

   Response: NFG does not take away any existing customers. Everyone who could lawfully purchase Nicotine Products may continue these purchases for their entire lives. The sales of Nicotine Products are phased out over a long period of time under NFG, affording retailers the time to slowly shift their business emphasis away from sales of Nicotine Products.

   These exact same economic arguments were made in the early 2000s when municipalities started prohibiting smoking in restaurants and bars. Numerous organizations funded directly or indirectly by tobacco manufacturers claimed that restaurants and bars would go out of business because too many people would stop eating out or they would simply drive to a neighboring community to eat or socialize. This claim proved to be completely wrong. People preferred dinning in restaurants and bars with clean air.[1] After the benefit of becoming smoke-free became obvious to restauranters, more and more municipalities and eventually the Commonwealth required smoke-free bars and restaurants.[2]

   There are, of course, businesses that clearly will be harmed: manufacturers of Nicotine Products. In general, NFG puts a stop to the supply of what some such manufacturers have called "replacement smokers," a term used to describe new users to take the place of those who quit or die as a result smoking. Under NFG, the manufacturers of Nicotine Products will conduct less and less business over time.

2. **Argument:** NFG infringes on the rights of 21+ adults by preventing them from purchasing Nicotine Products the same way they purchase alcohol or cannabis or gambling products that are granted by the state to those over 21.

   Response: Nicotine Products are highly dangerous and addictive no matter the user's age. Combustible tobacco products are the only consumer product that when used as directed kills many of its users, and they remain to this day, the leading cause of preventable death in the US. When examining the comparative preventable risks of alcohol, cannabis, lottery, and betting on sports, combustible tobacco dramatically exceeds all others combined.

   The vast majority of people addicted to Nicotine Products wish they never become addicted and want to quit, in part, because of the disease and sickness caused by the addiction, and in part because of the expense. NFG breaks this cycle of addiction and disease by preventing it from starting.[3]

Those who are 21 years of age or older may continue to purchase Nicotine Products. When they want to quit, they may utilize the quitting products and services that are widely available in Massachusetts.

The state has not granted any tobacco-related "rights" to those over 21. Likewise, there is no fundamental right to sell or to be sold Nicotine Products. Such sales, like those of alcohol, cannabis, lottery, or gambling are all regulated individually by state or local government. Any health risk product, such as those cited by critics of NFG, require their own tailored public health strategies. NFG is designed only to address the challenges of tobacco and nicotine addiction.

3. **Argument:** NFG does nothing to protect youth but will instead make Nicotine Products more attractive to youth by making products illegal. In fact, it only bans sales to adults.

   Response: 95% of tobacco use begins before the age of 21 and 99% begins before the age of 26.[4] The allure of smoking by their older peers will diminish for adolescents when the legal sales age climbs each year. Youth will not be as attracted to tobacco when existing users in their environment become older and older due to NFG.

   In addition, NFG is a long-term phase out of the sale of tobacco. Other tobacco control policies that specifically address youth use are already in place that will work in conjunction with NFG, which is meant to be part of a comprehensive policy approach.

4. **Argument:** We all know prohibition never works. Youth and legal aged adults will continue to find ways to acquire Nicotine Products just as people did with alcohol during prohibition and when cannabis was illegal.

   Response: Unlike alcohol, NFG does not take away any access to products from anyone who, at the time of the effective date, could legally purchase them. All existing customers do not need a black market to buy tobacco. They can continue to make those purchases unabated. The analogy to prohibition fails. Importantly, unlike prohibition, NFG does not prohibit the use of Nicotine Products, only the sale of Nicotine Products, and only to those who have not been sold Nicotine Products previously. NFG does not criminalize the purchase, use, or possession of Nicotine Products.

5. **Argument:** NFG arbitrarily divides people into 2 classes: those born before and after the birthdate – which is unconstitutional and illegal.

   Response: Retailers from Brookline who mounted a legal challenge against NFG made this argument which was found to lack merit in a 2024 unanimous decision by the highest court in Massachusetts. (*Six Brothers, Inc. v. Town of Brookline*, SJC-13434, March 8, 2024)

The Evidence Base for NFG

Because the NFG policy has only been in effect (anywhere in the world) since late in 2021, there is sparse literature documenting its impact. This is not surprising because the policy, by design, produces slow and gradual changes in the population in jurisdictions where it has been adopted which will take some time to measure and evaluate.

The concept of NFG was first described by Professor Jon Berrick in 2013.[5] Berrick cites an historical precedent which also involved the inhaling of an addictive drug: The phase-out of opium smoking in Formosa and British Ceylon in the early twentieth century. In both places, the policy was found to be an effective means of phasing out the use of opium beginning with the next generation.

In June of 2024, UCSF Professor Ruth Malone and former director of the CDC's Office on Smoking and Health, Timothy McAfee co-authored an analysis of the policy which they describe as a "birthdate-based commercial tobacco sales restriction."[6] They found it to be a promising, albeit very gradual means to ending the sale of tobacco products. The authors also found that there is no evidence to date regarding NFG or any other endgame tobacco policies because they are new and have yet to be assessed. The authors warned that NFG should not be adopted unless the community has already adopted other key policies, like licensing, compliance checks, flavor restrictions, and tobacco taxes. Massachusetts is fortunate to have these policies already in place to provide a solid foundation for NFG.

A commentary describing the NFG was published in the New England Journal of Medicine in 2024 which was co-authored by one of the law's sponsors in Brookline, Boston University law professor Katherine Silbaugh.[7] The article in included in Appendix B to this Guide.

While NFG is designed to eventually end all tobacco product sales in jurisdictions where it is adopted, it is also expected to have some very positive near to mid-term effects. Older peers are a significant source of tobacco products for youth.[8] It is expected that youth access to tobacco through older peers will decrease through the progressive increase of the minimum age of those able to be sold products. While a 21-year-old may now be an older peer or sibling to a high school student, it becomes less likely that someone in their mid-to-late twenties would be in a teen's social circle. This effect was forecast by the Institute of Medicine's model used to predict the impact of raising the minimum tobacco sales age to 21 or 25.[9] This modeling was important evidence supporting the policy to increase the minimum sales age for tobacco products to 21 nationwide.

Likewise, peers visibly modeling the use of tobacco products has been associated with youth initiation.[10] Thus, under NFG, with fewer local older peers modeling the use of Nicotine Products, it can be expected to contribute to a reduction in product initiation by middle and high school populations.

While for some, NFG might seem like a controversial policy, they may be in the minority. A study published by the U.S. Centers for Disease Control and Prevention in 2023 found that in a national survey, most Americans (57%) favored a policy to ban the sale of all tobacco products.[11]

NFG is a new policy, and it is too early to meaningfully measure its effects on tobacco use. There is good reason to expect very good outcomes for public health not only in the long term as the existing tobacco purchasing population ages out, but also in the near and mid-term through reductions in youth initiation of tobacco use and nicotine dependence.

The Court Decision on NFG

On November 17, 2020, Brookline became the first municipality in the United States to adopt NFG. Shortly thereafter, a group of Brookline tobacco retailers filed a lawsuit challenging the new law. After two and a half years of litigation, the highest court in Massachusetts, the Supreme Judicial Court ("SJC"), unanimously decided that NFG was lawful, clearing the way for any municipality in Massachusetts to adopt it.

The primary argument asserted by the retailers who brought the lawsuit was that state law setting the minimum sales age for tobacco to 21 preempted NFG. The retailers pointed to language in the state minimum age sales law, which stated, "this [state law] shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law relating to the minimum sales age to purchase tobacco products." Brookline responded by saying its law was not trying to change the minimum sales age. Rather, it was simply phasing in a complete ban of tobacco product sales over time. To support its position, Brookline pointed to language in the state minimum age sales law which stated, "this [law] shall not otherwise preempt the authority of any city or town to enact any ordinance or any . . . health . . . regulation that limits or prohibits the purchase of tobacco products."[12]

After a favorable decision in Brookline's favor from Superior Court judge Brian Davis, the case was appealed. Eventually, SJC decided it wanted to hear the appeal. The appeal was argued before the SJC on November 6, 2023, and on March 8, 2023, the Court agreed with Judge Davis and decided in favor of Brookline.[13]

The SJC unanimously determined that NFG was not preempted by state law and that NFG was, in effect, not a minimum age law, but rather, a ban of the sale of Nicotine Products that was phased in over time. In reaching this decision, the SJC also recognized that local public health laws and regulations were a cornerstone of governance in Massachusetts and essential to protecting the public's health. The SJC noted, for example, that "among these local powers no one is more important than that for the preservation of the public health."

The practical effect of the SJC's decision is confirmation that NFG is a lawful public health policy that other municipalities in the Commonwealth may adopt.

Health Equity and Community Engagement

There is an overwhelming consensus in public health that policies must be responsive to health equity goals and meaningfully address health disparities in affected communities.[14] This has long been especially important in developing tobacco policy. The best way to accomplish this for tobacco is through passage and implementation of comprehensive and thoughtfully developed policies that reflect health equity values. Comprehensive tobacco policies should protect future generations through prevention, which is the focus of NFG. It also must address those who are already nicotine-dependent and at increased risk for tobacco-caused disease or death. Creating and promoting access to cessation resources and reducing where tobacco products may be sold are among important policy considerations for this population. In communities where health inequities are present, this is an even higher priority.

How Does Nicotine-Free Generation Promote Health Equity Goals?

The policy's architect, Professor Jon Berrick, has suggested that the messaging inherent in the policy, namely that there is no safe age for using Nicotine Products, will reach communities with lower levels of education and awareness of the addiction and health outcomes resulting from product use. He also notes that nicotine dependence in lower income communities is especially problematic because the cost of maintaining the dependence through the constant purchase of tobacco products drains financial resources and can contribute to food and housing insecurity,

Chris Bostic, the Policy Director for Action on Smoking and Health issued the following statement on this question:

For decades the tobacco industry has rigorously targeted marginalized groups, which in their estimation had less political clout to demand regulation. Today's youth spared from nicotine addiction by NFG laws will come disproportionately from those populations, decreasing health inequity.

NFG supports health equity goals. But any proposed policy should also involve community engagement and inclusion. Appendix 3 of this Guide includes a health equity and community inclusion checklist to help ensure that communities considering NFG are well-served and heard during the policymaking process.

CONCLUSION

NFG is a policy with the potential to dramatically shape the public health future of the municipalities where it is adopted. It does this with no disruption to existing tobacco retailer business. That does not mean that it is the right policy for every community or that it is a cure-all. It will, however, create a policy backstop for ending the cycle of addiction and harm and should, in the near-term, reduce youth initiation. NFG is a new prevention policy that works in harmony with a range of other policy approaches and may be an important part of a comprehensive public health approach to reduce the impact of Nicotine Products on community health.

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[2] M.G.L. Ch. 270, §22.

[3] Centers for Disease Control and Prevention (CDC. (2011). Quitting smoking among adults---United States, 2001--2010. *MMWR: Morbidity & Mortality Weekly Report*, *60*(44). https://www.cdc.gov/mmwr/pdf/wk/mm6044.pdf

[4] Calculated based on data from the Substance Abuse and Mental Health Services Administration (SAMHSA)'s public online data analysis system (PDAS), National Survey on Drug Use and Health, 2016, https://pdas.samhsa.gov/#/survey/NSDUH-2016-DS0001.

[5] Berrick AJ. *The tobacco-free generation proposal*. Tobacco Control 2013;22:i22-i26.

[6] Malone RE, McAfee T. *Birthdate-based commercial tobacco sales restrictions: will 'tobacco-free generation' policies advance or delay the endgame?* Tobacco Control Published Online First: 19 June 2024. doi: 10.1136/tc-2024-058716.

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[12] Mass. Gen. Laws ch. 270 § 22.

[13] See 228 N.E.3d 565 (Mass. 2024).

[14] National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Population Health and Public Health Practice; Committee on Community-Based Solutions to Promote Health Equity in the United States; Baciu A, Negussie Y, Geller A, et al., editors. Communities in Action: Pathways to Health Equity. Washington (DC): National Academies Press (US); 2017 Jan 11. 1, The Need to Promote Health Equity. Available from: https://www.ncbi.nlm.nih.gov/books/NBK425853/

Appendix A - Model Comprehensive Tobacco Regulation

FY 2025 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 500 feet of a school (§E.8)	YES	NO
1,000 (___) | 2,000 (___) | 3,000 (___) | or more (___)		
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 language has been previously adopted by Boards of Health.

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 relatively 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;[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]

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]

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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/).
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[9] Campaign for Tobacco Free Kids, *The Rise of Products Using Synthetic Nicotine* (2021) (https://assets.tobaccofreekids.org/factsheets/0420.pdf)
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[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).

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 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]

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]

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[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.

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[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., *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).

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, that 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.

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, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product.

Coupon: Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be surrendered 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 are 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";
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.

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.

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 for solely 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, that 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.

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, 2005.]**

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, 2005].
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, 2005] 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 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 on or before January 1, 2005].
   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.

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. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws 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 fee shall be determined by the **[city/town]** Board of Health 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.
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 on or after January 1, 2005] 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 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 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 product 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]**

As of the effective date of this regulation, 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, 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)).

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; and
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:**

1. 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.
2. 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 for policies only established by local regulation. The fines for states policies are $1000/$2000/$5000. The fines for local policies are up to $300. 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, and violations of §D of this regulation, the following penalties apply:
   a. In the case of a first violation, a fine of one thousand dollars ($1,000.00) 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) 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) 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. For violations of all other sections specific to the **[city/town],** except for §D of this regulation, the violator shall receive:
   a. In the case of a first violation, a fine of one hundred dollars ($100.00).
   b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars ($200.00) and the Tobacco Product Sales Permit **[shall / may]** be suspended for seven (7) consecutive business days.
   c. In the case of three or more violations within a thirty-six (36)-month period, a fine of three hundred dollars ($300.00) and the Tobacco Product Sales Permit **[shall / may]** be suspended for thirty (30) consecutive business days.
3. List of state laws and local policies:

Policies Subject to State Law Fines

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §28)
- Penalties for sales to a person under the age of 21 of Tobacco/Vape products (105 CMR 665.045)
- Local Tobacco Sales Permit suspension for a first violation for sales to a person under the age of 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))

Policies Subject to Local Regulation

- Nicotine Free Generation / Sales to persons born on or after January 1, 2005
- 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)

- 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 policies

- No Local Tobacco Sales Permit
- Retailer Density Minimums
- Transfer of Permit in Sale of Business
- Restricting Oral Nicotine Pouches to adult-only retail tobacco stores
- Other local policies

5. 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.
6. 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.
7. 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. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.
8. 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.
9. 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.
10. 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 option creates one set of fines for all violations, that is $1,000/$2,000/$5,000. NOTE: When enforcing these fines for local policies, the filing of a criminal complaint will be necessary. 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) 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, 2004] 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) 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) 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:

<u>FINES FOR THE BELOW LISTED STATE LAWS MAY BE ISSUED AFTER AN ADMINISTRATIVE HEARING BY THE BOARD OF HEALTH</u>

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §28)
- Penalties for sales to a person under the age of 21 of Tobacco/Vape products (105 CMR 665.045)
- Local Tobacco Sales Permit suspension for a first violation for sales to a person under the age of 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)
- 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))

<u>FINES FOR THE BELOW LISTED LOCAL LAWS MUST BE ENFORCED THROUGH AN APPLICATION FOR A CRIMINAL COMPLAINT</u>

- Nicotine Free Generation / Sales to persons born on or after January 1, 2005
- 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 Oral Nicotine Pouches to adult-only retail tobacco stores
- Other local policies

- Admitting a person under the age of 21 into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))
- Other state laws

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 permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit 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 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 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.

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 _____, 2025.

_____

_____

_____

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.

11.26.24

Appendix B – New England Journal of Medicine Article on NFG

The NEW ENGLAND JOURNAL of MEDICINE

Perspective
MAY 30, 2024

Toward a Tobacco-free Generation — A Birth Date–Based Phaseout Approach

Katharine Silbaugh, J.D., Lis Del Valle, B.A., and Christopher Robertson, J.D., Ph.D.

Despite decades of public health efforts and advances in cessation treatments, smoking is still the leading cause of preventable disease, disability, and death in the United States.

Smoking kills more people in this country than HIV, drug overdoses, alcohol use, motor vehicle crashes, and firearm-related injuries combined. Governments worldwide have tried to reduce tobacco use. In a development that could signal a new direction for tobacco regulation, one U.S. town's policy aimed at creating a tobacco-free generation has successfully withstood legal challenge.

The bylaw, passed by Brookline, Massachusetts, gradually phases out commercial tobacco by banning the sale of nicotine products to anyone born on or after January 1, 2000 (one of us cosponsored the bylaw). Eventually, no one will be old enough to purchase nicotine products. Tobacco retailers sued Brookline over the bylaw. A unanimous March 2024 Massachusetts Supreme Judicial Court decision upholding the tobacco-free generation (TFG) bylaw may now boost its viability as a model for other local and state governments. In response to the ruling, health boards in three other Massachusetts towns (Melrose, Stoneham, and Wakefield) voted to implement birth date–based phaseouts, and other municipalities have taken initial steps toward adopting this policy.

The concept of a birth date–based phaseout of commercial tobacco has drawn attention worldwide. New Zealand passed a similar law in 2022, though a subsequent change in government led to its repeal. The concept is under discussion in the European Union, the Philippines, Singapore, Malaysia, Australia, and Norway. In April 2024, a TFG bill in the United Kingdom cleared a major hurdle in Parliament when a first reading secured strong support. Whereas the Brookline bylaw applies to all nicotine products, including combustible products and e-cigarettes (vapes), New Zealand's repealed law and the U.K. bill cover combustible tobacco products only. This variation reflects ongoing public health discussion about the relative harm of vapes as compared with cigarettes. By including vapes in its TFG bylaw, Brookline targets a key driver of initiation of nicotine use among adolescents.

The World Health Organization considers tobacco use, which kills more than 8 million people per year, one of the largest global public health threats.[1] In 2022, one fifth of U.S. adults still regularly consumed tobacco products. Use often starts at an early age:

that same year, 22.2% of U.S. middle and high school students reported ever having used tobacco products, according to the Centers for Disease Control and Prevention (CDC). Adolescents are particularly affected by the smoking behaviors of young adults — people just above the minimum age for purchasing tobacco products, who may serve as role models or buyers for younger users.[2] Reducing the availability of nicotine to this young-adult group may reduce its attractiveness to teenagers.

Smoking increases the risk of heart disease, stroke, lung cancer, and diabetes, among other conditions. Secondhand smoke contributes to 41,000 deaths per year in the United States among people who don't smoke. A reduction in smoking has long been among the most important goals for public health leaders.

Nicotine is thought to be more addictive than other widely available products, such as alcohol and cannabis. Nicotine binds to acetylcholine receptors in the central nervous system that stimulate the release of neuromodulators such as dopamine, which gives the user a feeling of pleasure.[3] There are several pharmacologic approaches to helping people stop using nicotine. But withdrawal symptoms — such as sleep problems, nausea, nicotine cravings, fatigue, irritability, and depression — cause more than 75% of people who try to quit smoking without medical support to relapse within the first week.[4] Nicotine dependency is so strong that people who stop using nicotine for 1 year still have a 35% chance of relapse at some point in their lives.[4] Exposure to nicotine can therefore be associated with lifelong harm.

Over the past six decades, the United States has seen many efforts to reduce tobacco-related harm. The U.S. Surgeon General's report in 1964 linked smoking to lung cancer and heart disease, and in 1966 Congress required manufacturers to add a warning label to cigarette packs. In 1970, Congress banned the advertising of cigarettes on television and radio. Beginning in 1992, stores were prohibited from selling tobacco products to people under 18 years of age. By 1998, a total of 46 states, the District of Columbia, and five U.S. territories had sued the four largest U.S. tobacco companies. This lawsuit resulted in the Master Settlement Agreement, which required companies to pay the states billions of dollars each year to compensate for taxpayer money used to fund health care for people who smoke.

In 2009, Congress banned flavored cigarettes (not including menthol-flavored cigarettes) and gave the Food and Drug Administration (FDA) the authority to regulate the manufacturing, distribution, and marketing of tobacco products. In 2019, Congress passed legislation that tobacco products could be sold only to people 21 years of age or older, and in 2022, it gave the FDA the authority to regulate products containing nicotine from any source, including so-called synthetic nicotine.[5] State excise taxes on cigarette purchases are as high as $5.35 per pack in New York, with an additional $1.01 federal tax, but U.S. taxes remain substantially lower than taxes in other high-income countries. Notwithstanding these efforts, tobacco use kills about 480,000 people each year in the United States, according to the CDC.

Brookline's TFG bylaw, passed in 2020 when it applied to people who were too young to purchase tobacco products under state and federal law, represents a new approach to tobacco regulation. This approach doesn't affect people who currently smoke, a feature designed to humanely recognize access concerns generated by nicotine addiction. Instead, the bylaw could eventually establish a generational firebreak against nicotine addiction, preventing tobacco purchases even as the current generation of young people ages. This approach could result in a steadily increasing proportion of the population that cannot legally be sold tobacco products, thereby phasing out tobacco sales.

Several tobacco retailers in Brookline filed a lawsuit against the town, arguing that the bylaw is preempted by state law and that it violates the guarantee of equal protection under the Massachusetts constitution by discriminating against people born on or after January 1, 2000. In March 2024, the Massachusetts Supreme Judicial Court unanimously rejected these challenges, thereby paving the way for action by other Massachusetts municipalities.

Retailers had argued that Brookline's tobacco bylaw is preempted by the Massachusetts Tobacco Act, which makes it illegal to sell tobacco products to anyone under 21 years of age. The Massachusetts high court recognized that the Brookline bylaw leaves that sales restriction "untouched" and that the Tobacco Act expressly preserves a role for cities and towns in regulating tobacco.

The court also rejected the suggestion that the Brookline bylaw requires a heightened level of

scrutiny under the state's equal-protection provision. Because the bylaw doesn't burden a fundamental right, such as religious freedom, or discriminate on the basis of a suspect classification, such as race or gender, it needs only to be "rationally related to the furtherance of a legitimate state interest." The bylaw clearly meets this standard; it was drafted to prevent health-related harms associated with tobacco use. Line drawing is routine and necessary in any legislation.

As other U.S. jurisdictions consider this approach, the Supreme Judicial Court's decision could be an important precedent. The equal-protection standard in Massachusetts is similar to provisions in the U.S. Constitution and other state constitutions. Unlike the Massachusetts legislature, however, some state legislatures have aggressively limited their local governments' authority to enact public health measures. In these states, the power to consider a TFG law rests with the state legislature. Other states, including California, have permitted local innovation in tobacco control; cities in those states could now choose to follow Brookline's lead.

An audio interview with Katharine Silbaugh is available at NEJM.org

Brookline's bylaw will have only a modest effect on public health as long as neighboring towns continue to permit tobacco sales to people who have turned 21. We believe the bylaw, and the court's decision, offer a proof of concept for birth date–based phaseout laws. Other Massachusetts towns have already shown an inclination to follow Brookline's lead. As more towns implement this policy, the Massachusetts legislature and other states could be motivated to adopt a birth date–based phaseout of commercial tobacco.

Disclosure forms provided by the authors are available at NEJM.org.

From the Boston University School of Law (K.S., L.D.V., C.R.), and the Boston University School of Public Health (C.R.) — both in Boston.

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Appendix C – Health Equity and Community Inclusion Checklist

Nicotine Free Generation HEIA

When considering proposing or implementing a new policy in your community, these questions should be answered to ensure community input and involvement.

Community engagement is a critical component in the development and implementation of public policies, especially those that directly affect the health and well-being of individuals. By actively involving community members in the decision-making process, policymakers ensure that diverse perspectives are considered, leading to more inclusive and effective solutions. Engaging the community fosters trust, builds stronger relationships, and empowers individuals to take ownership of the health outcomes that impact their lives.

Health Equity Impact Assessments (HEIAs) are essential tools in this process. They provide a structured approach to evaluate the potential effects of proposed policies on different populations, particularly those who are most vulnerable or historically underserved. HEIAs help identify and address disparities, ensuring that health policies do not inadvertently worsen inequalities but instead promote equity. By integrating HEIAs into the policy-making process, organizations can make informed decisions that advance health equity and contribute to the overall well-being of all community members.

For the purposes of this document "external partners" are any company or individual outside your organization that you partner with to achieve a goal, "internal partners" are any individuals or groups within your organization that you collaborate with.

Name of individual/group completing assessment: _____

Brief Description: what is the proposed policy? Who is responsible for implementing the policy? Why is this policy necessary?

_____
_____
_____

Issue Statement: Describe the issue you are trying to address with this policy.

_____
_____
_____

Desired Goal: What is the desired goal/outcome?

_____
_____
_____

Whose perspectives did you engage in the process of deciding on the policy for review?: Identify other people or organizations who were able to give feedback into the decision to review this policy.

_____
_____
_____

For a proposed policy, explain the interest in creating it:

_____
_____
_____

Describe whether any person or organization supports or opposes the policy and the reasoning behind their position, if known:

_____
_____
_____

Describe or summarize any data informing the policy (compliance or training data, outcomes data, or any data that helps to understand why the policy or updates to the policy are necessary):

_____
_____
_____

Is the data:

Complete	Yes	No
Reliable	Yes	No
Unbiased	Yes	No

For these next few questions, "partners" can be defined however your team or organization feels is appropriate. When thinking about the benefits and burdens, consider how outcomes or operations will be impacted, how resources will be distributed, or how an organizational or community need will be addressed.

Describe how this will affect internal partners:

1) How will they potentially benefit?_____
   _____
   _____
2) What are the potential burdens?
   _____
   _____
3) What do they value about the policy?
   _____
   _____

Will this policy affect external partners? Yes or No?

- If yes, list those partners here:
  _____
  _____

Describe how they will be impacted:

1. How will they potentially benefit?
   _____
   _____
2. What are the potential burdens?
   _____
   _____

3. What do they value about the policy?

   _____
   _____

If external partners will be impacted, identify ways you can plan to engage them. Examples include public meetings or town halls, surveys, focus groups, advisory boards, key informant interviews, etc.:

_____
_____

Any final decisions or actions should be communicated clearly to all partners and impacted people in a way that is accessible and meaningful to them. If community feedback is solicited and provided, it should be clear on whether and how that feedback impacted the final decision. Community members should be engaged in implementation, where appropriate.

Describe the outcomes you expect. How will this policy affect current practices or norms?

_____
_____
_____

Describe how the policy is likely to improve, worsen, or have no impact on health outcomes:

1. How is it likely to improve?

   _____
   _____

2. How is it likely to worsen?

   _____
   _____

3. Will it have no impact?

   _____
   _____

4. Are there any potential unintended consequences?

   _____
   _____

Has the policy been implemented elsewhere? Yes or No?

If the policy was implemented elsewhere, describe any lessons learned: This could include information about how successful the policy was in achieving its perceived goal, whether it was subsequently revised, and any benefits.

_____
_____
_____

Are there other options to achieve the same or a similar outcome? Which is the best option? Why? More than one legal or policy intervention may be necessary to achieve the goal.

Option	**Reasoning**
Statute	
Regulation	
Ordinance	
Organizational Policy	
Policy Guidance	

Modify Existing Policy	
Other	

Consider information gained from all of the prior steps, summarize the decision:

_____
_____
_____

How often will the existing or proposed policy be reviewed?

_____
_____
_____

Describe the conditions necessary for long-term success for the policy, e.g., human and financial resources, training, reasonable enforcement mechanisms, community engagement, leadership, political will, etc.:

_____
_____
_____

What conditions are already in place for success?

_____
_____
_____

You may not be able to answer all these questions in a way that you find satisfactory. There may not be opportunities for improvement or to engage diverse voices, and you may not find a solution that everyone agrees on. No matter the outcome, there is value in documenting the decision and communicating the result and reasoning to impacted partners.

- Did you establish why the policy is being reviewed or proposed?

_____
_____

- Did you explain the context of the policy?

_____
_____

- Did you determine the impact of the policy on internal and external partners?

_____
_____

- Did you identify potential outcomes?

_____
_____

- Did you identify ways to make your policy sustainable?

_____
_____

- Did you discuss the next steps?

_____
_____

INTENTIONAL ACTIONS. Which antiracist actions are you taking to advance health equity?

- Are you designing your program with the community? Yes, no, maybe? How?

_____

_____

- Which strategies are you using to connect and learn from community?

_____

_____

- How are you centering the voices and feedback of BIPOC individuals in those conversations? And in your decision-making processes?

_____

_____

- How do you plan to retain community participation and maintain those relationships in a meaningful way moving forward?

_____

_____

- How will you ensure that your organization is internally and publicly accountable to communities most impacted by racism?

_____

_____

- How does your organization benefit from conducting this evaluation?

_____

_____

ASSESSMENT

Step 1. Identify racial equity results:

- What does your organization define as the most important racially equitable community outcome(s)?

_____

_____

- Think about the systems your project/program/policy may impact. Can the project potentially impact systems outside the sector where you work? (for example, healthcare, education, employment, contracting, community development, housing, criminal justice, immigration, transportation)

_____

_____

Step 2. Identify key priority population:

- Who does your project, policy, or program impact? Check all that apply:
  - ❑ Black, Indigenous and people of color (BIPOC). Identify race/ethnicity:
  - ❑ Low-income individuals and/or families
  - ❑ Monolingual in languages other than English, English language learners
  - ❑ Immigrants, refugees, non-U.S. citizens
  - ❑ Older adults/elders
  - ❑ Lesbian, gay, bi-sexual, transgender, queer or questioning, intersex, asexual (LGBTQIA+)
  - ❑ People with disabilities
  - ❑ Neuro-divergent
  - ❑ Veteran
  - ❑ Other

- Who is your project, policy or program not reaching or impacting that it should be?

_____

_____

- What geographic areas may be impacted by your work?

_____

_____

- What is the racial composition of people and community groups in this city/neighborhood?

_____

_____

- What does data and your conversations with community members tell you about existing racial inequities that you should take into consideration?

_____

_____

- Determine benefits and burdens. Consider intersectionality across people who may be impacted.

_____

_____

- What are potential impacts to racial equity in the community where you are working?

_____

_____

Address each change you've made in response to identifying racial equity impacts. Think of how you will adjust your plans to AVOID the negative impacts, MITIGATE them, or ACCEPT them. If you have no choice and must ACCEPT a negative impact, identify why you had to accept that impact and what you would have needed to AVOID or MITIGATE the negative impact.

Racial equity issue (potential impact, root cause, etc.)	**Avoid, Mitigate, Accept**	**What strategies will you use to avoid/mitigate/accept this issue?**
1)		
2)		
3)		

<u>Community Partner Worksheet</u>

Community Groups: _____

Group Leader/Organization:

_____

Is this a priority issue?: _____

Desired Solution:

_____

_____

Whose voices are missing but should be part of the conversation? List them out.

_____

_____

How will the identified partners be included in identifying and defining the issue and deciding on the approach?

_____

_____

Who in your organization is responsible for reaching out to the identified partners? List them here.

_____

_____

Guidance for Community-based Organizations (CBOs)

Group Name: _____

Summarize the issue:

_____

_____

On a scale of 1 to 5, with 1 being the highest priority, how would you prioritize the issue?_____

Why did you give the rating you did?

_____

_____

What would you like to see as potential solutions?

_____

_____

How do you want to be engaged? This could be regular meetings, emails, phone calls, etc.:

_____

_____

What do you value most in the outcome? For your community?:

_____

_____