

# **Laying a Solid Foundation**

**Tobacco Laws Pertaining to  
The Commonwealth of Massachusetts**

**Third Edition  
November 2011**

## Acknowledgements

This booklet was originally drafted by staff at the Public Health Advocacy Institute (formerly known as the Tobacco Control Resource Center), based at Northeastern University School of Law for the Massachusetts Department of Public Health's Tobacco Cessation and Prevention Program. The second edition was updated in June of 2005. Cheryl Sbarra, Senior Staff Attorney for the Massachusetts Association of Health Boards, was the primary author.

The current (third) edition's primary author is Attorney Sbarra. Laura Richards, J.D., of the Massachusetts Association of Health Boards; Howard Saxner, J.D., previously from the Department of Public Health; D.J. Wilson, J.D. of the Massachusetts Municipal Association; Chris Banthin, J.D. of the Public Health Advocacy Institute at Northeastern University School of Law; and Sarah McColgan of the Massachusetts Health Officers Association assisted in the editing of this third edition.

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

---

## Table of Contents

<b>1</b>	<b>Introduction</b>
<b>3</b>	<b>Chapter 1: Laws Prohibiting Smoking</b>
3	Executive Summary of the Massachusetts Smoke-Free Workplace Law
5	Text of M.G.L. c.270 §22
18	105 CMR 661.000: Regulations Implementing Chapter 270, §22
22	Food Handling and Storage Areas and Processing Establishments
22	Public Conveyances and Transportation Terminals
22	Buses Traveling on Major Highways
23	Airplanes and Airports
23	Federal Buildings
24	University and College Dormitories
24	Public Schools
25	Private Schools
25	Child Care Centers
26	Family Child Care Homes
27	Manufacturing and Storage of Non-Food Items
27	Public Pools
28	Park and Recreational Buildings
29	Docks, Wharfs, and Waterfront Areas
29	Nursing Homes
30	Multi-Unit Housing - Residential Rental Properties
31	Residential Condominiums
<b>33</b>	<b>Chapter 2: Tobacco Product Sale and Display Laws</b>
33	Tobacco Product Sale and Display Laws
34	FDA Regulations
34	Minimum Age Sales Laws
35	Required Signage About the Minimum Age Sales Laws
36	Self-Service Displays
36	Vending Machines
37	Single Cigarette Sales
38	Tobacco Giveaways
38	Retailer Training
39	Contaminated Tobacco Products
40	Food Stamps
40	Rolling Papers
<b>41</b>	<b>Chapter 3: Health Warnings Laws</b>
41	Health Warnings Laws
41	Health Warnings for Cigarettes
42	Health Warnings for Cigars
43	Health Warnings for Smokeless Tobacco Products

---

---

<b>45</b>	<b>Chapter 4: Tobacco Advertising and Promotion</b>
45	Tobacco Advertising and Promotion
46	Outdoor Advertising
46	Advertising Content
47	Format Requirements for Labeling and Advertising
47	Advertising Significantly Viewed by Children
48	Television, Radio and Other Similar Advertising
49	Brand Name Sponsorship of Public Events
49	Brand Name Merchandise and Apparel
50	Product Placement
<b>51</b>	<b>Chapter 5: Tobacco Tax and Pricing</b>
51	Tobacco Tax and Pricing
51	Federal Taxes
52	Massachusetts Taxes
53	Pricing of Tobacco Products
53	Massachusetts Department of Revenue Tobacco Retail Licenses
54	Tax on Internet Sales
<b>55</b>	<b>Chapter 6: Legal Authority to Regulate Tobacco Locally</b>
55	Legal Authority to Regulate Tobacco Locally
55	Legal Authority for Tobacco-Related Board of Health Regulations
56	Legal Authority for Tobacco-Related Municipal By-Laws and Ordinances
57	The Open Meeting Law
<b>59</b>	<b>Chapter 7: Working at the Local Level, Emerging Issues and Local Regulation Templates</b>
59	Working at the Local Level - Local Ordinances and Regulations
61	Sample Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products
62	Regulation of the [city/town] Board of Health Restricting the Sale of Tobacco Products
72	Templates for Restricting Smoking in Areas Beyond the Statewide Smoke-Free Workplace Law
73	Town/City of _____ [Choose one: Regulation/ Ordinance/By-Law] Prohibiting Smoking in Workplaces and Public Places

---



---

## Introduction

This booklet is designed to introduce public health professionals and other interested individuals to tobacco-related laws affecting Massachusetts. It includes state statutes; state regulations promulgated by state agencies; federal laws, including the Federal Food and Drug Administration's (FDA) regulations effective on June 22, 2010; and 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 address tobacco-related issues. These local laws play a substantial role in protecting the public from 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 templates currently available 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 is the Massachusetts Smoke-Free Workplace Law. Other laws address smoking in commercial food preparation and storage areas, buses, transportation terminals, airplanes and airports, federal buildings, public and private schools, child care 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 Sale and Display Laws:** These laws are designed to reduce youth access to tobacco products and include

---

minimum age laws, signage laws, and laws regulating self-service displays, vending machines and single cigarette sales.

3. **Health Warning Laws:** Federal law requires that cigarette retail packages display a government-mandated health warning. 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.
4. **Tobacco Advertising and Promotion:** This continues to be one of the most contentious areas of public health law. Tobacco advertising and promotion are addressed in federal law and in the 1998 Multistate Master Settlement Agreement (MSA).
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/Working at the Local Level:** 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. **Emerging Tobacco-Related Issues:** Lawmaking is an ongoing and ever-changing process. This is especially true in the area of tobacco. Emerging issues, including but not limited to the regulation of “other tobacco products,” prohibiting the sale of single inexpensive cigars, and prohibiting the sale of tobacco in healthcare institutions are addressed in this chapter. This chapter also includes sample templates for local regulations addressing tobacco control issues.

## Chapter One Laws Prohibiting Smoking

### Executive Summary of the Massachusetts Smoke-Free Workplace Law (M.G.L. Chapter 270, Section 22)<sup>1</sup>

#### Background

Since July 5, 2004, all enclosed workplaces with one or more employees must be smoke-free. Designated smoking areas or smoking rooms are not permitted. Limited exceptions are noted below. The full text of the law, fact sheets, and no smoking signs are available at [www.mass.gov/dph/mtcp](http://www.mass.gov/dph/mtcp).<sup>2</sup>

Key provisions include:

- Mandates that all enclosed workplaces with one or more employee, or that are open to the public, be smoke-free. Further, any company vehicle that is shared between employees or is used to transport employees or the public must be smoke-free.
- Smoke may not migrate back in to the enclosed workplace.
- Some exemptions exist:
  1. Private residences, except when the residence is being used to operate a group child care 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 child care 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;

---

<sup>1</sup> [www.mass.gov/dph/mtcp](http://www.mass.gov/dph/mtcp)

<sup>2</sup> The full text of the law is also included in this booklet.

- 
4. Retail tobacco stores that prohibit entry to anyone under the age of 18;
  5. "Smoking" or "Cigar" [or Hookah] bars that derive a majority of their revenue from tobacco sales and are granted permission to allow smoking from the Department of Revenue;
  6. Religious ceremonies where smoking is part of the ritual;
  7. 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; and
  8. Tobacco laboratories/tobacco testing facilities that conduct medical or scientific research on tobacco smoke.
- Signage is required to indicate where smoking is not permitted or for those areas exempt from the law. Signs must be posted in a manner that is visible to all employees, customers or visitors while in the workplace. Additional signs may be posted in public areas.
  - 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.
  - Cities and towns may have local laws that are stricter than this law. Restrictions include banning smoking in private clubs, cigar bars, tobacconists, nursing homes, and outdoor areas.

On August 26, 2005 the Department of Public Health's *Regulations Implementing Chapter 270, s. 22 (105 CMR 661.000)* went into effect. These regulations provide additional definitions for membership associations, and outdoor spaces. A copy of the regulation and a summary are available at the DPH website, [www.mass.gov/dph/mtcp](http://www.mass.gov/dph/mtcp). All fact sheets on the DPH website incorporate the state law, *M.G.L. Chapter 270, Section 22* and the regulations (105 CMR 661.000).<sup>3</sup>

---

<sup>3</sup> The full text of the regulation is also provided in this booklet.

---

## Text of *M.G.L. c.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 18 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 lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

**“Smoking Bar”**, an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; 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; and maintains a valid permit to operate a smoking bar issued by the department of revenue.

**“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, cafés, 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 child care 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 tobacco 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 (4), 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 secondhand smoke; and, that persons under the age of 18 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 secondhand smoke; and, that persons under the age of 18 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: 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 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.

(3) 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 (1) 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) A 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.

Additional information about the Statewide Smoke-Free Workplace Law, including fact sheets and answers to frequently asked questions, is available at [www.mass.gov/dph/mtcp](http://www.mass.gov/dph/mtcp).

---

## **105 CMR 661.000: Regulations Implementing Chapter 270, §22**

### **661.001: Purpose**

The purpose of *105 CMR 661.000* is to provide standards for the implementation of *c. 270, §22*, which establishes restrictions on smoking in the workplace. The requirements in the regulations are intended to clarify or supplement the statutory requirements. Nothing in these regulations 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 *c. 270, §22*.

### **661.003: Definitions**

**Membership Association** shall be as defined in *c.270, §22*.

**Outdoor space** shall be as defined in *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 *105.661.100(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, in accordance with the following requirements.

- (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 first violation, \$200 for a second violation occurring within 2 years of the date of the first violation, 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 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 *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*, 5 or more citations from enforcing authorities within 2 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.

In addition to this statewide law, the following laws address smoking in other venues:



---

## **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 Traveling on Major Highways (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.*

**Enforcement Agency:** The United States Department of Transportation is the enforcing agency.

**Penalty:** Penalties are not specified.

## **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 not specified for smoking on airlines. An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *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.*

Smoking is permitted in federally owned buildings leased to private citizens or businesses. Also, people may smoke in federal residential facilities, and people may smoke in privately owned offices that house "duty stations" for one or more federal employees. *41 C.F.R. §102-74.320.*

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).*

U.S. Postal Service prohibits smoking in all buildings and office space, 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*.

**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:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. Penalties for violating *M.G.L. c.15A, §27* are not specified.

## Public 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, 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:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. Individual smokers may also be assessed a civil fine of \$100 for each offense. Penalties are not specified for a violation of the Education Reform Act.

## Private Schools

**General Rule:** The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including private schools. *M.G.L. c. 270 §22(b) (2)*. The outside grounds of private schools are not addressed in this law. *M.G.L. c. 270 §22*.

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

**Penalty:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. Individual smokers may also be assessed a civil fine of \$100 for each offense.

## Child Care Centers

**General Rule:** The Massachusetts Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including child care centers. *M.G.L. c.270 §22(b) (2)*. In addition, Massachusetts prohibits

---

smoking in all child care centers during hours of operation, including private residences when used as child care centers. *606 CMR 7.11*. A child care 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. Child care facilities do not include informal arrangements amongst 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 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 United States Secretary of Health and Human Services enforces the federal law.

**Penalty:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. 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 Child Care Homes

**General Rule:** Massachusetts prohibits caregivers from smoking on the child care premises during child care hours. *606 CMR 7.11*. A family child care 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:** Violators shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the

---

first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. 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. For example, smoking at dry cleaning facilities is strictly restricted. *527 CMR 15.04; 454 CMR 22.11*. Some similar restrictions can be found at the federal level, including restrictions on smoking in underground mines. *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:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *G.L. c. 270, §22(l)*. No penalties are specified for violations of the Board of Fire Prevention Regulations.

## 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 enclosed or unenclosed pool areas of public pools operated by any subdivision of the Department of Environmental Management. *304 CMR 12.33*.

**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:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. Violations of the Division of Forests and Park 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*.

### **Park and Recreational Buildings**

**General Rule:** The Smoke-Free Workplace Law prohibits smoking in all enclosed workplaces, including enclosed park and recreational buildings. *M.G.L. c. 270 §22(b) (2)*. In addition, Massachusetts prohibits smoking in any building owned or operated by the Division of Forests and Parks and the Department of Environmental Management, including skating arenas, except in designated areas. *304 CMR 12.14*.

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

**Penalties:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or

subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. 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, Wharfs, and Waterfront Areas**

**General Rule:** The Board of Fire Prevention Regulations prohibit smoking on all docks, wharfs 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 or adjacent areas. *M.G.L. c. 270, §22(f) (1)-(10); M.G.L. c.111 §72X; 105 CMR 150.015(D) (11) (b)*.

**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:** An owner, manager or other person in control of a workplace where smoking is taking place shall be subject to a civil



---

penalty of \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. Specific penalties are not listed for laws prohibiting smoking in patient care areas or in rooms where oxygen is administered; however, the Department of Public Health has discretion to suspend a nursing home license or revoke a nursing home license.

## **Multi-Unit Housing Residential Rental Properties**

**General Rule:** Landlords have the legal authority to prohibit smoking anywhere in their residential rental properties, including inside all units. 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 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 no smoking lease addendum. A tenant signs the addendum when signing a new lease or renewing an existing lease. In some cases, municipal public housing authorities and operators of other subsidized housing may also implement a no smoking rule by changing their house rules. Landlords are not required to grandfather in existing tenants beyond the implementation of the no smoking rule. Landlords are not required to designate an outside smoking area. Landlords who designate outside smoking areas locate them away from any buildings.

**Enforcement Agent:** Local boards of health are the primary enforcing agents of the Massachusetts Smoke-Free Workplace Law. *M.G.L. c. 270 §22(m)*. 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 drifting secondhand smoke. *105 CMR 410.750*.

**Penalties:** Fines for allowing smoking in an enclosed common area covered by the Massachusetts Smoke-Free Workplace Law are \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *M.G.L. c. 270 §22(l)*. 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 is available at <http://www.makesmokinghistory.org>**

## **Residential Condominiums**

**General Rule:** Condominium associations decide whether smoking is allowed or prohibited inside units in their buildings. If a condominium association decides to prohibit smoking in all units, it may, but need not grandfather in existing units for smokers. In addition, the Massachusetts Smoke-Free Workplace Law prohibits smoking in indoor common areas, such as hallways, stairways and elevators. Condominium trustees are responsible for prohibiting smoking in such indoor areas.

Trustees may designate any indoor or outdoor common area 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) start distributing ballots two to three weeks after the informational meeting; 4) mail ballots to owners who do not reside in the building; 5) hold the vote open as long as allowed by the condominium documents, sometime a few months, until the number of votes shows that the rule is passed or not. If enough unit owners vote in support of a no-smoking rule (typically 60% to 75%), smoking



---

will be prohibited in all units. After a successful vote, the trustees amend the condominium documents recorded at local county registry of deeds.

**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 drifting secondhand smoke. *105 CMR 410.750*.

**Penalties:** Fines for allowing smoking in an enclosed common area in covered by the Massachusetts Smoke-Free Workplace Law are \$100 for the first violation; \$200 for a second violation within 24 months of the first violation; and \$300 for a third or subsequent violation within 24 months of the second violation. *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 <http://www.makesmokinghistory.org>**

## Chapter Two Tobacco Product Sale and Display Laws

### Tobacco Product Sale and Display Laws

This section addresses laws designed to reduce youth access to tobacco products. Massachusetts has reduced illegal tobacco sales to children through aggressive enforcement of local youth access laws. Studies, however, indicate that children continue to obtain substantial amounts of tobacco products from lax or unscrupulous retailers.

Most cities and towns in Massachusetts have passed local laws that prohibit the sale of tobacco to minors. These local laws usually take the form of board of health regulation. Most are stricter than state and federal laws. These local laws enable local enforcement. Enforcement provisions usually include the requirement of a local tobacco sales permit, graduated penalties based on the number of illegal sales, and permit suspension provisions based on the number of sales. Chapter 6 provides more information about these local laws. Public health professionals should remember to check local laws addressing youth access to tobacco.

Several state and local laws in Massachusetts work in concert. For example, state law prohibits giving or selling tobacco to a minor (*M.G.L. h. 270 §6*). However, as noted above, many local laws are more stringent, requiring retailers to possess a tobacco sales permit that can be suspended if repeated sales to minors 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 new FDA tobacco regulations go to [www.fda.gov/protectingkidsfromtobacco](http://www.fda.gov/protectingkidsfromtobacco).

---

## FDA Regulations

- Requires proof of age to purchase tobacco. Federal minimum age to purchase is 18.
- 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.
- 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 local 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 Laws

**General Rule:** The vast majority of cities and towns in Massachusetts have local regulations that prohibit selling or giving tobacco products to minors. These laws are enforced locally, by boards of health. Local penalties vary from municipality to municipality. (See above). Massachusetts state law prohibits the selling or giving of tobacco products to any person under the age of 18 years, unless that person is the minor's parent or legal guardian. *M.G.L. c. 270 §6*. The FDA also prohibits the sale of cigarettes and smokeless tobacco to any person under the age of eighteen. *21 C.F.R. §1140.14(a)*.

Both state and federal regulations require retailers to obtain identification from anyone who appears to be 26 years of age or younger before selling him or her tobacco; and the retailer must only accept a currently valid government-issued, photographic identification to verify a purchaser's age. No verification is required for any person who appears 27 years of age or older. *940 CMR 21.04(2); 22.06(2), 21 C.F.R. §1140.14(b)*.

**Enforcement Agent:** The FDA enforces its regulations; the

---

Massachusetts Attorney General's Office (AG's office) enforces *940 CMR 21.04*, the local police departments and the District Attorney's Offices enforce Chapter 270, Section 6. Local boards of health enforce local laws relative to youth access issues.

**Penalty:** Fines for violating *Chapter 270, Section 6* range from no less than \$100 for the first offense to no less than \$300 for the third and subsequent offenses. For violations of the AG 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 \$10,000.00 for a sixth or subsequent violation. Penalties for violation of local youth access regulations usually include suspension of local tobacco sales permits for multiple violations, in addition to fines equal to fines in the state law.

## Required Signage About the Minimum Age Sales Laws

**General Rule:** Massachusetts requires that notice of the minimum legal age sales law be posted at retail establishments selling tobacco. State law provides detailed instruction on when and how to post notices about the minimum legal age sales law. At retail establishments that sell tobacco products, proprietors must display a sign at each cash register, informing customers that state law prohibits the sale of tobacco products to any person under the age of 18 years. A forty-eight square inch sign created by either the Massachusetts Department of Public Health or local board of health must be posted at the cash register that handles the greatest volume of tobacco product sales. The sign must face customers at a height of between four to nine feet from the ground. New signs are available as of July 2011. All other cash registers in a retail establishment must display the same message in a smaller nine square inch sign facing the customer. *M.G.L. c. 270 §7; 105 CMR 590.009(F)*. Signs can be obtained by contacting the Massachusetts Tobacco Cessation and Prevention Program at the Department of Public Health.

A similar sign must be posted on the front of all vending machines reading "Persons under eighteen are prohibited from using this machine." The sign must be obtained from the Massachusetts

---

Department of Revenue. *M.G.L. c. 64C §10; 940 CMR 21.04; 22.06(4)*.

**Enforcement Agent:** Local boards of health and the Massachusetts AG's office are the enforcement agents. In addition, the Massachusetts Department of Revenue (DOR), state police and local police authorities may enforce laws concerning vending machines.

**Penalty:** A retailer who sells tobacco may face a fine of up to \$50 for failing to post a sign regarding the minimum age sales law. Any person who removes the sign may be fined \$10. *M.G.L. c.270 §7*.

### Self-Service Displays

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

**Enforcement Agent:** The FDA enforces its regulations, the AG's Office enforces its regulations and local boards of health enforce their regulations.

**Penalty:** A violation of the AG regulation 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 \$10,000.00 for a sixth or subsequent violation.

**Local regulations usually provide for suspension of a tobacco sales permit for multiple violations of local youth access regulations, in addition to fines equal to the fines in the state law.**

### Vending Machines

**General Rule:** The AG regulations ban vending machines containing tobacco products, except in establishments licensed to sell alcohol for consumption on the premises. There are three requirements for all vending machines containing tobacco products. First, they must feature lock-out devices requiring an employee to unlock the vending

machine for each sale. Second, they must be located 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)*. The 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)*. **Local regulations may completely ban the sale of tobacco in vending machines.**

**Enforcement Agent:** The FDA enforces its regulations, the AG's Office enforces its regulations and local boards of health enforce their regulations.

**Penalty:** A violation of the AG 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 \$10,000.00 for a sixth or subsequent violation. Local regulations usually provide for suspension of a tobacco sales permit for multiple violations of local youth access regulations, in addition to fines equal to the fines in the state law.

### Single Cigarette Sales

**General Rule:** Massachusetts state statutes, AG 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, AG 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)*. **Local regulations may also ban the sale of single cigarettes and other single tobacco products.**

**Enforcement Agent:** The FDA enforces its regulations, the AG's Office enforces its regulations and local boards of health enforce their regulations.

**Penalty:** A violation of the AG 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 violation of the FDA regulations, penalties range from a warning letter for the first violation up to \$10,000.00 for a sixth or subsequent violation. Local regulations usually provide for suspension of a tobacco sales permit for multiple violations of local youth access regulations, in addition to fines equal to the fines in the state law.

### **Tobacco Giveaways**

**General Rule:** The AG 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 only qualified adult-only facilities. *21 C.F.R. §1140.16(d).* Local regulations may also ban free distribution of tobacco.

**Enforcement Agency:** The FDA enforces its regulations, the AG's Office enforces its regulations and local boards of health enforce their regulations.

**Penalty:** A violation of the AG 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 \$10,000.00 for a sixth or subsequent violation. Local regulations usually provide for suspension of a tobacco sales permit for multiple violations of local youth access regulations, in addition to fines.

### **Retailer Training**

**General Rule:** The AG regulations require retailers who sell tobacco to implement all measures that are reasonably necessary to prevent the sale of tobacco products to customers younger than 18 years of 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).*

The FDA regulations do not require retailers to implement a training program; however, the penalties are different for retailers who have implemented an approved retail training program and those who have not. For example, the penalty for a first violation for a retailer with an approved training program is a warning letter while the penalty for a retailer without a training program is \$250.00.

Local regulations enacted more than ten years ago may have a section on retailer training.

**Enforcement Agency:** The FDA enforces its regulations, the AG's Office enforces its regulations and local boards of health enforce their regulations.

**Penalty:** A violation of the AG 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 \$10,000.00 for a sixth or subsequent violation. Local regulations usually provide for suspension of a tobacco sales permit for multiple violations of local youth access regulations, in addition to fines.

### **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 statute mandates that cigarette rolling papers may not be sold to any person under the age of 18 years. This law is preemptive. This means that a city or town may not impose any additional requirement regarding rolling papers, except that local requirements in force before November 1995 may be enforced. *M.G.L. c. 270 §6A.* A printed warning that rolling papers shall not be used in conjunction with the possession of a controlled substance must be displayed in a prominent place wherever rolling papers are sold. *M.G.L. c. 94C §321(c).*

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 are the enforcing agents for drug paraphernalia laws.

**Penalty:** For a violation of *M.G.L. c. 270 §6A*, the first violation is punishable by a fine of not less than \$25. The second violation is punishable by a fine of not less than \$50. Third and subsequent violations are punishable by fines of no less than \$100. A violation of *M.G.L. c. 94C §321(c)* is punishable by a fine from \$50 to \$200. A violation of *M.G.L. c. 94C §321(c)* is punishable by imprisonment between one and two years, and/or a fine between \$500 and \$5,000. A person who violates *M.G.L. c. 94C §321(a)* by selling drug paraphernalia to a person under 18 shall be imprisoned for not less than 3 nor more than 5 years, or by a fine between \$1,000 and \$5,000, or both. *M.G.L. c. 94C §321 (b).*

## Chapter Three Health Warnings Laws

### Health Warnings Laws

Federal lawmakers have exclusive authority over tobacco-related health warnings for tobacco packaging and advertisements. Under the doctrine of preemption, which derives from the U.S. Constitution, the Federal Government specifically prohibits states and local governments from imposing new or additional health warnings for tobacco packaging and advertising.

### Health Warnings for Cigarettes

**General Rule:** The Federal Cigarette and Labeling Act (the Labeling Act) prohibits states and municipalities from imposing any “requirement or prohibition based on smoking and health . . . with respect to advertising or promotion of . . . cigarettes.”<sup>4</sup> Federal law requires that cigarette retail packages display a government-mandated health warning. Also, under federal law, cigarette manufacturers and importers may not advertise their products without displaying a mandated health warning in the ad. *15 U.S.C. §1333.* Neither state nor local governments may impose additional health warnings for cigarette packaging or advertising. *15 U.S.C. §1334(b).* The Labeling Act only applies to cigarettes, not to other tobacco products.

However, the Family Smoking Prevention and Tobacco Control Act of 2009 permits state and local laws that regulate “the time, place, and manner, but not content” of cigarette retailers’ and manufacturers’ communications with consumers. *15 U.S.C. §1334(c).* Due to pending litigation at the time of publication of this booklet, it is unclear what kind of state and/or local law is permissible regulation of the “time, place, and manner, but not content” of commercial communication with consumers.<sup>5</sup>

---

<sup>4</sup> 15 U.S.C. §1334.

<sup>5</sup> *23-94th St. Grocery, Corp., Kissena Blvd. Convenience Store, Inc. et al v. New York City Board of Health, et al*, 757 F.Supp.2d 407, S.D.N.Y., December 29, 2010



---

The recent federal law also requires bigger, bolder warning labels for cigarettes and smokeless tobacco. These labels are required in advertisements as well. Cigarette warning labels will have to cover the top 50% of both the front and back panels of the package and nine specific messages must randomly rotate during the course of a year. These warnings must appear on cigarette packages and in advertisements 15 months from the date of the final rule (i.e. September 22, 2012).<sup>6</sup>

**Enforcement Agent:** The Federal Trade Commission or the United States Department of Justice are the enforcing agents.

**Penalty:** Failure to display the cigarette health warning or to display the warning properly is a misdemeanor, and punishable by a fine of up to \$10,000. *13 U.S.C. §1338.*

## Health Warnings for Cigars

**General Rule:** In January 2000, the Federal Trade Commission ordered, through a Consent Order, the seven largest cigar companies, comprising 95% of the U.S. cigar market, to start to display government-developed health warnings on all of their product packages and advertisements. The health warnings must appear on the principal display surface. For premium cigars displayed in open boxes, the principal display surface is the interior box top. As with cigarette warnings, neither state nor local governments may impose additional health warnings for cigar packages or advertising. *In the Matter of Swisher International, Inc. et. al, Federal Trade Commission Docket Nos. C-3964 - 70 (Agreement Containing Consent Orders 2000).*

The Massachusetts AG regulations state that any retailer who sells hand rolled cigars, or who displays for purchase manufactured cigars outside of their original package must display a state-mandated warning about cigar consumption in a sign at least 50 square inches in size. *940 CMR 22.06 (2) (e).*

**Enforcement Agent:** The Federal Trade Commission enforces the federal law, and the AG's office enforces its regulations.

---

<sup>6</sup> <http://www.fda.gov/TobaccoProducts/Labeling/CigaretteWarningLabels/ucm259953.htm>.

---

**Penalty:** No penalty is specified for a violation of the federal law. A violation of the AG regulations 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.*

## Health Warnings for Smokeless Tobacco Products

**General Rule:** Federal law requires that retail packages of smokeless tobacco products - which include any finely cut, ground, powdered or leaf tobacco that is intended to be placed in the mouth or nose - display a government-mandated health warning on the package's primary display surface that covers the top 50% of the package. (See above "Health Warnings for Cigarettes"). Additionally, under federal law, smokeless tobacco manufacturers, importers and packagers may not advertise their products without including one of the federally mandated health warnings in the ad. *15 U.S.C. §4402.* Neither state nor local governments may impose additional health warnings for smokeless tobacco product packages or advertisements. *15 U.S.C. §4406.*

The Massachusetts Commissioner of Public Health has determined that snuff, which is a finely ground or cut tobacco mixture that is intended to be placed in the oral cavity, is classified as a hazardous substance. *105 CMR 650.017.* As such, containers of snuff must bear the federally mandated health warning discussed above. *105 CMR 650.105.*

**Enforcement Agency:** The Federal Trade Commission or the United States Department of Justice enforces the federal health warning. *15 U.S.C. §4405.* The Massachusetts Department of Public Health enforces the Massachusetts requirement.

**Penalty:** Failure to display a smokeless tobacco product health warning or to display it properly is a misdemeanor, and punishable by a fine of up to \$10,000 under federal law. *15 U.S.C. §4404.* No penalties are specified for violations of the Massachusetts law.

---

## Chapter Four Tobacco Advertising and Promotion

### 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.<sup>7</sup> 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) receive limited constitutional protection. The Federal Cigarette Labeling and Advertising Act (the Labeling Act) discussed in the previous chapter also prohibits states and municipalities from imposing requirements “. . . based on smoking and health . . . with respect to advertising or promotion of . . . cigarettes.”<sup>8</sup>

The 1998 Multistate Master Settlement Agreement, or MSA for short, contains several court-approved marketing requirements by which the cigarette industry has agreed to abide in exchange for 46 states dismissing legal suits filed to recover the cost of paying for tobacco-caused illness. The Food and Drug Administration (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 new FDA tobacco regulations go to [www.fda.gov/protectingkidsfromtobacco](http://www.fda.gov/protectingkidsfromtobacco).

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

---

<sup>7</sup> *U.D. Const. amend. 1.*

<sup>8</sup> *15 U.S.C. § 1334(b), exception being the “time, place and manner but not content”.*

---

establishments. These laws, if vigilantly enforced, have the ability to significantly limit the visibility and the amount of advertising, including tobacco advertising.

## Outdoor Advertising<sup>9</sup>

**General Rule:** The MSA provides two outdoor advertising rules. First, the MSA prohibits cigarette advertising out-of-doors, in enclosed arenas, stadiums, shopping malls, video game arcades, and advertising facing outwards on the inside surface of a window. 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)*.

**Exceptions:** There are several exceptions to these two MSA rules. First, cigarette manufacturers may advertise in adult-only facilities. Second, cigarette manufacturers may advertise outside of their manufacturing facilities. Third, cigarettes may be advertised inside retail establishments if the ads are not posted on the inside surface of a window facing outward. Fourth, cigarettes may be advertised outside at the site of an adult-only-event up to two weeks before the event. Fifth, cigarette manufacturers may advertise their products outside cigarette retailers, provided the ad is no larger than fourteen square feet. *MSA II (ii)*.

**Enforcement Agent:** Massachusetts AG's office is the enforcing agent.

**Penalties:** The AG may seek monetary, civil or criminal contempt charges should a court find that a violation has occurred. The AG, 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 manufacturers from using cartoons or cartoon-like qualities in their product advertisements. *MSA III (b)*.

---

<sup>9</sup> The FDA regulations prohibit many types of advertising however many of these sections are not being enforced due to litigation pending at the time of publication of this booklet.

---

**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 any alleged violation before turning to the courts.

## 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 tobacco product identification in newspapers, magazines, periodicals, billboards, posters, nonpoint-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.

**Exception:** 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 2 million people under the age of eighteen. Penalty: No penalty specified.

## Advertising Significantly Viewed by Children

**General Rule:** The MSA bans cigarette 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 was violating this rule by advertising in magazines with youth readership rates of almost twice the percentage of children 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 R.J. Reynolds had targeted youth in violation of the MSA. Ultimately, California and R.J. Reynolds 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.

**Exception:** None.

**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 any alleged violation 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 Communication Commission. For example, these tobacco products may not be advertised on television. *15 U.S.C. §§1335; 4402*.

**Exception:** Regular to large sized cigars may be advertised on any medium of electronic communication under the jurisdiction of the Federal Communication Commission, including television and radio.

---

*In the Matter of Swisher International, Inc. et. al., Federal Trade Commission Docket Nos. C-3964 - 70 (Agreement Containing Consent Orders 2000).*

**Enforcement Agency:** The Food and Drug Administration is the enforcing agent.

**Penalty:** The violation of this ban is a misdemeanor and it carries a fine of up to \$10,000. *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)*. Manufacturers, distributors or retailers may sponsor any athletic, musical, artistic or other social or cultural event, or team or entry in the name of the corporation which manufactures the tobacco product, provided that the corporate name and the corporation were registered and in use with the United States prior to January 1, 1995. In addition, the corporate name cannot include any brand name, logo, or other indicia identical to, similar to or identifiable with those used for any brand of cigarettes or smokeless tobacco. *21 C.F.R. §1140.34 (c)*.

**Enforcement Agent:** The Food and Drug Administration, in addition to local enforcement, is the enforcing agent.

**Penalty:** None specified

### **Brand Name Merchandise and Apparel**

**General Rule:** Under the Multistate Master Settlement Agreement of 1998, cigarette 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 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 manufacturers may pay to place products in movie television, theater, video games or other performances at adult-only facilities. Second, cigarette manufacturers may pay to place their tobacco products in videos not distributed to the general public. For example, cigarette 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 violation before turning to the courts.

# Chapter Five

## Tobacco Tax and Pricing

### Tobacco Tax and Pricing

Federal and State Governments tax tobacco to dissuade tobacco use and to raise government funds. The United States Surgeon General has determined that tobacco taxes are relatively easy to collect and can generate significant revenues. Additionally, numerous studies confirm a fundamental principle of economics: increasing tobacco prices will reduce tobacco use. Like most states in the U.S., the Commonwealth's taxation on the wide variety of tobacco products sold is complex.

This chapter outlines the taxes imposed on tobacco products purchased in Massachusetts. This chapter also reviews minimum pricing requirements of the Massachusetts Department of Revenue.

### 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, \$1.51 per pound of snuff tobacco, \$24.78 per pound of roll your own tobacco, \$2.83 per pound of pipe tobacco, \$50.33 per 1,000 of 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.*

**Enforcement Agency:** 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 \$10,000 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

**General Rule:** Massachusetts imposes an excise tax on tobacco products. The Commonwealth's excise tax for **cigarettes** is \$2.51 per pack of 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 3 pounds." A list of little cigar brands can be located at [www.mass.gov/dor](http://www.mass.gov/dor).

**The state tax on cigars and other smoking tobacco is assessed at 30% of the wholesale price. A cigar is defined similar to little cigars; however cigars must weigh more than 3 pounds for 1,000 units.**

**The tax on other tobacco products is assessed at 90% of the wholesale price. Other tobacco products include anything containing tobacco that is not consumed through smoking, including but not limited to, chew, spit, smokeless tobacco and snus.** *M.G.L. c. 64c, §§6, 7A, 7B, 7C.*

The state excise tax on cigarettes and smokeless tobacco products is collected from the stamper (generally a wholesaler) who must purchase proof-of-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.*

Additionally, the Massachusetts sales tax of 6.25 percent also applies to the purchase of tobacco products. *M.G.L. c.64H §2.* Tobacco retailers must prepay the sales tax on tobacco products. Retailers recoup this sales tax by assessing it at time the retailer sells tobacco to a customer.

**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 fines of up to \$5,000, jail for not more than five years, or both, and civil penalties up to \$5,000. *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 \$2.51 in excise taxes. *M.G.L. c. 64C §13(a).* There are some 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 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.*

**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 a year in prison and a \$1,000 fine in some cases. 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 in the Commonwealth file with the Massachusetts DOR. The internet tobacco retailers must also inform the DOR about the quantity and brand of cigarettes sold in the Commonwealth as well as to whom these shipments were made. The DOR may then collect the cigarette excise taxes from the purchaser. *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 \$1,000 and up to 6 months imprisonment, or both. 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 <http://www.dor.state.ma.us/cigarette/cigarette.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**

### **Legal Authority to Regulate Tobacco Locally**

Massachusetts is a “home rule” state. This means that local legal authority to enact and enforce laws is very strong, especially if these laws are public health laws. Most cities and towns in the Commonwealth have enacted, and currently enforce, local laws to control the sale and use of tobacco, usually in the form of a board of health regulation. Legal authority for board of health regulations is addressed separately from legal authority for city ordinances and town by-laws.

### **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 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. For example, local regulations controlling the sale of tobacco usually include a provision requiring a local tobacco sales permit. Some local regulations ban the sale of tobacco in all healthcare institutions, including pharmacies. Some local regulations ban the sale of non-FDA regulated nicotine delivery devices, such as electronic cigarettes (e-cigarettes).

Local regulations addressing secondhand smoke can include a complete ban on smoking in private clubs, a prohibition of cigar/smoking/hookah bars, buffer zones surrounding public buildings, and other restrictions that are stricter than the statewide smoke-free workplace law.

---

**Enforcement Agent:** Local health agents or others authorized by the board of health to enforce its regulations. Enforcement should be addressed within the body of the local regulation.

**Penalty:** The body of the regulation specifies penalties, which may include fines of up to \$300 per offense pursuant to non-criminal disposition ticketing procedures, as well as suspension of locally issued permits. If fines are not issued pursuant to the non-criminal method of disposition, fines cannot be more than \$1,000. *G.L. c. 111, §31.*

### **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 or others authorized by the municipality to enforce the by-law or ordinance. 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 town by-law or city ordinance specifies penalties which may include fines of up to \$300 per offense under non-criminal disposition ticketing procedures and suspension of permits. If fines are not issued pursuant to the non-criminal method of disposition, fines cannot be more than \$1,000. *G.L. c. 111, §31.*

---

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

### **The Open Meeting Law**

**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 [www.mass.gov/ago](http://www.mass.gov/ago).

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

---

## **Chapter Seven**

### **Working at the Local Level, Emerging Issues and Local Regulation Templates**

#### **Working at the Local Level**

##### **Local Ordinances and Regulations**

Many cities and towns in Massachusetts have passed tobacco-related provisions in order to reduce youth access to tobacco and to combat overall tobacco use. Recently, these regulations have included provisions that prohibit the sale of tobacco in healthcare institutions, including pharmacies; prohibit the sale of non-regulated nicotine delivery devices to minors; prohibit the redemption of coupons; prohibit the use of electronic cigarettes in workplaces; prohibit the sale of cigar wraps;<sup>10</sup> and prohibit smoking in public parks and beaches.

**Prohibiting the Sale of Tobacco in Healthcare Institutions, including Pharmacies:** Pharmacies are the only healthcare institutions that sell cigarettes. The sale of tobacco products in pharmacies sends the message that tobacco is not dangerous. Local boards of health have the authority to ban the sale of tobacco products in pharmacies. In 2008, the city of Boston became the first municipality in the state to ban the sale of tobacco in health care institutions, including pharmacies, drug stores and hospitals. Since then, several cities and towns in Massachusetts have enacted regulations banning the sale of tobacco products in pharmacies.

**Prohibiting the Sale of Nicotine Delivery Products to Minors:** Nicotine delivery products are manufactured products made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the U.S. FDA for sale as a tobacco use

---

<sup>10</sup> At the time of publication of this booklet, the cities of Boston and Worcester were involved in litigation for banning cigar wraps.

---

cessation or harm reduction product or for any other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include e-cigarettes.

**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 inexpensive cigars in packages of less than five (5) is a youth pricing strategy currently before the Boston Board of Health and the New Bedford Board of Health.<sup>11</sup>

**Prohibiting the Redemption of Coupons:** 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*. The Town of Mansfield includes the following language in its local board of health tobacco regulation: *"No means, instruments or devices that allow for the redemption of tobacco products for free or at less than retail price shall be distributed."*

**Capping the Number of Tobacco and Nicotine Delivery Product Permits:** Some municipalities in Massachusetts have limited the number of tobacco and nicotine delivery product permits that can be issued. This policy reduces the density of tobacco sales in a municipality.

**Prohibiting the Sale of Cigar Wraps:** Cigar wraps (also known as blunt wraps) are cigarette-like or cigar-like rolling papers that are made from tobacco leaves. They can come in flavored varieties. Please see footnote 10.

**Prohibiting the Use of Electronic Cigarettes in the Workplace:** Electronic cigarettes (e-cigarettes) are composed of a mouthpiece, heating element, battery and/or electronic circuits that provide a vapor of liquid nicotine to the user, or rely on vaporization of nicotine or any liquid.

---

<sup>11</sup> As of October 20, 2011 neither the Boston Board of Health nor the New Bedford Board of Health had taken a vote on the proposed regulations.

---

**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 rationale behind this policy is usually the public health nuisance threat of cigarette butts and other tobacco product waste.

## Sample Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products

This model regulation includes provisions that prohibit the sale of tobacco in healthcare institutions, including pharmacies; prohibit the sale of non-regulated nicotine delivery products to minors; and prohibit the single sale of inexpensive cigars. It can be downloaded from the MAHB website at [www.mahb.org](http://www.mahb.org).

### This model regulation incorporates:

- (1) the minimum standards required pursuant to the Attorney General's regulations on youth access to tobacco;
- (2) *Mass. General Law Ch. 270, Sections 6 and 7*;
- (3) Boston Public Health Commission language from their 12/2008 amended regulation on tobacco sales in educational institutions and health care institutions; and
- (4) expanded language to include nicotine delivery products and electronic cigarettes.
- (5) an additional retail signage requirement currently being used by the city of Boston.
- (6) language banning the sale of single inexpensive cigars.

### Instructions for Use:

- (1) Fill in [city/town] - 19 instances (one in title);
- (2) If measure is to be a bylaw or an ordinance, (a) replace "regulation" with "bylaw" or "ordinance"; (b) remove applicable "board of health" references; and (c) remove Authority section;
- (3) Fill in effective date;
- (4) See "Policy Decisions!" - 15 instances. These decisions should only be made after consultation with 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 smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000)); and whereas nationally in 2000, sixty nine percent of middle school-age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; **[POLICY DECISION! Two sections need to be removed if not using tobacco ban for pharmacies or educational institutions: and whereas the sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication; and whereas educational institutions sell tobacco products to a younger population, which is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms];** now, therefore it is the intention of the [city/town] Board of Health to regulate the access 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* that "Boards of Health may make reasonable health regulations".

### C. Definitions:

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

---

**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.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece.

**E-Cigarette:** Any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

**Employee:** Any individual who performs services for an employer.

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

**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 subject to the provisions of *247 CMR 6.00*. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

**Minor:** Any individual who is under the age of eighteen (18).

**Nicotine Delivery Product:** Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug

---

Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine Delivery Product includes, but is not limited to, e-cigarettes.

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

**Person:** An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

**Self-Service Display:** Any display from which customers may select a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel, excluding vending machines.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

**Vending Machine:** Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes, any other tobacco product or nicotine delivery product.

#### **D. Tobacco and Nicotine Delivery Product Sales to Minors Prohibited:**

1. No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco or nicotine delivery products to a minor.
2. **Required Signage**
  - (a) In conformance with and in addition to *Massachusetts General Law, Chapter 270, Section 7*, a copy of *Massachusetts General Laws, Chapter 270, Section 6*, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made

available from the [city/town] Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder 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 (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

(b) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the [city/town] board of health that discloses current referral information about smoking cessation. **[POLICY DECISION! This subsection would require an additional signage for each tobacco retailer. This language closely follows the requirement that the city of Boston has been enforcing for over two years.]**

(c) The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating that "The sale of nicotine delivery products to minors under 18 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

4. **Identification:** Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

- 
5. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer. **[POLICY DECISION! This sentence needs to be amended if you do not completely ban vending machines.]**

#### **E. Tobacco and Nicotine Delivery Product Sales Permit:**

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within [city/town] without first obtaining a Tobacco and Nicotine Delivery 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 or nicotine delivery products at the specified location in [city/town].
2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the [city/town] Board of Health 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 and Nicotine Delivery Product sales regarding both state laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the [city/town] Board of Health annually. All such permits shall be renewed annually by \_\_\_\_\_. **[POLICY DECISION! Insert date if desired.]**
5. A separate permit is required for each retail establishment selling tobacco or nicotine delivery products.
6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco and Nicotine Delivery Product Sales Permit holder

shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products 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.
9. Issuance of a Tobacco and Nicotine Delivery 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.
10. A Tobacco and Nicotine Delivery 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. **[POLICY DECISION! Check with your Board of Health first to see if they want to include this condition.]**

#### **F. Cigar Sales Regulated**

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least five (5) cigars. **[POLICY DECISION! Check with your Board of Health first to see if they want to include this condition.]**
2. This Section shall not apply to:
  - (a.) The sale or distribution of any cigar having a wholesale price of more than two dollars (\$2.00) or a retail price of more than two dollars and fifty cents (\$2.50); and
  - (b.) 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].

---

(c.) 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.

**G. Free Distribution:**

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products.

**H. Out-of-Package Sales:**

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.

**I. Self-Service Displays:**

All self-service displays of tobacco products and/or nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. **[POLICY DECISION! Additional Compromise Language: The only exception is self-service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.]**

**J. Vending Machines:**

All tobacco and/or nicotine delivery product vending machines are prohibited. **[POLICY DECISION! Minimum Mass. Attorney General/U.S. FDA language for tobacco vending machines may be used: The only exception is tobacco vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time. A lock out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.]**

**K. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions**

No health care institution located in [city/town] shall sell or cause to be sold tobacco or nicotine delivery products. No retail

---

establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

**L. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions**

No educational institution located in [city/town] shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

**M. Violations:**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or . The violator shall receive:

(a.) In the case of a first violation, a fine of one hundred dollars (\$100.00).<sup>12</sup> **[POLICY DECISION relative to enforcing first violations of Sections E, F, G, H, I, J, K and L. First violations of these sections can be warnings in lieu of fines.]**

(b.) In the case of a second violation within **[POLICY DECISION! 12, 18, 24]** months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days. **[POLICY DECISION! If Board wants latitude on permit suspensions: ...a fine of two hundred dollars (\$200.00) shall be assessed and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for up to seven (7) consecutive business days.]**

(c.) In the case of three or more violations within a **[POLICY DECISION! 12, 18, 24]** month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days. **[POLICY DECISION! If Board wants latitude on permit suspensions: ...a fine of three hundred dollars (\$300.00) shall be assessed and the Tobacco and Nicotine Delivery**

---

<sup>12</sup> Fines can be higher than these suggested fines; however if a fine is over \$300, non-criminal disposition described in Section N cannot be used as an enforcement tool.



---

**Product Sales Permit may be suspended for up to thirty (30) consecutive business days.]**

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.
3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer 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.
4. The [city/town] Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefore 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 therefore in writing.

After a hearing, the [city/town] Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred. **[POLICY DECISION! If Board wants latitude on permit suspensions: ...After a hearing, the [city/town] Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred.]** For purposes of such suspensions, the Board 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. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

**N. Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized

---

by the non-criminal method of disposition as provided in *General Laws, Chapter 40, Section 21 D* or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

**O. Enforcement:**

Enforcement of this regulation shall be by the [city/town] Board of Health of or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the [city/town] Board of Health of or its designated agent(s) and the Board shall investigate.

**P. Severability:**

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

**Q. Effective Date:**

This regulation shall take effect on \_\_\_\_\_, 201\_.



---

## Templates for Restricting Smoking in Areas Beyond the Statewide Smoke-Free Workplace Law

This model regulation can be used to enact a local regulation, by-law or ordinance that is stricter than the state law and to ban the use of e-cigarettes in workplaces and other places. It can be downloaded from the MAHB website at [www.mahb.org](http://www.mahb.org).

### Instructions for Use:

This model regulation incorporates the state's Smoke-Free Workplace Law and provides a format for a municipality to ban smoking in a category where smoking is currently allowed by the state law.

- (1) Fill in [city/town] - 7 instances (one in title);
- (2) If measure is to be a by-law or an ordinance:
  - replace "regulation" with by-law or ordinance in title, sections 1, 5.3, 5.6, 6, 7 (twice) & 8;
  - remove 6 "board of health" references; and
  - edit Authority section (Sect. 2) according to footnote;
- (3) Fill in effective date;
- (4) See "Policy Decisions!" - 3 instances. These decisions should only be made after consultation with the board of health.
- (5) Remove definitions not addressed in the regulation.

---

## Town/City of \_\_\_\_\_ [Choose one: Regulation/Ordinance/By-Law] Prohibiting Smoking in Workplaces and Public Places

### SECTION 1

The purpose of this [choose one: regulation/ordinance/by-law] is to protect the health of the employees and general public in the city/town of [city/town name].

### SECTION 2

This regulation is promulgated under the authority granted to the [city/town name] Board of Health pursuant to *Massachusetts General Laws Chapter 111, Section 31* that "[b]oards of health may make reasonable health regulations."<sup>13</sup> It is also promulgated pursuant to *Massachusetts General Laws Chapter 270, Section 22(j)* which states in part that "[n]othing 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 . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

### SECTION 3

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise: **[POLICY DECISION: Depending upon what you are listing in Section 4.3, you may not need all these definitions. Delete those defined terms that are not used in your document.]**

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

**"E-cigarette"**, any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include

---

<sup>13</sup> This sentence is only applicable to Board of Health regulations. If enacting an ordinance or by-law, this section can begin with the second sentence, with the word "also" omitted.

---

such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**“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 minimus* 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 one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the town/city of **[city/town name]**.

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

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

**“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 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the **[city/town name]** Board of Health.

**“Smoking” or “smoke”**, the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

**“Smoking bar”**, an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by *Mass. General Law Ch. 270, §22* to

---

maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

**“Workplace”**, an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an 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.

Terms not defined herein shall be defined as set forth in *M.G.L. Ch. 270, §22* and/or *105 CMR 661*. To the extent any of the definitions herein conflict with *M.G.L. Ch. 270, §22* and *105 CMR 661*, the definition contained in this regulation shall control.

#### **SECTION 4: SMOKING PROHIBITED**

- (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 is hereby prohibited in **[city/town name]** in accordance with *M.G.L. Ch. 270, §22* (commonly known as the “Smoke-free Workplace Law”).
- (3) Pursuant to *M.G.L. Ch. 270, §22(j)* smoking is also hereby prohibited in **[POLICY DECISION: your local smoking prohibition that goes beyond state law should be addressed here]**.
- (4) The use of e-cigarettes is prohibited wherever smoking is prohibited pursuant to *G.L. Ch. 270, §22* and *Section 4.3* of this regulation.

#### **SECTION 5: ENFORCEMENT**

- (1) 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:

- (i) \$100 for the first violation;
- (ii) \$200 for a second violation occurring within two (2) years of the date of the first offense; and
- (iii) \$300 for a third or subsequent violation occurring within two (2) years of the second violation.

**[POLICY DECISION: The categories listed in 4.3 are outside the state law and the municipality can choose fines that differ from those from the state law that are listed above.]**

- (2) Each calendar day on which a violation occurs shall be considered a separate offense.
- (3) This **[choose one: regulation/ordinance/by-law]** shall be enforced by the Board of Health and its designees.
- (4) Violations of Section 4.2 shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in *Section 21D of Chapter 40 of Massachusetts General Law* without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to *Section 188 of Chapter 111*.
- (5) Violations of Section 4.3 may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in *Section 21D of Chapter 40 of Massachusetts General Law*.
- (6) If an owner, manager or other person in control of a building, vehicle or vessel violates this **[choose one: regulation/ordinance/by-law]** repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the 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.
- (7) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department of the equivalent.

---

## SECTION 6: SEVERABILITY

If any paragraph or provision of this **[choose one: regulation/ordinance/by-law]** is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

## SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this **[choose one: regulation, ordinance, by-law]** nothing in this **[choose one: regulation, ordinance, by-law]** shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

## SECTION 8: EFFECTIVE DATE

This **[choose one: regulation/ordinance/by-law]** shall be effective as of \_\_\_\_\_, 201\_\_.

## For technical assistance with establishing or amending regulations contact

Cheryl Sbarra, Massachusetts Association of Health Boards  
at sbarra@mahb.org (781) 721-0183 or

DJ Wilson, Massachusetts Municipal Association Tobacco Control Program at djwilson@mma.org, (617) 426-7272.

---

**The Massachusetts Association of Health Boards (MAHB)** is a non-profit organization serving all elected and appointed Boards of Health in the Commonwealth of Massachusetts. 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 promotion of a healthy community. Since 1982, MAHB has assisted boards of health and related governmental and community agencies by providing technical assistance, legal education, training, and resource development. 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 **[www.mahb.org](http://www.mahb.org)**. You may also contact Cheryl Sbarra, J.D., Senior Staff Attorney, MAHB, 63 Shore Road, Suite 25, Winchester, MA 01890, (781) 721-0183, sbarra@mahb.org.

**Massachusetts Association of Health Boards  
Tobacco Cessation and Prevention Program**

63 Shore Road, Suite 25 ▪ Winchester, MA 01890

Phone: 781.721.0183 ▪ Fax: 781.721.0183

Email: [sbarra@mahb.org](mailto:sbarra@mahb.org) ▪ Web: [www.mahb.org](http://www.mahb.org)