

City of Cambridge

Richard C. Rossi • City Manager



Executive Department

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June 2, 2014

To the Honorable, the City Council:

I am hereby submitting for your consideration, proposed amendments to the Tobacco Ordinance (Chapter 8.28, *Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places*). This amended ordinance includes recommendations previously transmitted to the City Council on July 29, 2013 and includes additional amendments that have subsequently been added.

Very truly yours,

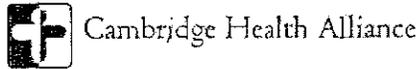
*Richard C. Rossi*

Richard C. Rossi  
City Manager

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CAMBRIDGE PUBLIC HEALTH DEPARTMENT

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May 28, 2014

City Manager Richard C. Rossi:

The proposed amendments to the Tobacco Ordinance (Chapter 8.28, *Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places*) that accompany this letter are the result of extensive review by successive advisory committees that engaged both municipal and public stakeholders. Although Cambridge was an early statewide leader in 2003 when the City Council adopted this ordinance, which established restrictions on public use and purchase of tobacco, the landscape of tobacco regulation has changed in the last several years.

In July 2013 the City Manager submitted several proposed amendments to the ordinance (letter of transmittal in this packet) adding new restrictions on smoking in public places, including parks and open space, hotels and inns, and outdoor seating areas. At the request of City Council, the amendment packet also included a prohibition on tobacco sales in all healthcare institutions, including pharmacies. These proposed changes were referred to Ordinance Committee.

At the further request of City Council in the fall of 2013, an expansion of the domain of the current ordinance to further regulate Nicotine Delivery Products (NDPs) such as electronic cigarettes was added to the list of amendments. This expansion addresses a significant gap in regulation, since such devices were not covered by the tobacco ordinance of 2003. No further action was taken by the Ordinance Committee before the end of the previous City Council term, so these amendments remained in draft form. In March of this year a provision to increase the legal age to purchase tobacco was requested by City Council and added to the list of amendments to the ordinance that are captured in the accompanying draft.

Finally, after a comprehensive review of tobacco policies not already addressed in the amendments thus far, several provisions have been added in the accompanying draft to prohibit tobacco products that have been used to specifically appeal to younger customers (single-serve cigars, flavored tobacco, blunt wraps), or are intended to circumvent certain tobacco levies (commercial roll-your-own machines). By imposing minimum pricing standards for single cigars (often flavored) this “loss-leader” strategy that has been used by tobacco manufacturers is neutralized within the City of Cambridge. By prohibiting flavored tobacco products (excluding mentholated varieties and allowing such sales in specialty tobacco shops) another well-recognized enticement to younger customers is eliminated without impacting the great majority of adult smokers. Blunt wraps have been identified as primarily used for the consumption of marijuana and further draws young residents into the tobacco market. This tobacco industry strategy targeting teenagers and pre-teens has been recognized nationally, but since the FDA is



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limited in its regulatory authority over tobacco, there has been no corresponding national regulatory response to this assault on the lifetime health of these young smokers.

In summary, with the assistance and cooperation of the members of the City Council and the Tobacco Advisory Committee, and the support of the Massachusetts Municipal Association and the 6-City Tobacco Control Collaborative (which includes Cambridge), we propose the following amendments to Chapter 8.28:

- 1) Prohibition on smoking in all parks and municipal open space
- 2) Prohibition on smoking in all rooms at inns, hotels, motels and bed-and-breakfast establishments
- 3) Prohibition on smoking in all outdoor seating areas adjacent to restaurants where food is served
- 4) Regulation of all e-cigarette and other nicotine delivery product (NDP) sales under the same restrictions as combustible tobacco
- 5) Prohibition on tobacco or NDP sales in all healthcare institutions (including pharmacies & drug stores, clinics or health centers)
- 6) Prohibition on sale of tobacco or NDPs to anyone under the age of 21
- 7) Restrictions on pricing and packaging for cigars (8.28.030, Section H)
- 8) Prohibition on sale of blunt wraps
- 9) Prohibition of all Commercial Roll-Your-Own machines
- 10) Restriction on sale of flavored tobacco (with an exemption for tobacconists)

These proposed amendments reflect an increasing concern over industry strategies that target younger individuals. After years of declining smoking rates, such sophisticated and targeted marketing efforts to expand the market for tobacco has shown troubling signs of success. The other area of significant progress represented by these changes is the protection of non-smokers from second-hand smoke in places that form part of the public enjoyment of our community. While continuing to take a thoughtful, evidence-based approach to policy development, Cambridge has an opportunity to catch-up to other communities across Massachusetts and the country and to continue to serve as a standard-bearer in strong local public health policy.

Best regards,

A handwritten signature in black ink, appearing to read "Sam Lipson".

Sam Lipson  
Director of Environmental Health

cc: Claude-Alix Jacob, Chief Public Health Officer



## CAMBRIDGE PUBLIC HEALTH DEPARTMENT



Cambridge Health Alliance

July 24, 2013

Honorable Members of the Cambridge City Council,

In March 2011, in response to a City Council request to review the status of smoking in public parks (Council Order #9, 10/4/2010), the City Manager convened a Smoking in Parks working group. This *ad hoc* committee met 5 times over the next 18 months in order to review municipal policy options, enforcement concerns, and published evidence of health risks from exposure to second-hand tobacco smoke under various circumstances. Members of that working group, including representatives from Police, Public Works, Inspectional Services, Human Service Programs, Law, and Public Health, were led by the Deputy City Manager. Public Health staffed this process and offered research on related topics to committee members. Outside stakeholders were also invited to attend the work group for one or more meetings. These attendees included a representative from the MIT Medical facility's Wellness program, a prominent Cambridge-based smoker's rights advocate, a Cambridge-based air quality policy expert, and a smoking policy visiting scholar at Harvard's Kennedy School of Government.

Discussion and review of municipal policies adopted in New York City, Boston, and several West Coast communities informed the discussion and led the committee to agree on several changes to the existing tobacco control ordinance (Chapter 8.28, *Restrictions on Youth Access to Tobacco Products, and on Smoking in Workplaces and Public Places*).

Final recommendations took into account the practical enforcement of these changes and led the committee to acknowledge the difficulty associated with the designation of specific parks or playgrounds as non-smoking. It was accepted by consensus that this should be considered to be a complaint-driven ordinance as active enforcement is highly impractical. Proper signage and a dedicated effort to educate park and playground users were thought to be keys in getting general public cooperation with this policy change. Furthermore, it was also agreed that we should institute a reasonable period of time (6 months or one year) during which no fines would be issued and significant public education efforts will be conducted in and around city parks and other open spaces. Final enforcement remains in the hands of several municipal departments, though police may serve as the enforcer of last resort.

It was also recognized that a smoking prohibition in outdoor public spaces was likely to have only modest impact on unwanted exposures to smoke without also reviewing smoking restrictions in other crowded, confined or indoor public spaces. A review of restrictions placed on smoking in hotels, motels and inns and on smoking in outdoor seating areas of restaurants (both part of the City of Boston smoking regulations) was included in the suggested amendments herein.

Finally, in January 2013 City Council requested a review of the policy that allows tobacco to be sold in pharmacies, drug stores and other healthcare facilities. City Council members recognized that several dozen municipalities in Massachusetts had already instituted bans on tobacco sales in



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all locations that employ healthcare professionals and requested a review of such a policy for Cambridge.

In order to establish an appropriate process for reviewing all City of Cambridge policies on tobacco sale and use the Cambridge Public Health Department proposed that a regular Tobacco Advisory Committee be constituted for this purpose. This newly convened committee, with representatives from city departments already included in the Smoking in Parks working group, was expanded to include representatives from the Tourism Board, MIT, Harvard, Cambridge Public Schools, Cambridge Housing Authority, and the Six-Cities Tobacco Control Program (which includes Cambridge). After two meetings this committee considered the prohibition on tobacco sales in pharmacies and healthcare institutions adopted in other communities and agreed that this was an appropriate policy for Cambridge as well.

Please find attached the amended draft of the Cambridge tobacco control ordinance, now renamed *Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places*, with changes intended to reflect the consensus recommendation of the Smoking in Parks work group and the now constituted Cambridge Tobacco Advisory Committee. The City Manager intends to distribute the enclosed draft ordinance amendments to impacted community stakeholders including the Chamber of Commerce, Tourism Board, Housing Authority and local business associations to make them aware of the new restrictions to be considered, so if they have comments or wish to attend future meetings, they may do so.

Best Regards,

A handwritten signature in black ink, appearing to read "Sam Lipson".

Sam Lipson  
Director of Environmental Health

cc: Claude-Alix Jacob, Chief Public Health Officer



## CHAPTER 8.28

### Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions for Youth Access of Minors to Access and Sale of Tobacco Products
- 8.28.030 Youth Access of Minors to and Sale of Tobacco Products
- 8.28.040 Enforcement and Violations
- 8.28.050 Definitions for Prohibition of Smoking in the Workplace
- 8.28.060 Prohibition of Smoking in the Workplace
- 8.28.070 Enforcement and Violations
- 8.28.080 Definitions for *Prohibition* on Smoking in Public Places
- 8.28.090 *Prohibition* of Smoking in Public Places
- 8.28.100 Enforcement and Violations
- 8.28.110 Definitions for *Prohibition* on Smoking in Restaurants
- 8.28.120 *Prohibition* of Smoking in Restaurants
- 8.28.130 Enforcement and Violations
- 8.28.140 *Invalidity of Provisions*
- 8.28.150 *Conflict with Other laws or Regulations*
- 8.28.160 *Implementation*

#### **8.28.010 Declaration of Legislative Findings**

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- A. Preventing access to tobacco products by ~~minors~~people under twenty-one (21) years of age;
- B. Creating a permitting process for tobacco sales to facilitate enforcement of this chapter;
- C. Prohibiting smoking in workplaces and most other public places.

#### **8.28.020. Definitions for Youth Access of ~~Minors to~~ and Sale of Tobacco Products:**

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

**Blunt wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**Cambridge Public Health Department:** the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

**Characterizing Flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

**City:** The City of Cambridge.

**Commercial Roll-Your-Own (RYO) machine:** A mechanical device, by whatever manufacturer made and by whatever name known, located in a business or used for sale or distribution of tobacco that is designed to roll and wrap tobacco into products. RYO machines located in a private home, used for personal consumption, are not Commercial Roll-Your-Own machines.

**Component Part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

**Distinguishable:** Perceivable by either the sense of smell or taste.

**E-Cigarette:** Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, ecigars, e-pipes or under any other product name.

**Flavored Tobacco Product:** Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

**Health Care Institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

**Self Service Display:** Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

**Inspectional Services Department:** The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code.

**Minor:** Any individual who is under the age of eighteen (18).

**Nicotine Delivery Product:** Any manufactured article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed medical provider or a product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

**Person:** A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

**Retail Tobacco Store:** An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Cambridge Public Health Commission (dba/Cambridge Public Health Department).

**Self Service Display:** Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

**Vending Mmachine:** Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, nicotine delivery product, snuff or tobacco in any of its forms.

**Health care institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

**Tobacco product:** Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, nicotine delivery product, snuff or tobacco in any of its forms.

**Youth:** Any individual who is under the age of twenty-one (21) years.

### **8.28.030 Youth Access of Minors to and Sale of Tobacco Products:**

#### **A. Prohibition Against Sales of Tobacco to Youthsminers prohibited:**

1. No person shall sell tobacco products or permit tobacco products to be sold to a minoryouth or, not being the minoryouth's parent or guardian, no person shall give tobacco products to a minoryouth.
2. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products and which states: "~~Massachusetts state law prohibits the sale of tobacco products to any person under the age of eighteen (18) years of age. See M.G.L. chap. 270, sect. 6.~~ Said notice shall be that notice provided by the Massachusetts Department of Public Health and is" "The City of Cambridge, by Chapter 8.28 of the Cambridge Municipal Code, prohibits the sale of tobacco products to any person under the age of twenty-one (21) years." Said notice shall be available from the Cambridge Public Health Department.
3. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than ~~eighteen (18)~~twenty-one (21) years of age. No such verification is required for any person over the age of 26.

#### **B. Prohibition Against the Sale of Tobacco Products by Health Care Institutions**

No health care institution located in the City of Cambridge shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

#### **CB. Tobacco sales permit:**

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.
2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.
3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.
4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.
5. A separate permit is needed for each location.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

**DC. Free distribution.** No person shall, in or upon any part of the streets, parks, public grounds, public buildings or other publicly owned places within the City of Cambridge, distribute free of charge any products containing tobacco or any coupons or vouchers for free tobacco products, to any person for any promotional or other commercial purposes.

**ED. Packaging.** Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer,

distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

**FE. Self Service Displays.** All self-service displays of tobacco products are prohibited. The only exception is self service displays that are located in facilities where the retailer ensures that no person younger than ~~eighteen (18)~~twenty-one (21) years of age is present, or permitted to enter, at any time.

**GF. Tobacco Pproducts Vvending Mmachines:** No person shall distribute or sell tobacco products by the use of a vending machine unless:

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;
2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for ~~minors~~youth under the age of twenty-one (21) years to purchase cigarettes; and
3. The vending machine is located in facilities where the retailer ensures that no person younger than ~~eighteen (18)~~twenty-one (21) years of age is present, or permitted to enter, at any time.

**H: Cigar Sales Regulated:**

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or
2. cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City..
- c. Retail Tobacco Stores

**I: Prohibition on the Sale of Blunt Wraps:**

No person shall sell or distribute blunt wraps in the City

**J: Commercial Roll-Your-Own Machines**

All commercial roll-your-own machines are prohibited.

**K: Sale of Flavored Tobacco Prohibited:**

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco to a consumer. This provision shall not apply to a retail tobacco store.

**8.28.040. Enforcement and penalties:**

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200) for the second offense and three hundred dollars (\$300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall inure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefore, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars (\$25) which may be enforced by Noncriminal Disposition as stated in 8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall inure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

**8.28.050 Definitions for Prohibition of Smoking in Workplaces:**

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

**Agent or Business Agent:** *An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.*

**Cambridge Public Health Department:** the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

**City:** the City of Cambridge.

**Employee:** Any individual person who performs services for an employer.

**Employer:** An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees, with or without compensation.

**Enclosed Area:** A space bounded by walls and under a roof or ceiling.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

**Private Club:** *A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If a private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined by M.G.L. Ch. 138. Sec. 12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority*

**Smoking:** Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, or tobacco in any of its forms.

**Workplace:** *Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer.* Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

**8.28.060 Prohibition of Smoking in Workplaces.**

A. *Smoking is prohibited in all Workplaces, including private clubs.*

B. It shall be unlawful for any employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, to permit a violation of this chapter.

C. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

#### **8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.**

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars (\$25) for a first offense, fifty dollars (\$50) for a second offense and one hundred dollars (\$100) for a third or subsequent offense *within a twenty-four month period from the first offense*. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may *request that the Cambridge Public Health Department initiate an investigation*.

### III

#### **8.28.080 Definitions for Prohibition on Smoking in Public Places:**

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

**Agent or Business Agent:** *An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.*

**Cambridge Public Health Department:** The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

**City:** the City of Cambridge

**Enclosed Area:** A space bounded by walls (*with or without windows*) from the floor to the ceiling and enclosed by doors. An enclosed area may include, but is not limited to, offices, rooms, and halls.

**Health Care Facility:** Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

**Inspectional Services Department:** The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State

Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.

**Mall:** Any enclosed public walkway or hall area which serves to connect retail stores or offices.

**Municipal Building Facility:** Any building, or facility or vehicle owned, leased, operated or occupied by the municipality, including public parks, school buildings and grounds.

**Municipal Vehicle:** Any vehicle owned or leased by the municipality, and operated or occupied by employees, agents or contractors of the municipality.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

**Designated Public park:** Any outdoor playgrounds, fields, reservations, open space (excluding public streets and ways) and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to, any public parkgrounds adjacent to any public school or city operated building in the city of Cambridge and athletic fields.

**Public place:** An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: *healthcare facilities, malls, municipal facilities, public transportation vehicles, retail food stores, retail stores, educational facilities, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, all enclosed areas of inns/hotels/motels-lobbies and restrooms, including all guest rooms, auditoriums and any rooms or halls when used for a public meeting, public areas of banks and automatic banking lobbies, common areas of residential buildings, public restrooms, lobbies, staircases, waiting rooms, halls, exits, entrance ways, elevators accessible to the public and licensed child-care locations.*

**Public transportation vehicle:** Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.

**Retail Food Store:** Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

**Retail Store:** Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.

**Smokeshop:** Retail stores where the primary business is the sale of tobacco products;

**Smoking:** Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, or tobacco in any of its forms.

## **8.28.090 Prohibition of Smoking in Public Places**

### **A. Smoking Prohibited:**

No person shall smoke nor shall any person be permitted to smoke in any *public place*,

~~or municipal facility, municipal vehicle, or public park.~~

**B. Election for coverage by private facilities:**

The owner, manager, or other person in charge of a building or facility not covered by paragraph A of Section I. of this regulation may elect to prohibit smoking.

**C. Posting notice of prohibition:**

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

**D. Exceptions:**

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

~~(3) Inn, hotel, motel, bed and breakfast, and lodging home rooms that are rented to guests that are designated as smoking rooms. Hotel and motel rooms rented to guests that are designated as "smoking rooms" may comprise no more than 25% of all rooms, leaving at least 75% smoke free at all times. A room so assigned shall have signs posted indicating that smoking is prohibited therein and shall have self-closing doors. No change in room designation shall take place without prior written approval by the Cambridge Public Health Department;~~

(34) Private or semiprivate rooms of nursing homes and long term care facilities, which is separately ventilated, occupied by one (1) or more patients, all of whom have requested in writing to be placed in rooms where smoking is permitted;

(45) Smokeshops provided such establishments prohibit entry to persons under the age of eighteen (18) at all times, and that such establishments conspicuously post signs at all entrances that warn patrons of the dangers of environmental tobacco smoke;

(56) Performers upon the stage, provided that the smoking is part of a theatrical production;

(67) Religious ceremonies where smoking is part of the ritual;

(78) The Middlesex County Jail/House of Corrections or places of incarceration/detention.

**8.28.100. Violations and Penalties:**

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars (\$25) for a first offense, fifty dollars (\$50) for a second offense and one hundred dollars (\$100) for a third or subsequent offense *within a twenty-four month period from the first offense*. Each day a violation occurs will be considered a separate

offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may *request that the Cambridge Public Health Department initiate an investigation.*

#### IV

### **8.28.110 Definitions for Prohibition on Smoking in Restaurants**

**Cambridge Public Health Department:** The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

**City:** the City of Cambridge

**Enclosed Area:** ~~A space bounded by walls (with or without windows) from the floor to the ceiling and enclosed by doors. An enclosed area may include, but is not limited to, offices, rooms, and halls.~~

**Inspectional Services Department:** The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code and Cambridge municipal code.

**License Commission:** Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within the City of Cambridge.

**Restaurant:** Any eating or entertainment establishment which possesses a Common Victualer License under the provisions of M.G.L. c. 140. *including but not limited to any coffee shop, cafeteria, sandwich shop, private and public school cafeteria, which gives or offer food for sale to the public, guests, or employees for on-premises consumption.*

*Restaurant Premises shall include all outdoor and sidewalk seating areas. This includes those establishments that possess a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission.*

**Restaurants where food is incidental to alcohol:** ~~A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.~~

**Smoking:** Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

### **8.28.120 Prohibition of Smoking in Restaurants**

#### **A. Smoking Prohibited:**

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

#### **B. Posting notice of prohibition:**

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display at the entry(s) of the premises and upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

#### **C. Exceptions:**

~~Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:~~

~~(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant. One side of said areas may adjoin the building, provided that the outdoor space and the indoor space are separated by a solid wall and/or self-closing doors such that smoke cannot enter the indoor space at any time.~~

None

### **8.28.130. Violations and Penalties:**

A. Any person who violates this chapter by ~~(1)~~ allowing smoking in a nonsmoking area or ~~(2)~~ allowing a ~~minor~~ youth into an area restricted to ~~eighteen~~ twenty-one and older shall be subject to a fine in an amount of twenty-five dollars (\$25) for a first offense, fifty dollars (\$50) for a second offense, one hundred dollars (\$100) for a third offense or subsequent offense *within a twenty-four month period from the first offense*. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may *request that the Cambridge Public Health Department initiate an investigation.*

### **8.28.140 Invalidity of Provisions**

*In the event that any one or more of the phrases, sentences, clauses, or paragraphs*

*contained in this Ordinance shall be declared invalid by the final and unappealable order, decree or judgement of a court of competent jurisdiction, this Ordinance shall be construed as if it did not contain such phrases, sentences, clauses, or paragraphs.*

**8.28.150 Conflict with Other Laws and Regulations:**

*Notwithstanding the provisions of the foregoing ordinance, nothing in this ordinance shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or regulations.*

**8.28.160 Implementation:**

*This revised ordinance will become effective October 1, 2003. An advisory committee will be created by the City Manager to develop recommendations for implementing and monitoring the tobacco ordinance. This committee will be composed of the following City staff: Deputy City Manager, Director of Economic Development at the Community Development Department, Police Commissioner, Commissioner of Inspectional Services, Chairman of the License Commission, Chief Public Health Officer, and City Solicitor. Additionally, there will be four members from the hospitality industry, including: Director of Tourism of the Cambridge Office for Tourism, one large business representative, one small business representative, and one alternate. The chair of the City Council's Economic Development Committee will also participate in the discussions. This committee will be co-chaired by the Deputy City Manager and the Chief Public Health Officer; will stay in effect for one year after passage of the ordinance; and will issue an implementation status report to the City Council at the end of the term.*

## Municipal Tobacco Control Technical Assistance Program

Donald J. Wilson, Director  
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**TO:** Cambridge City Council  
**FROM:** D. J. Wilson  
**RE:** A Statewide Update to the Cigar Pricing/Packaging Policy  
**DATE:** October 29, 2014

In the fall of 2011, the Boston Public Health Commission enacted a policy that controls the price and packaging of certain cigars in response to that city's findings that youth were using cheap, flavored single cigars more than they were using cigarettes. The Boston data is similar to statewide data. The original Boston policy reads:

Cigar Sales Regulated:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.
2. This Section shall not apply to:
  - a. The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
  - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of [city/town].
  - c. Retail Tobacco Stores.

The policy went into effect on February 2, 2012. 43 other cities and towns have also adopted this policy and it is in the Cambridge draft ordinance. In summary, a single cigar must sell for at least \$2.50; a two-pack for at least \$5; a three-pack for at least \$7.50 and a 4+-pack could be sold at market rate.

In 2013, our local programs began finding 4-packs for as cheap as \$1, undercutting the public health goals of the original policy. Greenfield, Deerfield, Lowell and Northampton adjusted the policy to require that the 4+-pack size had to sell for at least \$5 to end this loophole. Boston adjusted their policy requiring the 4+-pack size to sell for at least \$2.50.

To further simplify this policy, cities and towns are currently adopting a policy that keeps the single cigar minimum price and requires a \$5 minimum for all multi-packs to best serve our aim

to keep youth from starting smoking with these cheap, flavored products. The new policy reads as follows:

Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
  - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
  - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of [city/town].
4. The [city/town] Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

To summarize, this new policy requires that a single cigar must sell for at least \$2.50; a two-pack for at least \$5.00; a three-pack for at least \$5.00 and a 4+-pack for at least \$5.00 as well.

Further, because the definition we use for "cigar" assigns every "roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco" as either a cigar or a cigarette, this new policy captures a class of "large cigars" that are sold in 20-packs and are often flavored and cheap. Even though they look just like cigarettes except for their brown paper wrap, they evade the state's \$3.51 cigarette tax due to the way they are manufactured (the state's taxation method is weight-per-unit based). A tobacconist at the Woburn Mall had a 20-pack of Dean's peach large cigars for \$1.79 and a tobacconist in Wareham had a 20-pack of Seneca grape large cigars for \$1.69. This amended policy would require that they be sold for at least \$5.00.

## In a first, Mass. town may prohibit tobacco sales

By Kay Lazar  
GLOBE STAFF

The Central Massachusetts town of Westminster would become the first community in the state and, perhaps, the nation to ban all tobacco sales under a proposal made public Monday that regulators say is designed to improve health, especially among the young.

Draft regulations posted on the town's website would prohibit sales of products containing tobacco or nicotine, including cigarettes, chewing tobacco, and even electronic cigarettes, which use batteries to heat nicotine-laced liquid, producing a vapor that is inhaled.

The plan has infuriated local store owners who are circulating petitions to block the action, saying it would drive them out of business and simply send people to nearby communities for their tobacco products.

A ban such as the one under consideration in Westminster represents the next frontier in the campaign to curb tobacco use, which is already prohibited in all Massachusetts

WESTMINSTER, Page A8

## Mass. town considers a trailblazing ban on sale of tobacco products

► WESTMINSTER  
Continued from Page A1

workplaces, including restaurants and bars. It is already illegal to sell tobacco products in minors, and some communities have banned smoking in public parks.

In Westminster, a town of 7,480 that sits about 25 miles north of Worcester, the Board of Health has been weighing a total ban for months, said Westminster health agent Elizabeth "Whiby" Swedberg. The board has grown increasingly frustrated trying to stay a step ahead of tobacco companies' slick marketing and new products, such as 69-cent bubble gum-flavored cigars aimed at luring younger smokers, Swedberg said.

With this action, Westminster's health board is saying "this doesn't seem right, that we are permitting products that, if used as directed, 50 percent of people die," Swedberg said.

In Westminster, as in many Massachusetts communities,

the local health board regulates tobacco sales and issues permits allowing its sale.

In recent years, more than 104 Massachusetts communities have expanded their tobacco control rules to include bans on the sale of electronic cigarettes and other nicotine delivery products to minors, according to the Massachusetts Municipal Association's Tobacco Control Technical Assistance Program.

But it appears Westminster is poised to become the first community in the nation to propose a sweeping prohibition on the sale of tobacco products to anyone, regardless of age, Massachusetts and national tobacco control advocates and researchers said. Though a clearinghouse keeps track, the advocates could not identify another community with such a prohibition.

"This sends a clear message to residents that this is a bad product," said D.J. Wilson, director of the municipal association's tobacco control program.

He said that a ban may not stop adults from driving to another town to get cigarettes, but may be effective in curbing younger people, who are unable to drive.

The health board's five-page proposal cites research about

tobacco.

"Where do you draw the line, a candy bar because it causes diabetes? Are we going to ban licorice because it causes [high] cholesterol? It seems like a slippery slope," said Brian Vincent, owner of Vincent's

Country Store.

sales at convenience stores, industry analyses have shown. At Westminster Liquors, Michael Fratturelli is concerned that residents will head to surrounding towns, where there are plenty of stores to buy cigarettes.

"Nobody is going to stop smoking because this town decided to ban cigarettes," Fratturelli said. "Businesses won't want to come to this town anymore, and the value of our businesses will go down."

Swedberg said the board will listen to residents' concerns at a public hearing scheduled for Nov. 12, and that it is not the board's intention to put anyone out of business. In order for it to be enacted, the three-member Board of Health has to take a vote to approve the ban.

She also said it is "a little bit daunting" to be the first community to propose a ban on tobacco sales and that her office has been swamped with phone calls reacting to the plan, which had begun leaking out last

week.

"Maybe residents will think twice before driving a distance to purchase cigarettes," she said.

Public health researchers applauded Westminster's proposal, but were unable to say whether such an unusual approach might help stem tobacco use because it has not been tried elsewhere.

"When we talk to smokers in Massachusetts and across the nation, 88 percent say they want to quit, and 58 percent try every year," said Dr. Michael Figue, professor of medicine at the University of Wisconsin and director of the school's Center for Tobacco Research and Intervention.

Still, Figue said he is optimistic the sales ban would prove to be "a helping hand to get this monkey of tobacco addiction off their back."

Kay Lazar can be reached at [Kay.Lazar@globe.com](mailto:Kay.Lazar@globe.com). Follow her on Twitter @GlobeKayLazar.

**This sends a clear message to residents that this is a bad product.'**

D. J. WILSON

Director of the Massachusetts Municipal Association's Tobacco Control Technical Assistance Program

the heavy health toll tobacco has exacted in the United States, including a recent report from the surgeon general that concluded this year alone, nearly 500,000 adults in the country will die prematurely because of smoking.

But store owners said it is unfair to ban sales of a legal product and they worry that their financial losses will be considerable. Westminster has seven stores licensed to sell to

Country Store.

Vincent said tobacco products account for about 6 percent of his sales, and his concern is not just the loss of those sales, but other items people buy when getting cigarettes, such as a cold drink, a bag of chips, and lottery tickets. While tobacco products may be less than 18 percent of sales in grocery stores, cigarettes and other tobacco products can account for one-third or more of total

*Elly Gans*

ATTACHMENT D

**Herbert J. Gans. The Uses of Poverty: The Poor Pay All. Social Policy July/August 1971: pp. 20-24.**

Some twenty years ago Robert K. Merton applied the notion of functional analysis to explain the continuing though maligned existence of the urban political machine: if it continued to exist, perhaps it fulfilled latent - unintended or unrecognized - positive functions. Clearly it did. Merton pointed out how the political machine provided central authority to get things done when a decentralized local government could not act, humanized the services of the impersonal bureaucracy for fearful citizens, offered concrete help (rather than abstract law or justice) to the poor, and otherwise performed services needed or demanded by many people but considered unconventional or even illegal by formal public agencies.

Today, poverty is more maligned than the political machine ever was; yet it, too, is a persistent social phenomenon. Consequently, there may be some merit in applying functional analysis to poverty, in asking whether it also has positive functions that explain its persistence.

Merton defined functions as "those observed consequences [of a phenomenon] which make for the adaptation or adjustment of a given [social] system." I shall use a slightly different definition; instead of identifying functions for an entire social system, I shall identify them for the interest groups, socio-economic classes, and other population aggregates with shared values that 'inhabit' a social system. I suspect that in a modern heterogeneous society, few phenomena are functional or dysfunctional for the society as a whole, and that most result in benefits to some groups and costs to others. Nor are any phenomena indispensable; in most instances, one can suggest what Merton calls "functional alternatives" or equivalents for them, i.e., other social patterns or policies that achieve the same positive functions but avoid the dysfunctions.

Associating poverty with positive functions seems at first glance to be unimaginable. Of course, the slumlord and the loan shark are commonly known to profit from the existence of poverty, but they are viewed as evil men, so their activities are classified among the dysfunctions of poverty. However, what is less often recognized, at least by the conventional wisdom, is that poverty also makes possible the existence or expansion of respectable professions and occupations, for example, penology, criminology, social work, and public health. More recently, the poor have provided jobs for professional and para-professional "poverty warriors," and for journalists and social scientists, this author included, who have supplied the information demanded by the revival of public interest in poverty.

Clearly, then, poverty and the poor may well satisfy a number of positive functions for many nonpoor groups in American society. I shall describe thirteen such functions - economic, social and political - that seem to me most significant.

**The Functions of Poverty**

First, the existence of poverty ensures that society's "dirty work" will be done. Every society has such work: physically dirty or dangerous, temporary, dead-end and underpaid, undignified and menial jobs. Society can fill these jobs by paying higher wages than for "clean" work, or it can force people who have no other choice to do the dirty work - and at low wages. In America, poverty functions to provide a low-wage labor pool that is willing - or rather, unable to be unwilling - to perform dirty work at low cost. Indeed, this function of the poor is so important that in some Southern states, welfare payments have been cut off during the summer months when the poor are needed to work in the fields. Moreover, much of the debate about the Negative Income Tax and the Family Assistance Plan [welfare programs] has concerned their impact on the work incentive, by which is actually meant the incentive of the poor to do the needed dirty work if the wages therefrom are no larger than the income grant. Many economic activities that involve dirty work depend on the poor for their existence: restaurants, hospitals, parts of the garment industry, and "truck farming," among others, could not persist in their present form without the poor.

Second, because the poor are required to work at low wages, they subsidize a variety of economic activities that benefit the affluent. For example, domestics subsidize the upper middle and upper classes,

making life easier for their employers and freeing affluent women for a variety of professional, cultural, civic and partying activities. Similarly, because the poor pay a higher proportion of their income in property and sales taxes, among others, they subsidize many state and local governmental services that benefit more affluent groups. In addition, the poor support innovation in medical practice as patients in teaching and research hospitals and as guinea pigs in medical experiments.

Third, poverty creates jobs for a number of occupations and professions that serve or "service" the poor, or protect the rest of society from them. As already noted, penology would be minuscule without the poor, as would the police. Other activities and groups that flourish because of the existence of poverty are the numbers game, the sale of heroin and cheap wines and liquors, Pentecostal ministers, faith healers, prostitutes, pawn shops, and the peacetime army, which recruits its enlisted men mainly from among the poor.

Fourth, the poor buy goods others do not want and thus prolong the economic usefulness of such goods - day-old bread, fruit and vegetables that otherwise would have to be thrown out, secondhand clothes, and deteriorating automobiles and buildings. They also provide incomes for doctors, lawyers, teachers, and others who are too old, poorly trained or incompetent to attract more affluent clients.

In addition to economic functions, the poor perform a number of social functions:

Fifth, the poor can be identified and punished as alleged or real deviants in order to uphold the legitimacy of conventional norms. To justify the desirability of hard work, thrift, honesty, and monogamy, for example, the defenders of these norms must be able to find people who can be accused of being lazy, spendthrift, dishonest, and promiscuous. Although there is some evidence that the poor are about as moral and law-abiding as anyone else, they are more likely than middle-class transgressors to be caught and punished when they participate in deviant acts. Moreover, they lack the political and cultural power to correct the stereotypes that other people hold of them and thus continue to be thought of as lazy, spendthrift, etc., by those who need living proof that moral deviance does not pay.

Sixth, and conversely, the poor offer vicarious participation to the rest of the population in the uninhibited sexual, alcoholic, and narcotic behavior in which they are alleged to participate and which, being freed from the constraints of affluence, they are often thought to enjoy more than the middle classes. Thus many people, some social scientists included, believe that the poor not only are more given to uninhibited behavior (which may be true, although it is often motivated by despair more than by lack of inhibition) but derive more pleasure from it than affluent people (which research by Lee Rainwater, Walter Miller and others shows to be patently untrue). However, whether the poor actually have more sex and enjoy it more is irrelevant; so long as middle-class people believe this to be true, they can participate in it vicariously when instances are reported in factual or fictional form.

Seventh, the poor also serve a direct cultural function when culture created by or for them is adopted by the more affluent. The rich often collect artifacts from extinct folk cultures of poor people; and almost all Americans listen to the blues, Negro spirituals, and country music, which originated among the Southern poor. Recently they have enjoyed the rock styles that were born, like the Beatles, in the slums, and in the last year, poetry written by ghetto children has become popular in literary circles. The poor also serve as culture heroes, particularly, of course, to the Left; but the hobo, the cowboy, the hipster, and the mythical prostitute with a heart of gold have performed this function for a variety of groups.

Eighth, poverty helps to guarantee the status of those who are not poor. In every hierarchical society, someone has to be at the bottom; but in American society, in which social mobility is an important goal for many and people need to know where they stand, the poor function as a reliable and relatively permanent measuring rod for status comparisons. This is particularly true for the working class, whose politics is influenced by the need to maintain status distinctions between themselves and the poor, much as the aristocracy must find ways of distinguishing itself from the nouveaux riches.

Ninth, the poor also aid the upward mobility of groups just above them in the class hierarchy. Thus a

goodly number of Americans have entered the middle class through the profits earned from the provision of goods and services in the slums, including illegal or nonrespectable ones that upper-class and upper-middle-class businessmen shun because of their low prestige. As a result, members of almost every immigrant group have financed their upward mobility by providing slum housing, entertainment, gambling, narcotics, etc., to later arrivals - most recently to Blacks and Puerto Ricans.

Tenth, the poor help to keep the aristocracy busy, thus justifying its continued existence. "Society" uses the poor as clients of settlement houses and beneficiaries of charity affairs; indeed, the aristocracy must have the poor to demonstrate its superiority over other elites who devote themselves to earning money.

Eleventh, the poor, being powerless, can be made to absorb the costs of change and growth in American society. During the nineteenth century, they did the backbreaking work that built the cities; today, they are pushed out of their neighborhoods to make room for "progress. Urban renewal projects to hold middle-class taxpayers in the city and expressways to enable suburbanites to commute downtown have typically been located in poor neighborhoods, since no other group will allow itself to be displaced. For the same reason, universities, hospitals, and civic centers also expand into land occupied by the poor. The major costs of the industrialization of agriculture have been borne by the poor, who are pushed off the land without recompense; and they have paid a large share of the human cost of the growth of American power overseas, for they have provided many of the foot soldiers for Vietnam and other wars.

Twelfth, the poor facilitate and stabilize the American political process. Because they vote and participate in politics less than other groups, the political system is often free to ignore them. Moreover, since they can rarely support Republicans, they often provide the Democrats with a captive constituency that has no other place to go. As a result, the Democrats can count on their votes, and be more responsive to voters - for example, the white working class - who might otherwise switch to the Republicans.

Thirteenth, the role of the poor in upholding conventional norms (see the fifth point, above) also has a significant political function. An economy based on the ideology of laissez faire requires a deprived population that is allegedly unwilling to work or that can be considered inferior because it must accept charity or welfare in order to survive. Not only does the alleged moral deviancy of the poor reduce the moral pressure on the present political economy to eliminate poverty but socialist alternatives can be made to look quite unattractive if those who will benefit most from them can be described as lazy, spendthrift, dishonest and promiscuous.

### **The Alternatives**

I have described thirteen of the more important functions poverty and the poor satisfy in American society, enough to support the functionalist thesis that poverty, like any other social phenomenon, survives in part because it is useful to society or some of its parts. This analysis is not intended to suggest that because it is often functional, poverty should exist, or that it must exist. For one thing, poverty has many more dysfunctions than functions; for another, it is possible to suggest functional alternatives.

For example, society's dirty work could be done without poverty, either by automation or by paying "dirty workers" decent wages. Nor is it necessary for the poor to subsidize the many activities they support through their low-wage jobs. This would, however, drive up the costs of these activities, which would result in higher prices to their customers and clients. Similarly, many of the professionals who flourish because of the poor could be given other roles.

Social workers could provide counseling to the affluent, as they prefer to do anyway; and the police could devote themselves to traffic and organized crime. Other roles would have to be found for badly trained or incompetent professionals now relegated to serving the poor, and someone else would have to pay their salaries. Fewer penologists would be employable, however. And Pentecostal religion probably could not survive without the poor - nor would parts of the second- and third-hand goods market. And in many cities, "used" housing that no one else wants would then have to be torn down at public expense.

Alternatives for the cultural functions of the poor could be found more easily and cheaply. Indeed,

entertainers, hippies, and adolescents are already serving as the deviants needed to uphold traditional morality and as devotees of orgies to "staff" the fantasies of vicarious participation.

The status functions of the poor are another matter. In a hierarchical society, some people must be defined as inferior to everyone else with respect to a variety of attributes, but they need not be poor in the absolute sense. One could conceive of a society in which the "lower class," though last in the pecking order, received 75 percent of the median income, rather than 15-40 percent, as is now the case. Needless to say, this would require considerable income redistribution.

The contribution the poor make to the upward mobility of the groups that provide them with goods and services could also be maintained without the poor's having such low incomes. However, it is true that if the poor were more affluent, they would have access to enough capital to take over the provider role, thus competing with and perhaps rejecting the "outsiders." (Indeed, owing in part to antipoverty programs, this is already happening in a number of ghettos, where white storeowners are being replaced by Blacks.) Similarly, if the poor were more affluent, they would make less willing clients for upper-class philanthropy, although some would still use settlement houses to achieve upward mobility, as they do now. Thus "Society" could continue to run its philanthropic activities.

The political functions of the poor would be more difficult to replace. With increased affluence the poor would probably obtain more political power and be more active politically. With higher incomes and more political power, the poor would be likely to resist paying the costs of growth and change. Of course, it is possible to imagine urban renewal and highway projects that properly reimbursed the displaced people, but such projects would then become considerably more expensive, and many might never be built. This, in turn, would reduce the comfort and convenience of those who now benefit from urban renewal and expressways. Finally, hippies could serve also as more deviants to justify the existing political economy - as they already do.

Presumably, however, if poverty were eliminated, there would be fewer attacks on that economy. In sum, then, many of the functions served by the poor could be replaced if poverty were eliminated, but almost always at higher costs to others, particularly more affluent others. Consequently, a functional analysis must conclude that poverty persists not only because it fulfills a number of positive functions but also because many of the functional alternatives to poverty would be quite dysfunctional for the affluent members of society. A functional analysis thus ultimately arrives at much the same conclusion as radical sociology, except that radical thinkers treat as manifest what I describe as latent: that social phenomena that are functional for affluent or powerful groups and dysfunctional for poor or powerless ones persist; that when the elimination of such phenomena through functional alternatives would generate dysfunctions for the affluent or powerful, they will continue to persist; and that phenomena like poverty can be eliminated only when they become dysfunctional for the affluent or powerful, or when the powerless can obtain enough power to change society.

# Testimony to Cambridge City Council Ordinance Committee October 30, 2014

-Mark Gottlieb, J.D.

*Executive Director of the Public Health Advocacy Institute at Northeastern University School of Law  
Residing at 11 Montgomery Street, Cambridge.*

Suggested change to the cigar pricing and packaging provisions of the proposed amendments to the Tobacco Ordinance (Chapter 8.28, Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places) from May, 2014.

Increases in sales and use of inexpensive cigars and little cigars have become something of a loophole in tobacco control policies targeting cigarettes. These categories of cigars have tobacco blends similar to cigarettes, deliver nicotine and carcinogens like cigarettes, but cost a fraction of price of a pack of cigarettes. Minimum pricing and package size restrictions of the sort proposed in the amended ordinance can go a long way to close this regulatory loophole that threatens the health of price sensitive consumers, especially youth.

The Boston Public Health Commission pioneered the strategy encompassed in Sec. 8.28.030 H. Since it went into effect in 2012, more than 40 other communities have adopted it, according to the MA Municipal Association.

A key provision of this approach is that cigars must be sold in 4 packs, with an exception for any cigar selling for at least \$2.50.

Recently, 4 packs of cigars have been found selling for as little as \$1.00. Several communities modified the Boston approach (which is the one found in the proposed amendments here) to require that 4 packs or larger must sell for at least \$5.00. These communities included Greenfield, Deerfield, Lowell and Northampton. A minimum of \$5.00 for 4-packs will help to reduce the attractiveness of cheap cigars as a low-cost alternative to cigarettes. A provision providing

To accomplish this, I recommend replace the existing 8.28.030 Section H with updated language to allow the Cambridge Public Health Department to periodically review this pricing and raise minimum cost in proportion to increases in the applicable Consumer Price Index will save the Council from revisiting the issue repeatedly.

Recommendation: strike proposed Chapter 8.28.030, Section H

H: Cigar Sales Regulated:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or
2. cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City.
- c. Retail Tobacco Stores

Replace it with the following language -

H: Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
  - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
  - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of [city/town].
4. The [city/town] Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

The effect of this policy would be to stop the practice of undermining the minimum pricing intent of the 4 pack package size.

To summarize, this new policy requires that a single cigar must sell for at least \$2.50; a two-pack for at least \$5.00; a three-pack for at least \$5.00 and a 4-pack (or larger) for at least \$5.00 as well. This would also apply to ultracheap little cigars that appear very similar to cigarettes. Such 20-packs can sell a couple of bucks. This would require a minimum price of \$5.00

These changes would strengthen an already powerful set of amendments to improve the health of the City.

Thank you.

**From:** Bonny Carroll <bonnycarroll2@rcn.com>  
**Sent:** Thursday, October 30, 2014 8:42 AM  
**To:** Bonny Carroll  
**Subject:** Fwd: Hearing on sale of tobacco products

Sent from my iPhone

Begin forwarded message:

**From:** Eve Sullivan <eve@parentsforum.org>  
**Date:** October 30, 2014, 5:11:25 AM EDT  
**To:** bonny carroll <bonnycarroll2@rcn.com>  
**Cc:** Craig Kelley <ckelley@cambridgema.gov>  
**Subject:** Hearing on sale of tobacco products

Dear Bonny,

A copy of the message goes to my city councillor Craig Kelley.

I completely support your efforts to have the Cambridge City Council increase controls on tobacco and 'nicotine delivery products' / e-cigarettes with the following measures:

- = ban smoking (and 'vaping' as well) in outdoor seating areas in restaurants
- = ban smoking (and 'vaping') in parks with tot lots and at public events
- = ban the sale of tobacco products to anyone under 21 years of age
- = also ban the sale of "Nicotine Delivery Products" AKA e-cigarettes to anyone under 21

Smoking was the major factor in my father's death. He had a fatal heart attack at age 49, leaving my brother, then age 12, my sister, age 16, and me, age 21, without his care and companionship.

Thank you for all your work to combat these insidious products and limit the reach of companies who manufacture and market them. The promotion of flavored tobacco products and e-cigarettes to youth is especially troubling. The other day I saw a young woman with a small child, at a bus stop, using an e-cigarett. Awful!

Sincerely,

Eve

Eve Odiorne Sullivan  
144 Pemberton Street  
Cambridge MA 02140



## City of Cambridge

0-14  
Calendar item #3  
**IN CITY COUNCIL**  
September 22, 2014  
September 29, 2014

VICE MAYOR BENZAN

WHEREAS: According to a recent study published in the reputable British journal *The Lancet Psychiatry*, teenagers who smoke marijuana on a daily basis are 60 percent less likely than nonusers to finish high school. Furthermore, the studies of adolescent cannabis use also show that daily users under age 17 were 60 percent less likely to finish college than teens who did not smoke at all, seven times more likely to attempt suicide and eight times more likely to use illegal drugs at some point in their lives; and

WHEREAS: Legislation like the Tobacco Ordinance is aimed at strategically reducing the rate of teenage tobacco and drug use in our City; and

WHEREAS: Installing "no smoking marijuana" signs in our parks to discourage young people from doing so and reminding them that Massachusetts General Laws: CHAPTER 94C, Section 32L provides for civil penalties could serve as an effective deterrent for persons that choose to smoke marijuana in our parks around children; now therefore be it

ORDERED: That the City Manager be and hereby is requested to consult with the appropriate City departments to determine the feasibility of installing "no smoking marijuana" signs in city playgrounds and that signs further provide that persons found to be doing so could be fined in accordance to Massachusetts General Laws: CHAPTER 94C, Section 32L, and report back to the City Council.

**REFERRED TO THE ORDINANCE COMMITTEE FOR DISCUSSION WITH BAN ON TOBACCO PRODUCTS ON MOTION OF COUNCILLOR SIMMONS**