

ILLEGAL TOBACCO TASK FORCE MEETING MINUTES DRAFT

Notice of Public Meeting¹

Meeting Date: Wednesday, April 27, 2022

Meeting Time: 10:30 AM

Meeting Location: Via WebEx conferencing, dial (408) 418-9388, Meeting ID# 2344 504 9317

Board members present: John Hayes (Co-Chair), Detective Captain Brian Connors (Co-Chair), Patricia Henley, Anna Lumelsky, Nicholas Ogden, Susan Terrey, Mark William Bracken

Call to Order:

- Meeting was called to order at 10:35 AM by Mr. Hayes.
- Mr. Hayes informed all participants that this meeting will not be recorded by WebEx and that notes will be taken to complete the minutes. He reminded everyone to mute their phones and/or computers to limit background noise.
- Mr. Hayes welcomed Mark William Bracken to the Task Force and thanked Cole Doherty-Crestin for administrative assistance.

Opening Remarks:

- Mr. Hayes thanked everyone for attending. Mr. Hayes advised that the 2022 Annual Report to the legislature was filed on March 1st and thanked everyone for their hard work. Mr. Hayes indicated that today's meeting will primarily focus on discussing recommendations to legislation related to the tobacco and ENDS. There will be no public comment received during today's meeting but following meetings will include public testimony on recommended legislative changes.

Approval of Minutes from Meeting #47 on February 28, 2022:

- Mr. Hayes emailed a copy of the minutes for Meeting #47 to Task Force members prior to this meeting. Mr. Hayes asked members if there were any recommended edits to be made and hearing none, he asked for a motion to approve. Detective Captain Brian Connors approved. Sue Terrey seconded the motion. Mr. Hayes stated that with no objection, the minutes were approved.

Procedures to Review and Discuss Tobacco & ENDS Legislative Recommendations:

- Mr. Hayes reminded members the procedure for public submissions for recommended legislative changes will be outlined during today's meeting.
- Mr. Hayes reminded members the next several meetings will be spent proposing and reviewing legislative or regulatory changes "necessary to strengthen those operations and enforcement efforts of the Task Force and/or reduce or eliminate any impediments to those efforts."
- Mr. Hayes stated the Task Force's FY22 annual report, the most recent report submitted to the legislature, did not include any new recommendations for legislative changes. He reminded members the Task Force has not made recommended legislative changes since the FY20 annual report. Over the last two years, there has been passage of new tobacco related laws. The Task Force plans to review the impact of those laws as well as other current laws.

¹ This notice is being given in accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and An Act Extending Certain COVID-19 Measures, St. 2021, c. 20, June 16, 2021.

- In the past, the Task Force has submitted recommendations involving comprehensive revisions to the existing tobacco laws. Mr. Hayes suggested that the Task Force narrowly focus their mandate of combatting contraband tobacco distribution and take a more targeted approach in making recommendations to the legislature. Mr. Hayes stated that identifying a tentative list of the top 10 proposed legislative changes to assist in combatting tobacco smuggling would be a sufficient starting point. Mr. Hayes asked for feedback from members.
- Patricia Henley inquired about the status of previous recommended changes to legislation made by the Task Force from the FY20 report. Mr. Hayes stated previous recommendations have not gained traction. He recommended the Task Force focuses on new recommendations rather than revisiting pending recommendations. Nicholas Ogden suggested providing a grand overview of all statutes related to tobacco that have potential issues. Mr. Hayes responded that DOR and the Massachusetts State Police conducted a review of all statutes related to tobacco and identified the following 10 potential talking points for review. Mr. Hayes reminded members this list will be distributed for review and asked members to provide their own recommendations at the next meeting. Mr. Hayes reviewed the tentative list of proposed legislative changes.

10 Potential Talking Points for Review:

1. Establish criminal statute related to possession with intent to distribute, sale, or distribution of any untaxed tobacco and ENDS products without a license and associated criminal and civil penalties. (Chapter 64C, Section 30s).
 - Criminal and civil prosecution and penalties currently contained in various sections of law. Some tobacco types currently don't have civil remedies for selling without a license (e.g., cigarettes or smokeless tobacco). Proposing to create single law to address the unlawful possession, sale, or distribution of all untaxed tobacco and ENDS products with criminal and civil remedies (for both licensees and non-licensees).
2. Prohibition on the cash purchase of tobacco or ENDS products by retailers – requirement for use of check, credit card, or EFT via mobile app connected to the operating account. (Chapter 64C, Section 10).
 - This was discussed previously by the Task Force. This will allow investigators with the Task Force to better follow the money, prove violations of tobacco smuggling, and potentially recover lost revenue on behalf of Massachusetts taxpayers.
3. Revise language related to DOR authority to inspect tobacco and ENDS licensees and demand invoices. (Chapter 64C, Sections 7b, 7e, and 11).
 - This will create consistency between inspections of the different tobacco types.
4. Retailers must maintain invoices on premises for all tobacco and ENDS products at their location and products can't be transferred to other retail locations. (Chapter 64C, Section 5).
 - This will clarify requirement to maintain invoices on the premises as well as prohibition for retailers to transfer products between retail locations (different licensees).
5. Clarify language to include refusal of inspection of premises as grounds for possible suspension or revocation of license by the Commissioner. (Chapter 62C, Section 68 (5)).
 - This will clarify that licensee refusal to allow complete inspection of premises could be grounds for license suspension or revocation by Commissioner.
6. Revise legislation related to administrative searches for violations of tobacco and ENDS products. (Chapter 64C, Section 8).
 - This will clarify the scope of the administrative search warrants as it relates to licensees or non-licensees and the types of items to be seized.

7. Revise legislation to create consistency related to timing of tax payments for non-distributor licensees (cigars/smoking tobacco, ENDS) or unclassified acquirers (smokeless tobacco). (Chapter 62C, Sections 16 c, c1/2 and c3/4).
 - This will require non-distributor licensees or unclassified acquirers to file and pay the excise tax due for all tobacco types (except cigarettes) upon importation or acquisition of the products into or within Massachusetts.
8. Revise legislation to mirror the language in the federal statute. (Chapter 62C, Section 73 (h) [Obstruction of Justice]).
 - This will clarify the scope and application of the law as it applies to the assessment and collection of taxes.
9. Revise legislation related to non-resident cigar and ENDS distributors to identify what in-state activity would violate the provisions. (Chapter 64C, Sections 7B (cigars/smoking tobacco) and 7E (ENDS)).
 - This will clarify what actions can be taken by law enforcement when encountering an individual stopped in Massachusetts who is in possession of a large quantity of untaxed cigars/smoking tobacco or ENDS and indicates they are making a delivery to retailers within the state.
10. Additional requirement for distributors to have a business address when applying for CT-3D. (Chapter 62C, Section 67).
 - If distributor allowed to utilize a residence to store their cigars, then what is the process for DOR to conduct an inspection in a private residence and what is the scope of the inspection.

Public Input

- Mr. Hayes indicated the Task Force will be requesting testimony from the public about recommendations for changes to the tobacco laws. Specifically, recommendations to any of the 10 talking points or personal recommendations related to strengthening operations and enforcement efforts of the Task Force.
- Mr. Hayes reminded members that public testimony must first be submitted in writing to the Task Force via email (ITTF@dor.state.ma.us). The email address can be found on the ITTF website hosted by the DOR. To qualify for inclusion in the next Task Force meeting, which is tentatively scheduled for the second week of June, the deadline for written submissions will be May 31st. The Task Force will post the public comment procedure with the agenda for the June meeting by May 16th. These procedures will include the process for submitting the written testimony. The Task Force will review the submitted items and allow members of the public to speak on the topic during the June meeting. The Task Force will establish time limits for the testimonies depending upon the number of submissions. If needed, additional meetings will be scheduled to accommodate the public interest.

Updates from Member Agencies:

- Mr. Hayes stated DOR made a recent purchase of investigative equipment for ITTF. He asked if there were any updates from member agencies.
- Detective Captain Brian Connors stated the Massachusetts State Police storage facility will be running at full compliance in the following weeks. They are finalizing hardware issues. He also stated an additional designee will be appointed to the Task Force on behalf of the State Police, Steven Grasso. Steven Grasso has extensive experience with ITTF investigations and knowledge of legislation related to tobacco.

Closing Remarks:

- Mr. Hayes stated he will circulate the 10 potential talking points to members for review with a reminder to provide their own recommendations. The talking points will be further reviewed at the next meeting, which is to take place in early June.

- Mr. Hayes asked whether there was a motion to end the meeting. Patricia Henley approved. With no objections, Mr. Hayes thanked everyone for attending and concluded the meeting at 10:57 AM.