

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.
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- > 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.
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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.
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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?**
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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.

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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
- “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>)