



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

**Guidance for Adopting Municipal Regulations to Control
Air Pollution under M.G.L. chapter 111, section 31C**

A city or town, through its Board of Health or other legal authority (referred to in this fact sheet as “Board of Health”), has the authority to enact “reasonable” rules and regulations to control air pollution, pursuant to Massachusetts General Laws Chapter 111, Section 31C (Section 31C). These regulations are enforceable only after they are approved by the Massachusetts Department of Environmental Protection (MassDEP) and printed in a newspaper published in the city or town (if there is no newspaper published in the city or town, the regulation must be posted in a public place).

Boards of Health may enact regulations to control air pollution if the regulation serves to prevent:

1. Nuisance to members of the town;
2. Danger to the public health of the town; or
3. Detriment to public comfort and convenience in the town.

According to Section 31C “air pollution” includes (but is not limited to) the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors, and dusts that may arise within the town’s boundaries and are a nuisance, danger, or detriment.

Procedural Requirements of Section 31C

Before sending a regulation or an amendment of a previously approved regulation to MassDEP for approval, the Board of Health must hold a public hearing to give the public an opportunity to comment on the regulation. The date, time, place and subject of the hearing must be printed in a newspaper published in the city or town, or if there is no newspaper published in the city or town, the notice of the hearing must be posted in a public place within the city or town. The text of the regulation or amended regulation does not have to be published in the newspaper before the hearing, but it should be made available to the public at or before the hearing.

The notice must be published in the newspaper twice, in two successive weeks before the hearing, as follows:

- The first notice must be published at least two weeks (14 days) before the hearing; and
- The second notice must be published sometime during the week immediately following the week of the first publication. For example, if a hearing is scheduled to be held on June 15, the first notice should be published by June 1, and the second notice must be published during the week of June 8, 2009.

After the hearing, if the Board of Health approves the regulation or amended regulation, the regulation must then be approved by MassDEP. To obtain MassDEP's approval, the Board of Health must submit the following information:

1. A letter requesting approval of the regulations;
2. One copy of the regulation; and
3. Copies of the two public hearing notices that were published or posted (please make sure the copies show the date on which the notices were published).

This information must be submitted to Assistant Commissioner, Bureau of Waste Prevention, MassDEP, One Winter Street, Boston, MA 02108

MassDEP will inform the Board of Health in writing whether the agency approves or disapproves the regulation.

If MassDEP approves the regulation, the Board of Health must print a copy of it in a newspaper published in the city or town to give the regulation the force of law¹.

Substantive Requirements of Section 31C

Regulations adopted by cities and towns pursuant to Section 31C must be "reasonable." Although there is no specific definition of "reasonable" in the statute, these regulations should be clear, concise and not conflict with existing laws and regulations.

Section 31C contains a penalty provision that should be included in the regulation either in its entirety or by reference:

Whoever violates any order, rule or regulation promulgated or adopted under the provisions of this section shall be punished, for the first offense, by a fine of not less than one thousand nor more than five thousand dollars and for a subsequent offense, by a fine of not less than five thousand nor more than ten thousand dollars. For the purpose of this paragraph each day or part thereof of violation of such an order, rule or regulation whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense.

Regulations adopted by the Board of Health can include limits, bans and/or moratoriums on certain activities that produce air pollution (e.g. outdoor wood fired boilers). The regulation must be at least as stringent as any applicable state or federal law or regulation.

Local Regulations Adopted Pursuant to M.G.L. Chapter 111, Section 31

Boards of Health also have the authority to "make reasonable health regulations" pursuant to M.G.L. Chapter 111, Section 31. Regulations adopted under Section 31 do not have to be approved by MassDEP, but this section of the statute requires that "attested copies of sanitary codes, and all rules, regulations and standards, and any amendments and additions thereto" must be filed with MassDEP (Please send them to: Assistant Commissioner, Bureau of Waste Prevention, MassDEP, One Winter Street, Boston, MA 02108).

¹ If no newspaper is published in the city or town, a copy of the regulation must be posted in a public place in the city or town.

An air pollution regulation may be adopted pursuant to both Section 31 and Section 31C, but the procedural and substantive requirements of Section 31C must be followed in order to give the air pollution regulation the force of law.

For More Information

- MassDEP encourages Boards of Health to consult with their Town Counsel on the procedural and substantive requirements for adopting air regulations under Section 31C, and to consult with other cities/towns to develop a consistent approach for regulating air pollution.
- Contact Marc Cohen in MassDEP's Bureau of Waste Prevention (email: marc.cohen@state.ma.us or telephone: 617/292-5873), with questions about the requirements of Section 31C.