



January 8, 2025

Newton City Council
Programs and Services Committee

Re: Item #149-24 on Tonight's Agenda

I am the executive director of the non-profit Public Health Advocacy Institute at Northeastern University School of Law in Boston where I also teach public health advocacy to upper-level law students. I am teaching tonight and cannot join the hybrid meeting. I am an author or co-author of dozens of peer-reviewed articles about tobacco products and policy, and I am also a practicing attorney.

I am eager to share some information about this agenda item because I represented the Town of Brookline (along with my colleagues) *pro bono* in successfully defending the policy under consideration here from a legal challenge from the retail sector of the tobacco industry. The case went to the SJC and established Nicotine Free Generation as a valid exercise of local public health power in Massachusetts. All possible appeals have been exhausted, and the legal issues are settled.

My organization offered our legal help to Brookline and any other place adopting this policy in Massachusetts (including Newton) because a tobacco phase-out creates healthier communities by gradually ending the sale of tobacco products without affecting a single existing retail customer who can be sold tobacco products today. If widely adopted, it will make a huge difference. Someday, like smoke-free workplaces, Tobacco-21, bans on tobacco sales in pharmacies, and the 2019 flavor ban, it could become a statewide law.

I note that the title of the agenda item is: "Ordinance change to prohibit the sale of tobacco in Newton to anyone born on or after 1/1/2000." One of the important aspects of this policy is that it should not affect the ability of anyone who could have been legally sold tobacco products in Newton to continue to be sold tobacco products here. When Brookline passed this in 2020, the birthdate of 1/1/2000 achieved this purpose. Now it is nearly five years later and, to achieve this important purpose, the birthdate would need to be 1/1/2005.

As I'm sure you know, a dozen Massachusetts municipalities have now passed and are implementing this policy to phase out the addiction and illness caused by nicotine and tobacco products starting with the next generation of future customers. They are all now on a definitive path toward improving health outcomes and reducing their burden of chronic disease. Importantly, this is a policy focused on prevention and does not directly address the challenges faced by existing residents who are suffering from a tobacco use disorder. Nicotine Free Generation is not a panacea. But it will create significant health improvements in the mid and long term.

For example, older peers with access to tobacco products are a significant source of these products for youth.¹ It is expected that such access will be reduced with the progressive increase of the minimum sales age under this policy. This is because, while a 21-year-old may still be an older peer or sibling to a high school or even middle school student, it becomes less likely that someone in their mid-to late twenties, after this policy has been in effect for a few years, would still be in any teen's social circle. This is the same effect that was forecast by the Institute of Medicine's model used to predict the impact of raising the minimum sales age for tobacco to 21 or 25.² The IOM's modeling was important evidence supporting the policy to adopt Tobacco-21. As you know, Tobacco-21 started as a local Massachusetts policy in Needham and, in less than 15 years, became national policy.

Likewise, peers who model the use of tobacco products have been a strong predictor of youth initiation.³ But with fewer older peers modeling tobacco product use as a result of the proposed policy, it can be expected to contribute to a reduction in tobacco initiation by middle and high school populations.

Newton could be the first city in the Commonwealth to approve the nicotine free generation policy through an ordinance and continue the Council's leadership in protecting city residents from the harms of tobacco. In 1974, Newton was the first in Massachusetts to ban smoking in supermarkets. In 1981, the City Council passed the first requirement for nonsmoking sections in restaurants. And in 1984, just over 40 years ago, Newton led the state with the first ban on smoking in the workplace. By being a leader, this city has contributed mightily to the fact that all of these policies are now not only state law, but helped to create the current social norms around tobacco.

While the impact of this policy on retailers will be felt over the very long term, the loss of new tobacco customers who just turn 21 in each year represents only a tiny percentage of overall tobacco sales for retailers. This stands in marked contrast with the impact on retailers from the 2019 state law that banned the sale of all flavored tobacco products starting the following year. Suddenly, a large portion of retailers' sales was immediately banned. Tobacco free generation takes the opposite approach by phasing out sales over decades in a way that provides ample opportunity for retailers to adjust.

I have found that most retailers who have complained about this policy are under the misimpression that the policy will have a substantial near-term impact on their bottom line. Rather, tobacco industry retail groups like the New England Convenience Store and Energy Marketers Association (NECSEMA), the National Association of Convenience Stores, the National Association of Tobacco Outlets, and other lobbying organizations linked closely with the tobacco industry like the R Street Institute. In fact, NECSEMA has funded a “grassroots” campaign called “Citizens for Adult Choice” to target policymakers with cookie cutter letters, often from out of state senders, with “robo” opposition of the nicotine free generation. ⁴ Perhaps some councilors have received such materials in Newton.

I would like to address the concerns raised around contributing to black markets with this policy. There must already be strong demand for a product to create a black market. Consider the 2019 flavor ban where there was an existing demand for a product removed from retail shelves. That has resulted in out-of-state purchases and a small but not trivial black market and cross-border sales. Contrast this with Tobacco-21. One of the reasons Tobacco-21 did not create a black market was because young people did not lose their ability to purchase tobacco. They never had it, so there wasn’t an established retail demand from those under the legal age. Likewise, Nicotine Free Generation affects sales only to the next generations, for whom there is no strong existing demand for nicotine products. For this reason, concerns about this proposed policy creating a black market may be misplaced.

I hope very much that you take the opportunity to advance this ordinance, amended to use 1/1/2005 as the birthdate, to allow the possibility that Newton can join the growing list of communities that are seeking to protect future generations from the physical, psychological, and financial trap that nicotine addiction causes.

Sincerely,

A handwritten signature in blue ink that reads "Mark A. Gottlieb". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark A. Gottlieb
Executive Director

References:

¹ White MM , Gilpin EA , Emery SL , et al . *Facilitating adolescent smoking: who provides the cigarettes?* Am J Health Promot 2005;19:355–60.doi:10.4278/0890-1171-19.5.355.

² Committee on the Public Health Implications of Raising the Minimum Age for Purchasing Tobacco Products; Board on Population Health and Public Health Practice; Institute of Medicine; Bonnie RJ, Stratton K, Kwan LY, editors. Washington (DC): [National Academies Press \(US\)](#); 2015 Jul 23.

³ East, K., McNeill, A., Thrasher, J. F., and Hitchman, S. C. (2021) *Social norms as a predictor of smoking uptake among youth: a systematic review, meta-analysis and meta-regression of prospective cohort studies*. Addiction, 116: 2953–2967. [https://doi.org/10.1111/\(ISSN\)1360-0443](https://doi.org/10.1111/(ISSN)1360-0443)

⁴ “NECSEMA Launches Campaign Opposing Generational Tobacco Bans”
https://www.convenience.org/Media/Daily/2024/May/21/3-NECSEMA-Campaign-Opposing-Tobacco-Bans_GR