

This document is for guidance purposes only.

ENFORCEMENT PROTOCOL FOR SMOKING BARS

Amended on 6.13./22

BACKGROUND:

Pursuant to the 2019 amendments to the tobacco sales law, flavored tobacco/vape products and vape products can only be sold in “smoking bars.” Vaping products with more than 35 mg/ml may be sold in both adult-only tobacco retail stores and smoking bars. However, the tobacco and vape products sold at a “smoking bar” **must be consumed on-site only**. By the end of 2019, there were about 24 Mass. Department of Revenue-approved smoking bars statewide. Prior to this state law amendment, a smoking bar was defined as a cigar bar or a hookah bar. The updated law includes “vape bars” where people can vape on site. Note that attempts may be made by vape shops to change their business plan to become smoking bars.

Smoking Bar Inspections

- I. Before conducting an inspection, the following issues must be addressed:
 - Inspectors: For MTCP funded programs, funds may only be used to reimburse inspectors that have attended an MTCP inspection training. Check with your contract manager about trainings that are being offered.
 - Identifying Smoking Bars: Obtain the current DOR-licensed smoking bar list at www.mass.gov/dor . Funded programs must use that information to update POST annually.
- II. Conducting an inspection:
 - a. Items to bring if using handheld device for electronic forms: (Required for funded programs).
 - Handheld Device with internet capabilities to access POST (Point of Sale Toolkit)
 - Cash to purchase tobacco products if a purchase is to be made
 - Evidence labels
 - Cash tracking form
 - Car charger for handheld device
 - A few backup inspection forms in case of device/signal failure
 - Masks, Sanitizing Wipes, Hand Sanitizer as needed.

b. Items to bring if using paper compliance check forms: (Use paper forms only if you cannot use POST due to device/signal failure or technical issues, or if you are an unfunded municipality and do not to enter your data into POST)

- Copies of your most current Inspection or Compliance Check Enforcement Form or the one from POST
- Cash to purchase tobacco products if a compliance check
- Evidence labels
- Cash tracking form
- Pen
- Masks, Sanitizing Wipes, Hand Sanitizer.

III. Identification

- a. Identify yourself as an agent for the Board of Health/Health Dept. Do not identify yourself as an employee of MTCP, or the state or federal government.
- b. Show your identification credentials.
- c. Ask to speak to the owner/manager/person in charge and state the purpose of your visit.
- d. Explain the components of the inspection (what you are looking for: permits, signs, tax stamps, etc.). Explain that you may have to go behind the counter/bar to check for tax stamps, single sale of cigarettes, or less expensive single cigars (than the local regulation allows).

IV. If you are refused entry or the opportunity to inspect:

- a. Leave without confrontation.
- b. Document the incident with as much information as possible, including date, time, and name of the person who refused the inspection (if you have it).
- c. Notify the Board of Health/Health Dept. as soon as possible, both verbally and with a copy of the documentation you have completed.
- d. Apply for an administrative search warrant in order to complete the inspection if your board of your health director instructs you to do so.

V. Inspection

- a. Ask to see the local Board of Health and Department of Revenue permits (cigarette/OTP/ENDS/smoking bar) for the current year. Some regulations state that these must be posted conspicuously.
- b. Signs:
 - State law sign
 - Cigar Warning Sign if cigars are sold
 - Referral Information for Smoking Cessation Resources
 - Health Warning for E-Cigarettes
 - Must be 21+ to Enter
 - Exterior notice of smoking/vaping inside

- Other signs as required locally
- c. State tax stamp on packs of cigarettes
- d. If cigarettes or cigar multi-packs are sold, is there a plan for patrons to not remove them from the establishment (all products are on-site consumption only).
- e. Evidence of loose cigarette sales (open packs of cigarettes behind or under the counter)

VI. Dealing with Issues of Non-Compliance

- a. No permits
 - Sales of tobacco should stop until all necessary permits are obtained. DOR permits can be applied for on-line by the retailer.
 - Products should be boxed, taped, documented and a receipt issued until all required licenses/permits are obtained.
- b. No tax stamps
 - Report all unstamped cigarettes to the Department of Revenue by filing the Cigarette Complaint Referral Form: <https://www.mass.gov/doc/form-ccrf-cigarette-complaint-referral-form/download>
- c. Missing signs
 - Provide the owner/manager necessary signs so that they can be displayed immediately.
 - Make suggestions as to where to put the signs.
- d. Loose cigarette sales
 - Issue a state law level fine for the violation.
- e. Smoking bar permits can be suspended for violations.

VII. Documentation of Non-Compliance

- a. Report all violations to the owner or designee.
- b. Document all violations on a multi-part form whenever possible so that a copy can be left with the owner/manager.
- c. Provide the owner/manager with a copy of the municipal regulations and the URL for the state regulations so that the retailer can reference them regarding the violation.
- d. Record inspection results in POST, if applicable.
- e. Photographs should be taken of all instances of all violations.

VIII. Department of Revenue

- a. Quarterly, the smoking bar must provide financial information to DOR attesting that they are staying above the 51% tobacco sales minimum as required by the state law. That form is also on the DOR website. Practically speaking, it is nearly impossible to be a full-menu, full-liquor-licensed establishment and meet the minimum 51% of revenue derived from tobacco sales. Statewide, some cigar

bars gave up high-end liquor options, limited food options and, in the case of hookah bars, operate them in locations that do not have liquor licenses and instead operate like a coffeeshop that also allows for hookah.

- b. 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 for a smoking bar.