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Date: 3/20/2025 12:23:59 PM

Subject: [EXTERNAL] - Re: Tobacco - NFG petition response

Attachments: Tobacco letter - MH comments.docx

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I disagree with Peter's suggestion that the petition only tries to get rid of the fine-component (which we cannot do anyways - since we have to be equal or more restrictive than the state).

I read the petition to/from the SB such that they want us to eliminate the generational ban (and the associated fines/penalties) altogether from the regulation, since it creates two separate groups of people over 21 - one that can purchase, the other cannot purchase such products.

However, the SJC upheld that kind of a ban.

> Please see my changes to the letter - sorry they are extensive.

> I also strongly believe we need to have this published in written form - either in the Cricket or on the website. An interview with Erica is not going to be helpful, since the information will be edited heavily and will not reflect what we are saying. The public needs to see and know our rationale and the background of all this decision-making. Maybe it needs to go into the Gloucester Times

On March 20, 2025 at 11:08:28 AM, Wendy Hansbury (hansburyw@manchester.ma.us) wrote:

Hello Members of the Board,

Attached are the letters Peter and I wrote to send to the Cricket. Also attached is a document with some of the comments from Peter and I in email exchanges. I hope this isn't confusing, but there was a progression of thought that ended with "no editorial in writing, call the Cricket for an interview".

Any comments can come back to me. I will send out everyone's comments before the meeting next week.

Thank you for your time,

Wendy

Wendy Hansbury MPH, RS

Pronouns: she/her/hers ([why pronouns matter](#))

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Massachusetts General Laws established local Boards of Health to act as agents for the Department of Public Health and the Department of Environmental Protection. Local Boards are deputized to adopt and enforce regulations that protect the health and welfare of residents and the environment. The state agency drafts regulations. Local Boards of Health adopt the regulation as written by the state or may make the regulation **more restrictive but not lessen the regulation.**

In August 2024 a state agent investigated compliance to the state tobacco regulations. One of two stores selling tobacco products in Manchester was found to be selling cigarettes to minors. In the process of leveling fines to the store, the state discovered that the Manchester version of the tobacco regulation was old and not in compliance with the state regulation. **Specifically, the Board of Health was told that the language in the old regulations made it difficult to enforce non-compliance and that the fine schedule was out of compliance.** We were told to bring our tobacco regulation in compliance with the current state regulation.

There are a lot of strong opinions about tobacco and nicotine use. The Board believes that a strong policy against tobacco use, which has a much higher addiction rate than either alcohol or marijuana, will separate the product from our current youth.

The Board understands people may be frustrated by the mechanisms employed to protect public health. Tobacco use in Massachusetts is at a historic low of about 13%, but this statistic may not reflect other tobacco/nicotine products such as pouches, little cigars, or e-cigarettes. Use of e-cigarettes and vape products are the highest tobacco product use in MA: 18% of adults aged 18-24 use them and about 5.7% of adults overall.

Youth tobacco/nicotine use by e-cigarette/vape products is increasing and was about 17.6% in 2021. Breaking the cycle of addiction is an important use of the Board of Health authority.

The state sent us the current regulation with an advisory that additional amendments may be forthcoming, in particular the clause that increases the age to purchase tobacco products by one year each year – a so-called “generational ban” on tobacco and nicotine products (NFG). There is a bill in the state house to **potentially** require adoption of this age requirement. **Thirteen municipalities in Massachusetts so far have adopted the regulation. The decision of Brookline to adopt this “generational ban” was challenged in court, but the SJC in Massachusetts upheld the ban.**

Factors that influenced our discussion and adoption of the MBTS – Regulation (with the NFG - Nicotine Free Generation language included) are:

- **“Tobacco product use remains the leading cause of preventable disease and death in the United States. In 2022, 49.2 million (19.8%)—or nearly 1 in 5—U.S. adults reported current tobacco product use.”,**

- “Youth and young adult use of tobacco products contributes to future use. This is because nicotine exposure can harm the developing brain and increase the risk for dependence.”, and
- “Public health professionals and researchers have proven longstanding public health strategies can reduce tobacco use. These strategies include: Media campaigns, and Expanded access and availability of treatment and counseling for tobacco dependence.

The Board of Health held a public hearing on the corrected tobacco regulation which included at the Board’s discretion the increasing age requirement/“**generational ban**”. Both stores currently selling tobacco products were invited to the meeting. One store did not choose to participate. The other store asked for an extension of the effective date which was granted. One resident requested a postponement of the vote. No other resident participated. The Board adopted the tobacco regulation. It is important to note that the penalty for noncompliance is a fine **and/or** suspension of the license. **It is also important to note that current legal purchasers of tobacco/nicotine products are not affected by this regulation, so the existing store revenue from such products should not change, since it does not affect existing nicotine users over the age of 21.**

The Board of Health always encourages resident comments and participation. There is a petition, signed by 19 residents, to vote at town meeting to remove **the “generational ban” language and associated fines and penalties. Based on our mandate for our regulations to be at least equivalent (or more restrictive) than the state regulations, removing the language and fines is not possible by such a petition. In addition, the Board’s decision to include the “generational ban” in the regulation is binding at this point, and cannot be removed by a town-meeting petition. The ONLY way to challenge such Board of Health regulation is through the court system (which has been tried in Brookline but failed)**

TECHNICAL COMMENTS ONLY:

2nd paragraph, 2nd sentence – selling cigarettes to minors:

“On Sunday August 13, 2023 the North Shore/Cape Ann Tobacco Policy Program conducted tobacco compliance checks in the Town of Manchester-By-The-Sea.” via email/memo from Joyce Redford, Director NS/CATPP, dated 8/16/23 at 11:44 am.

2nd paragraph, 3rd sentence – did not prohibit selling:

The regulation has always prohibited the sale to minors, it was the fine schedule that was out of compliance with the state.

This was corrected at the 2024 Town Meeting and our June 2024 hearing for Tobacco Regulation update. The NS/CATPP Director noted at that time the local regulation format made it difficult to enforce and asked us to revisit them in the fall of 2024.

3rd paragraph, 1st sentence – increasing the age:

The law would set a date (year) that anyone born after that date would not be able to buy tobacco products.