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LAYING A SOLID FOUNDATION

**TOBACCO LAWS PERTAINING
TO THE COMMONWEALTH
OF MASSACHUSETTS**

Massachusetts Association Of Health Boards

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This edition has been significantly edited to include new state and federal laws relative to tobacco. This booklet is intended for educational purposes only and should not be construed as legal advice.

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term "Tobacco Products" includes both conventional tobacco products and vape products, and the term "Smoking" includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

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— Introduction —

This booklet is designed to introduce public health professionals and other interested individuals to state and federal tobacco-related laws affecting Massachusetts, as well as provisions from the 1998 Master Settlement Agreement between most states' Attorneys General and the vast majority of tobacco companies.

In Massachusetts, local board of health regulations, town by-laws and city ordinances can address tobacco-related issues. These local laws play a substantial role in protecting the public from the dangerous effects of tobacco. Federal and state tobacco-related laws usually set minimum standards. In general, cities and towns can enact stricter tobacco-related laws. This booklet addresses local legal authority to regulate tobacco sale and use. It also includes checklists for regulating tobacco sale and use locally, and emerging tobacco-related issues.

In light of the above, when seeking information on tobacco-related laws, it is important to learn the status of local tobacco-related laws in a specific city or town. These laws are usually available on municipal websites, in city and town clerks' offices, and at local boards of health. They are frequently stricter than federal and state laws and act in concert with them.

This booklet is comprised of seven chapters:

1. **Laws Prohibiting Smoking:** The premier law in Massachusetts is the Smoke-Free Workplace Law. Other laws include those that address smoking in commercial food preparation and storage areas, buses, transportation terminals, airplanes and airports, federal buildings, public and private schools, childcare facilities, public pools, park and recreational buildings and nursing homes. This section also includes legal issues and strategies surrounding smoking in multi-unit housing.
2. **Tobacco Product Sales Laws:** These laws are designed to reduce access to tobacco products and include minimum age sale laws, restriction of flavored tobacco laws, signage laws, and laws regulating self-service displays, vending machines and single cigarette and cigar sales.
3. **Health Warning Laws:** Federal law requires that cigarette retail packages display a government-mandated health warning.
4. **Tobacco Advertising and Promotion:** This continues to be one of the most contentious areas of public health law. Tobacco advertising and promotion are largely addressed in federal law and in the 1998 Multistate Master Settlement Agreement (MSA) and limited state regulation. FDA regulations enacted in 2010 permit states and localities to regulate the time, place, and manner, but not content of the advertising and promotion of cigarettes.
5. **Tobacco Taxes and Pricing:** Both the federal government and Massachusetts impose excise taxes on cigarettes and other tobacco products. Massachusetts also has a minimum price law, originally passed to protect small independent retailers from unfair price competition with larger, "big box" retailers. Massachusetts cities and towns do not have the legal authority to assess local tobacco taxes.
6. **Legal Authority to Regulate Tobacco Locally:** Massachusetts is a "home rule" state. This means that legal local authority to enact and enforce laws is very strong, especially if these laws are public health laws. Most municipalities have enacted local laws relative to the sale and use of tobacco, usually in the form of a board of health regulation. It is imperative when examining tobacco-related laws in Massachusetts to examine local laws.
7. **Working at the Local Level, Emerging Issues and Local Regulation Checklist Templates:** Lawmaking is an ongoing and ever-changing process. This is especially true in the area of tobacco. For example, in late 2019, the state enacted a law that prohibits the sale of any flavored tobacco product, except in smoking bars and only for use while at the smoking bar. This chapter discusses local regulations that mirror this new state law and build upon the new state law with additional evidence-based policies for reducing the harm caused by tobacco products.

— Chapter One —

Laws Prohibiting Smoking

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Summary Of The Massachusetts Smoke-Free Workplace Law

(M.G.L. Chapter 270, Section 22)

Background: Since 2004, all enclosed workplaces with one or more employees must be smoke-free. Designated smoking areas or smoking rooms are not permitted. In 2018, the law was amended to include the use of electronic cigarettes (vaping products) in the definition of smoking and thereby prohibiting the use of electronic cigarettes in all enclosed workplaces as well.

Definition of Smoking under the Smoke-Free Workplace Law: The inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

General Rule: An employer is responsible for providing a smoke-free environment for all employees working in an enclosed workplace. Smoking is prohibited in all enclosed workplaces including, but not limited to the following: common work areas; hallways; conference and meeting rooms; offices; employee lounges; restrooms and staircases; auditoriums; theaters; concert halls and convention centers; museums; libraries; schools; colleges and classrooms; restaurants; bars; taverns; food courts and supermarkets; medical facilities; health facilities; child care centers; camps for school age children; public and private primary and secondary schools including technical secondary schools; public transportation such as trains, planes, taxis, buses, airports, train and bus stations; terminals and enclosed outdoor platforms; and public buildings owned by the commonwealth or a political subdivision, such as a city or town. Signage is required to indicate where smoking is not permitted or for those locations (smoking bars, retail tobacco stores, time share properties) exempt from the law.

Exemptions where smoking may be permitted if certain conditions are met:

(please see full text of law for exemption details, conditions and requirements)

1. Private residences, except when the residence is being used to operate a group childcare center, school age day care center, school age day or overnight camp, a health care related office or a facility licensed by the Office of Childcare Services;
2. Membership associations (private clubs) defined as non-profit voluntary groups; organized under M.G.L. Chapter 180, while not open to either the public or non-members who are not invited guests;
3. Guest rooms in hotels, motels, or similar accommodations that have been designated as “smoking” rooms;
4. Retail tobacco stores that are not required to possess a retail food permit whose primary purpose is to sell tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental and which prohibit the entry of anyone under the age of twenty-one (21) years;

5. Smoking bars, including cigar, hookah and any vaping bars that derive a majority of their revenue from tobacco product sales, can demonstrate that the local board of health has given the proposed establishment a tobacco product sales permit, and are granted a permit from the Department of Revenue (DOR). A smoking bar that receives a DOR permit must demonstrate quarterly that the establishment derives a majority of its income from the sale of tobacco products. Before granting a permit the DOR will review the business plan of the proposed smoking bar;
6. Religious ceremonies where smoking is part of the ritual;
7. State licensed nursing homes that have received approval from the local board of health may have a designated smoking area for permanent residents only; and
8. Tobacco laboratories/tobacco testing facilities that conduct medical or scientific research on tobacco smoke.

Enforcement Agency: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270, §22(m)*.

Penalties: Smoking in a place where it is prohibited may result in a \$100 civil fine to the smoker. Employers or business owners may receive fines ranging from \$100 to \$300 for permitting smoking. Local boards of health, municipal governments, the Alcoholic Beverages Control Commission and the Department of Public Health may enforce this law. In practice, local boards of health are the primary enforcers.

Food Handling and Storage Areas and Processing Establishments

General Rule: Massachusetts prohibits smoking in all commercial food preparation and storage areas including food preparation and storage areas in prisons, long-term care facilities, restaurants, bars, sandwich stands, caterers' kitchens, bakeries, grocery stores, and more. *105 CMR 150.009; 451.214*. Massachusetts prohibits smoking in food processing and distributing facilities where there is exposed food or food ingredients. *105 CMR 500.005*. Massachusetts prohibits smoking in virtually all food and beverage processing areas including areas used to process seafood, poultry, meat, dairy, water, nonalcoholic beverages, and more. *105 CMR 530.017(y); 541.020(B) (7); 532.049*.

Enforcement Agency: Local boards of health and health agents are the enforcing agents.

Penalty: Penalties include fines of up to \$500, and suspension or revocation of permits needed for the commercial handling and storage of food. *105 CMR 590.014; 590.019*.

Public Conveyances and Transportation Terminals

General Rule: Massachusetts prohibits smoking on all railroad carriages, steamboats, or other public conveyances, or in a terminal or other facility of the Massachusetts Bay Transportation Authority. *M.G.L. c.272, §43A*.

Enforcement Agency: The Massachusetts Bay Transportation Authority is the enforcing agent.

Buses (Non-Massachusetts Bay Transportation Authority Buses)

General Rule: The federal government prohibits smoking on all buses transporting passengers on interstate service. *49 CFR §374.201*. Buses operating within Massachusetts must be smoke and vape-free. *M.G.L. c.270 §22*.

Enforcement Agency: The United States Department of Transportation, the Department of Public Health, and municipal boards of health are the enforcing agencies.

Penalty: Penalties are specified under state law.

Airplanes and Airports

General Rule: The Federal Government prohibits smoking on all domestic airline flights and all international airline flights arriving or departing from the United States. Massachusetts prohibits smoking in all enclosed areas of airports. *49 U.S.C. §41706; M.G.L. c.270, §22.*

Enforcement Agency: The United States Department of Transportation is the enforcing agency for the violation of smoking on airlines. The Massachusetts Port Authority is the enforcing agency for smoking in their enclosed facilities.

Penalties: Penalties are specified under state law. *M.G.L. c. 270, §22(l).*

Federal Buildings

General Rule: The federal government prohibits smoking in all offices owned or used by the executive branch of the federal government, including office space for essentially all of the departments and agencies of the executive branch, with some exceptions. *41 C.F.R. § 102-74.315.* The head of a federal agency may allow narrow exceptions for smoking where it is necessary to accomplish an agency's mission. *41 C.F.R. §102-74.320(d).* The US Department of Defense prohibits smoking in indoor facilities on any base with some exemptions. *US DOD Policy Directives 1010.10 & 1010.15.*

Federal law does not prohibit smoking in federally-owned buildings leased to private citizens or businesses, although the Massachusetts Smoke-Free Law applies. *41 C.F.R. §102-74.320.* Recall that the Massachusetts Smoke-Free workplace Law prohibits smoking in all workplaces with only some very narrow exceptions. The US Department of Housing and Urban Development prohibits smoking in and near any federally-aided housing authorities. *24 C.F.R. §965-6.* The U.S. Postal Service prohibits smoking in all buildings and office spaces, including service lobbies owned or leased by the U.S. Postal Service. No indoor smoking is permitted by any occupant of any space on U.S. Postal Service property.

Enforcement Agency: The director of the federal government agency or department on whose property the violation has occurred is the enforcing agency.

Penalty: No penalty is specified.

University and College Dormitories

General Rule: The Smoke-Free Workplace Law exempts dormitory rooms because they are considered residences. *M.G.L. c. 270, §22(a).* However, it does prohibit smoking in non-residential portions of dormitories, including, common areas, staircases, and restrooms. *M.G.L. c. 270, §22(b) (2).* In addition, Massachusetts requires that public (as opposed to private) colleges and universities allot an adequate number of nonsmoking rooms in their dormitories for students who prefer a smoke-free room. *M.G.L. c. 15A, §27.* Many colleges and universities have exceeded this rule and have adopted smoke-free campuses.

Enforcement Agency: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270, §22(m).* The dean of the college or university enforces *M.G.L. c. 15A, §27.*

Penalties: Penalties are specified by state law.

Public Schools and Private Schools

General Rule: The Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including public and private schools. In addition, Massachusetts requires that all public schools through high school prohibit the use of

tobacco products of any kind, including smokeless tobacco, on school grounds, on school buses, in school buildings, and at school-sponsored events. The law is commonly referred to as the “Education Reform Act.” *M.G.L. c. 270 §22(b) (2); M.G.L. c. 71 §§2A, 37H.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270 §22(m).* The superintendent for the school district is responsible for publishing the district’s policies prohibiting tobacco use. *M.G.L. c. 71 §37H.* The principal of each school building is responsible for enforcing the school district’s policies.

Penalties: Penalties are specified by state law.

Childcare Centers

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including childcare centers. *M.G.L. c.270 §22(b) (2).* In addition, Massachusetts prohibits smoking in all childcare centers during hours of operation, including private residences when used as childcare centers. *606 CMR 7.11.* A childcare center is defined as any regularly operated facility that receives children not of common parentage, under the age of seven years or under the age of sixteen years if the child has special needs. Childcare facilities do not include informal arrangements among neighbors or relatives. *M.G.L. c.15D §1A, 606 CMR 7.02.* The federal government prohibits smoking in any facility for early childhood development services (such as Head Start) if the facility accepts certain federal funding or yields certain control to the U.S. Secretary of Health and Human Services. *20 U.S.C. 6083.*

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270 §22(m).* The Department of Early Education and Care enforces *606 CMR 7.02 and 7.11.* The U.S. Secretary of Health and Human Services enforces the federal law.

Penalty: Penalties are specified by state law. Violations of the federal law are subject to fines of up to \$1,000 but may not exceed the amount the facility received in federal funding. *20 U.S.C. §6083.*

Family Childcare Homes

General Rule: Massachusetts prohibits caregivers from smoking on the childcare premises during childcare hours. *M.G.L. c.270 §22.* A family childcare home is defined as temporary custody and care provided in a private residence. *606 CMR 7.02.* It does not include informal babysitting arrangements amongst neighbors or relatives. *M.G.L. c.15D §1A.*

Enforcement Agent: The Department of Early Education and Care is the enforcing agent.

Penalty: Penalties are specified by state law. Violators may temporarily or permanently lose their license. *102 CMR 1.07.*

Manufacturing and Storage of Non-Food Items

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including establishments that manufacture and store non-food items. *M.G.L. c.22 §22(b) (2).* The Board of Fire Prevention has also established smoking regulations for a variety of manufacturing and servicing facilities where potential fire hazards exist. *527 CMR 15.04; 454 CMR 22.11.* Similar restrictions can be found at the federal level. *30 C. F.R. 75.1702; 57.5041.*

Smoking is banned in factories, workshops, mercantile establishments, and warehouses where the material being handled in and about such structure is of a flammable nature, or where such structures are of a combustible construction which may, in the opinion of the head of the fire department, constitute a fire hazard. *527 CMR 10.07*.

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270, §22(m)*. The local fire department enforces the Board of Fire Prevention Regulations.

Penalties: Penalties are specified by state law.

Public Pools

General Rule: The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including enclosed pool areas. *M.G.L. c. 270 §22(b) (2)*. In addition, Massachusetts prohibits smoking in both enclosed and unenclosed pool areas of public pools operated by any subdivision of the Department of Environmental Management. *304 CMR 12.33*. Many municipalities prohibit smoking in municipal-owned pools.

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270 §22(m)*. Additionally, any person failing to comply with a reasonable request of a duly authorized employee of the Division of Forests and Parks would be subject to a fine and/or an eviction. *304 CMR §12.05*.

Penalty: Penalties are specified by state law. Violations of the Division of Forests and Parks regulations are punishable by fines of unspecified amounts, evictions, or temporary denial of access to the facility, or any combination of these. *304 CMR 12.05*.

Docks, Wharves and Waterfront Areas

General Rule: The Board of Fire Prevention Regulations prohibit smoking on all docks, wharves, and waterfront areas except in designated smoking areas approved by the head of the fire department. *527 CMR 10.07(4)*.

Enforcement Agent: The local fire department enforces the Board of Fire Prevention Regulations.

Penalty: No penalty is specified.

Nursing Homes

General Rule: The Massachusetts Smoke-Free Workplace Law provides that nursing homes and acute care substance abuse treatment centers under the jurisdiction of the Commonwealth that have received approval from the local board of health may have a designated smoking area for permanent residents only. *M.G.L. c.270 §22(f)*. The process for local board of health approval is outlined in *M.G.L. c. 270 §22(f) (1)–(10)*. The area cannot be an employee workspace, such as an office, restroom or other area used primarily by employees. All patient care areas must be smoke-free. In addition, smoking is prohibited in rooms where oxygen is administered and in adjacent areas. *M.G.L. c. 270, §22(f) (1)–(10); M.G.L. c.111 §72X; 105 CMR 150.015(D) (11) (b)*. Many municipalities prohibit smoking in nursing homes.

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270 §22(m)*. The Department of Public Health enforces the laws prohibiting smoking in patient care areas and in rooms where oxygen is administered.

Penalties: Penalties are specified by state law.

Multi-Unit Housing and Residential Rental Properties

General Rule: All federally-aided housing authorities are required to be completely non-smoking without exception. Additionally, no one may smoke within 25 feet of any federally-aided housing authority building. This rule does not apply to privately-owned affordable housing. *24 C.F.R. § 965-6*

Landlords have the legal authority to prohibit smoking anywhere in their residential rental properties, including inside all units. In a no smoking building, tenants who want to smoke are typically required to do so outside, away from the building or off the property. In addition, the Massachusetts Smoke-Free Workplace Law prohibits smoking in indoor common areas, such as hallways, stairways and elevators. Landlords are responsible for prohibiting smoking in such indoor areas.

All landlords in Massachusetts have the legal authority to prohibit smoking anywhere in their buildings and outside on their property. The no smoking rule may include tobacco and marijuana. The legal authority exists for landlords of municipal public housing, state and federal subsidized housing, and market rate housing. Landlords typically make their properties no smoking by having tenants sign a lease addendum. The landlord can also include the language in the lease. A tenant signs the addendum when signing a new lease or renewing an existing lease. Landlords should not grandfather in existing tenants beyond the implementation date for the no smoking rule. Grandfathering tenants and allowing them to continue smoking inside makes it difficult to enforce the rule. It also continues the problem of involuntary exposure of tenants, their guests, and employees in the building.

Enforcement Agent: Local boards of health are the primary enforcing agents of the Massachusetts Smoke-Free Workplace Law. *M.G.L. c. 270 §22*. Landlords enforce their no smoking rules just like they would with any other lease violation. A resident who is being exposed to secondhand smoke drifting in from a neighboring unit may seek redress under state and federal disability laws and state landlord-tenant laws. The resident may also request an inspection by the local municipal housing inspector under the State Sanitary Code, although it is important to note that the Sanitary Code does not expressly prohibit migrating secondhand smoke. *105 CMR 410.750*.

Penalties: Penalties of the landlord for allowing smoking in indoor common areas are specified under state law. *M.G.L. c. 270, §22(l)*. Landlords enforce their no smoking rules. A tenant who violates a no smoking rule in a lease (or allows his guest to violate the rule) is subject to lease termination and eviction. Additionally, the landlord can retain a portion of the security deposit to remediate smoking-related damage to the unit.

More information and a model no smoking lease addendum are available at makesmokinghistory.org/

Residential Condominiums

General Rule: Like a landlord, condominium associations can make their buildings smoke-free, including inside residential units. The no smoking rule can include smoking marijuana and vaping marijuana. Smoking in indoor common areas of condominiums is prohibited by state law, which the condominium trustees are required to enforce. If a condominium association implements a no smoking rule, current residents may be grandfathered and allowed to continue smoking, but grandfathering is not required. Grandfathering in existing residents can make enforcement difficult.

Trustees may designate outdoor common areas as no smoking, as part of the condominium rules and regulations. To make all units no smoking, a vote of the entire condominium association is required. Typically, condominium trustees use the following process: 1) announce the plan for a vote on the no smoking rule; 2) hold an informational meeting and distribute educational materials; 3) distribute ballots after the informational meeting; 4) collect the executed ballots and count the vote; and 5) if enough owners support the rule, record an Amendment to the Condominium's Master Deed or Declaration of Trust at the appropriate Registry of Deeds. For a vote to be successful, typically 60 to 75% of the owners must vote in support. Sometimes the percentage is higher. The ballot used to collect votes should include the language for the no smoking rule.

Enforcement Agent: Local boards of health are the primary enforcing agents of the Smoke-Free Workplace Law. *M.G.L. c. 270 §22(m)*. Condominium trustees enforce no smoking rules just like they would for a violation of any other rule

or regulation. A resident who is being exposed to secondhand smoke drifting in from a neighboring unit may bring suit against the Trustees under state and federal disability laws. The resident may also claim that the nuisance clause in the condominium documents requires the Trustees to act. The resident may also request an inspection by the local municipal housing inspector under the State Sanitary Code, although it is important to note that the Sanitary Code does not expressly prohibit migrating secondhand smoke. *105 CMR 410.750*.

Penalties: Penalties of the condominium association for allowing smoking in indoor common areas are specified under state law. *M.G.L. c. 270, §22(l)*. Trustees typically send a warning letter after receiving a complaint, and thereafter, issue fines.

More information and model no-smoking condominium by-laws are available at makesmokinghistory.org.

— Chapter Two —

Tobacco Product and Sale Laws

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Executive Summary of the 2018 An Act Protecting Youth From the Health Risks of Tobacco and Nicotine Addiction and the 2019 An Act Modernizing Tobacco Control (MGL 270, Sections 6, 6A, 28, 29)

Background: The Massachusetts Legislature and Governor Charlie Baker approved bills that made substantial changes to several existing state laws and regulations regarding the sale of tobacco products. The provisions of the 2018 act went into effect on December 31, 2018. The provisions of the 2019 act went into effect for vaping products upon the Governor’s signature and for conventional tobacco products on June 1, 2020. Required signage is available at massclearinghouse.ehs.state.ma.us/category/TOB.html

Key provisions include:

- Raises the Minimum Legal Sales Age for tobacco product sales from 18 to 21;
- Updates the state laws (including the age of admission to adult-only retailers and smoking bars) to reflect the Minimum Legal Sales Age change from 18 to 21;
- Expands the definition of “tobacco product” to include vape products that “rely on vaporization or aerosolization” therefore mandating that the sale of vaping products is age-restricted to those 21 or older;
- Bans the sale of tobacco products at health care institutions, including pharmacies or retailers that house pharmacies;
- Removes the provision that permitted parents or guardians to purchase tobacco products for their children;
- Prohibits free samples of tobacco products except in smoking bars and ONLY for onsite consumption;
- Updates and expands existing state laws (including the Education Reform Act) and prohibits smoking and other tobacco use in all public and private schools, secondary schools, on their grounds, on school buses and at school-sponsored events at any time by students, staff or visitors. The vast majority of colleges and university have voluntarily prohibited smoking anywhere in their buildings and on their grounds;
- Expands the policy for smoking in nursing homes;
- Vaping liquids must be sold in child-resistant packaging;
- Bans the sale of ALL flavored tobacco product (regardless of whether of the vape products contains nicotine) including menthol, mint and wintergreen flavor except in smoking bars for on-site consumption ONLY;
- Increases retailer fines for selling to a person under 21, selling a flavored product and certain other violations to \$1000 for a first offense, \$2000 for a second offense and \$5000 for a third offense. Second and third violations are also subject to tobacco sales permit suspensions;
- Restricts the sale of vaping products and liquid nicotine products with more than 35 mg/ml to adult-only retail tobacco stores and smoking bars;

- Changes the definition of vaping products to the following: “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.” Any vape products containing cannabis is exempt from these tobacco laws;
- Adds a definition for “tobacco product flavor enhancer”: “Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.” (Examples include flavored rolling papers and separately-sold flavor vials/pods to add to vape solutions.);
- Bans tobacco product flavor enhancers, except in smoking bars for on-site consumption ONLY;
- Requires retailers to verify the age of the purchaser by means of a valid government-issued photographic identification. Retail tobacco stores and smoking bars must inspect said identification to ensure minors do not enter the establishment;
- Prohibits retailers from marketing or advertising tobacco products that they are banned from offering to customers;
- Adds an excise tax of 75% of wholesale on vaping products, such as e-cigarettes, and including the devices as well;
- Adds the ability for the state lottery director to suspend or revoke an establishment’s lottery license for selling untaxed vaping products;
- Requires health insurance carriers to offer cessation benefits; and
- The Department of Public Health (DPH) is charged with promulgating regulations relative to the enforcement of the tobacco sales provisions in the law (M.G.L. c. 270, § 6). The regulations Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems (105 CMR 665.000) went into effect on June 12, 2020. For more information on the regulations, please see [mass.gov/newtobaccolaw](https://www.mass.gov/newtobaccolaw). Provisions of this regulation include:
 - Designates local boards of health as the primary enforcement agents;
 - Requires retailers to obtain manufacturer’s letters that states the nicotine strength, in milligrams per milliliters (mg/ml) format, for each product the manufacturer sells;
 - Requires retailers to obtain manufacturer’s letters that lists those products the manufacturer sells that are unflavored; and
- Sets a 36-month tolling period for penalty calculation.

Flavor Restriction

General Rule: All flavored tobacco products (or enhancers to be added to tobacco products to create a flavor) may only be sold in smoking bars and for use ONLY while in the smoking bars. Flavored tobacco products include mint, menthol, candy, liquor and all other flavors except for tobacco flavor. Patrons of smoking bars are prohibited from leaving the premises with flavored products purchased in the smoking bar. This rule applies to all smoking products, chew, and any other tobacco product or enhancer with flavoring. This rule also applies to all vape products (e.g. vape pens, e-cigarettes, etc.) with flavoring regardless of whether the vape product contains nicotine or not. General tobacco retailers, adult-only tobacco retailers, and internet retailers are prohibited from selling such flavored tobacco products to customers located in Massachusetts. Smoking bars are regulated under *M.G.L. 270, Section 22* and is described in Chapter One of this booklet. This flavor restriction does not apply to flavored cannabis.

Fines and Enforcement: Any retailer who sells tobacco products (other than a smoking bar) must have a written certification from the product manufacturer stating its product is not flavored. The retailer must make the written certification available for inspection by the board of health. Boards of health have authority to enforce this rule, including through issuance of cease and desist orders.

Nicotine Content in Vapes

General Rule: The amount of nicotine in vape products (e.g. vape pens, e-cigarettes, etc.) is regulated in Massachusetts. Vape products with more than 35 mg/ml may only be sold in two places. The first place is smoking bars, and if the vape product is flavored it cannot be taken from the premises. The second place is adult-only retailers where no one under the age of 21 is allowed to enter. No flavored vapes of any nicotine content level may be sold in adult-only retailers. General tobacco retailers may not sell high nicotine vape products. However, they may sell vape products with 35 mg/ml or less. Higher nicotine vape products may be purchased at any adult-only tobacco retailer, which includes vape shops.

Fines and Enforcement: Any retailer (other than an adult-only tobacco retailer or smoking bar) that sells vape products must have a written certification from the product manufacturer stating that the nicotine content of each brand of vape product the retailer sells is 35mg/ml or less. The retailer must make the written certification available for inspection by the board of health. Boards of health have authority to enforce this rule, including through issuance of cease and desist orders.

Tobacco Product Laws

Most cities and towns in Massachusetts have passed local laws that prohibit the sale of tobacco products to anyone under the minimum legal sale age of 21. These local laws usually take the form of board of health regulations. Most are stricter than state and federal laws. These local laws enable local enforcement. Enforcement provisions usually include the requirement of a local tobacco product sales permit, graduated penalties based on the number of illegal sales, and permit suspension provisions based on the number of sales. (Certain fines are mandated by state law as indicated above.) Chapter 7 provides more information about these local laws. Public health professionals should remember to check local laws addressing tobacco product sales.

Several state and local laws in Massachusetts work in concert. Many local laws are more stringent, requiring retailers to possess a tobacco product sales permit that can be suspended if repeated violations occur. These laws are enforced by local boards of health.

In addition to state and local laws, the Family Smoking Prevention and Tobacco Control Act gave the Food and Drug Administration (FDA) the authority to regulate the manufacture, distribution, and marketing of tobacco products to protect public health. This law went into effect on June 22, 2010. A summary of the law is included below. For more information on the FDA tobacco regulations go to fda.gov/tobaccoproducts.

FDA Regulations

Key provisions include:

- Requires proof of age to purchase tobacco. Federal minimum age to purchase is 21;
- Requires face-to-face sales and limits vending machines and self-service displays;
- Bans the sale of packages of fewer than 20 cigarettes;
- Prohibits the sale of flavored cigarettes, except menthol;
- Bans tobacco product sponsorship of sporting and entertainment events;
- Bans free cigarettes and promotional products including non-tobacco products linked to tobacco products; and
- Requires bigger, bolder warning labels for cigarettes and smokeless tobacco.

The FDA regulations relative to youth access issues are not preemptive. This means that states and cities and towns can further regulate tobacco. For instance, the FDA regulations do not address cigars or other tobacco products. They only address cigarettes and, in some cases smokeless tobacco.

Minimum Age Sales Law

General Rule: Federal, state, and municipalities in Massachusetts have prohibit selling or giving tobacco products to anyone under 21. These laws are enforced locally by boards of health. *M.G.L. c. 270 §6*. Massachusetts state regulation requires retailers to obtain identification of a buyer's age before selling them a tobacco product. Only a currently valid government-issued, photographic identification is acceptable. *940 CMR 21.04(2); 22.06(2)*

Enforcement Agent: The FDA enforces its federal age-verification regulation. The Massachusetts Attorney General's Office enforces 940 CMR 21.04. The local enforcing departments, including boards of health, enforce Chapter 270, Section 6.

Penalty: Fines and penalties are specified under state law. For violations of the Attorney General's regulations, violators may be subject to a civil penalty of up to \$5,000 for each violation and the cost expended to investigate and prosecute the violation. *M.G.L. c. 93A §4*. For violation of the FDA regulations, penalties range from a warning letter for the first violation up to \$11,904 (2020 limit) for a sixth or subsequent violation. Penalties for violation of local tobacco product sales regulations usually include suspension of local tobacco product sales permits for multiple violations, in addition to fines equal to fines in the state law.

Required Signage About Tobacco Sales

General Rule: Massachusetts requires a variety of signs to be posted at all retail establishments selling tobacco including, but not limited to signs on the state law, ban on the sale of flavored tobacco products and warnings signs regarding exposure to secondhand smoke. Signs shall be posted conspicuously in the manner specified in *105 CMR 665.015*. All required signs can be found at [mass.gov/maclearinghouse](https://www.mass.gov/maclearinghouse).

Enforcement Agent: Local boards of health are the enforcement agents.

Penalty: Penalties are specified under state law.

Self-Service Displays

General Rule: The Attorney General's regulations and the FDA regulations regulate self-service displays. Self-service displays are displays from which customers may get a tobacco product without assistance from a store worker. Self-service displays are only allowed in adult-only facilities in both the Attorney General and the FDA regulations. *940 CMR 21.04(2); 22.06 (2), 21 C.F.R. 1140.16(c)*. Many municipalities ban self-service displays or regulate their placement. With a ban, tobacco products must be kept beyond the reach of all customers.

Enforcement Agent: The FDA enforces its regulations. The Attorney General's office enforces its regulations and local boards of health enforce their regulations.

Penalty: A violation of the Attorney General's regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *M.G.L. c. 93A §4*. For violation of the FDA regulations, penalties range from a warning letter for the first violation up to \$11,904 (2020 limit) for a sixth or subsequent violation. Local regulations usually provide for suspension of a tobacco product sales permit for multiple violations of local tobacco product sales regulations, in addition to fines equal to the fines in the state law.

Vending Machines

General Rule: FDA regulations ban the sale of cigarettes and smokeless tobacco in all vending machines except those located in facilities where no one under the age of eighteen is present, or permitted to enter, at any time. *21 C.F.R. §1140.16(c)*. There are three requirements for all vending machines containing tobacco products under state law. First, they must feature lock-out devices requiring an employee to unlock the vending machine for each sale. Second, they must be located in an establishment with a liquor license and where all sales are easily observed by an employee. Third, they must display a sign stating that minors are not permitted to purchase tobacco and notifying customers of the lock-out device. *940 CMR 21.04(4); 22.06(4)*. Local health regulations may ban vending machines.

Enforcement Agent: The FDA, the Attorney General's Office, and local boards of health enforce their respective regulations.

Penalty: A violation of the Attorney General's regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *M.G.L. c. 93A §4*. For violation of the FDA regulations, penalties range from a warning letter for the first violation up to \$11,904 (2020 limit) for a sixth or subsequent violation. Local regulations usually provide for fines and permit suspensions of tobacco product sales permits for multiple violations.

Single Cigarette Sales

General Rule: Massachusetts state statutes, Attorney General's regulations and FDA regulations prohibit any person from selling single unpackaged cigarettes. *M.G.L. c.64C §33A; M.G.L. c.94 §307A; 940 CMR 21.04(1) (b), 21 C.F.R. §1140.16(b)*. In addition, the Attorney General's regulations prohibit breaking or otherwise opening any cigarette pack, little cigar package, or smokeless tobacco container to sell or distribute. *940 CMR 22.06(1) (b)*. Many municipalities ban the sale of single cigarettes and other single tobacco products, and in addition, regulate single cigars. The regulations of single cigars might include pricing and packaging and other restrictions.

Enforcement Agent: The FDA, the Attorney General's office, and local boards of health enforce their respective regulations.

Penalty: A violation of the Attorney General's regulations may subject the violator to a civil penalty of not less than \$200 and not more than \$500. *M.G.L. c.94 §307A*. In some cases, a violation of this law may subject the violator to a fine of up to \$5,000 and the cost expended to investigate and prosecute the violation. *M.G.L. c. 93A §4*. The Commissioner of Revenue may assess a civil penalty of not more than \$5,000 per violation. *M.G.L. c.64C §33A*. For violations of the FDA regulations, penalties range from a warning letter for the first violation up to \$11,904 (2020 limit) for a sixth or subsequent violation. Local regulations usually provide for fines and permit suspensions of tobacco product sales permits for multiple violations.

Tobacco Give-Aways

General Rule: The Attorney General's regulations prohibit free distribution of all tobacco products. In adult-only facilities, however, one free sample per day per individual of the smallest package available is allowed. *940 CMR 21.04(1) and 22.06(1)*. The FDA regulations prohibit free distribution of cigarettes and limits free samples of smokeless tobacco to qualified adult-only facilities. *21 C.F.R. §1140.16(d)*. Many municipalities prohibit free distribution of all tobacco products and the redemption of coupons for these products.

Enforcement Agency: The FDA, the Attorney General's office, and local boards of health enforce their respective regulations.

Penalty: A violation of the Attorney General’s regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *M.G.L. c. 93A §4*. For violation of the FDA regulations, penalties range from a warning letter for the first violation up to \$11,904 (2020 limit) for a sixth or subsequent violation. Local regulations usually provide for fines and permit suspensions of tobacco product sales permits for multiple violations.

Retailer Training

General Rule: The Attorney General’s regulations require retailers who sell tobacco products to implement all measures that are reasonably necessary to prevent the sale of tobacco products to customers under the minimum legal sales age. Such preventive measures are presumed to be in place if a retailer implements and operates a training program for all employees who handle tobacco products regarding compliance with laws prohibiting sales to minors, and implements a secret shopper program if six or more people are employed. *940 CMR 21.04(3); 22.06(3)*. An online training program for retail store employees is offered by the Massachusetts Health Officers Association. The training can be accessed at mhoa.com.

Enforcement Agency: The FDA, the Attorney General’s office, and local boards of health enforce their respective regulations.

Penalty: A violation of the Attorney General’s regulations may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *M.G.L. c. 93A §4*. For violations of the FDA regulations, penalties range from a warning letter for the first violation up to \$11,904 (2020 limit) for a sixth or subsequent violation. Local regulations usually provide for fines and suspensions of tobacco product sales permits for multiple violations.

Contaminated Tobacco Products

General Rule: No one may deliver, sell, offer to sell, or have in his or her possession with the intent to sell, any tobacco products or implements used for smoking that have been contaminated by fire, smoke or water, without authority from the Massachusetts Department of Public Health. *M.G.L. c. 94 §307*.

Enforcement Agent: Massachusetts Department of Public Health is the enforcing agent.

Penalty: Violations are punishable by a fine from \$200 to \$500 or by imprisonment for up to six months.

Food Stamps

General Rule: Food stamps may not be used to buy tobacco products. *7 U.S.C.A. §§ 2012, 2016*.

Enforcement Agent: Massachusetts Department of Transitional Services is the enforcing agent.

Penalty: Violations may affect eligibility for the food stamp program.

Rolling Papers

General Rule: State law mandates that cigarette rolling papers may not be sold to any person under the age of 21 years. Local regulations can restrict the sale of rolling papers to marijuana dispensaries or retailers. *M.G.L. c. 270 §6A* State law prohibits the sale of flavored rolling papers, except in smoking bars for onsite consumption ONLY because flavored rolling papers are considered Tobacco Product Flavored Enhancers under *M.G.L. c. 270, §6*. Both the

Massachusetts and the Federal Controlled Substance Acts regulating controlled substances and drug paraphernalia specifically exempt tobacco products from regulation pursuant to these laws. *M.G.L. c. 94C, §§ 1, 2(d), 21 U.S.C. §§ 802(6), 812, 863(f)*.

Enforcement Agent: Police and boards of health are the enforcing agents.

Penalty: Fines and penalties are specified under state law.

— Chapter Three —

Health Warnings Laws

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Health Warnings for Cigarettes, Cigars and Smokeless Tobacco Products

General Rule for Cigarettes: New health warnings were to go into effect in June 2011. The warnings include text and color graphics. The warnings will cover the dangers of secondhand smoke, the harm caused by smoking and the addictiveness of nicotine. They will cover 50 percent of the front and rear panels of the cigarette packs and at least 20% of the top of cigarette advertisements. Current health warnings are smaller and use black and white written warnings only. The implementation of these new health warnings was delayed from 2011 because of lawsuits brought by members of the tobacco industry. The FDA proposed 11 new health warnings for cigarettes in March 2020.

General Rule for Cigars, Smokeless Tobacco, and Rolling Tobacco: Cigars and smokeless tobacco must have black and white text warnings that cover 30% of each principal display panel of the packaging and 20% of print advertising. The warnings include a series of texts regarding secondhand smoke, the danger of smoking or using tobacco, and the addictiveness of nicotine. However, a recent court decision blocked this requirement for premium cigars, although exactly what qualifies as a premium cigar in the court decision is unclear.

General Rules for Vape Devices: E-cigarettes must include a black and white text warning stating “*WARNING: This product contains nicotine. Nicotine is an addictive chemical.*” The warning must cover 30% of each principal display panel of the packaging and 20% of print advertising. The warning must also be displayed in any television or internet video ads.

General Rule regarding 2017 Corrective Statements: Starting in 2017, the leading cigarette manufacturers were forced to publicize corrective statements in newspapers and through other formats that they deceived the public and smokers regarding their products. The deceptions included minimizing the dangerous of smoking and secondhand smoke, the addictiveness of nicotine, and the fact that so-called “light” and “ultra-light” cigarettes offer no health benefit over other cigarettes. These statements were required after the leading cigarette manufacturers were adjudicated as racketeers after a lawsuit brought by the US Department of Justice. These statements no longer need to be displayed.

Enforcement Agent: The FDA enforces the health warning requirements.

Penalty: Fines and penalties are specified under federal law.

— Chapter Four —

Tobacco Advertising and Promotion

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Tobacco Advertising and Promotion

Tobacco advertising is one of the most contentious areas of public health law. This is because the First Amendment to the United States Constitution prohibits Congress from making any law abridging the freedom of speech.¹ While individuals have the right to express themselves, there are limits to this freedom. Speech that incites illegal activity and obscene speech receive no protection. Commercial speech (advertising and promotion) receives limited constitutional protection. The Federal Cigarette Labeling and Advertising Act (the Labeling Act) also prohibits states and municipalities from imposing requirements “...based on smoking and health...with respect to advertising or promotion of...cigarettes and smokeless tobacco.”²

The 1998 Multistate Master Settlement Agreement, or MSA for short, contains several court-approved marketing requirements by which the cigarette and smokeless tobacco industries have agreed to abide in exchange for 46 states dismissing legal suits filed to recover the cost of paying for tobacco caused illnesses. The MSA is enforced by the Attorney General’s office.

The FDA has issued regulations relating to marketing which went into effect on June 22, 2010. These regulations give the FDA authority to regulate tobacco product standards, pre-market approval of products, adulteration, misbranding, labeling, registration, manufacturing standards and modified risk products. For more information on the FDA tobacco regulations go to [fda.gov/tobaccoproducts](https://www.fda.gov/tobaccoproducts).

There are some limited state laws and regulations that apply to advertising reviewed in this Chapter.

Local laws cannot address tobacco advertising and promotion with the exception of regulating the time, place and manner, but not content of advertising and promotion. In addition, for public safety reasons, local laws may exist that regulate the amount of signage on buildings and sidewalks adjacent to buildings. The reason for these local laws is to assure that public safety officials can see into establishments. These laws, if vigilantly enforced, have the ability to significantly limit the visibility and the amount of advertising, including tobacco advertising.

At the time of publication, the federal government has not imposed any advertising restrictions on vaping products.

Outdoor Advertising

General Rule: The MSA provides two outdoor advertising rules. First, the MSA prohibits cigarette and smokeless tobacco advertising out-of-doors, in enclosed arenas, stadiums, shopping malls, and video game arcades. Second, the MSA prohibits cigarette advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any similar location. *MSA III (d)*.

¹ *U.D. Const. amend. 1.*

² *15 U.S.C. § 1334(b), exception being the “time, place and manner but not content”.*

Exceptions: There are several exceptions to these two MSA rules. First, cigarette and smokeless tobacco manufacturers may advertise in adult-only facilities. Second, cigarette and smokeless tobacco manufacturers may advertise outside of their manufacturing facilities. Third, cigarettes and smokeless tobacco may be advertised outside at the site of an adult-only event up to two weeks before the event. Fourth, cigarette and smokeless tobacco manufacturers may advertise their products outside cigarette and smokeless tobacco retailers, provided the ad is no larger than fourteen square feet. *MSA II (ii)*.

Enforcement Agent: The Massachusetts Attorney General's office is the enforcing agent.

Penalties: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a tobacco company has violated the MSA. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

Advertising Content

General Rule: The MSA prohibits cigarette and smokeless tobacco manufacturers from using cartoons or cartoon-like qualities in their product advertisements. *MSA III (b)*. Statewide regulations in Massachusetts prohibit the following: (1) No person or retailer may market or advertise the proposed sale or distribution of any tobacco product prohibited for sale or distribution within the retail establishment or by such person; (2) No person or retailer may use fraudulent or misleading statements in advertisements for tobacco products, including the use of any safety or efficacy claims that have not been approved by the FDA; and (3) No person or retailer may use or display tobacco product advertisements that depict celebrities, mascots, sponsorships, cartoons, or any other similar endorsements. *105 CMR 655.017*.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent for the MSA. Boards of health and the Massachusetts Department of Public Health enforce the statewide regulations.

Penalty: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a tobacco company has violated the MSA. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts. Fines for violating the statewide regulations are \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third offense. In some cases, the retailer's license to sell tobacco products may be suspended or revoked.

Format Requirements for Labeling and Advertising

General Rule: Manufacturers, distributors, and retailers may disseminate advertising or labeling which bears cigarette or smokeless tobacco brand names or other indicia of cigarette or smokeless tobacco product identification in newspapers, magazines, periodicals, billboards, posters, non-point-of-sale promotional material and in point-of-sale audio or video formats. *21 C.F.R. §1140.30*. FDA regulations require that manufacturers, distributors and retailers advertising or disseminating any labeling or advertising for cigarettes or smokeless tobacco use only black text on a white background. *21 C.F.R. §1140.32(a)*. Labeling and advertising in video format must be limited to words only with no music or sound effects. Video formats are limited to static black text only on a white background. *21 C.F.R. §1140.32(b)*. However, these regulations are not being enforced as of the date of publication of this booklet.

Exceptions: There are two exceptions to this rule. First, this section does not apply in any facility where vending machines and self-service displays are permitted, provided that such advertising cannot be seen from outside the facility and that it is attached to a wall or fixture in the facility. Second, this section does not apply to any advertisement appearing in an adult publication. An adult publication is defined as any publication whose readers under the age of eighteen constitute 15% or less of its total readership and that is read by less than two million people under the age of eighteen.

Penalty: No penalty specified.

Advertising Significantly Viewed By Children

General Rule: The MSA bans cigarette and smokeless tobacco manufacturers from targeting youth in the advertising, promotion or marketing of tobacco products through forums with significant youth exposure. Unfortunately, the MSA fails to define the phrase “significant youth exposure.” The California Attorney General filed suit claiming R.J. Reynolds (RJR) was violating this rule by advertising in magazines with youth readership rates of almost twice the percentage of youth present in California’s population. *MSA 111 (a)*. The lower court found in favor of the State of California. The California Appeals Court found that RJR had targeted youth in violation of the MSA. Ultimately, California and RJR entered into a court-approved settlement wherein RJR was prohibited from advertising if a publication’s teen audience comprises 15% or more of its total readership. RJR agreed to pay California more than \$11.4 million in civil penalties and about \$5.85 million to cover costs of litigation.

On June 20, 2005, an agreement was reached between Time, Inc. and Newsweek, Inc. and the National Association of Attorneys General. Time, Inc. publishes *People* and *Sports Illustrated* as well as *Time*. The publishers have agreed to stop tobacco advertising in those publications that are sent to school libraries.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a tobacco company has violated the MSA. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

Brand Name Merchandise and Apparel

General Rule: Cigarette and smokeless tobacco manufacturers may not sell or distribute merchandise or apparel that bears the name of any of their tobacco products. *MSA III (f) & (c)*. The FDA bans free distribution of non-tobacco items with the purchase of cigarettes or in exchange for coupons or proof of purchase. *21 C.F.R. §1140.34(a)*.

Massachusetts also prohibits retailers from selling or distributing any tobacco product if any apparel or other merchandise (apart from the actual tobacco product) which bears a tobacco product’s brand name is also offered as part of the purchase. *940 CMR 21.04(1) (d); 22.06 (1) (d)*.

Enforcement Agent: The FDA and Massachusetts Attorney General are the enforcing agents.

Penalties: No federal penalty is specified. The Attorney General may seek monetary, civil or criminal contempt charges to enforce the Multistate Master Settlement Agreement should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve any alleged violation before turning to the courts.

A violation of the Massachusetts Attorney General’s Consumer Protection Regulation regarding brand name merchandise and apparel may subject the violator to a civil penalty of up to \$5,000 and the cost expended to investigate and prosecute the violation. *G.L. c. 93A, §4*.

Product Placement

General Rule: Cigarette and smokeless tobacco manufacturers may not pay to place their tobacco products in the movies, television, theater, video games or other performances. *MSA III (e)*.

Exceptions: There are at least two exceptions to this MSA restriction. First, cigarette and smokeless tobacco manufacturers may pay to place products in movies, television, theater, video games or other performances at adult-only facilities. Second, cigarette and smokeless tobacco manufacturers may pay to place their tobacco products in videos not distributed to the general public. For example, cigarette and smokeless tobacco manufacturers may place their products in instructional videos that they distribute only to tobacco retailers. *MSA III (e)*.

Enforcement Agent: The Massachusetts Attorney General is the enforcing agent.

Penalty: The Attorney General may seek monetary, civil or criminal contempt charges should a court find that a violation has occurred. The Attorney General, however, has a duty to first try to resolve alleged violations before turning to the courts.

Television, Radio and Other Similar Advertising

General Rule: Cigarettes, smokeless tobacco products, and little cigars approximately the size of a typical cigarette or smaller may not be advertised on any medium of electronic communication under the jurisdiction of the Federal Communications Commission. For example, these tobacco products may not be advertised on television. *15 U.S.C. §§1335; 4402.*

Enforcement Agency: The FDA is the enforcing agent.

Penalty: The violation of this ban is a misdemeanor and it carries a fine of up to \$11,904 (2020 limit). *15 U.S.C. §§1338; 4404.*

Brand Name Sponsorship of Public Events

General Rule: No manufacturer, distributor or retailer may sponsor any athletic, musical, artistic or other social or cultural event or any entry or team in any event, in the brand name, logo, or other indicia of product identification identical or similar to those used for any brand of cigarettes or smokeless tobacco. *21 C.F.R. §1140.34 (c).*

Enforcement Agent: The FDA is the enforcing agent.

Penalty: None specified.

Chapter Five

Tobacco Tax and Pricing

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Federal Taxes

General Rule: The Federal Government imposes an excise tax of \$1.01 per pack of cigarettes, 50.33 cents per pound of chewing tobacco, \$24.78 per pound of roll-your-own tobacco, \$2.83 per pound of pipe tobacco, \$50.33 per 1,000 small cigars and 52.75% of price for which large cigars are sold, but not more than 40.26 cents per cigar. *26 U.S.C. §5701.* As of the date of this publication, possible federal tax rates may increase and new taxes may be imposed on the sale of e-cigarettes.

Enforcement Agency: The United States Internal Revenue Service, and the Bureau of Alcohol, Tobacco and Firearms are the enforcing agencies.

Penalty: Substantial civil and criminal penalties are imposed for violation of federal taxation laws. Depending on the seriousness of the offense, violators are subject to fines of \$1,000 to \$14,410 for each violation. In some cases, the violator is required to pay five times the tax liability on contraband tobacco products. Up to five years of jail time may be imposed in certain cases. Lastly, forfeiture of contraband tobacco products is required. *26 U.S.C. §§5761; 5762; 5763.*

Massachusetts Taxes

Tax on Cigarettes: Massachusetts imposes an excise tax on tobacco products. The Commonwealth’s excise tax for cigarettes is \$3.51 per pack of 20 cigarettes. A cigarette is defined by the Massachusetts Department of Revenue (DOR) as “(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco...and (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1).” In 2008, little cigars were classified as cigarettes by the Massachusetts DOR. They are defined as “rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh not more than three pounds.” A list of little cigar brands can be located at mass.gov/dor.

Tax on Cigars: Tax law in Massachusetts draws a distinction between “little cigars” and “cigars. As indicated above, little cigars are taxed at the same rates as a pack of cigarettes. They typically look similar in size to cigarettes. Cigars are taxed at 40% of the wholesale price. The weight of the cigar determines whether it is classified as a little cigar or regular cigar. Cigars weighing more than three pounds for 1,000 units are taxed as cigars. Cigars that are equal to or less than three pounds for 1,000 units are taxed as little cigars.

Tax on Chewing Tobacco and Snuff: The tax on chewing tobacco and snuff is assessed at 210% of the wholesale price. Chewing tobacco includes anything containing tobacco that is not consumed through smoking, including but not limited to, chew, spit, smokeless tobacco and snus.

Tax on Loose Smoking Tobacco: The tax on loose smoking tobacco is assessed at 40% of the wholesale price.

Tax on E-Cigarettes: The tax on e-cigarettes, referred by the Massachusetts Tax Code as “electronic nicotine delivery system,” is assessed at 75% of the wholesale price. The tax is applied to 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. It also includes any non-combustible liquid or gel that is manufactured into a finished product for use in such electronic devices. It also includes any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately. The tax does not include marijuana or any electronic device approved by the FDA for cessation or FDA approved medicine or device for delivery of medicine. *M.G.L. c. 64c, §§6, 7A, 7B, 7C.*

Additionally, the Massachusetts sales tax of 6.25% also applies to the purchase of tobacco products. *M.G.L. c.64H §2.*

Enforcement: The state excise tax on cigarettes and smokeless tobacco products is collected from the stamper (generally a wholesaler) who must purchase tax payment stamps to be affixed to product packaging *M.G.L. c. 64C §29.* The state excise tax on smokeless tobacco is also collected from the stamper, although no stamp is affixed to the package. The excise tax on cigars and smoking tobacco is collected by the retailer and sent to the Department of Revenue. *M.G.L. c. 64C §§ 6, 7B.*

Enforcement Agency: The Massachusetts DOR is the enforcing agency.

Penalty: Fines are imposed for the transportation and unauthorized possession of cigarettes for which excise taxes have not been paid. Sanctions include civil fines of up to \$5,000, jail for not more than five years or both. *M.G.L. c. 64C §§34, 35.*

Pricing of Tobacco Products

General Rule: A retailer generally may not sell cigarettes for less than 125% of his or her base cost in acquiring the cigarettes minus any trade discounts. The base cost includes \$3.51 in excise taxes. *M.G.L. c. 64C §13(a).* There are many exceptions, such as the discount sale of cigarettes during the final business liquidation of a retail establishment. *M.G.L. c. 64C, §15, 830 CMR 64C.14.1.* Other exceptions include the sale of cigarettes at a price set in good faith to meet the price of a competitor. *M.G.L. c. 64C, §16.* Retailers may also demonstrate to the Department that their actual cost of selling cigarettes is less than the statutory presumptive cost. *830 CMR 64C.14.1.*

The Department has published a written statement dealing with the effect of manufacturer promotional programs (“buy downs”) on the cost of cigarettes. *Department Directive 02-2.* Additionally, *Department Directive 03-14* addresses the circumstances under which manufacturer coupons may be accepted.

Enforcement Agency: The Massachusetts DOR is the enforcing agency.

Penalty: Violations are subject to a fine of up to \$500 and suspension or revocation of a DOR tobacco license. *M.G.L. c.64C §14; 830 CMR 14.1.*

Massachusetts Department of Revenue Tobacco Retail and Smoking Bar Licenses

General Rule: Those involved in the commercial distribution of tobacco products must obtain a license from the DOR. Licensees may include manufacturers, wholesalers, unclassified acquirers, transportation companies and retailers. Each retailer who sells tobacco products, including through vending machines, must obtain a license. The licensees must display their licenses, or in the case of vending machines, a decal furnished by the DOR. *M.G.L. c. 64C, §§2, 10.*

Smoking bars are required to obtain a smoking bar license from the DOR. Smoking bar license holders must declare their revenue quarterly to the DOR to prove a majority of their sales come from tobacco products. If a smoking bar cannot demonstrate this information, it may lose its license to operate.

Enforcement Agency: The Massachusetts DOR is the enforcing agency.

Penalty: Failure to obtain a proper license for the distribution of tobacco products may lead to substantial penalties for both the seller and buyer of cigarettes. Fines start at \$50 and can reach up to \$1,000 in some cases and may include a year in prison. Purchasing tobacco products from an unlicensed distributor may lead to fines of up to \$1,000. *M.G.L. c. 64C, §10.*

Tax on Internet Sales

General Rule: Federal Law requires that internet tobacco retailers who wish to sell cigarettes or smokeless tobacco in the Commonwealth file with the Massachusetts DOR. The retailer and wholesaler who sell cigars or smokeless tobacco to anyone in Massachusetts must collect the tax and remit it to the DOR. *15 U.S.C.A. §375, et seq.; M.G.L. c. 64C, §5A.*

Enforcement Agent: The Attorney General of the United States and Massachusetts DOR are the enforcing agents.

Penalty: The internet tobacco retailer is subject to a fine of \$5,000 or more. The customer is subject to collection of state taxes (including penalties and interest) on cigarettes as described in Department Directive 02-14 and Form CT-11.

Additional information, including Forms and Regulations, may be found at dor.state.ma.us.htm. A form that may be used to submit complaints about cigarette licensees and their prices and practices (Form CCRF) is also found at the above website address.

— Chapter Six —

Legal Authority to Regulate Tobacco Locally

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Legal Authority for Tobacco-Related Board of Health Regulations

General Rule: Section 31 of Chapter 111 of the Massachusetts General Laws provides broad authority for local boards of health to pass and enforce reasonable health regulations. Tobacco-related regulations have been consistently upheld by the Supreme Judicial Court as reasonable health regulations. *Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass 217 (2001), *American Lithuanian Naturalization Club, Athol, Mass., Inc. v. Board of Health of Athol*, 466 Mass. 310 (2006). Regulations promulgated under this authority frequently address the manner in which tobacco products are sold and where they may be used. Local regulations controlling the sale of tobacco products usually include a provision requiring a local tobacco product sales permit.

For example, local regulations addressing secondhand smoke can be stricter than the state law and include a complete ban on smoking in private clubs, a prohibition of cigar/smoking/hookah bars, and buffer zones surrounding public buildings.

Enforcement Agent: Local health agents are the enforcement agents. Other personnel may be authorized by the board of health to also enforce its regulations. Enforcement should be addressed within the body of the local regulation.

Penalty: The body of the regulation specifies fines as well as suspension of locally issued permits.

Legal Authority for Tobacco-Related Municipal By-Laws and Ordinances

General Rule: The Home Rule Amendment to the Massachusetts Constitution authorizes cities and towns to pass ordinances and by-laws relative to health, safety and welfare. Local laws that address tobacco sale and use have been upheld by the Supreme Judicial Court. For example, a town by-law promulgated pursuant to Home Rule authority prohibiting the use of vending machines to sell cigarettes was upheld as reasonably related to protecting the public’s health, safety and welfare. *Take Five Vending LTD v. Town of Provincetown* 415 Mass 741 (1993).

Enforcement Agent: Local health agents are the enforcement agents. Other personnel may be authorized by the board of health to also enforce its regulations. Enforcement should be addressed within the body of the town by-law or city ordinance.

Penalty: No penalty is specified in the Home Rule Amendment. The body of the local law specifies fines and suspension of local permits.

The Open Meeting Law

Although local boards of health, cities and towns have the legal authority to regulate tobacco and vaping locally, care must be taken to follow the requirements of the state's Open Meeting Law. This law supports the principle that the democratic process requires public knowledge of the debate behind public action. With some exceptions, most meetings of governmental bodies must be held in public. *M.G.L. c.30A §§18-25*.

General Rule: The Open Meeting Law requires that all meetings of a public body shall be open to the public and that any person be permitted to attend any of these meetings. Except in an emergency, notice of every board meeting shall be filed with the clerk of the city or town and the notice should be publicly posted at least 48 hours, excluding Saturdays, Sundays and legal holidays, prior to such meetings. For meetings of a regional or district public body, notice shall be filed and posted in each city or town in the same manner as for local public bodies. *M.G.L. c.30A §20*. A public body may meet only in an executive or closed session in certain instances set out in *M.G.L. c.30A §21(a)*, none of which would apply to tobacco control. For more information on the Open Meeting Law, see [mass.gov/ago](https://www.mass.gov/ago).

Enforcement Agent: The Attorney General enforces the Open Meeting Law. *M.G.L. c.30A §23(a)*.

— Chapter Seven —

Working at the Local Level, Emerging Issues, and Local Regulation Checklist Templates

A Note on Terminology

When referenced in Massachusetts state law or local policy options, the term “Tobacco Products” includes both conventional tobacco products and vape products, and the term “Smoking” includes conventional smoking of tobacco as well as the use of a vape product. Federal law will explicitly reference vape products when the law addresses these products.

Local Ordinances and Regulations

Many cities and towns in Massachusetts have passed tobacco related regulations in order to reduce youth access to these products and to combat their overall use. Recently, these regulations have included restricting flavored tobacco products to adult-only retail tobacco stores, capping the number of tobacco product sales permits, prohibiting the sale of single inexpensive cigars, the redemption of coupons, and prohibiting smoking in public parks and beaches.

Prohibiting the Sale of Single Inexpensive Cigars: Cigarettes can cost more than ten times the price of a single cigar. Low priced cigars are attractive to youth. Youth can buy single cigars for as low as fifty cents (\$.50). Prohibiting the sale of single inexpensive cigars is a youth pricing strategy.

Prohibiting the Redemption of Coupons: Where not prohibited by a local regulation, the FDA regulations prohibit mail-order redemption of coupons. *21 CFR 1140.16*. The Massachusetts DOR permits a consumer to present a manufacturer’s coupon to a retailer at the time of sale as long as it does not reduce the retail sales price of cigarettes below the applicable presumptive minimum price under *M.G.L. c. 64C. DOR Directive 03-14*.

Capping the Number of Tobacco Product Sales Permits: Some municipalities in Massachusetts have limited the number of tobacco product sales permits that can be issued. This policy reduces the density of tobacco retailers in a municipality.

Prohibiting the Sale of Blunt Wraps: Blunt wraps (also known as cigar wraps) are cigarette-like or cigar-like rolling papers that are made from tobacco leaves. They can come in flavored varieties and are often used for marijuana use.

Prohibiting Smoking in Public Parks and Beaches: Some municipalities have prohibited smoking in public parks and beaches. It has been done as a voluntary municipal policy in some cases and as a local law in other cases. The Cape Cod National Seashore is smoke-free due to federal action. Massachusetts-operated beaches are smoke-free due to state action. The rationale behind this policy is usually the public health nuisance threat of cigarette butts and other tobacco product waste.

Checklists for local sample regulations and sample regulations restricting the sale and use of tobacco products are included in the appendix below. Check mahb.org for updates to the sample regulations.

For technical assistance drafting or amending tobacco regulations, please contact Cheryl Sbarra, Massachusetts Association of Health Boards at sbarra@mahb.org, (781) 721-0183, DJ Wilson, Massachusetts Municipal Association at djwilson@mma.org, (617) 426-7272, or Sarah McColgan, Massachusetts Health Officers Association at smccolgan@mhoa.com, (413) 636-6418.

The Massachusetts Association of Health Boards (MAHB) is a non-profit membership association serving all elected and appointed Boards of Health in the Commonwealth of Massachusetts. Since 1982, MAHB's mission is to assist and support boards of health in meeting their statutory and service responsibilities through programs of education, technical assistance and resource development. Pursuant to Massachusetts General Laws, state and local regulations and community directives, boards of health are responsible for disease prevention and control, health and environmental protection, and promoting healthy communities. MAHB has been providing technical assistance and legal education relative to tobacco control issues since 1994.

For additional information about MAHB, visit our website at mahb.org. You may also contact Cheryl Sbarra, J.D., Executive Director and Senior Staff Attorney, MAHB, 63 Shore Road, Suite 25, Winchester, MA 01890, sbarra@mahb.org, (781) 721-0183.

LIST OF APPENDIX ITEMS

APPENDIX ONE

2021 Sample Municipal Tobacco Sales Regulation

APPENDIX TWO

Checklist for 2020 Sample Municipal Secondhand Smoke Regulation

APPENDIX THREE

Massachusetts Statewide Smoke-Free Workplace Law, MGL 270, §22

APPENDIX FOUR

**Statewide Regulations for the Massachusetts Statewide Smoke-Free
Workplace Law, 105 CMR 661.000**

APPENDIX FIVE

**Selected Sections of the 2019 Act Modernizing Tobacco Control,
MGL 270, §§6, 6A, 28, 29**

APPENDIX SIX

**Statewide Regulations for the 2019 Act Modernizing Tobacco,
105 CMR 665.000**

For Appendix One and Appendix Two, contact MAHB for the latest version as they are updated occasionally.

APPENDIX ONE – 2021 Sample Municipal Tobacco Sales Regulation

2021 Sales Regulation

Sample Regulation Restricting the Sale of Tobacco and Vape Products

This Model Regulation Incorporates the Following:

1. The minimum standards required pursuant to the United States Food and Drug Administration on the sale and distribution of cigarettes; and
2. The minimum standards required pursuant to Massachusetts state law and regulation. This includes M.G.L. Chapter 270 regarding sales to those under the minimum legal sales age of 21, tobacco and vaping product sales including flavored products, required signage, matching definitions and other relevant state statutes and regulations.

Checklist For Policy Decisions (circle decisions):

- | | | |
|---|-------|-----|
| 1. No permit renewal if outstanding fines exist (§E.8) | YES | NO |
| 2. No permit renewal if three sales to persons under 21 (§E.9) | YES | NO |
| 3. Cap and/or reduce number of permits (§E.10)
Simple Cap (____) Reducing Cap (____) Dual Cap (____) | YES | NO |
| 4. No new permits within 500 feet of a school (§E.10.d) | YES | NO |
| 5. No new permits within 500 feet of an existing permittee (§E.10.e) | YES | NO |
| 6. Ban Smoking Bars (§F) | YES | NO |
| 7. Include minimum cigar package size/price (§G) | YES | NO |
| 8. Restrict flavored tobacco products, including menthol (§H) | YES | NO |
| 9. Ban blunt wraps (§J) | YES | NO |
| 10. Ban free distribution of tobacco products (§K.1) | YES | NO |
| 11. Ban redemption of coupons (§K.2) | YES | NO |
| 12. Ban Self-Service Displays (§M)
Exception for Adult-Only Retail Tobacco Stores (____) | YES | NO |
| 13. Ban tobacco product sales in educational institutions (§Q) | YES | NO |
| 14. Add a Dual Penalty System (separate for local & state) (§S) | YES | NO |
| 15. Fining structure for local (not state law) policies (§S)
\$100/200/300 (____) Flat \$300 (____) State fine higher level (____) | YES | NO |
| 16. Tolling periods for local violations (§S)
State level at 36 months (____) Over 36 months (____) | YES | NO |
| 17. Suspension Period for local violations (§S)
7/30 days (____) 14/60 days (____) | YES | NO |
| 18. “Shall” vs. “May” language for local suspensions (§S) | SHALL | MAY |

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

GREEN highlighted sections are uniquely local policy decisions (most are on the above checklist) to be made by the Board 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 throat³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,⁵ and that it is addiction to nicotine that keeps youth smoking past adolescence⁶;

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 smokers⁷;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke⁸;

Whereas cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁹;

³ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm

⁴ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: cdc.gov/tobacco/data_statistics/sgr/2010/

⁵ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf

⁶ *Id.* at Executive Summary p. 13. Retrieved from: surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf

⁷ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁸ SAMHSA, *Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA)*.

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries (MMWR 2010: 59, 12, note 5)*. Retrieved from: cdc.gov/mmwr/pdf/ss/ss5905.pdf

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%¹⁰;

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year old’s who smoked cigars reported smoking cigar brands that were flavored¹¹;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking¹²;

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 addiction¹³;

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 sale¹⁴;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation¹⁵;

Whereas menthol makes it easier for youth to initiate tobacco use¹⁶;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018¹⁷;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”¹⁸;

¹⁰ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents’ Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug: 32(3-4):161-70. Retrieved from: nebi.nim.gov/pubmed/21809109

¹¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf

¹³ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf

¹⁴ See fn. 3 at p. 85.

¹⁵ fda.gov/downloads/ucm361598.pdf, tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol

¹⁶ tobaccofreekids.org/assets/factsheet/0390.pdf

¹⁷ MA YRBS 2017

¹⁸ 310 CMR 30.136

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes¹⁹;

Whereas educational institutions that sell tobacco products to a younger population, who is particularly at risk for becoming smokers is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms; and

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”²⁰.

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 Massachusetts General Laws Chapter 111, Section 31 which states “Boards of health may make reasonable health regulations.”

C. Definitions

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

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food, beverages or alcohol, that does not have a restaurant license or 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. 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 a nyone under the age of 21 to work at the establishment.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

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.

¹⁹ King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

²⁰ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

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 Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in such 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. Such term shall include a smoke constituent.

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

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

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

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

Employee: Any individual who performs services for an employer.

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

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a Flavored Tobacco Product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that “liquid nicotine container” shall not include a sealed, prefilled and disposable container of nicotine or other substance 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.

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

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any retailer, 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.

Retailer: A person that operates a retail establishment.

Rolling Papers: Sheets, rolls, tubes, cones or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly-smoked herbs. **[NOTE: State law no longer preempts local regulation. If you want to regulate rolling papers, contact a tobacco control specialist.]**

Self-Service Display: Any display 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.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

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 or TOWN] of [city/town]; and (v) maintains a valid permit 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.

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, as defined herein.

D. No Tobacco Sales to Persons Under Twenty-One (21) Years Old

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.
2. **Required Signage:**
 - a. All retail establishments, including smoking bars and adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.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 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 electronic nicotine systems 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.
 - b. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, 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 the Massachusetts Department of Public Health, 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 second hand smoke and the use of tobacco products, including electronic nicotine delivery systems.
3. **Identification:** Each person selling or distributing tobacco products, or admitting entrance into a smoking bar or adult-only retail tobacco store, shall first verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer’s date of birth that the purchaser is 21 or older.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit

1. No 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, 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.
5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
6. As of the effective date of this regulation, no new adult-only retail tobacco stores shall be located within twenty-five (25) feet of an existing retailer with a tobacco product sales permit.
7. 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.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
9. 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 three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
10. Maximum Number of Tobacco Product Sales Permits.
 - a. At any given time, there shall be no more than [number (XX)] Tobacco Product Sales Permits issued in [city/town] reduced by the number of permits not renewed pursuant to section 10(b) below. **[This phrase needs to be removed if NOT including subsection B and left in if using Subsection B]** No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. 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 as issued permits are either not renewed, revoked, or are returned 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.]**
 - b. As of [date], any permit not surrendered, revoked or 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 and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits. **[NOTE: This is the "advanced" cap. It automatically reduces the cap number when a retailer stops selling tobacco and returns their permit to the municipality. The only way a new retailer can obtain a permit would be to buy an existing business. The conditions for this occurrence are set out in subsection f.]**

- c. Of the permits allowed pursuant to section 10(a) above, there shall be no more than **[number (XX)]** Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, as defined above, in **[city/town]**. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. **[NOTE: This is a dual cap that can be used with either the “basic” cap OR the “advanced” cap. It provides a maximum number of permits that can go to qualifying “adult-only retail tobacco stores” (includes both tobacconists and vape shops).]**
- d. A 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. **[NOTE: This bars NEW retailers from selling tobacco near a school, regardless of the cap policy used.]**
- e. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a 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. **[NOTE: This bars NEW retailers from selling tobacco near an existing tobacco permit holder, regardless of the cap policy used.]**
- f. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business may acquire said permit providing the applicant submits a valid application and meets all conditions within this regulation within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the Applicant intends to sell tobacco products, as defined herein. Permits for adult-only retail tobacco stores will only be issued if one is available pursuant to section 10(c) above.

An application for transfer of a Tobacco Product Sales Permit to a new owner for the sale of tobacco products from an existing location with a valid Tobacco Product Sales Permit will not be denied solely on the basis of the quota set forth in this section, provided, however, that such an application will be treated as a new application in all other respects. If the permit transfer application is not received within said sixty days of the transfer of the business, the permit will be deemed surrendered.

F. Prohibition of Smoking Bars

Smoking Bars are prohibited in the **[CITY OR TOWN]** of **[city/town]**.

G. Cigar Sales Regulated

1. No 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 fifty cents (\$2.50) or more.
2. No 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 (\$5.00) 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.

H. Sale of Flavored Tobacco Products Prohibited

No person 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 them add this phrase] except in smoking bars for on-site consumption only. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010).

I. Nicotine Content in Electronic Nicotine Delivery Systems

No 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 from a manufacturer documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

J. Prohibition of the Sale of Blunt Wraps

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

K. Free Distribution and Coupon Redemption: No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., “buy-two-get-one-free”) or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

L. 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 person may sell or cause to be sold or distribute or cause to be 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, and must provide the [city/town] Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
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 and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

M. 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.

N. Vending Machines

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

O. Non-Residential Roll-Your-Own Machines

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

P. 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.

Q. 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. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

R. Incorporation of State Laws and State Regulations

1. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§6, 6A, 7, 28, 29 and M.G.L. Ch. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”) and 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”).

S. Violations

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 MGL Ch. 270, Section 6 and 105 CMR 665, the following penalties apply:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1000.00).
 - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) shall be issued and the Tobacco Product Sales Permit shall 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 five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

2. For violations of all other sections specific to the [TOWN or CITY] of [city/town], 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 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 be suspended for thirty (30) consecutive business days.
 - d. State Law Fines and Regulation Fines:

**Policies Subject to State Law Fines
G.L. Chapter 270, §6 (Section S.1)**

- 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, §6)
- 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, §6)
- 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))

Policies Subject To Local Regulation Fines (Section S.2)

- Prohibition of the Sale of Blunt Wrap
- Ban on Smoking Bars
- Cigar Sales Regulated
- Tobacco Product Sales in Health Care Institutions
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Maximum Number of Tobacco Sales Permits
- No New Tobacco Retailer Near Schools
- No New Tobacco Retailer Near Existing Permit Holder
- Self-Service Display Ban
- Mass. Department of Revenue license(s)
- Retailer possessing, holding, keeping prohibited flavor products
- Local Tobacco Sales Permit Requirement for retailers who are neither Smoking Bars nor Retail Tobacco Stores

Permit suspensions and permit revocations are calculated using the total number of a retailer’s violations, combining those violations that receive state-mandated fines and those that receive local fines. Where there is a difference in permit suspension periods, the longer period shall apply.

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
4. Failure to cooperate 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 his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.

6. 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 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.
7. 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.

T. Non-Criminal Disposition

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.

U. Separate Violations

Each day any violation exists shall be deemed to be a separate offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

V. 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) and the Board shall investigate.

W. 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.

X. Effective Date

This regulation shall take effect on _____, 2021.

APPENDIX TWO – Checklist for 2020 Sample Municipal Secondhand Smoke Regulation

**Checklist for Policy Decisions
That Make the Local Regulation Stricter Than State Law**

(circle decisions after consultation with the local board of health):

Ban Smoking and Vaping Locally In:

1. Adult-Only Retail Tobacco Stores (tobacconists & vape shops)	YES	NO
2. Municipal buildings	YES	NO
3. Buffer Zones around municipal building entrances (_____ feet)	YES	NO
4. Municipal-owned parks and playgrounds	YES	NO
5. Municipal-owned athletic fields	YES	NO
6. Municipal-owned beaches	YES	NO
7. Membership Associations (private clubs)	YES	NO
8. Nursing Homes	YES	NO
9. Hotels, Motels, B&B Rooms	YES	NO
10. Outdoor Restaurant/Bar Locations (language variations available)	YES	NO
11. Public Transportation, Bus and Taxi Waiting Areas	YES	NO
12. Residential Multi-Unit Housing (2 or more units)	YES	NO

Ban:

13. Smoking Bars (cigar bars, vape bars, hookah bars)	YES	NO
14. Use of Vaping Products where smoking is prohibited	YES	NO

APPENDIX THREE – Massachusetts Statewide Smoke-Free Workplace Law, MGL 270, §22

(a) As used in this section, the following words shall have the following meanings, unless the context requires otherwise:

“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 the establishment.

“Compensation”, money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

“Customer service area”, an area of the workplace that a business invitee may access.

“Employee”, an individual or person who performs a service for compensation for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a de minimis amount of time.

“Employer”, an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees at 1 or more workplaces, at any 1 time, including the commonwealth or its agencies, authorities or political subdivisions.

“Enclosed”, a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

“Lodging home”, a dwelling or part thereof which contains 1 or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons. The residential portion of boarding houses, rooming houses, dormitories, and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters, and assisted living homes are not included in this definition.

“Membership association”, a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans’ organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

“Outdoor space”, an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

“Public building”, a building owned by the commonwealth or any political subdivision thereof, or in an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

“Public transportation conveyance”, a vehicle or vessel used in mass public transportation or in the transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority

of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority; state transportation department; or a vehicle or vessel open to the public that is owned by, or operated under the authority of a business, including tour vehicles or vessels, enclosed ski lifts or trams, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle or vessel not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or other vessel, shall not be considered a public transportation conveyance.

“Residence”, the part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home; vacation home, cabin or cottage; a residential unit in a governmental public housing facility; and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered to be a residence; if the unit is an enclosed indoor space used exclusively as a residence, and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

“Retail tobacco store”, an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located.

“Smoking” or **“smoke”**, the inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

“Smoking bar”, an establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products as defined in section 6 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 appropriate authority in the city or town in which the establishment is located; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

“Tobacco product”, a tobacco product as defined in section 6.

“Workplace”, an indoor area, structure or facility or a portion thereof, at which 1 or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

“Work space” or **“work spaces”**, an enclosed area occupied by an employee during the course of his employment.

- (b) (1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- (2) Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meals tax on the purchase; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college,

university, museum, library, health care facility as defined in section 9C of chapter 112, group child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under section 38 of chapter 10 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

(3) A person shall not smoke in the state house or in a public building or in a vehicle or vessel, owned, leased, or otherwise operated by the commonwealth or a political subdivision thereof, or in a space occupied by a state agency or department of the commonwealth which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, or in a courtroom or courthouse. This subsection shall not apply to a resident or patient of a state hospital, the Soldiers' Home in Massachusetts located in the city of Chelsea or the Soldiers' Home in Holyoke.

(c) Notwithstanding subsection (b), smoking may be permitted in the following places and circumstances:

(1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility;

(2) (i) premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is: (A) open to the public; or (B) occupied by a non-member who is not an invited guest of a member or an employee of the association; or (C) rented from the association for a fee or other agreement that compensates the association for the use of such space.

(ii) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection.

(3) A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to paragraph (1) of subsection (g).

(4) A retail tobacco store, if the store maintains a valid permit for the sale of tobacco products issued by the appropriate authority in the city or town in which the retail tobacco store is located. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(5) A smoking bar, if the smoking bar maintains a valid permit pursuant to this section. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(6) By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production, and if permission has been obtained from the appropriate local authority;

(7) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as defined by regulation of the department of public health;

(8) Religious ceremonies where smoking is part of the ritual; and

(9) A tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes; if the smoking is necessary to conduct the test.

[There is no subsection (d).]

- (e) If the outdoor space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed, when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed work space. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.
- (f) (1) A nursing home, licensed pursuant to section 71 of chapter 111 and any acute care substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence.
- (2) All applications shall designate the residential area of the facility. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees.
- (3) The entire facility may not be designated as a residence.
- (4) The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility.
- (5) All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.
- (6) The facility shall provide suitable documentation, acceptable to the local board of health, that the facility is the permanent domicile of the residents residing in that portion of the facility, that information on the hazards of smoking and secondhand smoke have been provided to all residences and that smoking cessation aids are available to all residents who use tobacco products.
- (7) The designated residential area shall be in conformance with the smoking restriction requirements of section 72X of chapter 111 and 105 CMR 150.015 (D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express approval of the local board of health.
- (8) All areas of a nursing home not designated as a residence shall comply with this section.
- (9) The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to smoke.
- (10) Upon compliance with this section, submission of the required documentation and satisfactory inspection, the local board of health shall certify the designated portion of the facility as a residence. The certification shall be valid for 1 year from the date of issuance. No fewer than 30 days before the expiration of the certification, the facility may apply for re-certification. If the local board of health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time as the local board of health notifies the nursing home of its certification status.
- (g) (1) A designated smoking room in a hotel, motel, inn, bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces; and in the interior of the room. Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with paragraph (4).
- (2) A retail tobacco store that permits smoking on the premises shall, pursuant to paragraph (c), post in a clear and conspicuous manner, a sign at each entrance warning persons entering the establishment that smoking may be present on the premises; of the health risks associated from second hand smoke; and, that persons under the age of 21 years of age may not enter the premises.
- (3) A smoking bar shall, pursuant to paragraph (4), post in a clear and conspicuous manner signs at all entrances which warn persons entering the establishment that smoking may be present on the premises; and, of the health risks associated from second hand smoke; and, that persons under the age of 21 years of age may not enter the premises.

- (4) Every area in which smoking is prohibited by law shall have “no smoking” signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.
 - (5) Additional signs may be posted in public areas such as, the following areas: lobbies; hallways; cafeterias; kitchens; locker rooms; customer service areas; offices where the public is invited; conference rooms; lounges; waiting areas; and elevators.
 - (6) Approved signs and templates for signage design may be obtained from the department of public health or the local boards of health.
 - (7) It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.
- (h) (a) (1) A smoking bar operating in the commonwealth shall obtain a smoking bar permit from the department of revenue. A permit issued by the department shall be valid for a period of 2 years from date of issuance unless suspended or revoked. A valid permit that is not suspended at the time of its expiration may be renewed for consecutive 2-year periods.
- (2) A non-refundable fee may be required with each permit and renewal application. Each permit issued by the department shall be non-transferable, for a specific location and business; and, only 1 permit may be issued to a business for a specific location during any permit period.
- (3) The department shall not issue or renew a smoking bar permit to any business that has not filed all tax returns and paid all taxes due the commonwealth; or is delinquent in filing all declaration statements in connection with the smoking bar permit as required by the department.
- (4) The department shall notify the local board of health or municipal health department in the city or town where the establishment is located of any permits issued, renewed, suspended, revoked or reinstated to a business.
- (b) A smoking bar shall demonstrate on a quarterly basis that revenue generated from the sale of tobacco products are equal to or greater than 51 per cent of the total combined revenue generated by the sale of tobacco products, food and beverages. The department shall require each business that has been issued a smoking bar permit to submit a quarterly declaration for each 3-month period that the business is in operation; notwithstanding, the first declaration may include a period of not to exceed 4 months. A declaration submitted to the department in connection with a smoking bar permit shall be signed by the owner or business agent under the pains and penalties of perjury. A declaration received by the department shall be confidential and the financial information contained therein shall not be disclosed to the public or any other state governmental agency or department except the attorney general. In the event a business has not filed a required declaration statement, the department shall give written notice to the business that the statement is delinquent and, shall suspend the permit of a business that does not submit the required report after 21 days of the date of notice; but the department shall reinstate the suspended permit within 5 days after receiving the delinquent report.
- (c) The department of revenue shall promulgate regulations to implement this section.
- (i) Companies which sell ownership rights to owners of time share properties shall distinguish between smoking and non-smoking time share properties. Companies shall disclose to potential buyers whether the unit they are purchasing is a smoking or non-smoking property and post signs accordingly.
- (j) Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth.
- (k) An individual, person, entity or organization subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation, to a person, entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint or furnishing information during any period of work or

time of employment, shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about such place of work or to the public.

- (l) An owner, manager or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100 for the first violation; \$200 for a second violation occurring within 2 years of the date of the first offense; and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of a building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the department of public health, the local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the department of public health. The department of public health shall promulgate regulations to implement this section including, but not limited to notice, collection, and reporting of the fines or license action, and defining uniform standards that warrant license suspension or revocation.
- (m)
 - (1) The local board of health, the department of public health, the local inspection department or the equivalent, a municipal government or its agent, and the alcoholic beverages control commission shall enforce this section. In addition, in the city of Boston, the commissioner of health and his authorized agents shall enforce this section.
 - (2) An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation. As an alternative to criminal prosecution, a violation of subsection (L) may also be considered a civil violation. Each enforcing agency under paragraph (1) shall dispose of a civil violation of this section by the non-criminal method of disposition procedures contained in section 21D of chapter 40, without an enabling ordinance or by-law, or by the equivalent of these procedures by a state agency under regulations of the department of public health. The disposition of fines assessed under this section shall be subject to section 188 of chapter 111. Fines assessed by the commonwealth or its agents shall be subject to section 2 of chapter 29. In a city or town having an ordinance or by-law that imposes a fine greater than the fine imposed by this section, the ordinance or by-law shall prevail over this section.
 - (3) Any person may register a complaint to initiate an investigation and enforcement with the local board of health, the department of public health, or the local inspection department or the equivalent.
 - (4) The supreme judicial court or the superior court shall issue appropriate orders to enforce this section and any regulation under it, at the request of any agency mentioned in paragraph (1).
 - (5) fine or fee collected by the commonwealth under this section shall be used for the enforcement or for educational programs on the harmful effects of tobacco.
- (n) Each local board of health, each local inspection department or its equivalent, and the alcoholic beverages control commission shall report annually to the commissioner of public health, beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines. The department of public health shall file a copy of the report with the clerks of the House of Representatives and the Senate.
- (o) The department of public health may issue regulations to implement this section.

APPENDIX FOUR – Statewide Regulations for the Massachusetts Statewide Smoke-Free Workplace Law, 105 CMR 661.000

661.001: Purpose

The purpose of 105 CMR 661.000 is to provide standards for the implementation of M.G.L. c. 270, § 22, which establishes restrictions on smoking in the workplace. The requirements in 105 CMR 661.00 are intended to clarify or supplement the statutory requirements. Nothing in 105 CMR 661.000 shall be interpreted as limiting or preempting further restrictions on smoking by any local by-law, ordinance or regulation.

661.002: Authority

105 CMR 661.000 is authorized and in part mandated by M.G.L. c. 270, § 22.

661.003: Definitions

Membership Association shall be as defined in M.G.L. c.270, § 22.

Outdoor Space shall be as defined in M.G.L. c. 270, § 22.

661.100: Smoking Restrictions in Membership Associations

- (A) Smoking shall be prohibited in an enclosed indoor space of a membership association during the time that the space is:
- (1) open to the public. A membership organization shall be regarded as open to the public when it has signs or advertising inviting or encouraging non-members to enter the premises or takes other action that may reasonably be regarded as inviting or allowing non-members to enter the premises;
 - (2) occupied by a non-member who is not a guest. A non-member shall be regarded as a guest if entering the premises:
 - (a) accompanied by a member, provided the member remains on the premises while the guest is present; and
 - (b) signing a guest register that clearly specifies the name and address of the guest and the inviting member;
 - (3) rented from the association for a fee or other compensation; or
 - (4) occupied by a contract employee, temporary employee or independent contractor.
- (B) Smoking may be permitted if the premises are occupied solely by the following:
- (1) members of the association. A person shall not be regarded as a member if entering the premises under terms of a membership that differ in duration, cost or privileges from the terms of a full membership in the association;
 - (2) one or more salaried employees of the association;
 - (3) invited guests of the members, as determined in accordance with 105 CMR 661.100(A); and
 - (4) visiting members of an affiliated chapter or branch of a fraternal lodge organization.
- (C) Smoking may be permitted in a distinct part of the premises of a membership association, provided that this part:

- (1) is physically separated from any area open to the public or occupied by a non-member who is not a guest. The separation shall be sufficient to prevent any migration of smoke into the public area. Any doors separating the areas shall be self-closing;
- (2) is occupied solely by those persons specified in 105 CMR 661.100(B). The membership association shall adopt and effectively implement a policy that ensures only such persons are permitted to enter the part of the premises where smoking is permitted; and
- (3) there are no signs inviting or encouraging the public or non-members who are not guests to enter.

661.200: Smoking in Outdoor Spaces

Smoking may be permitted in an outdoor space, provided that the outdoor space is physically separated from an enclosed work space and there is no migration of smoke into the work space.

- (1) In accordance with M.G.L. c. 270, § 22, any outdoor space that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or covers, shall be regarded as an enclosed space when the walls or covers are in place.
- (2) The outdoor space shall be open to the air at all times. For purposes of 105 CMR 661.000, this shall mean that the space has thorough, unobstructed circulation of outside air to all parts of the outdoor space. An outdoor space shall be presumed to meet this test if:
 - (a) the space has a ceiling and at least one half of the total surface area of the walls and other vertical boundaries of the space permits unobstructed flow of outside air into the space; or
 - (b) the space has no ceiling and no more than two walls or other vertical boundaries of the space that obstruct the flow of air into the space exceed eight feet in height.
- (3) For purposes of 105 CMR 661.000, a ceiling shall include any top or covering that is placed or may be placed over a space, or any other structure or arrangement above the space (including substantial coverage by umbrellas or awnings) that may impede the flow of air into the space, regardless of the type or nature of the materials or the partial or removable nature of the covering.
- (4) The local board of health shall be notified in writing prior to initiating construction or renovation of an outdoor space for the purpose of permitting smoking, if such construction or renovation requires notification of the local building department or a licensing authority.

661.300: Professional Testing Laboratories

Medical or scientific research on tobacco products may be conducted in a professional testing laboratory, provided that the laboratory notifies the Department of its activities, in accordance with policies and procedures established by the Department, and provides such documentation as specified by the Department of compliance with federal regulations on Protection of Human Subjects, 34 CFR Part 97.

661.400: Enforcement

- (A) The Department and the Alcoholic Beverages Control Commission is hereby authorized to enforce the provisions of M.G.L. c. 270, § 22 through use of the non-criminal disposition procedures specified in M.G.L. c. 40, § 21D.
 - (1) The fine imposed pursuant to 105 CMR 661.400 shall be \$100 for the violation, \$200 for a second violation occurring within two years of the date of the first violation, and \$300 for a third or subsequent violation within two years of the second violation. Each calendar day on which a violation occurs shall be considered a separate violation.

- (2) The disposition of fines assessed in accordance with 105 CMR 661.400 shall be in accordance with M.G.L. c. 29, § 2.
 - (3) As specified in M.G.L. c. 270, § 22, each city or town shall file with the Department, on an annual basis in accordance with procedures established by the Department, a report indicating the number of citations issued for non-compliance with M.G.L. c. 270, § 22 and 105 CMR 661.000, the basis for the citations, fines assessed and collected, and such additional information about enforcement as specified by the Department.
- (B) In accordance with M.G.L. c. 270, § 22, local boards of health shall have the authority to revoke or suspend a license of a building, vehicle or vessel to operate if an owner, manager or other person in control is found to repeatedly violate the requirements of M.G.L. c. 270, § 22 (“egregious non-compliance”). For purposes of 105 CMR 661.000, five or more citations from enforcing authorities within two years of the first citation, or such violations as specified in regulations of the board of health, shall constitute egregious non-compliance. Such action shall be taken in accordance with local board of health regulations for the suspension or revocation of a license or permit.

APPENDIX FIVE – Selected Sections of the 2019 Act Modernizing Tobacco Control, MGL 270, §§6, 28, 29

MGL 270, §6

- (a) As used in this section and sections 6A and 7, the following words shall have the following meanings unless the context clearly requires otherwise:

“Manufacturer”, a person that manufactures or produces a tobacco product.

“Person”, an individual, firm, fiduciary, partnership, corporation, trust or association, however formed, or a club, trustee, agency or receiver.

“Retail establishment”, a physical place of business or a section of a physical place of business wherein a tobacco product is offered for sale to consumers.

“Retailer”, a person that operates a retail establishment.

“Tobacco product”, a product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization; 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 and is marketed and sold exclusively for the approved purpose.

- (b) No person shall sell or provide a tobacco product to a person who is under 21 years of age.
- (c) No manufacturer or retailer shall distribute or cause to be distributed a free sample of a tobacco product in a retail or other commercial establishment; provided, however, that this subsection shall not apply to retail tobacco stores and smoking bars as defined in section 22.
- (d) A person who violates this section shall be punished by a fine of \$1,000 for the first offense, \$2,000 for a second offense and \$5,000 for a third or subsequent offense.
- (e) The department of public health may promulgate regulations to implement this section.

MGL 270 § 28

- (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Characterizing flavor”, a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable before or during consumption of a tobacco product, including, but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

“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; provided, however, that “constituent” shall include a smoke constituent.

“Distinguishable”, perceivable by the sense of smell or taste.

“Flavored tobacco product”, any tobacco product that contains a constituent that has or produces a characterizing flavor.

“Manufacturer”, a person that manufactures or produces a tobacco product.

“Person”, an individual, firm, fiduciary, partnership, corporation, trust or association, however formed, or a club, trustee, agency or receiver.

“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.

“Retailer”, a person that operates a retail establishment.

“Smoke constituent”, any chemical or chemical compound in mainstream or sidestream tobacco smoke that transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

“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.

“Tobacco product flavor enhancer”, any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

- (b) No person, retailer or manufacturer shall sell, distribute, cause to be sold or distributed, offer for sale any flavored tobacco product or tobacco product flavor enhancer in any retail establishment, online or through any other means to any consumer in the commonwealth; provided, however, that this subsection shall not apply to the sale or distribution by a smoking bar, as defined in section 22, of flavored tobacco products or tobacco product flavor enhancers for on-site consumption. No person, retailer or manufacturer shall market or advertise a proposed sale or distribution that is prohibited herein.
- (c) A person, retailer or manufacturer may make a sale of flavored tobacco products as it applies to electronic nicotine delivery systems by online, phone, or other means for delivery to a consumer located in another State.
- (d) Public statements, claims or indicia made or disseminated by a manufacturer or by any person authorized or permitted by the manufacturer to make or disseminate public statements, claims or indicia 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.
- (e) A person who violates this section shall be subject to the same fines established for violations of section 6.
- (f) Marijuana or marijuana products as defined in section 1 of chapter 94G shall not be subject to this section.

- (g) The department of public health may promulgate such procedures, rules or regulations as it deems necessary to implement this section.

MGL 270 § 29

- (a) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Electronic nicotine delivery system”, an electronic device, whether for 1-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.

“Person”, an individual, firm, fiduciary, partnership, corporation, trust or association, however formed, or a club, trustee, agency or receiver.

“Retail tobacco store”, shall have the same meaning as in section 22.

“Smoking bar”, shall have the same meaning as in section 22.

- (b) No 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 retail tobacco stores or smoking bars.
- (c) A person who violates this section shall be subject to the same fines established for violations of section 6.

APPENDIX SIX – Statewide Regulations for the 2019 Act Modernizing Tobacco, 105 CMR 665.000

665.005: Definitions

Board of Health means the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town.

Business Agent means an individual who has been designated by the owner or operator of any tobacco retail store or smoking bar to be the manager or otherwise in charge of said establishment.

Characterizing Flavor means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable before or during consumption of a tobacco product including, but not limited to, a taste or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Child-resistant Packaging means 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.

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

Department means the Massachusetts Department of Public Health.

Distinguishable means perceivable by either the sense of smell or taste.

Electronic Nicotine Delivery System means 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.

Flavored Tobacco Product means 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.

Liquid Nicotine Container means a package: (1) from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer; and (2) that is used to hold soluble nicotine or other

substance in any concentration; provided however, that “liquid nicotine container” shall not include a sealed, prefilled and disposable container of nicotine or other substance 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 means the higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Person means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed, or a club, trustee, agency or receiver.

Retail Establishment means 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.

Retailer means a person that operates a retail establishment.

Retail Tobacco Store means an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons younger than 21 years old is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth where the establishment is located.

Smoking Bar means an establishment that: (1) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises only; (2) 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 younger than 21 years old; (3) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (4) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth in which the establishment is located; and (5) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

Tobacco Product means a product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic 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 and is marketed and sold exclusively for the approved purpose.

Tobacco Product Flavor Enhancer means any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product.

665.010: Sale of Tobacco Products and Electronic Nicotine Delivery Systems

(A) No person shall sell or provide a tobacco product to any individual younger than 21 years old, as verified by said person’s valid government-issued photographic identification.

- (B) Retail establishments other than retail tobacco stores or smoking bars shall not place any tobacco product on the counter, but shall place all tobacco products for sale behind the counter where retail sales are made in the establishment and out of the reach of consumers.
- (C) No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter outside of a retail tobacco store or smoking bar.

Retail establishments, including retail tobacco stores or smoking bars, may sell or provide unflavored electronic nicotine delivery systems with nicotine content less than or equal to 35 milligrams per milliliter. Prior to the sale of such a product in a retail establishment other than a retail tobacco store or smoking bar, such retail establishment shall obtain documentation from the product's manufacturer or the manufacturer's agent in a form and manner specified by the Department indicating, at a minimum, the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment. A retail establishment may obtain such documentation through a distributor, provided the distributor obtained such documentation from the product manufacturer or the manufacturer's agent. The owner, retailer, or other person in charge of the retail establishment must maintain record of the nicotine content submitted by the manufacturer for each electronic nicotine delivery system sold or offered for sale within the retail establishment, and provide such records upon request of any authorized enforcement agent, including Boards of Health or their agents and the Department or its agents.

- (D) No person shall sell, distribute, cause to be sold or distributed, or offer for sale to a consumer located in the Commonwealth a flavored tobacco product or tobacco product flavor enhancer, except for a smoking bar for on-site consumption only in accordance with federal law and regulations.
- (E) Prior to the sale of a tobacco product, a retail establishment other than a smoking bar shall obtain documentation from the product's manufacturer or the manufacturer's agent in a form and manner specified by the Department, certifying such tobacco product does not meet the definition of a flavored tobacco product or tobacco product flavor enhancer, and that the product lacks any characterizing flavor. A retail establishment may obtain such documentation through a distributor, provided the distributor obtained such documentation from the product manufacturer or the manufacturer's agent. The owner, retailer, or other person in charge of the retail establishment must maintain record of the certification documentation submitted by the manufacturer for each tobacco product sold or offered for sale within the retail establishment, and provide such records upon request of any authorized enforcement agent, including Boards of Health or their agents and the Department or its agents.
- (F) No person shall sell online, distribute online, or cause to be sold or distributed online to any consumer located in the Commonwealth, an electronic nicotine delivery system, except for a non-flavored electronic nicotine delivery system with nicotine content less than or equal to 35 milligrams per milliliter.

665.013: Permitting Requirements

- (A) All retail tobacco stores and smoking bars shall obtain prior to operation and shall maintain during any period of operation a municipal permit allowing the sale or distribution of tobacco products.
- (B) Retail tobacco stores and smoking bars in operation prior to December 11, 2019, and compliant with all then existing permitting requirements in the municipality in which they operate shall not be subject to 105 CMR 665.013(A), unless the municipality in which they operate later imposes a municipal permitting requirement applicable to such establishments.

665.015: Required Signage

- (A) All retail establishments, including smoking bars and retail tobacco stores, shall conspicuously post signage, in the form developed and made available by the Department. Such signage shall include:
 - (1) a copy of M.G.L. c. 270, §§ 6 and 6A;
 - (2) referral information for smoking cessation resources;

- (3) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years old is prohibited;
 - (4) health warnings associated with using electronic nicotine delivery systems; and
 - (5) 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.
- (B) In addition to the signage required by 105 CMR 665.015(A), smoking bars and retail tobacco stores shall post signage, in the form developed and made available by the Department, 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 feet 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) In addition to the signage required by 105 CMR 665.015(A) and (B), all smoking bars and those retail tobacco stores that allow for on-site consumption of tobacco products shall post signage, in the form developed and made available by the Department, 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 feet 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 second hand smoke and the use of tobacco products, including electronic nicotine delivery systems.
 - (D) The owner, retailer, or other person in charge of a retail establishment shall conspicuously post any additional signs required by the Department in a form and manner as required by the Department.
 - (E) Any person who violates 105 CMR 665.015 shall be subject to the provisions of 105 CMR 665.045; provided that any retail establishment who violates 105 CMR 665.015(A)(1) or 105 CMR 665.015(A)(2) shall additionally be subject to a fine of not more than \$50. Any person found to have unlawfully removed a copy of the postings required by 105 CMR 665.015(A)(1) or 105 CMR 665.015(A)(2) shall be punished by a fine of \$10.00.

665.017: Advertising

No person or retail establishment shall:

- (A) Market or advertise the proposed sale or distribution of any tobacco product prohibited for sale or distribution within the retail establishment or by such person;
- (B) Use fraudulent or misleading statements in advertisements for tobacco products, including the use of any safety or efficacy claims that have not been approved by the United States Food and Drug Administration; or
- (C) Use or display tobacco product advertisements that depict celebrities, mascots, sponsorships, cartoons, or any other similar endorsements.

665.020: Identification Requirements

- (A) Unless otherwise specified in 105 CMR 665.000, each person selling or providing tobacco products shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer’s date of birth that the purchaser is 21 years of age or older, as verified by said person’s proof of identification.
- (B) In addition to the requirements of 105 CMR 665.020(A), an employee of a retail tobacco store or smoking bar must inspect the individual’s valid government-issued photographic identification and determine the individual’s age prior to said individual entering said tobacco retail store or smoking bar. An individual shall not be admitted to the tobacco retail store or smoking bar, unless the employee has verified that the individual is 21 years of age or older as verified by said person’s proof of identification.

- (C) Mail-order or internet sales shall require verification that the purchaser is 21 years of age or older. Verification of age through the mail or internet shall consist of, at a minimum:
- (1) verification that the purchaser is 21 years of age or older through a commercially available database, or aggregate of databases, that is regularly used by government and business for the purpose of age and identity verification; and
 - (2) use of a method of mailing, shipping, or delivery that requires signature of a person who is 21 years of age or older before the shipping package is released.
 - (3) Any information required to complete the age verification process must be requested on a form separate from that used to collect payment information, shall not include personal information as defined by M.G.L. c. 93H, and shall not be used for any purposes other than age verification.

665.025: Prohibition on Coupons and Other Discounts

No person shall 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 without charge or for less than the listed or non-discounted price. No retail establishment that is not a retail tobacco store or smoking bar, or any other establishment shall distribute or cause to be distributed a free sample of a tobacco product.

665.030: Out-of-package Sales

- (A) The sale of tobacco products, as defined in 105 CMR 665.000, in any form other than an original factory wrapped package is prohibited, including the repackaging or dispensing of any tobacco product for retail sale.
- (B) No person shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

665.035: Liquid Nicotine Container Packaging

No person shall knowingly sell or provide:

- (A) A liquid or gel substance containing nicotine unless the substance is contained in child-resistant packaging; or
- (B) A liquid nicotine container unless the container includes child-resistant packaging as part of its design.

665.040: Requirements for Retail Establishments

A retail establishment operating on or after December 11, 2019, must meet the following requirements:

- (A) Only establishments with a permanent, non-mobile location are eligible to operate.
- (B) Operation of a retail establishment shall be conditioned on the retailer's or retail establishment owner's consent to unannounced, periodic inspections of his or her retail establishment and tobacco products to ensure compliance with 105 CMR 665.000 and any applicable local regulations, orders, or ordinances.
- (C) A retail establishment shall be prohibited from selling tobacco products if the retailer or owner of the retail establishment has failed to pay all fines issued and the time period to appeal the fines has expired and/or the retail establishment has not satisfied any outstanding orders issued pursuant to 105 CMR 665.000.
- (D) Sale of a tobacco product by a retail establishment to a person younger than 21 years old shall result in the retail establishment being prohibited from selling tobacco products for up to 30 consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate

and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.

665.045: Violations

Unless otherwise specified or provided for in 105 CMR 665.000, violations of 105 CMR 665.000 shall be assessed as follows:

- (A) It shall be the responsibility of any person to ensure compliance with 105 CMR 665.000. If an inspection pursuant to 105 CMR 665.000 reveals a retail establishment, retailer, and/or his or her business agent does not comply with the provisions of 105 CMR 665.000, the retail establishment shall be ordered to comply with the violated provision of 105 CMR 665.000. In addition to the correction order, the following fines and actions apply against any person who violates 105 CMR 665.000, provided, however, that such fines and actions related to any violation within a retail establishment shall apply against the retailer and/or his or her business agent and not an employee thereof:
 - (1) In the case of a first violation, a fine of \$1,000 shall be imposed.
 - (2) In the case of a second violation within a period of 36 months from the first violation, a fine of \$2,000 shall be imposed; and a prohibition on the sale of tobacco products may be imposed for at least one day and up to seven consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.
 - (3) In the case of a third violation within a period of 36 months from the first violation or additional violations during that time period, a fine of \$5,000 shall be imposed; and a prohibition on the sale of tobacco products may be imposed for at least seven consecutive business days and up to 30 consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.
- (B) Failure to cooperate with inspections pursuant to 105 CMR 665.000 shall result in the prohibition on the sale of tobacco products for up to 30 consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.
- (C) Failure to pay a fine imposed pursuant to 105 CMR 665.000 shall constitute a separate violation of 105 CMR 665.000 subject to the penalties set forth at 105 CMR 665.045(A).
- (D) Consistent with 105 CMR 665.055, a retail establishment shall be provided notice of the intent to prohibit the sale of tobacco products at or by the retail establishment. The notice shall contain the reasons therefor and establish a time and date for a hearing. The retail establishment, retailer or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the decision regarding the retail establishment's prohibition from selling tobacco products and the reasons therefor in writing. After a hearing, the retail establishment may be prohibited from selling tobacco products upon a finding that a violation of 105 CMR 665.000 for which such prohibition is applicable occurred. All tobacco products shall be removed from the retail establishment upon an indefinite suspension from operating as a retail establishment. Failure to remove all tobacco products shall constitute a separate violation of 105 CMR 665.000.
- (E) Separate Violations. Each day any violation of 105 CMR 665.000 exists shall be deemed to be a separate offense.

665.050: Order to Cease and Desist

- (A) An Order to Cease and Desist may be issued by the Department or Board of Health to a person or a business agent of a retail establishment upon the regulatory authority's reasonable belief that:

- (1) A person is conducting sales of tobacco products in violation of the law, regulations, and/or standards applicable to it;
 - (2) A person refuses access to the premises and/or records to authorized enforcement agents;
 - (3) A person or retail establishment is operating in a manner that may pose an imminent danger to the public health;
 - (4) A retail establishment has failed to comply with a correction order within the time specified; or
 - (5) A retail establishment is operating in a manner that is unsafe or otherwise below the accepted standards for the type of operation and summary closure is authorized by statute on these grounds.
- (B) Service of Orders to Cease and Desist shall be on the person or retail establishment or business agent of the retail establishment by:
- (1) Personal delivery by an agent of the regulatory agency;
 - (2) Posting in a conspicuous place at the retail establishment;
 - (3) Simultaneously mailing, by first class and certified mail return receipt requested; or
 - (4) By any officer of the Commonwealth authorized to make service.

Notice is deemed to be served if the person or retail establishment or business agent of the retail establishment has actual notice of the Order to Cease and Desist.

665.055: Enforcement

- (A) No provision of 105 CMR 665.055 shall be construed as a limitation on the emergency powers of the Department of Public Health of the Commonwealth or its Commissioner.
- (B) **Local Enforcement.**
- (1) **General Procedures.** Unless otherwise expressly provided in any general law to the contrary, each board of health may enforce 105 CMR 665.000, or otherwise at law or in equity in the same manner that local rules and regulations are enforced.
 - (2) **Emergency Procedures.** Whenever an emergency related to tobacco products exists in which the interest of protecting the public health requires that ordinary procedures be dispensed with, the board of health or its authorized agent, acting in accordance with the provisions of M.G.L. c. 111, § 30, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as the board of health deems necessary to meet the emergency. Any person to whom such order is directed shall comply therewith within the time specified in the order, provided, however, that such fines and actions related to any violation within a retail establishment shall apply against the retailer and/or his or her business agent and not an employee thereof. Each day's failure to comply with the order shall constitute a separate offense. Upon compliance with the order and within seven days after the day the order has been served, he or she may file a written petition in the office of the board of health requesting a hearing. He or she shall be granted a hearing as soon as possible, but not later than ten days after the filing of the petition. The procedures for such hearing shall otherwise conform with the hearing requirements which would have existed had the order been issued under nonemergency circumstances.
- (C) **Complaints.** Any person who desires to register a complaint pursuant to 105 CMR 665.000 may do so by contacting the Board of Health or its designated agent(s) in the city, town, or other legally constituted governmental unit within the Commonwealth where the retail establishment is located.
- (D) **State Enforcement.**
- (1) Whenever any Board of Health has failed after a reasonable length of time to enforce 105 CMR 665.000 the Commissioner of Public Health of the Commonwealth or his or her designated representative may act for the Commonwealth in any way that the local board of health is authorized to act to effect compliance.

- (2) Upon the determination by the federal Food and Drug Administration or the federal Centers for Disease Control and Prevention or other regulatory authority that an electronic nicotine delivery system has been shown by substantial epidemiologic, laboratory, or other evidence to be the cause of an imminent danger to public health, the Commissioner of Public Health may place a ban or restriction on the sale of such electronic nicotine delivery system.

(E) **Service of Orders.**

- (1) Unless otherwise stated in 105 CMR 665.000, orders issued under the provisions of 105 CMR 665.000 shall be served on all persons responsible for the violation, provided, however, that such fines and actions related to any violation within a retail establishment shall apply against the retailer and/or his or her business agent and not an employee thereof.
- (2) These orders shall be served in the following manner:
 - (a) personally, by any person authorized to serve civil process;
 - (b) by any person authorized to serve civil process by leaving a copy of the order at his or her last and usual place of abode;
 - (c) by sending him a copy of the order by registered or certified mail, return receipt requested, if he is within the Commonwealth; or
 - (d) if his or her last and usual place of abode is unknown or outside the Commonwealth, by posting a copy of the order in a conspicuous place on or about the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building or premises affected is situated.

(F) **Hearings.**

- (1) **Procedure for Requesting and Holding Hearing.** Unless otherwise specified in 105 CMR 665.055(F), the person or persons to whom any order has been served pursuant to any section of 105 CMR 665.000 may request a hearing before the Board of Health or the Department, as applicable, by filing with the Board of Health or the Department, as applicable, within seven days after the day the order was served, a written petition requesting a hearing on the matter. Upon receipt of such petition, the Board of Health or the Department, as applicable, shall set a time and place for such hearing and shall inform the petitioner thereof in writing.

The hearing shall be commenced not later than 30 days after the day on which the order was served. The Board of Health or the Department, as applicable, upon application of the petitioner, may postpone the date of hearing for a reasonable time beyond such 30-day period if in the judgment of the Board of Health or the Department, as applicable, the petitioner has submitted a good and sufficient reason for such postponement.
- (2) **Hearing of Petitioner.** At the hearing, the petitioner shall be given an opportunity to be heard and to show why the order should be modified or withdrawn.
- (3) **Procedure by the Board after Hearing.** After the hearing the Board of Health or the Department, as applicable, shall sustain, modify, or withdraw the order and shall inform the petitioner in writing of its decision. If the Board of Health or the Department, as applicable, sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.
- (4) **Public Record.** Every notice, order, or other record prepared by the Board of Health or the Department, as applicable, connection with the hearing shall be entered as a matter of public record in the office of the clerk of the city, town, other legally constituted governmental unit within the Commonwealth, or in the office of the Board of Health or the Department, as applicable.
- (5) **Hearing Petition Not Submitted or Sustaining of Order.** If a written petition for a hearing is not filed with the board of health within seven days after the day an order has been served or if after a hearing the order has been sustained in any part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

(G) **Judicial Appeals.** Any person aggrieved by the final decision of the Board of Health or the Department, as applicable, with respect to any order or other action taken with respect to 105 CMR 665.000 may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this Commonwealth.

665.057: Preemption

The provisions of 105 CMR 665.000 shall not limit the right of an appropriate authority in a city or town to adopt rules and regulations as may be necessary; provided, however, that such a rule or regulation shall not conflict with regulations promulgated by the department or state or federal law.

665.060: Severability

If any provision of 105 CMR 665.000 is declared invalid or unenforceable, the other provisions shall not be affected thereby, but shall continue in full force and effect.