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Subject: Tobacco - NFG petition response

Attachments: Tobacco letter.docx

Petition to Overturn Local BOH Regulation.docx

EMAIL exchanges on NFG petition.docx

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. The Manchester tobacco regulation did not prohibit selling tobacco products to minors and the fines were lower than the minimum fines mandated by the state. We were told to bring our tobacco regulation in compliance with the current state regulation.

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. There is a bill in the state house to require adoption of this age requirement. Eleven municipalities have adopted the regulation.

The Board of Health held a public hearing on the corrected tobacco regulation which included at the Board's discretion the increasing age requirement. 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 or suspension of the license.

The Board of Health encourages resident comments and participation. There is a petition, signed by 19 residents, to vote at town meeting to remove the fine for noncompliance to the tobacco regulation and leave only suspension of license as not binding. The ONLY way to challenge any Board of Health action is through the court system.

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.

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 regulation models. Local Boards of Health may adopt the regulation and make more restrictive modifications that are appropriate for the Town.

A citizens' petition has been submitted for the 2025 Spring Town Meeting asking to overturn a local public health regulation. The Massachusetts General Laws structure of the local Board of Health authority requires that a Massachusetts Court determines the validity of a Board of Health decision. The Manchester Board of Health encourages residents' comments and participation in our local government.

The Board of Health was told by the North Shore / Cape Ann Tobacco Policy Program that our local regulations were not updated to the current version of the state's requirements, including the fine schedule. In November 2024, the Board of Health held a public hearing to adopt the tobacco related regulations. A member of the Board of Health asked that the proposed Nicotine Free Generation (NFG) regulation, that prohibits nicotine product sales to people born after January 1, 2004, be included for review. The drafts used during the hearing were provided by the North Shore / Cape Ann Tobacco Policy Program.

The North Shore / Cape Ann Tobacco Policy Program is funded through the Massachusetts Tobacco Control Program (MTCP) of the Department of Public Health and is part of Smoke Free Solutions North, the MTCP Community Mobilization Network. MTCP was created through a statewide referendum in 1992 and has programs that facilitate smoking cessation and supports retail compliance.

The public hearing for the regulations were advertised two times in the local newspaper two weeks in advance, and the notice was posted on the website. The Board's Administrative Assistant contacted the tobacco sales license holders prior to the meeting, one of whom attended the hearing. Few other community members attended, which is usual for the Board's public hearings.

The Board's choice to adopt this regulation is focused on changing the access points of a highly addictive substance. We are all interested in protecting one another from preventable disease; yet this regulation does not affect existing nicotine users over the age of 21.

The main reasoning for the Board to adopt the Nicotine Free Generation regulation include:

- "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. These measures can be coordinated with tobacco prevention and control policies (e.g., price increases, smoke-free policies). Together, they are essential for reducing the toll caused by tobacco product use including disease and death in the United States."

(CDC Smoking and Tobacco Use; Current Cigarette Smoking Among Adults in the United States, Sept. 17, 2024. <https://www.cdc.gov/tobacco/php/data-statistics/adult-data-cigarettes/index.html>)

One community member asked for a postponement of the vote. The local retailer asked for additional time to prepare before enforcement of the NFG regulation. This was allowed by the Board

along with the 3 to 1 vote to approve the regulations as presented. Manchester is one of 13 communities to adopt the NFG rule. This proposal for a sales ban is before the MA Legislature for consideration during this session.

The following sections are EMAIL exchanges between Peter/Wendy and WENDY responding to SB and Newspaper requests for information. The progression is the most recent first and going back in exchanges to the documents provided. This is meant to be helpful. If it's not, please disregard.

WENDY:

I now see that we are understanding this petition differently. You are saying the petition is trying to eliminate fines. I was saying the petition was trying to force the Board to change the regulation.

One of people who signed the petition mentioned that it was couched to them as "government overreach" and that the Board was trying to force its opinion and affecting business owners.

That was why I was focusing more on the justification of the local regulation, versus the government is forcing us to change the rules. You are right that alignment is why it was originally brought up and is still an important point.

I am making this complicated, I understand. I will back off, I just think it's important that I understand what the whole Board wants to see represented to the Town and that we provide a clear and complete picture. Again – my technical thinking.

Greg let me know that the warrant will include the usual statements from the Select Board and Fin Com- SB in support of/ Fin Com no position. We will have an opportunity to speak at the Town Meeting. We should put it before the Board who will speak. I'm happy to do it as the Board's representative, but maybe someone else will want to.

WENDY:

I'm not sure saying " The age to purchase tobacco products increases by one year, each year." is clear. It makes it sound progressively higher, instead of saying turning 21 doesn't allow purchase of nicotine in Manchester, and current smokers are not affected.

PETER:

The age to purchase tobacco products will be 22 later this year, 23 next year, etc. Perhaps the way to phrase it is the age to purchase tobacco products increases yearly

PETER:

The talking points from our perspective:

- > Although funded by the town, the BOH is overseen by the DPH and the DEP.
- > We do not write regulations. The state provides regulations so there is uniformity across the state.
- > We can modify a regulation to make it more restrictive but can not lessen the regulation; ie reduce or eliminate fines.
- > The state reviews and approves any change to a regulation.
- > The state advised us that our tobacco regulation was not consistent with existing regulation and we had to update the regulation.

- > The board voted to include the “generational” age restriction clause. The age to purchase tobacco products increases by one year, each year. Current smokers 21 and older are unaffected.
 - > Answer any questions Erica may have.
 - > Describe the public hearing
 - > Close with actions of the BOH had on be challenged in the state court. Any vote by town meeting would not be binding.
 - > The content of the tobacco regulation is only a tool to set a precedent to attempt to challenge BOH actions.
-

PETER:

My experience to successful communication is to take the complex and make it easily for the general public to understand and to stay focused on the topic.

The petition is an attempt to eliminate fines. That is what we should respond to, not the content of the regulation.

The response to not eliminate fines are:

- 1.The BOH is under the jurisdiction of the DPH and DEP
 - 2.The DPH told us our old regulation not consistent with state law
 - 3.They provided the regulation.
 - 4.We can make the regulation more restrictive but not less; ie we can not eliminate penalties
 - 5.The state reviews and approves all regulations.
 - 6.The only method to challenge a BOH action is through the courts. Town meeting vote is not binding.
-

PETER (black) / WENDY (red):

1. > Although funded by the town, the BOH is overseen by the DPH and the DEP. **Do we want to draw attention that they fund us and we are not under their direct purview? There is an ability to remove the admin and budget.**
2. > We do not write regulations. The state provides regulations so there is uniformity across the state. **We do write regulations, the state often provides “models”, but the Board can change them significantly.**
3. > We can modify a regulation to make it more restrictive but cannot lessen the regulation; ie reduce or eliminate fines.
4. > The state reviews and approves any change to a regulation. **They only review/approve it to determine if there is a conflict with the state rules. They don’t comment on more restrictive rules.**
5. > The state advised us that our tobacco regulation was not consistent with existing regulation and we had to update the regulation.
6. > The board voted to include the “generational” age restriction clause. The age to purchase tobacco products increases by one year, each year. Current smokers 21 and older are unaffected.
7. > Answer any questions Erica may have.
8. > Describe the public hearing

9. > Close with actions of the BOH have to be challenged in the state court. Any vote by town meeting would not be binding.
 10. > The content of the tobacco regulation is only a tool to set a precedent to attempt to challenge BOH actions. **Do you mean challenge the state's regulatory actions?**
-

WENDY (in response to PETER's comments on "Petition to Overturn" letter):

Those are great points. I put them in. "restrictive" last line in first paragraph, first line in 3rd paragraph, and the end of the sentence just before the bullet points.

PETER (comments on my letter):

In the first paragraph the statement that we can modify the state regulation can be misconstrued and feeds into their request. We can make the regulation more restrictive but not less; ie we can't eliminate penalties for noncompliance. By definition regulations have to have a penalty for noncompliance.

Also can you mention that the regulation will not impact those currently over 21.

There is an impression that we arbitrarily decided to review the tobacco regulation. Stating that the state told us our old regulation was not consistent with current tobacco regulation reinforces that we need to respond to state directives

WENDY (sent with "Petition to Overturn" letter):

I hit most of your points except the violation. I think having only 1 in the past 5+ years doesn't help our case. The original violation date was August 2023. Joyce didn't tell us there were issues with the fines until after the spring 2024 vote.

Of course, change what you want. I cut out a lot of the explanation of how it got to the Board in the attempt to keep 1 side page.

PETER (discussing "Tobacco letter"):

The message I tried to communicate:

We are under the authority of state agencies

We do not write regulations. The state supplies the regulations for uniformity between municipalities

We can only make the regulations more rigorous not less - can not eliminate the fines

The review of the regulation was due to a violation uncovered by the state.

The review of the public hearing indicates that only one person cared.

Vote in not binding. Only challenge to BOH is through the courts.

Hoped to explain our position and that future attempts will be futile

WENDY (Response to Ann Harrison):

Hi Ann,

Thank you for forwarding the email. 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. I do understand people being 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 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 use by e-cigarette/vape products is increasing and was about 17.6% in 2021. I've attached a snapshot of products that "are not targeted to youth" according to the tobacco industry. Breaking the cycle of addiction is an important use of the Board of Health authority.

Manchester's Board of Health did hold a public hearing, and though not well attended by residents of the town, the main tobacco retailer was present. He and his representative were able to speak about concerns, and the Board heard and agreed that allowing time to implement this new Nicotine Free Generation regulation was a reasonable request. The regulation has an enforcement date of April 1, 2025.

I appreciate you forwarding any concerns, even those that are from other municipalities. Each side was well represented at the Board Meeting, even though there were only 3 local residents in attendance.

SB EMAIL (forwarded to me from Ann Harrison SB Chair – not from a resident):

Dear Select Board Chair Ann Harrison,

Some cities and towns in Massachusetts are considering a new policy called Nicotine Free Generation (NFG).

I ask that you reject this policy for the following reasons:

- When a person is 21 years of age, that person is an adult and should be able to use legal adult products.
- It applies different laws to two groups of adults treating them differently from one another for the purchase and use of the same products despite both being 21 years of age or older.
- It does nothing to address youth use of nicotine products since the policy targets adults upon reaching the age of 21.
- It is blatantly hypocritical allow an adult to purchase and use cannabis or alcoholic beverages or gamble on sports, but prohibit that same adult from purchasing and using a nicotine product.

This policy goes way too far.

Say NO to NFG regulations in Massachusetts.

NEWSPAPERS:

The Manchester-by-the-Sea Board of Health held a public hearing on November 12, 2024, to discuss the Tobacco Regulations including the 'Nicotine Free Generation' initiative. The ban is on the sale of products containing nicotine to people born after January 1, 2004.

After discussion, the Board voted to pass the local regulation with an implementation date of April 1, 2025. This allows time for local businesses to pivot and educate staff.

The regulation has enforcement and violation language that is typical to tobacco regulations at the local and state level. Both the Manchester Board of Health and the North Shore / Cape Ann Tobacco Policy Program emphasize education and prevention as we work cooperatively with retailers. We want to be helpful to businesses implementing this locally as part of efforts to break the cycle of nicotine addiction.

.....

Glad to answer, again thank you for your interest in our local public health efforts.

The Board vote was 3 to 1 to approve the Nicotine Free Generation section to be included in the Restricting the Sale of Tobacco Products Regulation. One seat is open. There are concerns from tobacco retailers and they did have opportunity to express their position at the public hearing. After the meeting, I checked in with a long-time, local retailer/resident regarding the future impact of the change. We had a very good discussion about the meeting and the anticipated difficulties of implementing the age restriction at the checkout counter.

The retailer brought up valid concerns. The influx of seasonal tourists will create challenges because of the current patchwork adoption of the regulation; state adoption as proposed by the current legislature would help. Pushback from customers could possibly be heated and/or dangerous to their employees. This is a serious concern; we encourage preparation for it to anticipate problems and have ready responses available to employees.

My understanding is the North Shore / Cape Ann Tobacco Policy Program will work with retailers in the coming months to be ready by educating both the employees and the customers. The Board of Health wants to ensure that good tools are available to the retailers. I hope that retailers feel they can come to us and ask for help if needed.

They are a first line of public health protection measures by stopping the purchase of nicotine. We need to support their efforts as businesses and residents invested in our community. The Board's choice to adopt this regulation is focused on changing the access points of a highly addictive substance. We are all interested in protecting each other from preventable disease.

This is information I'm sure you have, but I've included as it is the main reasoning for the Board to adopt the Nicotine Free Generation regulation:

- "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
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These measures can be coordinated with tobacco prevention and control policies (e.g., price increases, smoke-free policies). Together, they are essential for reducing the toll caused by tobacco product use including disease and death in the United States.

(CDC Smoking and Tobacco Use; Current Cigarette Smoking Among Adults in the United States, Sept. 17, 2024. <https://www.cdc.gov/tobacco/php/data-statistics/adult-data-cigarettes/index.html>)