



Building a Healthy Boston

## **Boston Public Health Commission**

### **Tobacco Control Administrative Hearings and Appeals**

WHEREAS, the City of Boston has enacted a strict and enforceable system to prevent access to, and the illegal sale of, tobacco products to minors entitled Limiting Tobacco Access by Youth; and

WHEREAS, said ordinance confers enforcement authority upon the Boston Public Health Commission or its designated agents.

The Boston Public Health Commission enacts the following regulation to determine violations and fines under the City Ordinance, Limiting Tobacco Access by Youth.

#### **Section I: Appeals before BPHC Hearing Officer**

Any individual, organization or business charged with violation of any provision of the Boston City Ordinance, Limiting Tobacco Access by Youth, shall receive a citation from a designated agent of the Boston Public Health Commission ("BPHC"). Said citation and any subsequent hearing notification shall be deemed a Notice of Action within the meaning of 801 CMR 1.02(6). Unless waived, the BPHC shall conduct an Administrative Hearing, before a designated BPHC Hearing Officer and in accordance with 801 CMR 1.02, to determine the facts of the violation, the appropriate fine, if any, and/or the appropriate term of suspension, if any.

#### **Section II: Executive Director's Approval of Hearing Procedures**

The Executive Director shall approve procedures for such Administrative Hearings which are consistent with 801 CMR 1.02. A written copy of the current approved procedures shall be provided, upon written request, to any individual, organization or business cited for violation of the Boston City Ordinance, Limiting Tobacco Access by Youth.

#### **Section III: Appeals from Decision of BPHC Hearing Officer**

In the event that an individual, organization or business cited for violation of the Boston City Ordinance, Limiting Tobacco Access by Youth, wishes to appeal the findings or rulings of the BPHC Hearing Officer, he/she shall file the appeal, and all supporting memoranda and documents, within twenty-one (21) days of the BPHC Hearing Officer decision postmark.

- A. In the event that the appellant provides notice to contest a fine determined by the BPHC Hearing Officer, the Boston Tobacco Control program shall schedule a hearing, pursuant to M.G.L. c. 40, sec. 21D, before a clerk magistrate in the appropriate court. All Boston Tobacco Control Program supporting materials, including the written summary of findings of the BPHC Hearing Officer, shall be presented to the Clerk Magistrate. The

Clerk Magistrate hearing will be a de novo review of the underlying facts as they pertain to fines for violation of the Boston City Ordinance, Limiting Tobacco Access by Youth.

- B. In the event that the appellant provides notice to contest a term of suspension of his/her Permit for Location and Sales of Tobacco Products, the Executive Director shall hear the appeal. The Boston Tobacco Control Program shall file any response to the appeal within ten (10) days of the date the appeal is filed. The Executive Director shall have the discretion to determine whether or not to hear oral argument. The Executive Director shall then make a written recommendation to the Chairperson of the Commission Board. The full record shall be made available to the Chairperson if so requested. The Chairperson shall accept, reject or amend the recommendation. The Chairperson's decision shall be the final decision of the BPHC.
- C. In the event that the appellant provides notice to contest both the fine and the term of suspension imposed by the BPHC Hearing Officer, the avenues provided for in Sections III(A) and III(B) shall proceed simultaneously and independently of one another.

#### **Section IV: Failure to Respond to Notice of Violation**

In the event that a cited person or entity does not respond to a citation either by sending the appropriate payment or requesting a hearing, the Boston Tobacco Control Program may:

- A. File a criminal complaint in the appropriate District Court, pursuant to M.G.L. c. 40, sec. 21D; and/or;
- B. Schedule a hearing before a BPHC Hearing Officer to show cause why the violator's Permit for Location & Sales of Tobacco Products should not be suspended or revoked (and failure to appear at such a show-cause hearing may result in the suspension or revocation of the violator's Permit); and/or
- C. Pursue any other remedy as warranted by law.

#### **Section V: Severability**

If any provision of this regulation or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

#### **Section VI: Effective Date**

This regulation shall take effect immediately upon its passage by the Public Health Commission.