



Laura Vlasuk
Director of Public Health

CITY OF NEWBURYPORT BOARD OF HEALTH

60 Pleasant Street
Newburyport, MA 01950

PHONE: 978-465-4410

WEBSITE: www.cityofnewburyport.com



Public Health
Prevent. Promote. Protect.

***Remote* Board of Health Meeting**
September 22, 2022 7:00pm

Please click the link to join the meeting: <https://us02web.zoom.us/j/88996440077>

Or by phone (audio only): +1 (929) 205-6099
Meeting/Webinar ID: 889 9644 0077

Meeting Agenda:

- I. 7:00pm – Call to Order
- II. Approval of Minutes
- III. Tobacco – Sale to a Person under the Age of 21 Violations
 - a. Shell (75 Storey Ave) – 1st Offense - **PAID**
 - b. Richdale (62 State St) – 1st Offense – **PAID**
 - c. Newburyport One Stop (1 Kent St) – 2nd Offense – **APPEAL HEARING**
- IV. Director's Report
- V. Set date for next Meeting
- VI. Session for topics not reasonably anticipated 48 hours in advance of meeting
- VII. Adjourn

Healthy Communities Tobacco Control Program

A Boards of Health Partnership

Amesbury
Andover
Billerica
Chelmsford
Dracut
Haverhill
Lynnfield
Methuen

Middleton
Newbury
Newburyport
North Andover
North Reading
Rowley
Salisbury
Tewksbury
Topsfield

CERTIFIED MAIL AND FIRST-CLASS POSTAGE

August 24, 2022

Shell
75 Storey Ave.
Newburyport, MA 01950

Re: Correction/Cease and Desist Order - Tobacco Product Sale to a Person Under the Age of 21

Attn: Manager/Owner:

On August 24, 2022 at approximately 10:08 a.m. your establishment sold a tobacco product to a person under the age of 21 in violation of state law 105 CMR 665.010(A).

As outlined on the Correction/Cease and Desist Order issued by the City of Newburyport's Health Department (hand-delivered to you or your agent on the day of the unlawful sale) you have the following alternatives:

1. Pay the fine of one-thousand (\$1,000.00) within 21 days of the date of issuance of the Order; or
2. If you are aggrieved by the Correction/Cease and Desist Order, request a Hearing before the Newburyport Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date the Order was served or actually received. The written request for a hearing can be delivered to the Newburyport Board of Health, 60 Pleasant Street, Newburyport, MA 01950. Any affected party has a right to appear at said hearing.

All payments of fines shall be made to the City Clerk, City Hall, 60 Pleasant Street, Newburyport, MA 01950 . Please note that this fine of one-thousand (\$1,000.00) is required under state law 105 CMR 665.045(A).

As you know, you have a legal obligation under 105 CMR 665.020(A) to ID all customers seeking to purchase tobacco products, regardless of age. You must verify the age of tobacco purchasers by viewing their valid government-issued photo identification cards. If you need any training to emphasize this legal obligation to your employees, please do not hesitate to contact me.

Please feel free to contact me if you have any questions regarding this notice.

Sincerely,

Ronald N. Beauregard
Tobacco Control Program Director

cc: Laura Vlasuk, Newburyport Director of Public Health
Richard Burke Jones, Newburyport City Clerk

36 Bartlet Street, Andover, MA 01810
Tel: 978-490-8114



CITY OF NEWBURYPORT HEALTH DEPARTMENT

60 Pleasant Street
Newburyport, MA 01950

PHONE: 978-465-4410

WEBSITE: www.cityofnewburyport.com



Public Health
Prevent. Promote. Protect.

CORRECTION/CEASE AND DESIST ORDER

Today's Date: August 24, 2022
Today's Date

This CORRECTION/CEASE AND DESIST ORDER is issued to:

Shell

75 Storey Ave.

Newburyport, MA.

Name of Establishment

Street Address

Please be advised that on Aug. 24, 2022 at approximately 10:08 AM a compliance
Date of Violation Time AM/PM

check was conducted on behalf of the Newburyport Board of Health.

Shell

violated the state law entitled "An Act to Modernize Tobacco Control"

Name of Establishment

and 105 CMR 665.000 by selling a tobacco product to a person under the Minimum Legal Sales Age.

You are hereby ordered to cease and desist from violating An Act to Modernize Tobacco Control and 105 CMR 665.000.

In addition, a fine of One Thousand dollars (\$1,000.00) is applied against

Shell

Name of Establishment

for violation of 105 CMR 665.000.

You are hereby ordered to pay the amount of One-Thousand dollars (\$1,000.00) by check or money order made payable to the "City of Newburyport" within twenty-one (21) days of receipt of this order to the following address: Newburyport City Clerk, 60 Pleasant Street, Newburyport, MA 01950.

If you are aggrieved by this order, you have the right to request a Hearing before the Newburyport Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date this Order was served or actually received. Any affected party has a right to appear at said hearing.

Failure to comply with this order may result in additional penalties as permitted by law.

Signed by:

Signature of Agent

8/24/22

Date

As agent of the Newburyport Board of Health

Healthy Communities Tobacco Control Program

A Boards of Health Partnership

Amesbury
Andover
BillERICA
Chelmsford
Dracut
Haverhill
Lynnfield
Methuen

Middleton
Newbury
Newburyport
North Andover
North Reading
Rowley
Salisbury
Tewksbury
Topsfield

CERTIFIED MAIL AND FIRST-CLASS POSTAGE

August 24, 2022

Richdale
62 State Street
Newburyport, MA 01950

Re: Correction/Cease and Desist Order - Tobacco Product Sale to a Person Under the Age of 21

Attn: Manager/Owner:

On August 24, 2022 at approximately 11:11 a.m. your establishment sold a tobacco product to a person under the age of 21 in violation of state law 105 CMR 665.010(A).

As outlined on the Correction/Cease and Desist Order issued by the City of Newburyport's Health Department (hand-delivered to you or your agent on the day of the unlawful sale) you have the following alternatives:

1. Pay the fine of one-thousand (\$1,000.00) within 21 days of the date of issuance of the Order; or
2. If you are aggrieved by the Correction/Cease and Desist Order, request a Hearing before the Newburyport Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date the Order was served or actually received. The written request for a hearing can be delivered to the Newburyport Board of Health, 60 Pleasant Street, Newburyport, MA 01950. Any affected party has a right to appear at said hearing.

All payments of fines shall be made to the City Clerk, City Hall, 60 Pleasant Street, Newburyport, MA 01950 . Please note that this fine of one-thousand (\$1,000.00) is required under state law 105 CMR 665.045(A).

As you know, you have a legal obligation under 105 CMR 665.020(A) to ID all customers seeking to purchase tobacco products, regardless of age. You must verify the age of tobacco purchasers by viewing their valid government-issued photo identification cards. If you need any training to emphasize this legal obligation to your employees, please do not hesitate to contact me.

Please feel free to contact me if you have any questions regarding this notice.

Sincerely,

Ronald N. Beauregard
Tobacco Control Program Director

cc: Laura Vlasuk, Newburyport Director of Public Health
Richard Burke Jones, Newburyport City Clerk

36 Bartlet Street, Andover, MA 01810
Tel: 978-490-8114



CITY OF NEWBURYPORT HEALTH DEPARTMENT

60 Pleasant Street
Newburyport, MA 01950

PHONE: 978-465-4410

WEBSITE: www.cityofnewburyport.com



Public Health
Prevent. Promote. Protect.

CORRECTION/CEASE AND DESIST ORDER

This CORRECTION/CEASE AND DESIST ORDER is issued to:

Today's Date: Aug. 24, 2022
Today's Date

Richdale

Name of Establishment

62 State St.

Street Address

Newburyport, MA.

Please be advised that on Aug 24, 2022 at approximately 11:11 a.m. a compliance
Date of Violation Time AM/PM

check was conducted on behalf of the Newburyport Board of Health.

Richdale

Name of Establishment

violated the state law entitled "An Act to Modernize Tobacco Control"

and 105 CMR 665.000 by selling a tobacco product to a person under the Minimum Legal Sales Age.

You are hereby ordered to cease and desist from violating An Act to Modernize Tobacco Control and 105 CMR 665.000.

In addition, a fine of One Thousand dollars (\$1,000.00) is applied against

Richdale

Name of Establishment

for violation of 105 CMR 665.000.

You are hereby ordered to pay the amount of One-Thousand dollars (\$1,000.00) by check or money order made payable to the "City of Newburyport" within twenty-one (21) days of receipt of this order to the following address: Newburyport City Clerk, 60 Pleasant Street, Newburyport, MA 01950.

If you are aggrieved by this order, you have the right to request a Hearing before the Newburyport Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date this Order was served or actually received. Any affected party has a right to appear at said hearing.

Failure to comply with this order may result in additional penalties as permitted by law.

Signed by:

[Handwritten Signature]

Signature of Agent

8/24/22

Date

As agent of the Newburyport Board of Health

MABARDY OIL INC.

720 Lafayette Rd

Seabrook, NH 030874

Phone: 603-474-0510 Fax: 603-474-8193

August 30, 2022

City of Newburyport
Board of Health Department
Newburyport MA

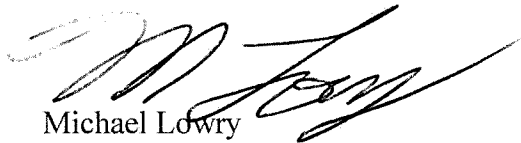
RE: Violation 8/24/22
Tobacco Product Sale to a Person under the Age of 21

Newburyport One Stop located at 1 Kent St Newburyport Ma request a hearing before the board of Health to discuss the \$2000.00 fine for the violation on August 24, 2022. I have attached a copy of said violation.

Please contact me at the above address to when the hearing may take place.

I can be reached on my cell at 978-476-6654

Sincerely



Michael Lowry
General Manager
Salisbury Mini Mart Inc
Seabrook One Stop Inc
Mabardy Oil Inc.

Healthy Communities Tobacco Control Program
A Boards of Health Partnership

Amesbury
Andover
Billerica
Chelmsford
Dracut
Haverhill
Lynnfield
Methuen

Middleton
Newbury
Newburyport
North Andover
North Reading
Rowley
Salisbury
Tewksbury
Topsfield

CERTIFIED MAIL AND FIRST-CLASS POSTAGE

August 24, 2022

Newburyport One Stop
1 Kent Street
Newburyport, MA 01950

Re: Correction/Cease and Desist Order - Tobacco Product Sale to a Person Under the Age of 21

Attn: Manager/Owner:

On August 24, 2022 at approximately 12:05 p.m. your establishment sold a tobacco product to a person under the age of 21 in violation of state law 105 CMR 665.010(A). **This is a second offense.*** The first offense occurred April 12, 2022.

As outlined on the Correction/Cease and Desist Order issued by the City of Newburyport's Health Department (hand-delivered to you or your agent on the day of the unlawful sale) you have the following alternatives:

1. Pay the fine of **two-thousand (\$2,000.00)*** within 21 days of the date of issuance of the Order; or
2. If you are aggrieved by the Correction/Cease and Desist Order, request a Hearing before the Newburyport Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date the Order was served or actually received. The written request for a hearing can be delivered to the Newburyport Board of Health, 60 Pleasant Street, Newburyport, MA 01950. Any affected party has a right to appear at said hearing.

All payments of fines shall be made to the City Clerk, City Hall, 60 Pleasant Street, Newburyport, MA 01950 . Please note that this fine of one-thousand (\$1,000.00) is required under state law 105 CMR 665.045(A).

As you know, you have a legal obligation under 105 CMR 665.020(A) to ID all customers seeking to purchase tobacco products, regardless of age. You must verify the age of tobacco purchasers by viewing their valid government-issued photo identification cards. If you need any training to emphasize this legal obligation to your employees, please do not hesitate to contact me.

Please feel free to contact me if you have any questions regarding this notice.

Sincerely,



Ronald N. Beauregard
Tobacco Control Program Director

cc: Laura Vlasuk, Newburyport Director of Public Health
Richard Burke Jones, Newburyport City Clerk



CITY OF NEWBURYPORT HEALTH DEPARTMENT

60 Pleasant Street
Newburyport, MA 01950

PHONE: 978-465-4410
WEBSITE: www.cityofnewburyport.com



Public Health
Prevent. Promote. Protect.

CORRECTION/CEASE AND DESIST ORDER

This CORRECTION/CEASE AND DESIST ORDER is issued to:

Today's Date: Aug. 24, 2022
Today's Date

Newburyport One Stop 1 Kent St. Newburyport, MA.
Name of Establishment Street Address

Please be advised that on Aug. 24, 2022 at approximately 12:05 pm. a compliance
Date of Violation Time AM/PM

check was conducted on behalf of the Newburyport Board of Health.
Newburyport One Stop violated the state law entitled "An Act to Modernize Tobacco Control"
Name of Establishment

and 105 CMR 665.000 by selling a tobacco product to a person under the Minimum Legal Sales Age.

You are hereby ordered to cease and desist from violating An Act to Modernize Tobacco Control and 105 CMR 665.000.

In addition, a fine of ~~One~~ TWO RNB Thousand dollars (~~\$1,000.00~~) is applied against Newburyport One Stop
\$2,000.00 + RNB
for violation of 105 CMR 665.000. Name of Establishment

You are hereby ordered to pay the amount of One-Thousand dollars (\$1,000.00) by check or money order made payable to the "City of Newburyport" within twenty-one (21) days of receipt of this order to the following address: Newburyport City Clerk, 60 Pleasant Street, Newburyport, MA 01950.

If you are aggrieved by this order, you have the right to request a Hearing before the Newburyport Board of Health. This request must be made by you, in writing, and filed within seven (7) days after the date this Order was served or actually received. Any affected party has a right to appear at said hearing.

Failure to comply with this order may result in additional penalties as permitted by law.

Signed by:

Signature of Agent

8/24/22

Date

As agent of the Newburyport Board of Health

* 2nd offense (1st offense on 4/12/22)

665.035: Liquid Nicotine Container Packaging

No person shall knowingly sell or provide:

- (A) A liquid or gel substance containing nicotine, unless the substance is contained in child-resistant packaging; or
- (B) A liquid nicotine container, unless the container includes child-resistant packaging as part of its design.

665.040: Requirements for Retail Establishments

A retail establishment operating on or after December 11, 2019 must meet the following requirements:

- (A) Only establishments with a permanent, non-mobile location are eligible to operate.
- (B) Operation of a retail establishment shall be conditioned on the retailer's or retail establishment owner's consent to unannounced, periodic inspections of his or her retail establishment and tobacco products to ensure compliance with 105 CMR 665.000 and any applicable local regulations, orders, or ordinances.
- (C) A retail establishment shall be prohibited from selling tobacco products if the retailer or owner of the retail establishment has failed to pay all fines issued and the time period to appeal the fines has expired and/or the retail establishment has not satisfied any outstanding orders issued pursuant to 105 CMR 665.000.
- (D) Sale of a tobacco product by a retail establishment to a person younger than 21 years old shall result in the retail establishment being prohibited from selling tobacco products for up to 30 consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.

665.045: Violations

Unless otherwise specified or provided for in 105 CMR 665.000, violations of 105 CMR 665.000 shall be assessed as follows:

- (A) It shall be the responsibility of any person to ensure compliance with 105 CMR 665.000. If an inspection pursuant to 105 CMR 665.000 reveals a retail establishment, retailer, and/or his or her business agent does not comply with the provisions of 105 CMR 665.000, the retail establishment shall be ordered to comply with the violated provision of 105 CMR 665.000. In addition to the correction order, the following fines and actions apply against any person who violates 105 CMR 665.000, provided, however, that such fines and actions related to any violation within a retail establishment shall apply against the retailer and/or his or her business agent and not an employee thereof:
 - (1) In the case of a first violation, a fine of \$1,000 shall be imposed.
 - (2) In the case of a second violation within a period of 36 months from the first violation, a fine of \$2,000 shall be imposed; and a prohibition on the sale of tobacco products may be imposed for at least one day and up to seven consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.
 - (3) In the case of a third violation within a period of 36 months from the first violation or additional violations during that time period, a fine of \$5,000 shall be imposed; and a prohibition on the sale of tobacco products may be imposed for at least seven consecutive business days and up to 30 consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

665.045: continued

(B) Failure to cooperate with inspections pursuant to 105 CMR 665.000 shall result in the prohibition on the sale of tobacco products for up to 30 consecutive business days, or for a longer term as enacted, adopted, or promulgated in a rule, regulation or other measure by the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth.

(C) Failure to pay a fine imposed pursuant to 105 CMR 665.000 shall constitute a separate violation of 105 CMR 665.000 subject to the penalties set forth at 105 CMR 665.045(A).

(D) Consistent with 105 CMR 665.055, a retail establishment shall be provided notice of the intent to prohibit the sale of tobacco products at or by the retail establishment. The notice shall contain the reasons therefor and establish a time and date for a hearing. The retail establishment, retailer or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the decision regarding the retail establishment's prohibition from selling tobacco products and the reasons therefor in writing. After a hearing, the retail establishment may be prohibited from selling tobacco products upon a finding that a violation of 105 CMR 665.000 for which such prohibition is applicable occurred. All tobacco products shall be removed from the retail establishment upon an indefinite suspension from operating as a retail establishment. Failure to remove all tobacco products shall constitute a separate violation of 105 CMR 665.000.

(E) Separate Violations. Each day any violation of 105 CMR 665.000 exists shall be deemed to be a separate offense.

665.050: Order to Cease and Desist

(A) An Order to Cease and Desist may be issued by the Department or Board of Health to a person or a business agent of a retail establishment upon the regulatory authority's reasonable belief that:

- (1) A person is conducting sales of tobacco products in violation of the law, regulations, and/or standards applicable to it;
- (2) A person refuses access to the premises and/or records to authorized enforcement agents;
- (3) A person or retail establishment is operating in a manner that may pose an imminent danger to the public health;
- (4) A retail establishment has failed to comply with a correction order within the time specified; or
- (5) A retail establishment is operating in a manner that is unsafe or otherwise below the accepted standards for the type of operation and summary closure is authorized by statute on these grounds.

(B) Service of Orders to Cease and Desist shall be on the person or retail establishment or business agent of the retail establishment by:

- (1) Personal delivery by an agent of the regulatory agency;
- (2) Posting in a conspicuous place at the retail establishment;
- (3) Simultaneously mailing, by first class and certified mail return receipt requested; or
- (4) By any officer of the Commonwealth authorized to make service.

Notice is deemed to be served if the person or retail establishment or business agent of the retail establishment has actual notice of the Order to Cease and Desist.

665.055: Enforcement

(A) No provision of 105 CMR 665.055 shall be construed as a limitation on the emergency powers of the Department of Public Health of the Commonwealth or its Commissioner.

(B) Local Enforcement.

- (1) General Procedures. Unless otherwise expressly provided in any general law to the contrary, each board of health may enforce 105 CMR 665.000, or otherwise at law or in equity in the same manner that local rules and regulations are enforced.