

Integrating Tobacco Inspections into Food Service Inspections

James Doucette, Code Enforcement Officer *Brockton Board of Health*

Sarah McColgan, Tobacco Control Program Director *MHOA*

Preparing for the Inspection

- Ensure that you have all necessary equipment
- Identification
- Business cards
- Pen/paper
- Phone, camera or other recording device
- Relevant documents (Inspection checklist, sign packet)
- Ticket book Thermometer
- Sanitizing wipes
- Disposable Gloves
- Hair net
- Local regulations
- List of tobacco vendors

Approaching the Property

- Final preparations
- Marked vehicles v. private vehicles
- Uniformed inspector v. plain clothes
- Parking on the property or adjacent to the property
- Walking directly and quickly into the building
- CCTV surveillance

Announcing the Inspection

- Present your credentials
- Offer a business card
- Inform staff that you will be stepping behind the counter and other areas where the public are not invited
- Inform staff that no product is to be moved or removed during the inspection
- Watch the conduct and actions of staff that are present
- If you are refused entry or refused the right to conduct inspection

Educational Inspection v. Enforcement Inspection

- Talk to the staff present about the benefits of the educational inspection
- Educational inspection is intended to check for compliance and increase awareness of state and local regulations
- An educational inspection may transition into a enforcement inspection if violations are observed

Conduct of Inspections

- State CRM
- Observing products/practices that violate state CRM
- Flavored products such and cigarettes, ENDS and flavor enhancers containing nicotine
- Out of package sales
- Tax stamps
- Sales lower than minimum mandated prices
- Local regulations with bans on items such as blunt wraps
- Do local regulations mirror state CRM?

During the Inspection

- Conduct inspection in methodical manner scanning for product from left to right, top to bottom
- Ask staff present to open drawers, cabinets, bags, boxes etc
- Back packs and lunch bags
- Back rooms
- Offices
- Safes
- Walk-in coolers

What Constitutes a Violation?

- Flavored cigarettes
- Flavored ENDS
- Flavored cigars
- Flavored chewing tobacco
- Missing or tax stamps from states other than Massachusetts
- Does banned product scan in the POS system?
- Trap doors, hidden compartments, false fronts, trash barrels

*Photos of above-mentioned items

Documenting Violation

- Via photograph
- Date/time stamped
- Purchasing physical specimens
- Contacting DOR if large quantities with missing or other state tax stamps are observed
- Issuing cease and desist orders, monetary fines and summoning violators to appear in front of the Board

Physical Safety and Conflict De-escalation

- Observe body language
- Changes in tone of voice and volume
- Avoid discussing fines and suspensions
- Bring another inspector with you if there is a high likelihood of observing violations

Other Aspects of Tobacco Inspection

- Confirm that local tobacco permit is present and posted
- Confirm that DOR permits are present and posted
- Manufacturer's letters
- State mandated signage
- Providing copies of signs and guiding the vendor towards online resources

Reporting in POST

- Obtain individual user ID and login
- Tutorials and customer service available from POST
- Recording routine inspections
- Recording violations

Reporting to Department of Revenue

- ITTF form
- Emailing photographs

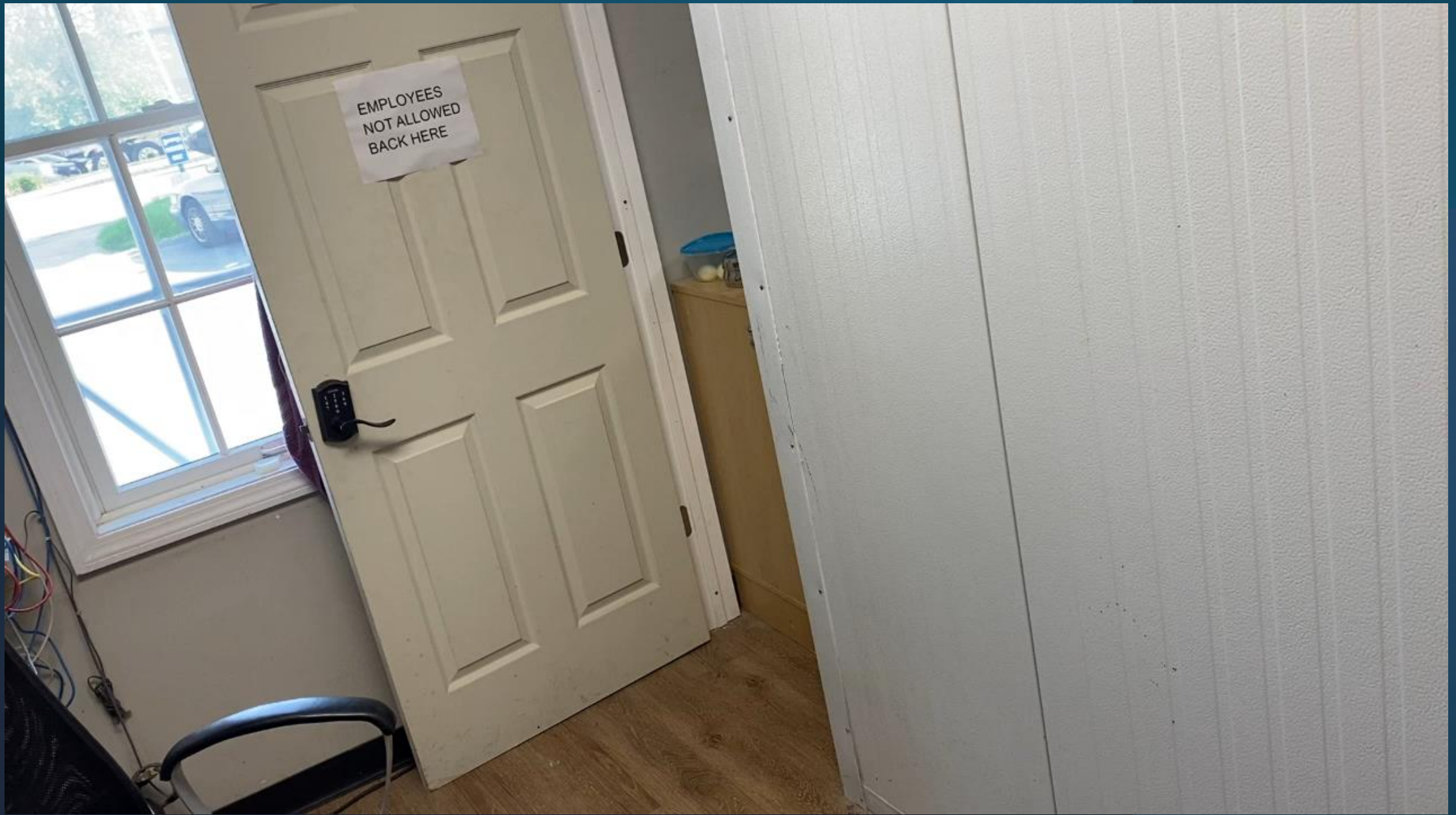
“Those are Mine”

- Presence of product unlawful for sale within a facility permitted to sell tobacco products and
ENDS



Loosies





EMPLOYEES
NOT ALLOWED
BACK HERE

Educational Tobacco Inspection Transitions to Food Inspection

- Multi-tasking and effective time management

Conduct of Food Inspections

- Confirm that permits are current and posted visibly
- Food permits and milk permits
- Other permits issued by your community

Facilities Without Prepared Food

- Perishable foods
- Non-perishable foods
- Dairy products
- Eggs
- Baby food and baby formula

Facilities With Prepared Food

- Hand washing sinks in place with soap and paper towels
- 3 bay sinks present with sanitizer and test strips
- No food items or packaging directly on floor surfaces
- Temperature monitoring
- Date labeling
- HACCP plans

Observing Violations and Issuing Corrective Actions

- Critical violations requiring immediate action
- Food inspection reports
- Issuing corrective actions and improvement plans
- Timeframes to abate conditions

Funded vs. Unfunded Municipalities

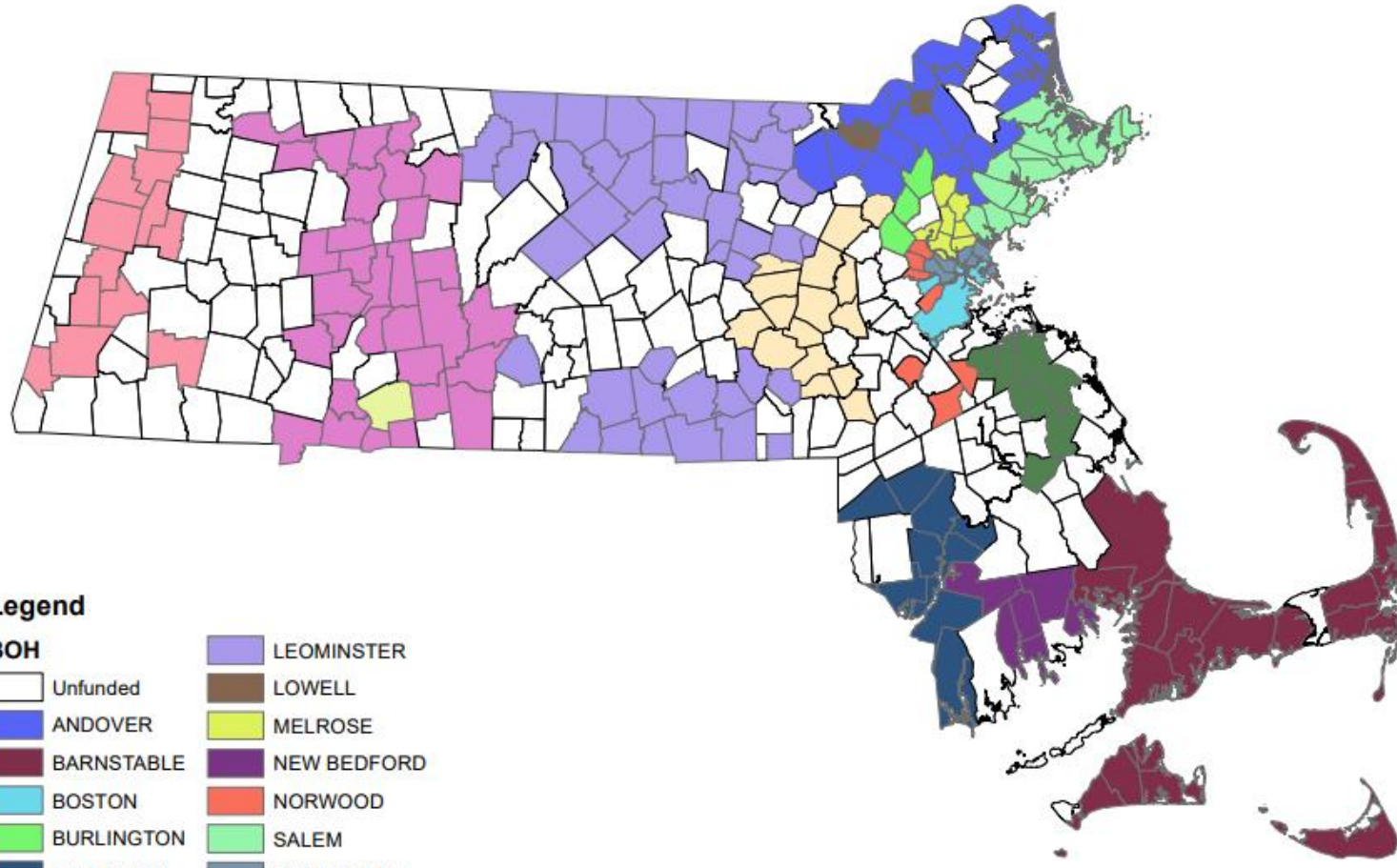
Funded (approximately 192)

- Regional tobacco control staff conduct merchant education, retail store inspections, and youth access compliance checks
- Data is required to be entered into POST (Point of Sale Toolkit), the state funded database
 - Reports can be run regarding individual vendors, all vendors, during a specified time period
 - Health Departments should be provided with these reports to ensure good documentation and any needed follow-up

Things to consider:

- Does the inspector have the authority to enforce on the spot or does the information come back for board of health consideration?
- Do your regulations meet or exceed the state law?

BOH Funded Regions 2023



Legend

BOH	
Unfunded	LEOMINSTER
ANDOVER	LOWELL
BARNSTABLE	MELROSE
BOSTON	NEW BEDFORD
BURLINGTON	NORWOOD
FALL RIVER	SALEM
FRAMINGHAM	SOMERVILLE
HANOVER	SOUTH HADLEY
LEE	SPRINGFIELD

Funded vs. Unfunded Municipalities

Unfunded (approximately 159)

- SSA's with Objective #5: Tobacco Use Prevention: Improve inspectional requirements and enforce regulations, in alignment with Performance Standards
 - many SSA's that identified Objective #5 have municipalities that are MTCP funded municipalities
- Services available to these SSA unfunded municipalities include:
 - assistance, TA to revise tobacco regulations (referral will be made to legal TA),
 - Retail Tobacco Inspection Training (can include a ride-a-long with an experienced tobacco inspector)
 - Underage Compliance Check Training (can include a ride-a-long with an experienced tobacco inspector)
 - Guidance and recommendations for Merchant Education, including prompting the online training for store employees
 - Direct services for municipalities that lack the capacity to conduct tobacco inspections/compliance checks
 - Guidance and resources to develop an in-house municipal tobacco control program
- Other unfunded municipalities will be provided with services depending on municipal need and MHOA capacity

POST

What is POST?

- Training
 - self directed videos
 - TA available through the Help Desk
- How do I get started?
 - take the training
 - request access for municipalities you work in
 - your vendors are already in the system

* verify all vendors with the board of health permit list
- Tell me about the system?
 - Simple
 - drop downs
 - ability to attached up to 4 photos for evidence
- Why should I put my municipality's data into POST?
 - after data entry, your municipality's data is then contained online and is easily retrievable, enabling you to print reports by vendor, by municipality
 - Paperless
 - historical information on each vendor

POST/Enforcement

What if we don't use POST?

- Recommendation is that you follow MTCP Inspection Protocol and use the POST Data Sheet

I've done the inspection. What next?

- issue a cease-and-desist order for state law violations within 15 days
 - * minor violations (small self-service, missing signs) can be corrected immediately, and you may decide not to issue a fine, but the violation should be documented
- 21D tickets can still be used for local policy violations if the fine is \$300 or less
- permit suspensions:
 - * all sales to people under the age of 21 (varying amounts of time)
 - * 2nd or subsequent violation of other state law policies are subject to permit suspensions
 - * hearing date should be written on cease and desist

BOH Hearings

How does my board conduct a permit suspension hearing?

- notice (c&d) sent to the violator
- hearings are held during regularly scheduled open meetings of the board
- there is a guidance document available
- board should only entertain testimony from the violator on potential procedural errors
- best practice:
 - * open the hearing
 - * inspector testimony
 - * vendor testimony
 - * board decision

[City/Town of _____]
Board of Health
CORRECTION/CEASE AND DESIST ORDER

This CORRECTION/CEASE AND DESIST ORDER is issued to:

Name of Establishment -

Address of Establishment -

Date -

Please be advised that on [date and approximate time] a [compliance check and/or inspection] was conducted on behalf of the [city/town] [health department/tobacco control program].

[Name of establishment] violated the state law entitled "An Act to Modernize Tobacco Control" and 105 CMR 665.000 by [check all that apply]:

- Selling a tobacco product to a person under the Minimum Legal Sales Age;
- Selling a flavored tobacco product or tobacco product flavored enhancer product;
- Offering for sale a flavored tobacco product or tobacco product flavor enhancer;
- Failure of a non-age restricted retail establishment to maintain a record of the documentation submitted by the manufacturer or manufacturer's agent certifying that an unflavored nicotine delivery product has a nicotine content of 35 milligrams per milliliter or less;
- Manufacturer letters - Failure to maintain a record of the documentation submitted by the manufacturer or a manufacturer's agent certifying that 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. (Smoking bars are exempt).
- Other violations of 105 CMR 665.000, see the below additional violations, with any necessary additional pages attached:

Additional violations:

You are hereby ordered to cease and desist from violating An Act to Modernize Tobacco Control and 105 CMR 665.000.

In addition, the following fines and actions apply against [name and address of establishment] for violations of 105 CMR 665.000:

- First violation: a fine of One Thousand (\$1,000.00) Dollars; additionally, if the violation is the sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended for [Pick one - _____ business days per vote of the _____ Board of Health] or [up to 30 consecutive business days] pursuant to 105 CMR 040(d). [BOH decision];
- Second violation within a 36-month period from the first violation: a fine of Two Thousand (\$2,000.00) Dollars and a possible permit suspension for at least one (1) day and up to seven (7) consecutive days as required by state law or for a longer term as promulgated in a local regulation;
- Third violation within a 36-month period from the first violation or additional violations during that time-period: a fine of Five Thousand (\$5,000.00) Dollars and a possible permit suspension of at least seven (7) consecutive business days not less than thirty (30) days as required by state law or for a longer term as promulgated in a local regulation.

Consistent with 105 CMR 665.000, if this is a second, third or subsequent violation within a 36-month period as indicated above, a Hearing Notice with the date and time of the hearing will be served forthwith on [name of establishment] regarding the above-described violation[s] at which time the Board of Health shall hear facts relative to this matter and determine whether to suspend or revoke [name of establishment's] tobacco sales permit.

You are hereby ordered to pay the amount of _____ by check or money order made payable to the [city/town] of [name of city/town] within twenty-one (21) days of receipt of this order to the address below:

Address:

If you wish to contest any part of this order, you have the right to request a Hearing before the Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date this Order was served or actually received. Any affected party has a right to appear at said hearing.

Failure to comply with this order may result in additional penalties as permitted by law.

Signed by:

Name:

Date:

As agent of the [city/town] [health department/board of health]

What do I need to do After the Hearing?

- notify treasurer/collector of fine so they don't think it's a mistake
- communicate regarding payment of the fine
- provide the vendor with a sign stating the store is unable to sell tobacco products during the suspension period
- check to ensure that the suspension is being served
- best practice is to have the products removed during the suspension or have them boxed and labeled. Products should not remain on the sales floor.

Resources:

- mhoa.com has guidance documents on conducting a hearing, what is a flavored product, and many other topics
- legal TA:
 - Cheryl Sbarra, MAHB, sbarra@mahb.org
 - Lisa Stevens-Goodnight, MMA, lstevensgoodnight@mma.org
 - Chris Banthin, PHAI, chrisbanthin@phaionline.org
 - training TA, coordination with SSA's: Sarah McColgan, MHOA, mhoa.com