

SMOKING BARS, CIGAR BARS AND HOOKAH BARS AND THE MASSACHUSETTS SMOKE-FREE WORKPLACE LAW

The Smoke-Free Workplace Law, M.G.L. Ch. 270, §22, mandates that enclosed workplaces with one or more employees must be smoke-free. The state law's intent is to protect workers in enclosed workplaces from secondhand smoke exposure. The law allows an exception for "smoking bars" under certain circumstances. The full text of the law and additional information is available at www.mass.gov/dph/mtcp.

What is a smoking bar?

A smoking bar, sometimes known as a cigar bar or a hookah bar, is "*an establishment that exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises.*" In order to become a smoking bar, an establishment must first get a permit from the Massachusetts Department of Revenue and meet all of the state and local definition and exemption criteria.

Is hookah exempt from the Smoke-free Workplace Law?

No. The law specifically prohibits the lighting or possession of any tobacco or non-tobacco product designed to be combusted and inhaled. Hookah, under that definition, is prohibited because the materials placed in the pipe are designed to be ignited and inhaled. Establishments may apply for an exemption as a smoking bar.

What if the hookah does not contain tobacco?

It is still not permitted. The law defines smoking as the possession of any tobacco or **non-tobacco** item designed to be combusted and inhaled. Therefore, even if the hookah contains only herbal materials, it is not allowed under the law. The establishment must also apply for a smoking bar exemption. However, because the Smoking Bar eligibility requirements mandate that at least 51% of the establishment's revenue come from the sale of tobacco, an establishment selling only herbal or other non-tobacco hookah is, by definition, ineligible to become a Smoking Bar. In essence this means that the smoking of herbal or non-tobacco hookah is never permitted in an enclosed workplace.

What if I only want to serve hookah on a patio/outside?

Because the area is not an enclosed work area, serving hookah outside is allowable without a Smoking Bar permit. However, the patio must be at least 50% open to the air, and smoke must not migrate back in to the business, as this is a violation of the Smoke-Free Workplace Law. Some local boards of health have passed regulations that are stricter than the state law and prohibit smoking on patios. For further guidance on constructing a permissible patio please refer to the fact sheet entitled "Buffer Zones and Outside Spaces" A retail tobacco sales permit from both Department of Revenue and the local board of health is still required.

What is the process for becoming a smoking bar?

1. Contact the local board of health that covers the location to make sure Smoking Bars are permitted under their local regulations.
2. Contact the Department of Revenue to obtain a license to sell tobacco (visit www.mass.gov/dor) and a smoking bar permit.
3. Obtain a tobacco sales permit from the local board of health (if required).

How may I obtain a smoking bar permit?

Permit application forms are available from the Bureau of Desk Audit/Cigarette Tax Unit of the Department of Revenue. The telephone number is (617) 887-5090 and the fax number is (617) 887-5039. The permits may also be downloaded from www.mass.gov/dor

What are the permit eligibility requirements for becoming a smoking bar?

An establishment must be:

1. A majority (*at least 51%*) of the bar's revenue is from on-site sale of tobacco products;
2. Revenue from the sale of food, alcohol, or other beverages is incidental to the sale of tobacco products;
3. Prohibits any food or alcoholic beverage that are not sold directly by the business to be consumed on the premises;
4. Prohibits entry to any person under the age of 18 during business hours;
5. Maintains a valid permit for retail sale of tobacco products required to be issued by the appropriate authority in the city or town where the establishment is located;
6. Maintains a license (*from Department of Revenue*) to sell tobacco; and
7. Maintains a valid permit to operate a smoking bar issued by the Department of Revenue. Some local laws may exist that either do not permit an exemption for such an establishment, or have additional conditions that must be met before the establishment may permit smoking. **Contact your local BOH for additional requirements.**

Are there any additional requirements by the MA Department of Revenue for smoking bar permits?

Additional requirements include:

1. A non-refundable fee;
2. Applicants are required to file a *Certificate of Good Standing* and/or *Tax Compliance*, or a request for a Certificate with the smoking bar application;
3. A smoking bar/cigar bar permit will not be issue or renewed if a business has not filed all tax returns, has taxes due to the Commonwealth, or is delinquent in filing all declaration statements in connection with the smoking bar permit as required by MA Department of Revenue.

How long are permits issued for?

A smoking bar/cigar bar permit is valid for a period of two years from the date of issuance, unless otherwise suspended or revoked. A valid permit that is not suspended at the time of its expiration may be renewed for consecutive 2-year periods.

Do I need more than one permit for multiple locations?

Each permit issued is only for a specific business location and it is non-transferable. If a business owner wants to get a permit for multiple locations, then he/she must apply for a separate permit for each business location.

What happens after the MA Department of Revenue issues a permit?

The Department of Revenue will send a letter to the local board of health indicating that a permit has been issued in their municipality. Smoking bars are required to submit a confidential quarterly declaration to the Department of Revenue every 3 months that the business is in operation. Failure to file timely declarations may result in permit suspension.

For More Information About Smoking, Cigar and Hookah Bars:

Dept. of Revenue: 617-887-5090 www.mass.gov/dor

Questions About the Smoke-Free Workplace Law:

Massachusetts Department of Public Health: 1-800-992-1895 www.mass.gov/dph/mtcp

Please Note: The Massachusetts Department of Public Health is concerned about the use of hookah. Information about health risks of hookah is available at www.lung.org.