

Revised Ordinance (multi-unit housing removed; Sections VI and VII revised)

Changes are underlined. CITY OF CONCORD.

AN ORDINANCE

Amending the Code of Ordinances of the City of Concord by Adopting a New Article []
Governing Tobacco and Nicotine Retail Permitting, Enforcement, and Related Public Safety
Measures

The City of Concord ordains as follows:

Section I. Title and Purpose

This Ordinance shall be known and may be cited as the "Tobacco and Nicotine Retail
Governance and Public Safety Ordinance of the City of Concord."

The purpose of this Ordinance is to address discrete public safety and compliance concerns
through a limited and balanced regulatory framework that:

- a) Prevents unlawful youth access to tobacco and nicotine products through compliance with
existing state and federal law;
- b) Minimizes regulatory uncertainty for lawful retail operations by clarifying the City's limited
permitting and enforcement role in a manner consistent with state licensing and inspection
regimes;
- c) Discourages the distribution and sale of illicit or unlawfully sourced tobacco and nicotine
products in coordination with state authorities;
- d) Promotes regulatory clarity, predictability, and stability for residents, retailers, property
owners, and enforcement agencies; and
- e) Relies on targeted enforcement, existing legal standards, and proportional administrative
measures, and shall not be construed to impose unnecessary, duplicative, or expansive
regulation beyond what is reasonably required to achieve the purposes stated herein.

Section II. Legislative Findings

The City Council finds that:

- a) Preventing the unlawful sale of tobacco and nicotine products to persons under the age of twenty-one is a legitimate and continuing public safety objective under state law;
- b) Effective enforcement is best achieved through clear standards, coordination with state authorities, and targeted use of existing inspection and compliance tools, rather than duplicative or expansive local regulation;
- c) Combustible tobacco products are the primary source of involuntary smoke exposure and fire-related risk associated with smoking;
- d) Lawful non-combustible nicotine products are used by adults and may present different risk profiles than combustible products, which is relevant for proportional regulatory evaluation and enforcement prioritization;
- e) Recognition of such distinctions for regulatory evaluation purposes does not promote use, does not authorize any product or conduct prohibited by law, and does not alter prohibitions on youth access;
- f) Illicit and unlawfully sourced tobacco and nicotine products undermine public safety, tax integrity, and lawful commerce, and are primarily addressed through state licensing and enforcement mechanisms;
- g) Targeted, evidence-based enforcement focused on documented compliance concerns is preferable to broad, categorical restrictions affecting lawful conduct;
- h) Regulatory clarity and stability are in the public interest and support consistent enforcement, lawful commerce, and informed future policy review;
- i) Compliance concerns involving specific businesses or locations require targeted enforcement and corrective measures versus broad restrictions;
- j) In evaluating future consideration of additional tobacco product restrictions, it is important that documented violations involving unlawful youth access, age-verification failures, or repeat non-compliance are prioritized for targeted and proven remedial action; and
- k) Any additional restrictions on tobacco products should only be considered upon a showing that existing enforcement mechanisms and compliance measures have been fully implemented and found insufficient to address documented concerns.

Section III. Definitions

For purposes of this Ordinance, the following words and phrases shall have the meanings indicated:

- a) Adult means a person twenty-one (21) years of age or older.
- b) Adult Tobacco Retailer means a retail establishment whose primary business is the sale of tobacco or nicotine products, and components related to the use of said products.
- c) Clerk means any employee or agent authorized to complete or facilitate the sale of a Tobacco Product on behalf of a Tobacco Retailer.
- d) Combustible Tobacco Product means any tobacco product intended to be burned or ignited for inhalation, including but not limited to cigarettes, cigars, cigarillos, or pipe tobacco.
- e) Tobacco Product means any product that is made from or derived from tobacco or that contains nicotine from any source that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, and snus or any product that can deliver nicotine to the user through inhalation of vapor including any component part of such product, including a substance for use in the device regardless of whether the substance contains nicotine, and whether or not sold separately. It shall not include any drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- f) Tobacco Retailer means any person who sells tobacco products to consumers within the City of Concord.

Section IV. City Tobacco Retail Permit

- a) No Tobacco Retailer shall sell any Tobacco Product within the City of Concord without first obtaining and maintaining a valid City Tobacco Retail Permit from the Health & Licensing Officer for each retail location.
- b) A City Tobacco Retail Permit shall be required in addition to any license or authorization required under state or federal law.
- c) A permit issued under this Section shall be site-specific and non-transferable, except as expressly provided herein.

- d) A City Tobacco Retail Permit shall be valid for a period of one (1) year from the date of issuance, unless sooner suspended or revoked in accordance with this Ordinance.
- e) The annual permit fee shall be ten dollars (\$10.00) per retail location and is intended solely to recover administrative costs associated with permit processing and enforcement coordination.
- f) The City Council may adjust the permit fee by resolution, provided that any such adjustment remains reasonably related to administrative cost recovery.
- g) Permits shall be renewed annually in a manner coordinated, to the extent practicable, with applicable state licensing timelines.
- h) Renewal shall require confirmation of continued compliance with this Ordinance and applicable state and federal law.
- i) Upon issuance or renewal of a City Tobacco Retail Permit, the Health & Licensing Officer shall provide the Tobacco Retailer with a standardized permit acknowledgment notice.
- j) Any Tobacco Retailer lawfully operating and holding all required state licenses as of the Effective Date of this Ordinance shall be able to continue to operate at its existing location, subject to compliance with this Ordinance and applicable law.
- k) A change in ownership or business entity shall not be deemed the establishment of a new Tobacco Retailer for purposes of this Section, provided there is no lapse in City or state licensure.
- l) Nothing in this Ordinance shall require the relocation or closure of a lawfully operating Tobacco Retailer existing as of the Effective Date.
- m) A City Tobacco Retail Permit shall not be issued to a Tobacco Retailer if the Tobacco Retailer is not engaged in the business of selling tobacco products prior to the Effective Date of this Ordinance and the Tobacco Retailer is located:
1. Within one thousand (1,000) feet of a public or private elementary or secondary school; or
 2. Within five hundred (500) feet of a playground, youth center, licensed childcare facility, or public library.

n) Nothing in this Section shall be construed to expand the City's authority to regulate products, pricing, advertising, or lawful adult consumption of Tobacco Products beyond what is expressly authorized under state or federal law.

Section V. Online Tobacco Product Retail Training and Attestation

a) As a condition of original issuance or renewal of a City Tobacco Retail Permit described in Section IV, a Tobacco Retailer shall attest to the fact that all employees of the Tobacco Retailer that are engaged in the sale of any Tobacco Product have completed online trainings approved by the Health & Licensing Officer that addresses age-verification requirements and lawful sales practices related to the sale of any Tobacco Product.

b) Such training shall be maintained on an ongoing basis as staff turnover occurs.

c) Tobacco Retailers shall ensure documented training compliance and shall make such documentation available upon request in the course of any lawful inspection or compliance check.

d) The Health & Licensing Officer shall establish standardized training content designed to ensure consistent application of age-verification practices.

Section VI. Compliance Enforcement (revised)

a) The City shall rely on existing compliance and enforcement data generated by the U.S. Food and Drug Administration, the New Hampshire Liquor Commission, and other state or federal authorities regarding Tobacco Retailers operating within the City, and shall coordinate with those agencies regarding suspected violations, in lieu of establishing an independent City inspection program under this Ordinance.

b) The City shall produce an annual report compiling available data from the U.S. Food and Drug Administration, the New Hampshire Liquor Commission, and any local enforcement actions taken under this Ordinance, including documented violations and general enforcement outcomes to the extent such data is publicly available. Such reporting shall be for the purpose of maintaining transparency and informing future policy evaluation, but shall not include confidential or personally identifiable information.

c) The report shall be presented to the City Council at a noticed public meeting and entered into the official record. No amendment to this Article shall be adopted unless: (i) the most recent annual report has been formally received by Council within the preceding twelve months; (ii) no

fewer than thirty days have elapsed between the Council's receipt of the report and the vote on the proposed amendment; and (iii) the findings of the report have been expressly considered in the staff analysis accompanying the proposed amendment.

d) Nothing in this Section shall be construed to require the City to conduct a fixed number of inspections, to establish an independent inspection program, or to conduct compliance activity beyond what the City undertakes in the ordinary course of its existing licensing and code enforcement functions.

Section VII. Administrative Cost Recovery (revised, formerly "Funding for Compliance Enforcement")

Administrative costs associated with implementing this Ordinance, including permit processing, training administration, and enforcement coordination, are intended to be recovered through the permit fee established under Section IV and, where legally available, through civil penalties imposed under Section VIII. This Ordinance shall not be construed to require any appropriation from the City's General Fund. The City may, at its discretion, coordinate with the Concord Police Department, Health & Licensing Services, or other appropriate City departments, and with the New Hampshire Liquor Commission, regarding youth access prevention efforts.

Section VIII. Violations and Graduated Penalties

a) A violation of this Ordinance shall include the following:

1. Selling or furnishing a Tobacco Product to a person under twenty-one (21) years of age;
2. Failing to verify age as required by state or federal law prior to the sale of a Tobacco Product;
3. Failing to obtain or maintain a valid City Tobacco Retail Permit as required under Section IV;
4. Failing to cooperate with a lawful inspection conducted pursuant to Section VI of this Ordinance; or
5. Failing to comply with a corrective measure lawfully imposed under this Section following a documented violation.

b) Enforcement under this Ordinance shall employ graduated measures designed to encourage compliance and deter repeat violations.

c) Except in cases involving willful misconduct, or repeated violations, enforcement shall favor warnings and corrective measures prior to the imposition of the following penalties:

1. First Violation: A written warning together with required re-completion of the online training described pursuant to Section V. No monetary penalty shall be imposed.

2. Second Violation (within twenty-four (24) months): A civil penalty not to exceed five hundred dollars (\$500.00), together with any reasonable corrective measures necessary to ensure compliance.

3. Third or Subsequent Violation (within twenty-four (24) months): A civil penalty not to exceed one thousand dollars (\$1,000.00) and, where warranted, temporary suspension of the City Tobacco Retail Permit for a period not to exceed seven (7) days.

d) Nothing in this Ordinance shall be construed to alter or expand penalties applicable to persons under twenty-one (21) years of age, which shall be governed exclusively by applicable state law.

e) Any citation or enforcement action taken under this Section shall be subject to applicable notice and appeal procedures under City code and state law.

f) A Tobacco Retailer shall have the right to appeal any penalty or permit suspension in accordance with established City procedures.

Section IX. Coordination with the New Hampshire Liquor Commission

a) The City may coordinate with the New Hampshire Liquor Commission and other appropriate state agencies regarding inspections, enforcement trends, and suspected violations involving Tobacco Products.

b) Where the City encounters suspected illicit trade, unstamped products, or unlicensed distribution, the City shall refer such matters to the New Hampshire Liquor Commission or other appropriate state authority for investigation and enforcement, consistent with state law.

c) Nothing in this Ordinance shall be construed to supplant, duplicate, or conflict with the licensing, inspection, or enforcement authority of the New Hampshire Liquor Commission.

d) The City shall defer primary investigation and enforcement of matters within state jurisdiction to the appropriate state agency, except where local enforcement is expressly authorized by law.

e) To the extent permitted by law, the City may exchange non-confidential information with state authorities for the limited purposes of compliance verification, enforcement coordination, and public safety.

Section X. Severability

If any provision of this Ordinance or its application to any person or circumstance is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining provisions or applications of this Ordinance, which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are declared to be severable.

Section XI. Effective Date and Transition

This Ordinance shall take effect on a date set by the City Council following adoption.

a) Tobacco Retailers lawfully operating as of the Effective Date shall be afforded a reasonable period, as determined by the City, to obtain a City Tobacco Retail Permit and complete the attestation required under Section IV.

b) Nothing in this Ordinance shall be construed to require immediate changes to lawful business operations, lease agreements, or property policies beyond what is reasonably necessary to achieve compliance with the provisions herein.