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Conducting Retail Tobacco Inspections

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Massachusetts Health Officers Association

Tobacco Control Program

Chapters

1. Goals and objectives
2. Reasons, authority and preparation for conducting inspections
3. Conducting the inspection
4. Required components
5. Issues of non-compliance and gaining compliance
6. Discussion and questions
7. Resources

Goals & Objectives

- Identify the reasons to conduct retail tobacco inspections
- List the components of the inspection
- Describe the procedure for approaching and conducting the inspection
- Determine and explain remedies for non-compliance
- Identify resources available to assist you in providing the retailer with merchant education and the retailer in educating and training store employees

Reasons for conducting retail tobacco inspections

- Maintain presence in the retail environment
- Obtain a profile of a new store
- Ensure compliance with all laws, regulations, ordinances and codes
- Check for necessary permits/licenses
- Develop a working relationship with the retailer
- Reduce youth access to tobacco products

Authority to conduct inspections

- The right to inspect is a critical enforcement strategy
- Boards of Health are specifically authorized to enter, inspect and examine premises by:
 - General Laws (i.e. Smoke-Free Workplace Law)
 - Code of Massachusetts Regulations (i.e. Sanitary Code, Food Code, etc)
 - Local Board of Health regulations, City Ordinances, Town By-Laws
 - Language on Tobacco Sales Permit

How to prepare for a retail inspection

Board of Health staff, tobacco control agents and Board of Health members (in the absence of staff) who have been trained should conduct retail tobacco inspections.

- *You must be appointed by the board of health to conduct enforcement in the municipality.*
- *Youth should not be asked to conduct retail inspections*

Inspections should be scheduled as a consistent part of your weekly work, at a time when the store is not at its busiest. If you are a regional program funded through MTCP, inspections should align with your work plan.

Try to inspect when the manager/assistant manager or owner are present.

Identification for Inspections

Determine what your municipality(ies) requires for inspectional identification.

Whenever you enter an establishment for business purposes you should always carry an identification card or document that states that you are an agent of the Board of Health.

Do not represent that you work for the MTCP or the state.

Preparing for the inspections

- Blank Store Inspection Forms and/or tablet with internet access for you to record the data in POST
- List of tobacco retailers organized by street address (if using paper forms)
- Identification
- Signs and merchant education material

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Store Inspection Form

Inspector Name: _____

Store Name: _____ Address: _____ Date: ____ / ____ / ____

City: _____, MA Zip: _____ Time: _____ AM
 PM

1. Can you visit this store?

- Yes No, store does not exist or is permanently closed
 No, store closed at time of visit No, temporary/short-term or seasonal closure
 No, members only No, unsafe
 No, other reason not listed

2. Purpose of visit

- Routine inspection visit Complaint received
 Failed compliance check follow-up Suspension of permit
 Retailer requested education Other: _____

3. Was the inspection completed? Yes No If NO, please select the reason:

- Do not sell tobacco Complaint received
 Other: _____

Signage

	Yes	No
4a. Is the local board of health permit posted?	<input type="checkbox"/>	<input type="checkbox"/>
4b. Is the DOR tax license posted?	<input type="checkbox"/>	<input type="checkbox"/>
4c. Is required state law signage (MGL ch 270, G and 6A) posted?	<input type="checkbox"/>	<input type="checkbox"/>
4d. Is a "no smoking" sign(s) posted? Yes/No	<input type="checkbox"/>	<input type="checkbox"/>
4e. Is a minimum legal sale age sign posted?	<input type="checkbox"/>	<input type="checkbox"/>
4f. Is a cessation sign(s) posted?	<input type="checkbox"/>	<input type="checkbox"/>
4g. Is a vaping health warning sign(s) posted?	<input type="checkbox"/>	<input type="checkbox"/>
4h. Is a cigar health warning sign(s) posted?	<input type="checkbox"/>	<input type="checkbox"/>
4i. Is a sale of flavored tobacco prohibited sign posted?	<input type="checkbox"/>	<input type="checkbox"/>

Adult-Only Retailers and Smoking Bars ONLY

4j. Is a "Must be 21+ to enter" exterior sign posted?	<input type="checkbox"/>	<input type="checkbox"/>
4k. If smoking or tobacco use is allowed inside, is there an exterior warning sign that smoking/vaping allowed inside?	<input type="checkbox"/>	<input type="checkbox"/>
4l. If smoking or tobacco use is allowed inside, is there an interior warning sign that smoking/vaping allowed inside?	<input type="checkbox"/>	<input type="checkbox"/>

Location Compliance: Adult-Only Retailers and Smoking Bars ONLY

	Yes	No
5a. Does the establishment have a doorbell, buzzer, or locking mechanism for preventing minors from entering the store?	<input type="checkbox"/>	<input type="checkbox"/>
5b. Is any tobacco in a self-serve location?	<input type="checkbox"/>	<input type="checkbox"/>
5c. Do all self-service locations meet legal standards?	<input type="checkbox"/>	<input type="checkbox"/>
5d. Are any tobacco vending machines present? Yes/No	<input type="checkbox"/>	<input type="checkbox"/>
5e. Do tobacco vending machines meet all regulation standards?	<input type="checkbox"/>	<input type="checkbox"/>

Conducting the inspection

While driving up to the retail store observe the exterior and interior for:

- Signage and advertisements
- Neighborhood and density.

After entering the establishment, ask to speak to the owner/manager/person in charge.

Introduce yourself, prepare to show your identification if asked, and state the purpose of your visit:

- WHO are you?
- WHAT are you looking for?
- WHY are you there?
- HOW will you do the inspection?

The retailer refuses to allow the inspection

If the retailer refuses the inspection:

1. Leave without confrontation
2. Document the incident
3. Notify your Board of Health/Health Department as soon as possible.

Required components of a retail inspection

- Required signs
- Permits and licenses
- Mass. State tax stamp
- Self-service displays
- Nicotine strength restriction on ENDS
- Prohibition of the sale of flavored tobacco products
- Manufacturer letters regarding nicotine strength (convenience type stores only) and unflavored products (convenience type stores and adult-only retail tobacco stores)
- Products prohibited by state laws and local regulations

Required signs

The following signs are required by state law and local regulations:

- Minimum Legal Sale Age sign
- State law sign
- Cigar warning sign
- Referral Information for Smoking Cessation Resources
- Health Warning for E-Cigarettes
- Sale of Flavored Products is Prohibited
- Must be 21+ to enter *
- Exterior notice of smoking/vaping inside*

Minimum Legal Sale Age

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As of December 31, 2018

**It is illegal to sell
or give tobacco
products** (including e-cigarettes)
**to anyone
under 21**

IMPORTANT NOTICE TO RETAILERS AND CUSTOMERS
The law addressing the sale of tobacco and nicotine delivery products in this municipality is stricter than the state law.
You must be 21 to purchase tobacco and nicotine delivery products.

MGL ch. 270 §§ 6

For questions or concerns call 1-800-950-1895.

 Massachusetts Department of Public Health

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Minimum Legal Sale Age Sticker (if more than one register)

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State Law (MGL ch 270, section 6 and 6A)

Massachusetts Law Regarding the Sale of Tobacco

MGL, ch. 270, section 6: Sale or provision of tobacco product to person under 21 years of age

Section 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, ch. 270, section 6A: Sale of tobacco rolling papers to person under 21 years of age

Section 6A.

A person who sells tobacco rolling papers to a person under the age of 21 shall be punished by a fine of **\$25** for the first offense, **\$50** for the second offense and **\$100** for a third or subsequent offense.



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Referral Information for Smoking Cessation Resources

For help quitting
smoking go to

www.makesmokinghistory.org

or call

1-800-QUIT-NOW

(1-800-784-8669)

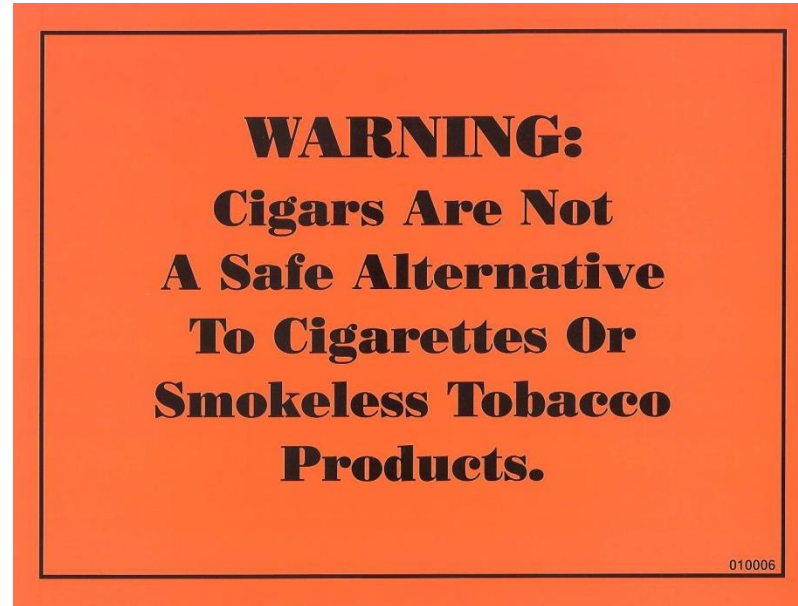


Massachusetts Department
of Public Health

BH2673 | 2018

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Orange cigar warning signs for establishments that sell cigars



Sale of All Flavored Tobacco Products is Prohibited (DOR licensed smoking bars are exempt)

NO FLAVORED TOBACCO.

The sale of

**ALL FLAVORED
TOBACCO PRODUCTS**
// INCLUDING MENTHOL //

IS PROHIBITED

in this establishment
at all times.

MGL ch. 270 §28(b)

For questions or to report a violation,
call **1-800-992-1895**



Massachusetts Department of Public Health

BH2699 6/2020

Health Warning for E-Cigarettes for establishments that sell e- cigarettes



WARNING

E-cigarette aerosol can contain cancer-causing chemicals and other substances that harm the body.

**E-CIGARETTES CONTAIN NICOTINE,
AN ADDICTIVE DRUG.**

The use of e-cigarettes may cause E-Cigarette/ Vaping Associated Lung Injury (EVALI).



Massachusetts Department of Public Health

0103693 6/2020

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Must be 21+ To Enter for adult-only retail tobacco stores and licensed smoking bars

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**ADULT
ONLY**

**RETAIL TOBACCO
ESTABLISHMENT
or SMOKING BAR**

Persons under the age of 21
are not permitted to enter
these premises at any time.



Massachusetts Department of Public Health

BH2697 6/2020

Exterior Notice of Smoking/Vaping Inside for smoking bars and adult-only retail tobacco stores where allowed



WARNING

SECONDHAND SMOKE OR AEROSOL
from e-cigarettes may be present in this
establishment.

Secondhand smoke and secondhand aerosol from e-cigarettes
contain chemicals that are hazardous to your health.



Massachusetts Department of Public Health

SPH2016 6/2020

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Local Board of Health permit



CITY OF EASTHAMPTON
 BOARD OF HEALTH
 60 Payson Ave.
 Easthampton, MA 01027
 (413) 529-1430 TEL.
 (413) 529-1433 FAX
www.health@easthampton.org

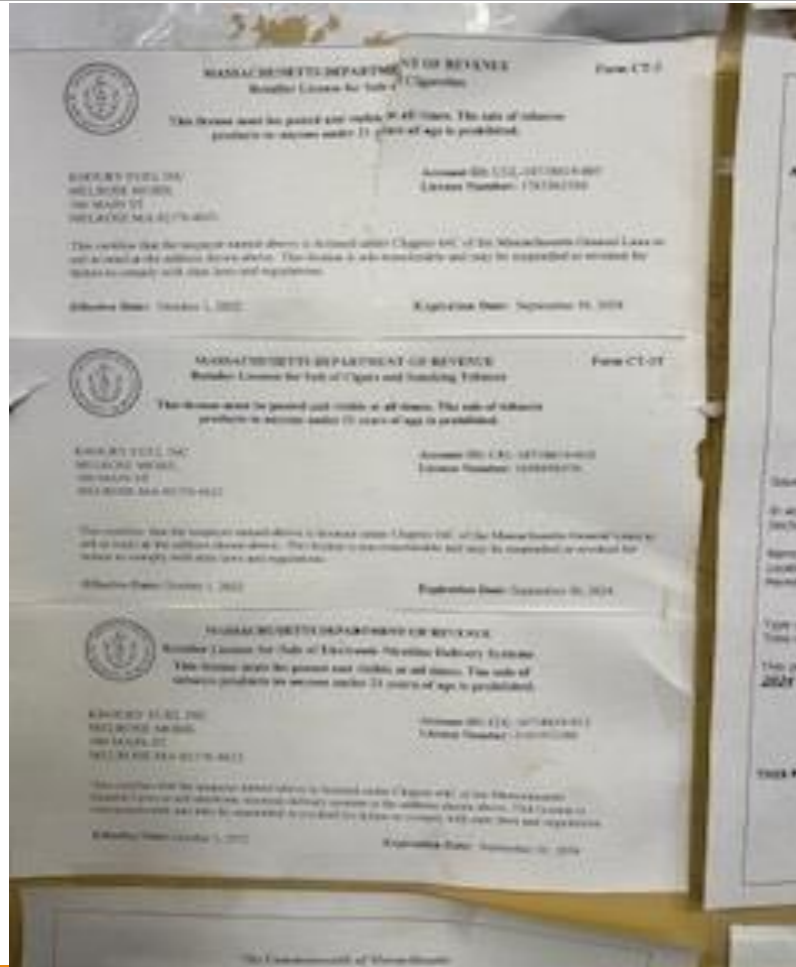
Easthampton Board of Health Application for "Permit for Location and Sale of Tobacco Products"

This form must be initialed and signed by the owner of the establishment applying for a Board of Health "Permit for Location and Sale of Tobacco Product". No permit will be issued until this checklist has been initialed and signed.

Initial							
<input type="checkbox"/>	1. I understand that it is against the law to sell any tobacco product and/or matches/lighters to anyone less than 18 years of age, regardless of how old the person looks.						
<input type="checkbox"/>	2. I understand that the Easthampton Board of Health Regulation requires anyone selling tobacco, lighters or matches to conclusively establish the customer's age as over 18 years old, by means of government-issued photographic ID.						
<input type="checkbox"/>	3. I must check and verify photo ID for anyone under age 27 years.						
<input type="checkbox"/>	4. I understand and agree that the Easthampton Board of Health will conduct frequent compliance checks of my business to ensure that tobacco products are not sold to minors. This means that: <table border="1" style="margin-left: 20px;"> <tr> <td><input type="checkbox"/></td> <td>5. The Board of Health will send minors into my establishment who will attempt to purchase tobacco products.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>6. These minors may or may not look 18 years of age.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>7. These minors may or may not have ID.</td> </tr> </table>	<input type="checkbox"/>	5. The Board of Health will send minors into my establishment who will attempt to purchase tobacco products.	<input type="checkbox"/>	6. These minors may or may not look 18 years of age.	<input type="checkbox"/>	7. These minors may or may not have ID.
<input type="checkbox"/>	5. The Board of Health will send minors into my establishment who will attempt to purchase tobacco products.						
<input type="checkbox"/>	6. These minors may or may not look 18 years of age.						
<input type="checkbox"/>	7. These minors may or may not have ID.						
<input type="checkbox"/>	8. I understand that self-service tobacco displays from which the customer may select tobacco products, lighters or matches are prohibited; all sales must be face-to-face.						
<input type="checkbox"/>	9. I understand that tobacco vending machines are prohibited.						
<input type="checkbox"/>	10. I understand that the sale of single or loose cigarettes, or cigarettes in packages smaller than 20 cigarettes is prohibited.						
<input type="checkbox"/>	11. I understand that I must display Department of Public Health signs stating, "Sale of Tobacco to Minors is Prohibited."						
<input type="checkbox"/>	12. I will provide the Board of Health with proof of a current "Cigarette Excise License" from the Massachusetts Department of Revenue. (Attach copy of DOE license)						
<input type="checkbox"/>	13. I understand that I am responsible for informing my and all persons who sell tobacco about both state and local regulations pertaining to tobacco sales.						
<input type="checkbox"/>	14. I understand that I may not sell tobacco products below state minimum prices.						
<input type="checkbox"/>	15. I understand that penalties for violation of the regulation include monetary fines and/or suspension of this permit for seven days, three days or one year.						

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Department of Revenue Cigarette and OTP Licenses



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State tax stamp on cigarettes



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Absence of self-service displays



Loose Cigarettes & Cigars

- The sale of loose cigarettes or “loosies” is prohibited
- Where to look for loosies:
 - container behind the counter
 - multiple packs of cigarettes on the counter
 - packs of cigarettes must contain at least 20 cigarettes
- Cigars
 - does the municipality have the cigar pricing policy?
 - cigars must be sold in original factory packaging

Additional things to look for

- Nicotine strength and unflavored product documents from manufacturers
- ENDS with more than 35 mg/ml (non-age restricted stores only)
- Prohibited flavored products (exemption for smoking bars for on-site consumption only)
- Local regulation provisions
 - cigar packaging
 - blunt wrap ban
 - ban on smoking in adult-only retail tobacco stores

Manufacturer Letters

- Manufacturer letters are required that attest that all tobacco products are not flavored. Non-age restricted and adult-only retail tobacco stores must have manufacturer letters on site for you to observe. Smoking bars are exempt.
- Manufacturer letters are required that attest that all ENDS have a nicotine strength of 35 mg/ml or below. Adult-only retail tobacco stores and smoking bars are exempt. All non-age restricted stores must have these manufacturer letters on site for you to observe.
- Both types of letters are obtained from the distributor/wholesaler, but must be produced by the manufacturer. If a retailer does not have the required letter they should be instructed to remove the product until they obtain the letter.

Flavored Tobacco Products and Flavored Product Enhancers

- Guidance documents are available at:

<https://mhoa.com/aws/MHOA/pt/sp/tobacco-control-program>

- Understand the strategies and recommendations of the “sniff test”
- Plan with your board the steps you will take if there is a violation of the flavor prohibition and how to enforce the law.

Issues of Non-Compliance

Bring all issues of non-compliance to the attention of the owner/manager/person in charge.

Take photographs of flavored products or other major violations.

Document all issues of non-compliance according to Board of Health policy. A 21D ticket could be used for this purpose.

Gaining compliance

Your goal in an inspection is for the retailer to be in compliance with all federal/state and local tobacco laws and regulations.

Bring a copy of your local regulations so that you can reference them. Advise the retailer that the regulations are available on the municipal website.

Bring multiple copies of all required signs so that they can be displayed immediately if they are not already.

Gaining compliance (continued)

Discuss plans with the retailer for compliance and state that you will return to confirm compliance at a later date. Provide a recheck inspection for all violations.

Remember that you are representing your local Board of Health, not the state or federal government.

Remember that any form that you use or distribute is a public document and cannot be altered once it is issued.

Merchant Education

Along with resources from the Clearinghouse, periodically visit websites from various organizations like MHOA, and MAHB to obtain helpful merchant education.

Some ideas for merchant education are:

- Letters from DPH to tobacco retailers with guidance on the flavor ban, and required manufacturer letters.
- Copies of local and state regulations.
- Postcards with QR code for store employees to take free training in English or Spanish
- Group merchant education training will be offered virtually by MHOA

Resources

Makesmokinghistory.org

Mass.gov/MAclearinghouse has all required signs, in multiple languages, for free

Mass.gov/guides/2019-tobacco-control-law

mhoa.com/aws/MHOA/pt/sp/tobacco-control-program

<https://mahb.org/tobacco-control/>

For questions about retail inspections:

Sarah McColgan

MHOA Tobacco Control Program

smccolgan@mhoa.com

or (413) 636-6418

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