

TOOLKIT TO ESTABLISH A MUNICIPAL TOBACCO CONTROL PROGRAM



Please be advised that this document was written during the COVID response and the Reopening of Massachusetts in Phases. The protocols contained herein may be in the process of being updated to reflect changes in federal protocol and/or best practices to address safety during the COVID response.

Please use an abundance of caution and recommended health and safety measures to ensure the safety of yourself, the people you work with and the people that you may encounter during your work.

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This document is provided for education purposes only and is not to be construed as legal advice. For legal advice, please contact your city or town attorney.

BOARD OF HEALTH TOBACCO PROGRAM**Staff/Contractor/Young Adult Buyer Training**

MHOA provides free training for Board of Health staff/independent contractors in conducting retail tobacco inspections and compliance checks. The combined training takes approximately three hours.

A municipal identification should always be carried when conducting in store merchant education, retail tobacco inspections and compliance checks. Consult your Board of Health or lead board (for a collaborative) to determine what identification to carry and how to obtain it.

In addition, inspectors need to be appointed by the board. Consult with the Town Clerk on this process as it varies town by town.

I. Retail Tobacco Inspections

The Retail Tobacco Inspection Training reviews the various documents and tobacco products that you will be taking note during a retail tobacco inspection, along with guidance for resolving situations of non-compliance. The established protocol for conducting retail tobacco inspections is included in this document as **APPENDIX A (Page 15)**.

II. Compliance Check Training

The compliance check portion of the training reviews local, state and federal laws, safety for the youth and adult inspectors, state protocol for conducting compliance checks and preparation for Board of Health and court hearings. This training is supplemented by a ride-along with field staff currently conducting these activities. Municipalities that receive funding through the Department of Public Health/Mass. Tobacco Cessation and Prevention Program are not authorized to conduct inspections and compliance checks until they have been trained by MHOA, and are required to follow the approved Compliance Check Protocol, which is included as **APPENDIX B (Page 18)** in this document. To arrange for this training, contact smccolgan@mhoa.com.

III. **Additional Staff Training/Subject Matter Development**

Staff training should also include familiarizing yourself with a number of websites and documents, including the current local regulations in your municipality(ies). A list of essential websites is **APPENDIX C (Page 24)** in this document.

IV. **Introductions**

Introduce yourself to your Board(s) of Health by attending one of their regular meetings. Be prepared to discuss current regulations and how they can strengthen them if needed. Be prepared to make recommendations if asked.

Introduce yourself to the Statewide Technical Assistance Providers, who will be prepared to discuss the current regulations in your area and assist you in making the above recommendations. TA providers will also orient you to their roles and how they can each assist you.

V. **Young Adult Buyer Training for Compliance Checks**

Young adult buyer training is conducted online with an in-person follow-up. To access the online training, contact Molly Butler, FDA State and Synar Coordinator, Molly.Butler@state.ma.us. Prior to conducting the compliance check, you should conduct on-the-job training for the Buyer and remind them of key points in the Compliance Check Protocol. The protocol also includes a section on recruitment. It will also be helpful to you to contact a neighboring counterpart to see what strategies they have used for Buyer recruitment. The on-the-job training guidance is attached to this document as **APPENDIX B (Page 18)**.

IV. **POST**

MTCP has entered into a partnership with Counter Tools, out of the University of North Carolina, to provide state-of-the-art software for data collection, synthesis and reporting. While this is a new partnership, data from municipalities that are funded through a regional grant with DPH/MTCP has been entered in real time. We are now able to offer this to municipalities that are not part of a regional grant, along with access to the POST (Point of Sale Toolkit) system and training provided by Counter Tools. POST provides data on store visits (inspections and compliance checks)

including store mapping, and reports which will assist you in informing your key local stakeholders, tracking sales history of establishments and local demographics. There is general and Massachusetts specific training available to assist you in maximizing the use of POST. The information provided to you by way of the various reports will be helpful to you and your municipality. Please visit their site, countertools.org to learn more about the POST system. For information on POST training and access to the site for your municipality contact smccolgan@mhoa.com.

Vendors/Permit Applications/Permits

I. Vendor Lists

Obtain current tobacco/vape vendor lists from the board of health(s).

This list should be compared to the lists used by the FDA:

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/Tobacco/default.htm>

and the DOR permit list:

<https://www.mass.gov/info-details/dor-cigarette-tobacco-and-vaping-excise-tax#licensed-cigarette-retailers,-distributors,-and-minimum-retail-price-lists->

The FDA site has some very informative training videos.

II. Vendor Database

Create a database of vendors and their pertinent information frequently found on their permit applications. If there is information not contained in the permit application that would be helpful in the future, make a note to collect that information on the next visit to the establishment.

Email addresses of the owner/manager have become increasingly helpful and important to collect.

III. Permit Applications and Permits

Determine when each municipality permit renewal process takes place. Consider providing each municipality with a different color of paper for the permit, which could be switched on an annual basis. Like a car's annual inspection sticker, this will allow you to quickly identify the tobacco sales permit in the establishment, as they receive a number of permits annually from state and municipal government. The mailing of permit applications is also a good opportunity to send out any recent/relevant merchant education. You may want to consider hand delivering some of the applications and/or permits and use this opportunity to educate the retailer and or do an inspection. Prior to applications being sent out, provide the board of health with any recommended changes to the application. See a sample template application as **APPENDIX D (Page 25)** to this document.

Municipal Regulations

I. **Current Regulations**

Obtain and review all current tobacco sales and second hand smoke regulations for your municipality(ies). For the most part these will be health regulations check to see if any of these policies are contained in either city ordinances or town bylaws. Do they at least meet the current state law/federal law/State Attorney General regulations? Take note of what areas the regulations may exceed the state law. It will be helpful to make a chart for each town to refer to while in the field. A sample chart is included as **APPENDIX E (Page 28)** to this document.

II. **Enforcement**

Does the board have a history of enforcement of the regulations as enacted? Does the municipality use non-criminal disposition (civil ticketing) or issue a health order or a combination of the two (i.e. non-criminal disposition fine for an unacceptable sale price for a cigar and state required fining amount for a sale to minor)? How will fines be issued in each municipality?

III. **Court**

In case of a fine non-payment or a legal challenge from a retailer who has been issued a fine, is your local district court aware of the current regulations? Do they support the enforcement of them? Will you be attending any resulting court hearings or will the health director be representing the health department? What is the protocol for the city/town attorney to attend?

BUDGET/FINANCES

A large group of cities and towns in Massachusetts are part of regionally funded tobacco control programs. Some single large cities also receive funding individually. The funding is received through state and federal appropriation to the Department of Public Health/Massachusetts Tobacco Cessation and Prevention Program. Funding, always contingent on legislative approval, is sent to a collaborative's "lead municipality". Other member municipalities of a collaborative receive the services of their tobacco control program, but not the funding. A workplan outlining deliverables is required as a condition to accepting MTCP funding. A typical workplan includes conducting compliance checks, retailer inspections, policy development and responding to second-hand smoke complaints.

There are several cities and towns that are not funded by MTCP for tobacco control. Some of these municipalities receive funding in their municipal budget for tobacco control activities and some do not.

A toolkit has been developed to guide a municipality through the process of obtaining a revolving fund to finance tobacco control efforts with local funds. The toolkit is attached to this document as **APPENDIX F (Page 30)**.

There are a number of questions that must be answered at the inception of a program, including but not limited to:

- a. Is the program staff going to be paid as a municipal employee or an independent contractor?
 1. **Employee:** Will benefits be offered?
 2. **Contractor:** Will they be reimbursed for mileage or is that included in their hourly rate? Is there an established mechanism in the municipality to pay independent contractors?
 3. **Both:** How much per hour will this person be paid? (MTCP has hourly guidelines). How many hours per week will this person work? Who will supervise this person?

- b. Funds to conduct compliance checks - petty cash – needs to be available to the field staff. How is this money accessed and accounted for?
- c. How will the young buyers be paid? Most municipalities pay the young adults as independent contractors, within MTCP's recommended hourly guidelines. All young buyers must be paid at least minimum wage. These guidelines can be found in the Compliance Check Protocol, which is **APPENDIX B (Page 18)** to this document.

Merchant Education/Retail Training

I. **Education Visits**

One of the purposes of education visits is to give establishment owners/managers new information regarding regulations/laws. Just as important, it gives the opportunity for program staff to see what products are being sold in this establishment, and in this municipality, often introducing new products to you. If you are able, purchase any new products to share with your co-workers on the local and state level.

II. **Mailings**

New product advisories, legal notices regarding hearings and draft regulations are the types of education that can be mailed or emailed to establishments to keep the chain of communication open. A word on snail mail, sending a document by first-class mail is considered "legally sufficient". If you send certified mail a retailer could choose to not accept it so also send a copy by first-class mail.

III. **Manager Training**

MHOA conducts live group training for managers and owners. The training takes 1.5 hours, and attendees are provided with the power point and useful handouts. This training is free. To conduct a group training in your municipality or as a group of municipalities, contact smccolgan@mhoa.com.

IV. **On-Line Training**

MHOA hosts on-line training on their website, www.mhoa.com, for retail clerks. This takes approximately 20 minutes, is free and is anonymous. It is recommended that you visit the site and take the training to enhance your own knowledge of tobacco retail issues.

Retail Tobacco Inspections

I. Inspections

During a retail tobacco inspection, you have the opportunity to remedy on the spot some of the situations that are out of compliance (i.e. missing signs, self-service display). Sometimes this non-compliance calls for the issuance of a fine, sometimes all that is called for is to provide the owner/manager with education/material, like signs, that will lead to their establishment coming into compliance. It is important to note to that retailer's file what was missing or what was given to the merchant so you have documentation for the future, as you may need to issue a fine on a subsequent visit. The data sheet for retail tobacco inspections is **APPENDIX G (Page 39)** to this document.

Compliance Checks

II. Compliance Checks

A compliance check is an unannounced, structured inspection of a permitted retail tobacco establishment where a trained young person, under the supervision of a trained adult, attempts to purchase a tobacco/vape product. Municipalities funded through MTCP are required to conduct specific compliance checks during specific times of the year, asking for specific products during those checks. During unspecified checks, the type of product is at the discretion of the adult supervisor. The data sheet for compliance checks is **APPENDIX H (Page 42)** to this document.

Check with your municipality as to what their requirements are for insurance coverage. Program funds can be utilized to pay for additional required insurance coverage.

Your municipality will need a physical location to safeguard purchased tobacco/vape products as evidence. A locked desk, file cabinet or safe will provide the needed safeguards.

III. Required Consent Forms

Prior to conducting a compliance check with young adults, you must obtain consent signed by the youth's parent/guardian, if the young person is under 18 years old; and a buyer's agreement, signed by the young person. Prior to using either of these documents, please have them reviewed by your Town Counsel/City Solicitor. Samples are attached as **APPENDIX I, J, K, & L (Page 45-48)** to this document. An application and medical release are also included but are not required.

IV. Data Collection for Retail Inspections and Compliance Checks

The Commonwealth of Massachusetts utilizes a data system called POST (Point of Sale Toolkit) which has been developed by Counter Tools, out of the University of North Carolina (www.countertools.org and www.countertobacco.org).

V. Independent Contractors

As an alternative to training existing board of health staff, MHOA works with local boards of health to identify independent contractors that can engage in agreements with municipalities to conduct a variety of services, including merchant education, retail tobacco inspections and compliance checks, as needed by individual boards. For the most part, these contractors are people who work in tobacco control, have been trained in conducting these activities, and have access to trained young adults to assist with compliance checks. Financial negotiations and renumerations to these contractors are the responsibility of the contracting municipality.

To obtain electronic copies of any/all of these documents contact Sarah McColgan at smccolgan@mhoa.com

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FY 20 Retail Inspection Protocol

Protocol for Conducting a Retail Tobacco Inspection

- I. Importance of Conducting a Retail Tobacco Inspection**
 - a. Maintain presence in the retail environment
 - b. Visiting a new store provides you the opportunity to collect information needed that should be entered into POST.
 - c. Determine if the establishment is complying with the local, state, federal tobacco regulations.
 - d. Develop or continue to develop a positive working relationship with the retailer.
- II. When to Conduct a Retail Inspection**
 - a. This may vary by city/town, but generally when the store is not at its busiest. You want the owner's/manager's attention during the inspection.
 - b. If the store becomes busy step aside. Do not interfere with business. Ask the owner/manager when is the best time to complete the inspection and keep notes for the following year or for follow-ups.
- III. Identification**
 - a. Identify yourself as an agent for the Board of Health/Health Dept. Do not identify yourself as an employee of MTCP, the state or federal government.
 - b. Show your credentials.
 - c. Ask to speak to the owner/manager/person in charge and state the purpose of your visit.
 - d. Explain the components of the inspection (what you are looking for: permits, signs, tax stamps, etc.). Explain that you may have to go behind the counter to check for tax stamps, single sale of cigarettes, or cheaper single cigars (than the regulation allows).
- IV. If you are refused entry or the opportunity to inspect:**
 - a. Leave without confrontation
 - b. Document the incident with as much information as possible, including date, time, and name of the person who refused the inspection (if you have it).
 - c. Notify the Board of Health/Health Dept. as soon as possible, both verbally and with a copy of the documentation you have completed.
- V. What to look for during Inspections**

- a. If you are doing an initial inspection for a new store, complete the Profile, noting the products available at the store (i.e. do they sell electronic devices, liquid nicotine, blunts wraps, little cigars).
- b. Ask to see the local Board of Health and Department of Revenue permits for the current year. Some regulations state that these must be posted conspicuously.
- c. Signs:
 - State law sign (all permits)
 - Cigar Warning Sign if cigars are sold (all permits)
 - Referral Information for Smoking Cessation Resources (all permits)
 - Health Warning for E-Cigarettes (all permits)
 - Sale of Flavored Tobacco Products is Prohibited (non-age restricted vendors and adult-only retail tobacco stores)
 - Must be 21= to Enter (adult-only retail tobacco stores and smoking bars)
 - Exterior notice of smoking/vaping inside (adult-only retail tobacco stores where not prohibited and smoking bars)
 - Other signs as required locally
- d. Local Board of Health permit
- e. Department of Revenue Permits
- f. Self-service displays
- g. State tax stamp
- h. Evidence of loose cigarette sales (open packs of cigarettes behind or under the counter)
- i. Advertising, “storage”, or sale of prohibited tobacco products

VI. Dealing with Issues of Non-Compliance

- a. No permits
 - sale of tobacco should stop until all necessary permits are obtained. DOR permits can be applied for on-line.
- b. Self-service displays, unlocked humidor
 - determine a reasonable amount of time for the violation to be corrected
 - state that you will come back to re-inspect after that reasonable time period
- c. No tax stamp
 - Report all unstamped cigarettes to the Department of Revenue by filing the Cigarette Complaint Referral Form:
<https://www.mass.gov/doc/form-ccrf-cigarette-complaint-referral-form/download>
- d. Restricted products
 - All restricted products must be removed immediately
- e. Missing signs
 - provide the owner/manager necessary signs so that they can be displayed immediately.
 - Make suggestions as to where to put the sign. Do not put signs on the power wall as it is generally the property of the wholesaler.
- f. Loose cigarette sales
 - Issue a ticket for the violation

VII. Documentation of Non-Compliance

- a. Report all violations to the owner or designee.
- b. Document all violations on a multi-part form whenever possible so that a copy can be left with the owner/manager. A 21D ticket can be used.
- c. Provide the owner/manager with a copy of the municipal regulations so that you can reference them regarding the violation.
- d. Record inspection results in POST.

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FY 20 Retail Compliance Check Protocol

This protocol serves as guidance for funded tobacco control programs conducting enforcement of youth access regulations. The following protocol is meant for you and your program to follow and to offer ways to perform such activities in a manner that we deem acceptable and effective. Please contact MHOA if you have questions related to these protocols.

Retail Compliance Checks

I. Before conducting compliance checks, the following issues must be addressed:

- **Young Adult Buyer recruiting:** If you do not already have a pool of available trained young buyers you can check to see if there are trained in your area being used by the FDA. Please contact Molly Butler at molly.butler@state.ma.us to inquire about trained young buyers. If trained buyers are not available, you can begin by reaching out to recruit from peer leadership programs, schools, community colleges, churches, friends and neighbors, YMCA/YWCA.
- **Parental consent:** Programs must obtain parental consent prior to working with young buyers. If you do not have consent forms developed, MHOA can assist you with a template to present to your collaborative.
- **Adult Supervisors:** Have adult supervisors been selected? Have the adult supervisor(s) attended an MTCP Compliance Check Training? MTCP funds may only be used to reimburse adult supervisors that have attended an MTCP compliance check training. All programs are required to conduct a criminal offender record check (CORI) with the Criminal History Systems Board for all persons who are candidates to work with minors conducting compliance checks. Such check shall comply with the requirements of 101 CMR 15.00.
- **Identifying Tobacco Retailers:** Each year, programs must obtain current lists of permitted tobacco retailers and use that information to update store lists in POST. POST store lists must also be updated regularly by adding new retailers found while in the field.

II. Requirements of Youth Buyers:

- Buyers must be 16 or 20 years old.
- Buyers must be willing and able to ask for tobacco products
- Buyers must be willing and able to provide descriptions of clerks who sell tobacco
- Buyers must complete MTCP/FDA training prior to conducting compliance checks
- Buyers must be willing and able to testify if necessary (enforcement use only)

III. Enrolling Young Adult Buyers:

A. Prior to the completion of any compliance check, it is mandatory that programs have a signed Parental Consent Form on file for each Buyer if they are under 18. This form should include:

- Date of birth of minor

- Signature of parent confirming date of birth or copy of birth certificate
- Last four digits of social security number of minor
- Permission for youth to testify if needed (enforcement checks only)
- Signature of parent giving permission for youth to participate
- Proof of social security number is needed for programs to pay youth

B. All Buyers **must** complete an MTCP/FDA online and in person training using the outline provided prior to conducting a compliance check.

IV. Conducting Compliance Checks - Adult Supervisor Checklist

Items to Bring If Using Paper Compliance Check Forms:

- Bag for Buyer to place personal items from pockets
- Cash to purchase product and possible co-buys (*low denomination bills and change for vending machines*)
- Evidence labels for purchased product
- Cash tracking form
- Timesheet or receipt form for Buyer to be paid
- List of stores/addresses including zip codes and route map
- Most up-to-date compliance check forms

Items to Bring If Using Handheld Device for Electronic Forms: (preferred)

- Bag for Buyer to place personal items from pockets
- Cash to purchase product and possible co-buys (*low denomination bills and change for vending machines*)
- Evidence labels for purchased product
- Cash tracking form
- Timesheet or receipt form for Buyer to be paid
- Route map
- Tablet
- Car Charger for tablet
- A few backup compliance check forms (most up-to-date)

V. Conducting Compliance Checks- Rules for Youth Buyers:

- While conducting a compliance check, Buyers should dress the way that they would normally. Buyers should not try to make themselves look older by wearing excessive makeup, dresses, suits, etc.
- If asked, Buyers may never lie about their age. If asked their age, they must tell the truth or avoid answering the question. Buyers should not plead or threaten during the conversation.

A. Prior to conducting the compliance check: The Buyer should empty his/her pockets to ensure that he/she does not have any tobacco products. The Buyer should place any money or any other items from his/her pockets in a separate bag. This ensures that the Buyer has only the money you gave him or her for the compliance check. The only other item allowed in the Buyer's pocket during a check is their cell phone. Buyer must be given money from your agency for all purchases. Cash must be kept in his/her pockets. We encourage youth **NOT** to carry identification for safety reasons.

B. Conducting the Compliance Check: When you arrive at a location, the driver should park out of the view of the clerk if possible. The Buyer should enter the establishment. The Adult Supervisor must be able to see the youth enter and leave the establishment. If necessary, the Adult Supervisor should leave the car and discretely follow youth to the establishment. The Adult Supervisor should not enter the establishment unless his/her anonymity can be assured.

Purchase steps for Buyers:

1. Buyer stands in shortest line.
2. Buyer attempts the purchase.
3. Buyer should ask for the product requested by adult supervisor. If Buyer is asked for age, always state correct age or avoid answering the question. Always tell the truth.
4. All e-cigarette checks performed should follow the e-cigarette check protocol outlined in Section VI below.
5. If Buyer is asked for ID, Buyer must tell the clerk that he/she does not have one.
6. If the clerk does not sell: Buyer must simply leave the store and go directly to the car. Buyer must not plead with or threaten the clerk.
7. If a sale is made:
 - a. Buyer pays for the product and takes a receipt if given. Buyer should **never** ask for a receipt.
 - b. Buyer leaves the store and goes directly to the car.
8. If the cigarettes are in a vending machine, the Buyer should enter the establishment with small bills and change, and go directly to the vending machine to see if he/she can purchase the cigarettes. If a lock-out device prevents the sale from occurring, the Buyer should go to the cash register/bartender and request that the machine be unlocked.
9. When the Buyer returns, have him/her report what happened.
10. If there is NOT a sale, simply fill out the compliance check form with input from Buyer. The Adult Supervisor must collect all of the information on the MTCP Compliance Check Form. Please complete the form before you leave the site to ensure it is accurate. **Under no circumstances can Buyer complete the form or enter data on a handheld device.**
11. If there is a sale, please follow the following procedure:
 - When Buyer returns to the car, all items are to be given immediately to the Adult Supervisor. This includes the tobacco product, the receipt (if any), and change.
 - Count the change to make sure sale price is correct.
 - Label the front of the product (or evidence bag) with store data and write time/date of purchase and cost of the product. Time of purchase should be the instant the Buyer leaves the store.
 - If your Board of Health or Clerk Magistrate requires a more detailed description of the clerk, make sure you have an accurate description of the clerk from the Buyer. Complete any necessary documentation regarding description of the clerk or chain of custody of evidence.
 - Evidence must remain in Adult Supervisor's possession until returning to the office.
 - Evidence should be placed in a locked area/cabinet until the fine is paid, the permit suspension hearing or court action has been held.
 - If the sale is made, co-buys must also be given to the adult supervisor as part of the evidence.
12. Continue with the same procedure for each store. The minor should return to report to the Adult Supervisor after every attempt so that an accurate form can be filled out for each store.

VI. E-Cigarette Compliance Check Protocol:

The following guidelines are to be followed when conducting compliance checks for electronic cigarettes. Buyers should be trained and know how to identify e-cigarettes, e-hookah and liquid nicotine prior to conducting a check.

Purchase steps for Buyers are as follows:

- Provide Buyer with information about the product – where it may be located in the store – or on the counter, behind the counter.

- Buyer should request a specific type of electronic cigarette, electronic hookah or specific flavor of liquid nicotine from the cashier (JUUL, Njoy, Blu or Logic).
- If product is on the counter, instruct the Buyer to pick up the product and hand it to the cashier for purchase. Buyer should report to adult supervisor if the product is found on counter and this information should be noted on the Compliance Check Form.

VII. Quality Assurance Issues:

- The time and day of the week of the compliance checks must be rotated. Some checks must occur on weekends, evenings and school vacation days.
- Checks should be done as consistently as possible throughout the fiscal year. Checks should not be done just in certain months every year. Inspection patterns can be easily identified by retailers.
- If possible, vehicle should be rotated. Do not use a marked municipal or police vehicle.
- Use an equal mixture of 16 and 17 year-old males and females if possible.
- The Buyers should be trained to ask for the products in a realistic manner.
- Buyers should not attempt to purchase tobacco if they know anyone inside the store. If this occurs, send another Buyer into the store if available or go back to the store later. To minimize the chances of this occurring, have Buyers check stores outside of their hometowns.

VIII. Buyer Safety:

- If a clerk becomes verbally abusive, the Buyer should leave the store immediately and report the interaction to the adult supervisor.
- The safety of the Buyer comes first. The Buyer must always feel safe entering an establishment. If the Buyer does not feel comfortable, s/he should leave the store. That store should not be checked at that time. Simply record that information on the compliance check form. Please note that Buyer should be advised to walk out of the store and directly into the Adult Supervisor's car if they feel unsafe.
- Buyers must be picked up and dropped off for compliance checks at a location convenient to the Buyer. Please take into account the time of day and location when dropping off Buyers to commute home.

IX. MTCP Ticketing Protocol:

It is MTCP's protocol to issue fines/tickets at the end of a round of compliance checks later the same day of the check or to mail/deliver the tickets within 24 hours of the sale and place a phone call to the retailer to give notice of non-compliance. These protocols reduce the risk of "phone trees" that could potentially bias subsequent checks. These procedures also help to protect the safety and anonymity of the Buyer.

MTCP has adopted this protocol as a result of the strong recommendation of the federal government (SAMHSA), who oversees the Synar block grant.

Notification immediately after the sale is NOT recommended. Nationwide, SAMHSA has found that issuing tickets immediately after the sale of tobacco has a strong potential of biasing subsequent compliance checks performed that same day.

If an MTCP funded Board of Health requires that tickets be issued immediately after a sale, a letter from the Board of Health must be sent to the MTCP Contract Manager explaining the rationale. The Contract Manager must issue a waiver for this deviation from MTCP protocol.

X. Fiscal Expenditures:

Payment of Adult Supervisors of compliance checks

MTCP funded staff may be paid regular salary to conduct compliance checks. All job descriptions must clearly indicate that evening and weekend hours are expected. MTCP funds cannot be used to pay funded program staff or other municipal staff (inspectors, police, etc.) for overtime.

Independent contractors can be employed following municipal or agency procedures. MTCP funds may be used to pay independent contractors. Independent contractors may be paid in either of the following ways:

By the hour:

- Contractors may be paid an hourly rate for their services.
- The MTCP recommended hourly rate range for independent contractors is \$25 to \$30.

- Contractors may only be paid for actual hours worked, including time for preparation for a compliance check, time conducting compliance checks, ticketing and hearings (if applicable).
- Contractors may only be paid from the time that they arrive at their agency/health office to the time they return to the agency/health office after the check is complete. Contractors may not be paid from the time that they leave home to the time that they return home.
- Timesheets must be submitted to agency/health office for contractor payment. Timesheets must be available for MTCP audit.
- Hourly pay rates cannot include mileage.

Mileage reimbursement:

Staff and hourly independent contractors may also be reimbursed for mileage if using a personal vehicle. Mileage must be reimbursed following municipal or agency procedures.

- Mileage must be reimbursed separately.
- If there is no municipal or agency policy in place regarding the starting point for mileage reimbursement, mileage must be paid starting from the agency/health office until the return to the office immediately after the checks are completed.
- It is not an appropriate use of MTCP funds to reimburse staff and consultants for mileage from their home to an agency/health office or from their home to perform a compliance check. Mileage must be based on the round-trip distance from the agency/health office to the location (s) of the compliance checks.

Reimbursement for business use insurance rider:

MTCP funds may be used to reimburse staff or independent contractors for the cost of adding a rider to their vehicle insurance policy to cover business use. The use of business insurance riders is strongly recommended by MTCP.

Payment of Young Adult Buyers:

Buyer's must be paid at least minimum wage.

1. Young people participating in compliance checks can be paid as municipal employees or independent contractors at a reasonable rate. For fiscal year 2021, a typical rate is \$12-\$15 per hour including travel time.

Purchase of tobacco products:

MTCP funds can be used to obtain the petty cash necessary to purchase tobacco products during a compliance check. A cash log must be maintained in addition to documenting the cost of all tobacco products on compliance check forms. Petty cash may also be used to purchase small items (gum, mints, and beverage) as a co-buy with tobacco. In fiscal year 2020, co-buys should not exceed \$1.50 per buy.

Purchase of food items:

If a compliance check lasts longer than 2 hours, in fiscal year 2020, it is appropriate to use petty cash to purchase food for the Buyer(s) at a rate of no more than \$10 per Buyer. This should be documented on the cash log and reasonable efforts should be made to obtain a receipt.

You May Want to Consider:

- Having two Adult Supervisors so that one can concentrate on driving and one can concentrate on paperwork.
- In initial training of a new Buyer, having a less experienced Buyer watch an experienced Buyer perform the compliance check. However, only one Buyer can execute the purchase attempt. The second Buyer cannot be involved with any interaction with the clerk or do anything to make the clerk suspicious.
- Using two Buyers for Compliance Checks, so that Buyers can alternate going into stores. Or, both Buyers can enter store so the other can observe while not taking part in the check.

Samples of all forms are available from the Massachusetts Health Officers Association Tobacco Program.

The Massachusetts Health Officers Association Tobacco Control Program is a technical assistance program for cities and towns funded by the Massachusetts Department of Public Health/Massachusetts Tobacco Control Program.

TOBACCO RELATED/HELPFUL WEBSITES

FDA Tobacco Violations:

The FDA conducts compliance checks in all Massachusetts retailers. The results are posted on the FDA website approximately 8 weeks after the compliance check:

https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm

Mass.gov

The Department of Public Health/Massachusetts Tobacco Cessation and Prevention Program show health indicators related to tobacco use, tobacco sale rates to minors and current local tobacco policy.

<https://www.mass.gov/massachusetts-tobacco-cessation-and-prevention-program-mtcp>

makesmokinghistory.org

Tobacco Free Mass and Tobacco Free Kids

Tobacco Free Mass is an important statewide advocacy group, working to ensure that the Massachusetts legislature enacts progressive statewide tobacco policy and provides funding for the Massachusetts Tobacco Control Program.

Tobacco Free Kids works on a national level to advocate and educate for state and national policy on tobacco control.

<https://www.tobaccofreekids.org/>

<https://tobaccofreema.org/>

Massachusetts Health Officers Association

MAHB is the trade association for the board of health members in 351 communities, providing health related legal guidance to its members.

<https://www.mahb.org/>

Massachusetts Health Officers Association

MHOA is the trade association for the health department staff in 351 communities in Massachusetts, providing training and resources to its members.

<https://mhoa.com/>

INSTRUCTIONS FOR USE OF THE SAMPLE PERMIT APPLICATION

1. Fill in the name of the town in the header.
2. Make sure the name of your permit is correct in the header, #14, #15 and #17.
3. On page 2, if you do not have the following policies, delete them:
#7, #8, #9, #10, #11, #12 and #20.
4. Adjust the time on the penalties in #13, if needed.

Town of XXX Tobacco Product Sales Permit Application 2020

The owner must complete both sides of this form. A permit may be issued only after all required information, attachments and signatures are received. All permits must be approved by the Board of Health/Health Department.

Establishment Name (listed on DOR Business License)	Owner Name
DBA ("Doing Business As" Name)/ Store Front Name	
() ()	() ()
Phone	Owner Phone Owner Mobile Phone
Establishment Address (Street, Community, ZIP)	Owner Address (Street, Community, ZIP)
Establishment Email	Owner Email
Manager Name	

Establishment Information

Is this a chain store? ☐ Yes ☐ No Is this an adult only retail tobacco store? ☐ Yes ☐ No Is the establishment within 500 ft. of a school? ☐ Yes ☐ No Is the establishment within 500 ft. of a playground? ☐ Yes ☐ No Check other restricted products sold in the establishment. ☐ Keno ☐ Liquor ☐ Other ☐ Lottery Check the establishment type ☐ Gas Station Only ☐ Supermarket ☐ Grocery ☐ Convenience Store ☐ Gas Mini-mart ☐ Liquor Store ☐ Tobacconist ☐ Pharmacy ☐ Restaurant ☐ Private Club ☐ Other: List _____ Check any products sold in your establishment ☐ Cigarettes Packs ☐ Small Cigars/Cigarillos ☐ Roll Your Own ☐ Electronic Nicotine Delivery Systems (cigarettes) ☐ Cigarette Cartons ☐ Little Cigars (Omega, Winchester) ☐ Chewing Tobacco ☐ E-Liquids ☐ Single Cigars <\$5 ☐ Tipped Cigars (Black and Mild) ☐ Loose Tobacco ☐ Bunt Wraps ☐ Single Cigars >\$5 ☐ Rolling Papers ☐ Smokeless Tobacco ☐ Flavored Tobacco Products ☐ Other: List _____	License /Permit # _____ _____ _____
--	---

Permit Information

Does the establishment have a liquor license?	☐ Yes	☐ No	
Department of Revenue Tobacco Sales Permit(s)	☐ Yes	☐ No	Please attach. _____

Signatures

Permit Applicant Signature	Date
Board of Health/Health Department Signature	Date

For Internal Use

Approved: ☐ Yes ☐ No Permit Fee: \$ Permit #: Fee Paid ☐ Yes Date: ☐ No Other:

A check mark signifies your understanding and agreement. I understand and agree that:	
☐	1. It is against the law to sell any tobacco product including electronic nicotine delivery systems (e.g. e-cigarettes) to anyone under 21 years old regardless of how old the person looks.
☐	2. Anyone selling tobacco products including electronic nicotine delivery systems must conclusively establish the customer's age as over 21 years old by means of government-issued photographic ID.
☐	3. Anyone selling tobacco products including electronic delivery systems must check and verify official government issued photo ID for anyone less than 27 years of age.
☐	4. I consent to unannounced, periodic inspections and compliance checks of the permitted retail establishment.
☐	5. Self-service tobacco product including electronic nicotine delivery system displays from which the customer may select products are prohibited.
☐	6. The sale of single or loose cigarettes or cigarettes in packages of fewer than 20 cigarettes is prohibited.
☐	7. I may not sell or distribute a single cigar with a retail value of under \$2.50, or a package of two or more cigars for less than \$5.00 or more.
☐	8. I may not distribute any free samples of tobacco products including electronic delivery products (e.g. e-cigarettes) and I may not accept any means, instruments or devices that allow for the redemption of tobacco products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue.
☐	9. Tobacco vending machines are prohibited.
☐	10. Non-residential Roll-Your-Own machines are prohibited
☐	11. Flavored tobacco products and vape products can only be sold in licensed smoking bars, for on-site consumption only.
☐	12. Unflavored e-cigarettes with nicotine content over 35 mg/ml can only be sold in adult-only retail tobacco stores and licensed smoking bars. Flavored e-cigarettes with any strength of nicotine content can only be sold in licensed smoking bars, for on-site consumption only.
☐	13. Blunt wraps are prohibited.
☐	14. Penalties for violation of the regulation include monetary fines and/or suspension of this Permit.
☐	15. If I sell the permitted establishment, the buyer will be unable to receive this Permit unless any outstanding fines have been paid and any permit suspensions have been served.
☐	16. This Permit will not be renewed if the permit holder has failed to pay all fines and served all permit suspension issued and the time period to appeal has expired.
☐	17. I may not allow any employee to sell tobacco products including electronic nicotine delivery systems (e.g. e-cigarettes) until such employee reads this regulation, state and federal laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file, that he/she has read the regulation and applicable state laws.
☐	18. I must prominently display a copy of this Permit.
☐	19. I must provide the Board of Health with proof of all current applicable licenses from the Massachusetts Department of Revenue (DOR) and my DOR business permit (Attach a copy of each permit/license).
☐	20. I must display Department of Public Health signs stating, "It is Illegal to Sell or Give Tobacco Products (Including E-Cigarettes) to Anyone Under 21", the State Law sign; Health Warning Sign for E-cigarettes; Sale of Flavored E-cigarettes is Prohibited sign. Adult-only Retail Tobacco Stores must also display a sign stating you must be 21+ to enter.
☐	21. I must display signs provided by the Board of Health that discloses referral information about cessation.

I have received, read and understand the Board of Health regulation "Restricting the Sale of Tobacco Products" and agree to abide by it.

Signature

Date

Print Name

Chart of Towns

SALES REGULATIONS					
	Hanover	Norwell	Pembroke	Rockland	Weymouth
Number of Retailers	22	8	21	22	66
Expanded Definition of tobacco product	N	Y	Y	Y	N
Must have cessation sign-	Y	Y	Y	Y	Y
Sale of Cheap Cigars/minimum package and price	N	Y	N	N	Y
No permit renewal if outstanding fines exist	N	Y	Y	?	N?
No permit renewal if there is 3 sales to MLSA	N	N	N	N 4th sale	N 4th ?
Capping # of Retail License	N	N	N	N	Y
No sales within 500 feet of a school	N	Y	Y	N	N
No new permits with in so many feet of existing one	N	N	N	N	N
Flavored Tobacco-Adults Only	N	Y	N	N	N
MLSA 21	21	21	21	21	21
Ban of Blunt Wraps	N	Y	N	N	Y
Ban of free tobacco products and coupons	Y	Y	Y	N	Y
No less than 20 cigarettes /Out of package	Y	Y	Y	Y	Y
Self Service Displays (only allowed for 21)	Y	Y	Y	Y	Y
Vending Machines-Lock out and Bar	Y	Y	Y	N	Y
Ban RYO machines	N	Y	N	N	Y
Pharmacies	Y	Y	Y	Y	Y
Ban of tobacco product sales in educational institution	N	Y	Y	N	Y
Fining structure mirrors state law	100/200/300	300/300/300	100/200/300	100/300/500	100/200/300
Tolling period for violations	36 Months	36 Months	24 Months	12 Mnth revoke 1 yr	36 Months
Suspension Periods	3,21,90	7/30 days	7/30/ days	3/10 no more than 30	7/30 days
Shall vs May	Neither	Both	May	Shall	Shall
E-cigarettes to Minors	Y	Y	Y	N	Y
Violations					
No permit-	\$50/day				
1st Violation	3 days \$100	\$300	\$100	\$100	\$100
2nd Violation within a 12 or 24month period	21 days \$200	7 Days \$300	7 days 24/\$200	3 days12/\$300	7 days/36\$200
3rd Violations within 12 or 24 month period	90 days \$300	30 Days \$300	30 d 24/\$300	10-30 days 12 \$500	30days/36/\$300
4th Violations with in a 24 or 36month period	12-36 mths revocation	36/may revoke	24 revocation	12 revocation	36 revocation

ETS REGULATIONS					
	Hanover	Norwell	Pembroke	Rockland	Weymouth
Number of Retailers	22	8	21	22	66
Ban Smoking Locally In:					
Smoking Bars (cigar bars and hookah bars)	N	N	N	N	Y
Retail Tobacco Stores(Tobacconists and smoke shops)	N	N	N	N	Y
Buffer Zones around municipal Blds _____ feet	N	N	N	N	Y-25 FEET
Municipal-owned parks and playgrounds	N	N	N	N	Y
Municipal-owned athletic fields	N	N	N	N	Y
Municipal -owned beaches	N	N	N	N	Y
Membership Assoc (private clubs)	N	N	N	N	N
Nursing Homes	N/A	N	?	N	N
Hotels, motels and B&B Rooms	N/A	N	?	N	N
Outdoor Rest/Bar Locations	N	N	N	N	N
Public transportation, bus and taxi waiting areas	Y	N	N	N	Y
Expanded the smoking ban to include e-cigs	Y	N	N	N	Y
Violations					
1st Violation	\$100/each violation	\$20		\$100	\$100
2nd Violation		\$50		\$200	\$200
3rd Violation		\$200		\$300	\$300

A BRIEF GUIDE FOR LOCAL HEALTH DEPARTMENTS TO MUNICIPAL FEES AND REVOLVING FUNDS

Sarah McColgan, Tobacco Control Director
Massachusetts Health Officers Association
2020



**A Technical Assistance Project for cities and towns funded through a MA
DPH grant to the
Massachusetts Health Officers Association**

ESTABLISHING A REVOLVING FUND FOR TOBACCO

The purpose of establishing a revolving fund within the Health Department to be dedicated to tobacco control efforts is to provide the health department with a source of income to sustain activities which will provide the community with education and enforcement. Regardless of whether or not a community is part of a collaborative funded through the Department of Public Health/Massachusetts Tobacco Control Program, state and municipal funding for tobacco control activities have frequently been insufficient and inconsistent over the last 20 years. A dedicated revolving fund will provide the health department with resources to conduct retail tobacco inspections and compliance checks in tobacco retailers; and continue to educate the community of the effects of tobacco use, including vaping, and the resources available to assist with cessation.

Here is some information that may be helpful in efforts to establish a revolving fund:

PURPOSE: The purpose of establishing a municipal revolving fund is to provide a department with the financial resources outside of the municipal budget to conduct specified activities. These resources can originate from fees, charges or other receipts from that department.

BOH AUTHORITY: Chapter 111, Sec. 31 of M.G.L. states, “Boards of Health may make reasonable health regulations.”

FEES: Chapter 40, Section 22F states “Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing city or town ...” Municipalities are allowed to recover 100% of the cost of providing fee-based services including direct and indirect costs.

DETERMINING COST: To determine a reasonable fee, considerations include, but are not limited to: (1) staff time to conduct and inspection; (2) staff time to document the inspection, write reports; (3) mailing and filing charges; (4) follow-up time; (5) keeping of records.

PROCESS: When a department has determined that a fund of money is available that can be certified as not having been used to compute the most recent tax levy, the process can begin to establish a revolving fund which would give that department the resources to conduct specified activities. In obtaining the approval of the Select Board or Mayor, the requesting department should be prepared to: (1) give an overview of Board of Health responsibilities in the area of concern; (2) describe the projected costs of the activities to be conducted; (3) identify the resources which would pay for these activities or services without utilizing property tax dollars. The same information should be presented to the finance Committee or Budget Office. For towns, once approval to proceed is received, the warrant article should be drafted and submitted for approval of the appropriate voting body.

A revolving fund must specify: (1) the program or activities for which the fund may be expended; (2) the departmental receipts in connection with those programs or activities that shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; and (4) any reporting or other requirements the city or town may impose.

RELEVANT LAWS:

Title VII, Chapter 44, Section 53E1/2: No revolving fund can be made for the purpose of paying wages or salaries for full-time employees unless the fund is also charged with the costs of fringe benefits associated with those wages. The total amount of income and expenses must be reported annually. If a fund is not being reauthorized or the purpose for the fund is being

changed, at the end of the fiscal year the balance of the fund reverts to surplus revenue unless the legislative body votes to transfer the balance to another fund established under this section. The ordinance or by-law establishing a revolving fund shall specify: (1) the programs or activities for which the fund may be expended; (2) the departmental receipts that will be credited to the fund; (3) the board, department or officer authorized to spend the fund; and (4) any reporting or other requirements the city or town may impose. The establishment of the fund cannot begin later than the beginning of the fiscal year.

Municipal Modernization Act: Enacted during the 2015-2016 legislative session. The relevant change it brought to revolving funds for Board of Health tobacco control was that the fund can be established through a one-time enactment of a by-law or ordinance at the local level, eliminating annual authorization for everything except the total budget amount. The Act also eliminated the cap that can be spent from the funds.

MODEL BY-LAW OR ORINANCE:

Prior to using the model, municipalities should consult with municipal counsel to ensure consistency with style, organization and format, and compliance with applicable charter provisions and statutory requirements.

MODEL
DEPARTMENTAL REVOLVING FUND BY-LAW/ORDINANCE
G.L. c. 44, § 53E½

Model should not be used without the advice of municipal counsel
Footnotes are not part of Model and are informational only

ARTICLE/ORDER. To see if the town/city will vote to amend the general by-laws/ordinances of the town/city by adding a new section to establish and authorize revolving funds for use by certain town/city departments, boards, committees, agencies or officers under Massachusetts General Laws Chapter 44, § 53E½, or take any other action relative thereto.
(Majority vote to adopt or amend general by-law/ordinance)

VOTED: To amend the general by-laws/ordinances of the town/city by adding the following new section:

[FOR ALL MUNICIPALITIES]
DEPARTMENTAL REVOLVING FUNDS

1. Purpose. This by-law/ordinance establishes and authorizes revolving funds for use by town/city departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

2. Expenditure Limitations.¹ A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law/ordinance without appropriation subject to the following limitations:

A. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund [, except for those employed as school bus drivers²].

B. No liability shall be incurred in excess of the available balance of the fund.

C. The total amount spent during a fiscal year shall not exceed the amount authorized by town meeting/town/city council on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the select board and finance committee/mayor and city council.

3. Interest.³ Interest earned on monies credited to a revolving fund established by this bylaw/ordinance shall be credited to the general fund.

¹ Expenditure limitations set by G.L. c. 44, § 53E½.

² Add exception set by G.L. c. 44, § 53E½ if authorizing a fund for non-mandated school bus service.

³ Interest treatment set by G.L. c. 44, § 53E½.

4. Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this by-law/ordinance, the laws, charter provisions, by-laws/ordinances, rules, regulations, policies or procedures that govern the receipt and custody of town/city monies and the expenditure and payment of town/city funds shall apply to the use of a revolving fund established and authorized by this by-law/ordinance. The town accountant/city auditor shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the town accountant/city auditor provides the department, board, committee, agency or officer on appropriations made for its use.

5. Authorized Revolving Funds

[FORMAT 1 – Separate subsections establishing each fund]

5.1 _____ Revolving Fund.

5.1.1 Fund Name. There shall be a separate fund called the _____ Revolving Fund authorized for use by the _____ Department/Board/Committee/Agency/Officer.

5.1.2 Revenues.⁴ The town accountant/city auditor shall establish the _____ Revolving Fund as a separate account and credit to the fund all of the **(Insert list of specific fees, charges or other receipts to be credited to the fund)** charged and received by the Department/Board/Committee/Agency/Officer in connection with _____ **(Insert departmental program or activity generating the monies).**

5.1.3 Purposes and Expenditures.⁵ During each fiscal year, the _____ Department Head/Board/Committee/Agency/Officer may incur liabilities against and spend monies from the _____ Revolving Fund for **(Insert list of types of program or activity expenses that may be charged to the fund)** in connection with _____ **(Insert departmental program or activity generating the monies).**

(Insert any program or activity expenses that may not be charged to the fund, i.e., will be funded through a regular budget appropriation, require prior approval or are subject to some other limitation or condition).

5.1.4 Other Requirements/Reports. **(Insert any specific reporting or other requirements the town/city wants to apply to this fund).**

5.1.5 Fiscal Years. The _____ Revolving Fund shall operate for fiscal years that begin on or after July 1, _____. **(Insert any sunset or termination provision that the town/city wants to apply to this fund)**

⁴ G.L. c. 44, § 53E½ requires by-law/ordinance to specify fund revenues.

⁵ G.L. c. 44, § 53E½ requires by-law/ordinance to specify who is authorized to spend from fund and the expenses of the program or activity for which fund monies may be spent.

[FORMAT 2 – Table establishing each fund]

The Table establishes:

- A. Each revolving fund authorized for use by a town/city department, board, committee, agency or officer,
- B. The department or agency head, board, committee or officer authorized to spend from each fund,⁶
- C. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the town accountant/city auditor,⁷
- D. The expenses of the program or activity for which each fund may be used,⁸
- E. Any restrictions or conditions on expenditures from each fund;
- F. Any reporting or other requirements that apply to each fund, and
- G. The fiscal years each fund shall operate under this by-law/ordinance.

A Revolving Fund	B Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	C Fees, Charges or Other Receipts Credited to Fund	D Program or Activity Expenses Payable from Fund	E Restrictions or Conditions on Expenses Payable from Fund	F Other Requireme nts/ Reports	G Fiscal Years
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⁶ G.L. c. 44, § 53E½ requires by-law/ordinance to specify who is authorized to spend from fund.

⁷ G.L. c. 44, § 53E½ requires by-law/ordinance to specify fund revenues.

⁸ G.L. c. 44, § 53E½ requires by-law/ordinance to specify the expenses of the program or activity for which fund monies may be spent.

Store Inspection Form		
Inspector Name:	Date: / /	
Store Name:	Address:	
	City:	MA, zip:
	Time	☐ AM ☐ PM

1. Can you visit this store?	
☐ Yes ☐ No, store closed at time of visit ☐ No, members only ☐ No, other reason not listed	☐ No, store does not exist or is permanently closed ☐ No, temporary/short-term or seasonal closure ☐ No, unsafe
2. Purpose of visit	
☐ Routine inspection visit ☐ Failed compliance check follow-up ☐ Retailer requested education	☐ Complaint received ☐ Suspension of permit ☐ Other:
3. Was the inspection completed? ☐ Yes ☐ No <u>If NO</u> , please select the reason:	
☐ Do not sell tobacco ☐ Other:	☐ Complaint received

Signage		
	Yes	No
4a. Is the local board of health permit posted?	☐	☐
4b. Is the DOR tax license posted?	☐	☐
4c. Is required state law signage (MGL ch 270, G and 6A) posted?	☐	☐
4d. Is a "no smoking" sign(s) posted? Yes/No	☐	☐
4e. Is a minimum legal sale age sign posted?	☐	☐
4f. Is a cessation sign(s) posted?	☐	☐
4g. Is a vaping health warning sign(s) posted?	☐	☐
4h. Is a cigar health warning sign(s) posted?	☐	☐
4i. Is a sale of flavored tobacco prohibited sign posted?	☐	☐
Adult-Only Retailers and Smoking Bars ONLY		
4j. Is a "Must be 21+ to enter" exterior sign posted?	☐	☐

4k. If smoking or tobacco use is allowed inside, is there an exterior warning sign that smoking/vaping allowed inside?	☐	☐
4l. If smoking or tobacco use is allowed inside, is there an interior warning sign that smoking/vaping allowed inside?	☐	☐

Location Compliance: Adult-Only Retailers and Smoking Bars ONLY		
	Yes	No
5a. Does the establishment have a doorbell, buzzer, or locking mechanism for preventing minors from entering the store?	☐	☐
5b. Is any tobacco in a self-serve location?	☐	☐
5c. Do all self-service locations meet legal standards?	☐	☐
5d. Are any tobacco vending machines present? Yes/No	☐	☐
5e. Do tobacco vending machines meet all regulation standards?	☐	☐

Violations
6. Were any violations found? Check <u>ALL</u> that apply ☐ None ☐ Loose cigarettes sold ☐ Flavored products or flavored enhancers (including mint/menthol flavors) sold ☐ Missing or incomplete manufacturer document certifying products are not flavored ☐ Vape products with nicotine content over 35 mg/ml sold ☐ Missing or incomplete manufacturer document displaying nicotine content of available vape products ☐ Missing local BOH and DOR permits ☐ Missing signage ☐ Advertising for products not sold in store ☐ Tobacco products sold on or in front of counter ☐ Noncompliance with local cigar packaging/pricing regulation ☐ Other:
7. What action was taken? Check <u>ALL</u> that apply ☐ Educational warning ☐ \$1,000 fine ☐ \$2,000 fine ☐ \$5,000 fine ☐ Other fine (please specify): ☐ Cease and desist order issued ☐ Establishment referred for suspension ☐ Referral given to another agency (e.g. Department of Revenue, Attorney General's office, local Board of Health)

Merchant Education

8. Employee/Merchant Name:

9. Employee/Merchant Title: ☐ Owner ☐ Manager
☐ Supervisor ☐ Clerk

10. Which of the following topics were discussed with the merchant? Check ALL that apply

- ☐ Checked local BOH and DOR permits
- ☐ Reviewed regulations/tobacco sales laws
- ☐ Retailers' responsibilities
- ☐ Proper identification
- ☐ Compliance checks (minors may look older)
- ☐ Penalties
- ☐ Trainings
- ☐ Required signage and placement
- ☐ Smoke-free/vape-free workplace law

11. Which of the following materials were given? Check ALL that apply

- ☐ Copy of regulations
- ☐ State signage (MGL ch 270, G and 6A)
- ☐ Local signage
- ☐ Retailer kit/training materials
- ☐ Other:

12. If state or local signage was provided to retailers, specify which signs:

13. Any field notes?

Store Enforcement Form		
Inspector Name:	Date: / /	
Store Name:	Address:	
	City:	MA, zip:
	Time	☐ AM ☐ PM

1. Were you able to conduct the check? ☐ Yes ☐ No, store closed at time of visit ☐ No, members only ☐ No, other reason not listed		☐ No, store does not exist or is permanently closed ☐ No, temporary/short-term or seasonal closure ☐ No, unsafe
2. Enter Adult Supervisor's Name or ID:		
3. Enter youth ID:		Enter youth date of birth: / /
Select youth gender: ☐ Female ☐ Male ☐ Other		
4. Was the inspection completed? ☐ Yes ☐ No <u>If NO</u> , please select the reason:		
☐ Do not sell tobacco ☐ Machine broken ☐ Youth inspector knows the clerk ☐ Tobacco out of stock ☐ Clerk reports they "don't sell" even though they have a permit and tobacco is visible ☐ Other:		☐ Wholesale only/cartons ☐ Presence of police ☐ Drive-thru only ☐ Permit suspended ☐ Youth under 21 denied entrance at door

Age Verification		
	Yes	No
5. If purchaser is under 21, were they able to enter an adult-only establishment?	☐	☐
6. Was the purchaser asked for ID?	☐	☐
7. Was the purchaser asked their age?	☐	☐
8. Was this an ID-based check?	☐	☐

Visit Details		
9. What type of tobacco did the purchaser attempt to purchase?		
☐ Loose cigarette	☐ Cigarettes	
☐ Cigarette tobacco/roll-your-own	☐ Cigarillos/little cigars/blunts	
☐ Large premium cigars	☐ Chew/snuff/dip/snus	
☐ Hookah tobacco	☐ Electronic nicotine delivery system (ENDS)/E-liquid	
☐ Other:		
10. Enter Product Brand:		
	Yes	No
11. Was the product flavored (including mint/menthol)?	☐	☐
12. Was the sale made?	☐	☐
13. Was the purchaser asked their age?	☐	☐
Smoking Bars ONLY		
14. If product was flavored, could purchaser take product off-site?	☐	☐
15. How much did the product cost?		
16. Was a receipt given?	☐	☐
17. Purchaser made payment using:		
☐ \$1 bill(s)		
☐ \$5 bill(s)		
☐ \$5 and \$1 bills		
☐ \$10 bill(s)		
☐ \$20 bill(s)		
☐ Change		
☐ Other:		
18. Were other products purchased?	☐	☐
19. What action was taken? Check ALL that apply		
☐ Educational warning		
☐ \$1,000 fine		
☐ \$2,000 fine		
☐ \$5,000 fine		

- ☐ Other fine (please specify):
- ☐ Cease and desist order issued
- ☐ Establishment referred for suspension
- ☐ Referral given to another agency (e.g. Department of Revenue, Attorney General's office, local Board of Health)

Merchant Education

20. What is the clerk's gender? ☐ Male ☐ Female ☐ Unknown

21. What is the approximate age of the clerk? ☐ Teen ☐ Young Adult
☐ Adult ☐ Older Adult

22. Any field notes?

Sample Underage Buyer Tobacco Compliance Application

All information will be kept confidential!

The following information is needed so that Underage Buyer can be contacted about the training, conducting checks, and be paid. A representative of the _____ Board of Health will be contacting you to set up the training. Starting pay is \$13.00/hr with the opportunity for a 50 cent raise for each six month period worked.

Name: _____ Date of Birth: _____

Home Address: _____

City/Town: _____ Zip Code: _____

Cell Phone Number: _____ Home Phone Number: _____

Email: _____

School Attending (if applicable): _____

City/Town of School: _____ Social Security Number: _____

Parent/Guardian Name: _____

Parent/Guardian Phone Number: _____

Parent/Guardian Email: _____

Have you used any tobacco products (cigarettes, JUUL /vapes, cigars, cigarillos, chewing tobacco, snus, etc.) in the past 30 days?

A. Yes

B. No

C. Don't know

**Please note: the use of tobacco products does not exclude you from working for the Tobacco Compliance Check program.*

Please tell us anything about your availability (Ex. Not available in the fall because of sports).

Preferred Method of Communication: (Please circle) Text Home Phone Cell Phone Email
Please mail or scan and email the following items to the _____ Board of Health:

- ✓ Underage Purchaser Tobacco Compliance Application
- ✓ Parent Consent and Release Form
- ✓ Underage Purchaser Agreement
- ✓ A clear photograph of yourself
- ✓ Medical Treatment Authorization Form
- ✓ Government Issued Birth Certificate (copy) or Identification
- ✓ Social Security Card (copy)
- ✓ CORI Acknowledgement Form (if the Buyer is 18 +)

Sample Parent/Guardian Consent and Release Form

Dear Parent/Guardian:

Your son or daughter has expressed an interest in assisting, the _____ Board of Health and the Massachusetts Tobacco Cessation and Prevention (MTCP) Program in preventing the illegal sale of tobacco products to underage persons. With your permission, your son/daughter will help us to conduct compliance checks by visiting local tobacco retailers and attempting to purchase tobacco products. Your son's/daughter's activities will be under the direct supervision of a representative from the _____ Board of Health. Each potential undercover purchaser will be trained with respect to standard compliance check procedure. Money to purchase tobacco products will be provided. Any tobacco products purchased by the underage purchaser involved in this project will be retained by the staff person and labeled as evidence. Massachusetts law does not prohibit those underage from buying tobacco, so your son/daughter will not be violating any law by participating in compliance checks. While your son/daughter will spend the majority of their time conducting checks, they may also need to be called as a witness to testify regarding the compliance check in which they participated. Stipends will vary based on the program your son/daughter is conducting checks for. If you have any questions about what the project will entail, please feel free to call the _____ Board of Health at (_____) _____.

PARENT OR GUARDIAN CONSENT AND RELEASE FORM

- I give my consent for my son/daughter's participation in the tobacco compliance check project described above, including the orientation and training.
- I give my consent for my son/daughter's information to be submitted on the Criminal Offended Record Information Acknowledgement form. (for Buyers 18 +)
- I give consent for my son/daughter to ride in a vehicle with an adult working on the compliance check.
- Identities of Underage Purchasers are to remain as confidential as possible. However, in the event of possible enforcement or judicial action, the Underage Purchaser's identity may be revealed and the Underage Purchaser may need to provide a declaration and/or give testimony in a hearing.
- I give consent for my son/daughter's contact information to be shared with representatives from Boards of Health in order to contact my son/daughter to conduct compliance checks. As parent and/or legal guardian, I agree on behalf of myself, my son/daughter, or our heirs, successors and assigns, to hold harmless and defend the _____ Board of Health, and its agents, employees, officers and directors, as well as the sponsors of the activity and their agents, employees, officers and directors from any and all actions, claims, demands, damages, costs, expenses and all consequential damage arising from or in connection with my son/daughter attending the activity or in connection with any illness or injury or cost of medical treatment in connection therewith; provided, however, that this indemnity will not apply with respect to any claims for injury to the extent of any available and applicable motor vehicle insurance or other liability insurance. If I have any questions about this program, I understand that I can contact the _____ Board of Health at (_____) _____.

Underage Purchaser Name (please print): _____ Date of Birth: _____

Parent/Guardian's Name (please print): _____

Parent/Guardian's Signature: _____ Date: _____

Underage Buyer Agreement

Name (please print): _____

INSTRUCTIONS: Please read each item below. **Your signature signifies your agreement to the following:**

1. I understand that the purpose of the Tobacco Compliance Check project is to encourage the increased enforcement of laws that ban the sale of tobacco to underage young people.
2. I agree that I will meet with Tobacco Compliance Officers at the location and time specified for each compliance check.
3. I certify that I will not work with any Tobacco Compliance Officer that I am related to.
4. I understand that specific information about the compliance checks I will conduct are confidential, and that I will not discuss such details such as store names and locations unless directed to do so by Tobacco Compliance Officers.
5. I understand that Massachusetts law does not ban underage persons from attempting to purchase tobacco; therefore, I will not be violating any laws while participating in this activity.
6. I agree not to pursue or participate in any attempt to purchase tobacco products except when I am supervised by Tobacco Compliance Officers.
7. I agree to give any tobacco products, change or unused money that is not my own to the Tobacco Compliance Officers.
8. I am aware that I may need to complete narrative reports and/or may be called as a witness to testify regarding the compliance check in which I participated.
9. I agree to follow the procedures explained to me during the Tobacco Compliance Check training session while conducting tobacco compliance checks. I will alert my Tobacco Compliance officer of any conflicts of interest that I may have, including if any member of my family or anyone I know owns or works at an establishment that I am assigned to check.
10. I understand that I must be available to testify as a witness in administrative hearings.
11. I understand that this position requires that I be of good moral character including being honest, fair, ethical and of high integrity.

Underage Buyer's Signature

Date

Medical Treatment Authorization

*This form is to be filled out by the parent/guardian of the underage buyer and will be kept on file in the case of an emergency during work hours. **PLEASE NOTE: The original, signed document is to be given to the Adult Compliance Officer on your first day of work. A copy of this will also be placed in your file.***

Underage Buyer's Name: _____

Home Address: _____

Date of Birth: _____ Gender: _____

Medical Information:

Primary Care Physician's Name: _____

Phone #: (_____) _____

Medical Insurance Provider: _____ Policy #: _____

Allergies to Medications: _____

Medical conditions for which treatment is being received: _____

Prescription drugs currently being taken: _____

Other pertinent medical information: _____

AUTHORIZATION AND CONSENT OF PARENT(S) OR LEGAL GUARDIANS(S):

As custodian of the aforementioned young person, I grant my authorization and consent for a designated adult to administer general first aid treatment for minor injuries or illnesses. If the injury or illness is severe, I authorize him or her to seek professional emergency personnel to attend, transport, and treat my son/daughter and to issue consent for any medical care deemed advisable by a licensed medical professional or institution. I authorize the designated adult to exercise best judgement upon the advice of medical or emergency personnel.

Effective Date: _____

Signed this _____ day of _____, 20____

Parent/Guardian Signature: _____

Printed Name: _____