

Before court ruling, Brookline's generational ban on tobacco sales was an oddity. That's quickly changed.

By Matt Stout Globe Staff, Updated April 23, 2024, 8:24 a.m.



Brookline in 2020 adopted a bylaw banning the sale of tobacco or e-cigarettes to anyone born on or after Jan. 1, 2000. DAVID L. RYAN/GLOBE STAFF/DAVID L. RYAN, GLOBE STAFF

Once unprecedented, a rule banning the sale of tobacco and e-cigarettes to most, if not all, people born this century has quickly proliferated in Massachusetts, turning the state into ground zero for a novel effort to go beyond setting a minimum age to combat

tobacco use.

Local officials in more than a half-dozen greater Boston communities have either passed bans or begun considering them just weeks after the Supreme Judicial Court upheld Brookline's own groundbreaking bylaw that banned the sale of tobacco to anyone born on or after Jan. 1, 2000.

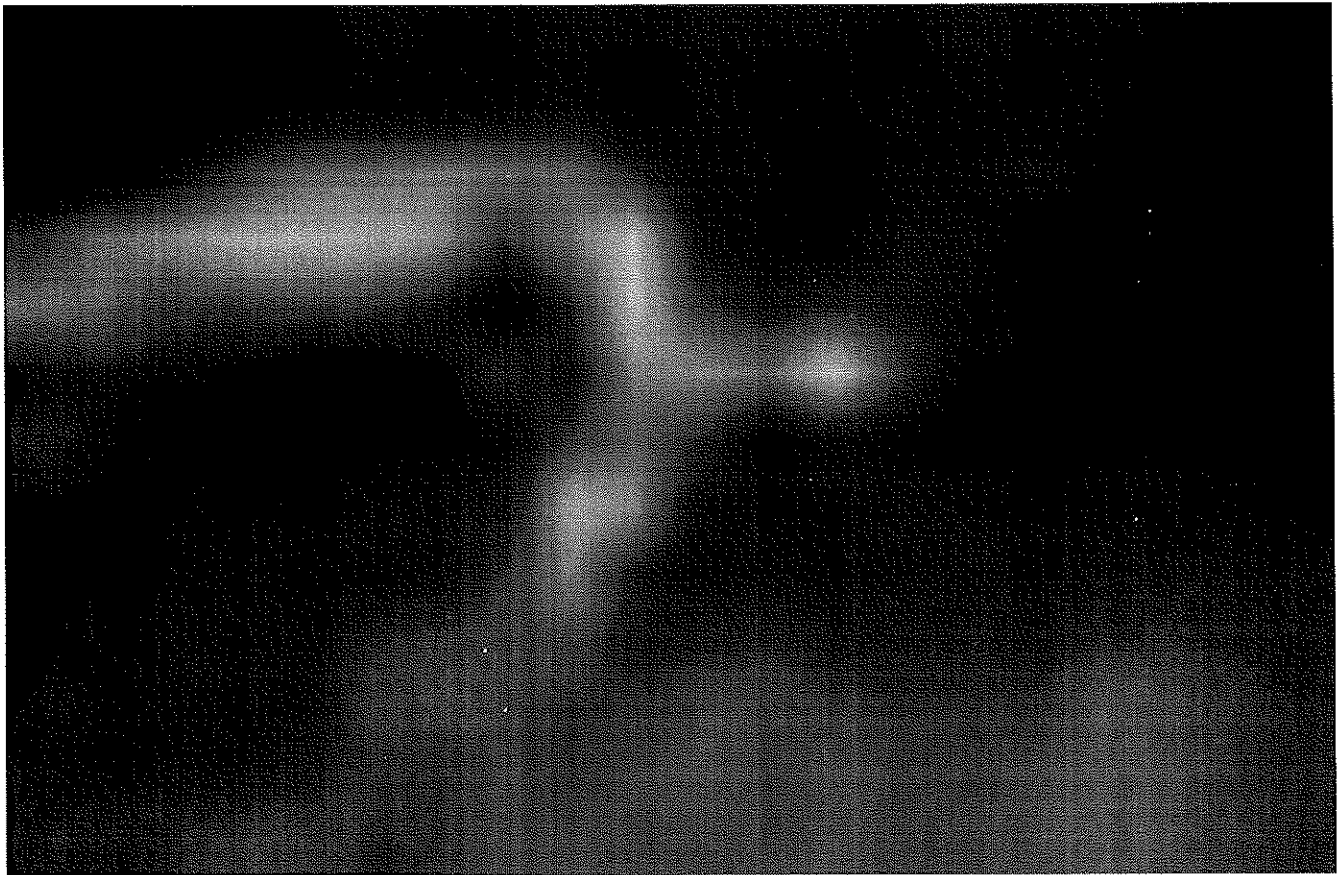
Boards of health in Wakefield, Stoneham, and Melrose have already approved their own versions of the ban. Winchester and Malden are holding public hearings in the coming days on their proposals. Reading and Medford could follow next month, local health officials said.

"This is the kind of thing that we need all municipalities to get together on, or it's just too easy to cross over and go to, say, Waltham, or Needham, or Watertown to buy your cigarettes," said Susan Albright, a city councilor in Newton who helped draft a similar proposal being considered in that 87,000-person city. "We need to make it a mass movement."

Several towns or cities were weighing their own proposals before the Supreme Judicial Court issued its ruling on March 8, including Wakefield, Stoneham, and Melrose, a cluster of communities north of Boston that share a health director.

Each municipality held a public hearing last fall, and in recent weeks adopted identical regulations — slated to take effect in January 2025 — that ban the sale of tobacco or e-cigarette products to anyone born on or after Jan. 1, 2004. In other words, anyone not 21 at the time they take effect would never be able to legally purchase tobacco in those towns.

But the speed with which local boards have pursued similar regulations has surprised critics, who argue that such sweeping rule-making not only demands more public vetting but shows the power even small local boards of health can wield.



A man holds a lit cigarette while smoking. Brookline, Mass., has adopted an unusual smoking ban that bars tobacco sales to anyone born in the 21st century. JEFF CHIU/ASSOCIATED PRESS

“These local boards of health are working with proponents ahead of time, and then they have a hearing for show. . . . It’s essentially rubber stamped by the time it gets there.” said Peter Brennan, executive director of the New England Convenience Store and Energy Marketers Association, a trade organization that represents 7,000 retailers and has opposed and tracked similar regulations across the state.

“They’ve certainly run with their success,” he said of supporters. “It’s almost like they took the SJC ruling that towns could do this as saying that they should do this.”

In its ruling, the Supreme Judicial Court upheld a lower court’s decision to dismiss a lawsuit, known as Six Brothers v. Brookline, in which store owners argued Brookline’s tobacco sales ban was unconstitutional and conflicted with a 2018 statewide law that set the statewide legal minimum age to buy tobacco at 21.

The state’s highest court rejected both arguments. State law expressly allows towns

and cities — long considered “local community laboratories” for public health policies — to prohibit tobacco sales in full, the court ruled. Further, it ruled that Brookline’s bylaw does not undercut state law but rather augments it, and that the town has a “legitimate interest in mitigating tobacco use overall and in particular by minors.”

Brookline Town Meeting voters first adopted the town’s bylaw in 2020, and the rule went into effect about a year later, aiming to gradually prohibit tobacco or e-cigarette sales to anyone in town at some distant point in the future, regardless of a person’s age.

The bylaw was the first of its kind in the United States, and remains a novelty on the entire planet: New Zealand had adopted a similar policy, but scrapped it last year after a right-leaning coalition won control of the government. A proposal in the United Kingdom to make it illegal to sell tobacco products to anyone born after January 1, 2009 cleared an initial hurdle in Parliament last week.

Others have approved more aggressive measures; two California cities — Manhattan Beach and Beverly Hills — banned the sale of all tobacco products, for example. But for years, Brookline remained an outlier, in part, because some cities and towns were waiting to see how the SJC ruled before considering their own generational ban. Then, the court cracked the door open.

“It certainly feels like there’s some momentum and momentum in the right direction,” said Richard Lopez, chair of Reading’s board of health. This type of policy-making “has to be town by town. The question is whether Beacon Hill at some point would take notice and think there would be a statewide solution.”

That remains to be seen, and even with the current rush of local regulations, it could be years until similar legislation passed on the state level, said Maureen Buzby, the regional tobacco control coordinator for seven communities, including Melrose, Wakefield, and Stoneham. When the Legislature voted in 2018 to increase the legal

age to buy tobacco from 18 to 21, for example, half the state's towns and cities, Boston included, had already done so, in some cases years earlier.

"This is kind of public health policy 101: One city or town is the pointy tip of the spear," Buzby said. She also defended the public process several towns and cities have used, saying she personally hand-delivered meeting notices to retailers in towns before officials voted to pass the bans.

"The main reason for doing this now, or as soon as possible, is because every single day more young people pick up the habit," she said.

Retailers argue that moving so quickly creates a "slippery slope" for towns to target other products local officials consider a public health issue. Brennan, the director of the convenience store trade group, said it's weighing whether to appeal the SJC ruling on Brookline's rule to the US Supreme Court, but it has yet to make a decision.

"The fact that [these local regulations] are spreading so quickly," he said, "certainly bolsters our argument that there could be a federal issue here."

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