

Post-SJC Decision NFG Update to the Board of Health

On Friday, March 8th, 2024, the Supreme Judicial Court of Massachusetts unanimously ruled in favor of the Town of Brookline.

The proposed Nicotine Free Generation policy to the Board of Health is as follows:

“Prohibition of Sales – No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to anyone born on or after 1/1/2004.

Any person, firm, corporation, establishment, or agency who or which shall violate any provisions of this regulation and upon written notification shall be fined and suspended according to the schedule set forth under the Regulation of the Melrose Board of Health Restricting the Sale of Tobacco Products.”

On July 19, 2021, the Town of Brookline sought approval from then-Attorney General Maura Healey concerning the proposed policy. The reason cited by the AG was that both the Tobacco Act (21) and the bylaw aim for the same goal of barring the sale of tobacco products to those under the age of twenty-one, and because the bylaw simply goes further than the Tobacco Act (21), and given the broad public health power of municipalities to regulate tobacco products, the bylaw was not inconsistent, contrary, or conflicting with the Statewide minimum sales age.

The SJC highlighted key points in its decision to uphold the regulation passed by the Town of Brookline.

- “Importantly, state laws and local ordinances and bylaws can and often do exist side by side.”
- “This is particularly true of local ordinances and bylaws regulating public health, the importance of which we have long acknowledged.”
 - (“[a]mong these [local] powers no one is more important than that for the preservation of the public health”)
 - (“[t]he great object of the city is to preserve the health of the inhabitants”)
 - “With deference to the role local communities historically have played as laboratories for potential Statewide standards, 12 municipal laws are afforded “considerable latitude”; we require “a sharp conflict” between the local and State laws before concluding that the local law is preempted.”
 - “Over time, the bylaw broadens the separation between those under twenty-one years of age and those to whom tobacco products may be sold in the town, eventually banning sales of such products in the town altogether. In

other words, the group two cohort will have less access to tobacco products because it is likely that fewer individuals in their social circles will be able to purchase tobacco, reducing the likelihood that persons in group two will begin to use such products in the first instance.”

- “Also, as the market base for tobacco products in the town shrinks, the economic incentives to sell the products in the town reduce. See *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 12 (D.C. Cir. 2022) (“Businesses seeking to make a profit selling tobacco products . . . face powerful economic incentives to reach younger customers”). In brief, the legislative purpose of the minimum age provision of the act -- namely, to prohibit sales to those under twenty-one years of age -- can be achieved in the face of the local law.”

Many false claims have been and will be presented; unsubstantiated arguments, fearmongering around increasing black market sales, or unsupported constitutional rights claims.

Here are the facts:

- Smoking is still the leading cause of preventable death.
- 480,000 Americans die from smoking-related causes every year.
- Nicotine addiction is the hardest addiction to quit.
- 68% of adult smokers want to quit.
- 55% of adult smokers try to quit every year.
- Only one in ten who try to quit are successful.
- 9 out of 10 smokers started smoking by the age of 18.
- The Tobacco industry spent \$8 billion in 2021 on advertising and promotion.
- RJ Reynolds, one of the big tobacco companies, reported net earnings of \$8 billion for the third quarter of 2023.