

DEPARTMENT OF PUBLIC HEALTH ISSUES EMERGENCY ORDER BANNING SALE AND DISPLAY OF VAPING PRODUCTS

On September 24, 2019, pursuant to a declaration of emergency by Governor Baker, the Massachusetts Department of Public Health (DPH) has issued an Emergency Order banning the display and sale of any “vaping” products. The ban took effect immediately but is temporary, lasting through January 25, 2020, during which time DPH and other agencies will seek more information on the apparent health risks these products are causing. The Order follows reports nationwide of hundreds of serious lung ailments and at least seven deaths attributable to vaping, along with increased use of these products by school age youth. Since the DPH Order expressly calls for local enforcement of its terms, particularly from municipal Boards of Health or Health Departments, it is important for local officials to be aware of the Order’s provisions. We urge you to share this eUpdate with your Health Department officials and staff.

Effective immediately, the sale and/or display of all vaping products by retailers is prohibited. The only exceptions are for products for tobacco cessation or other medical purposes that have been approved by the Federal Food and Drug Administration. “Vaping products” includes all products or product components that are intended for human consumption by vaporizing or aerosolizing a substance for inhalation, such as e-cigarettes, vaping pens and cartridges, and the like. This notably includes products containing nicotine, flavored (including mint and menthol) or otherwise, as well as marijuana products containing THC or other cannabinoids that are sold by retailers licensed by the Cannabis Control Commission. While more information and guidance on the details of enforcement will be issued by DPH shortly, the Commissioner of Public Health issued a preliminary memorandum for implementation of the Order by cities and towns. The Order and the implementation memorandum can be viewed [here](#). The memorandum states that while the Commonwealth will directly contact all known vaping product retailers, DPH will rely on local health departments to assist with enforcement of the ban. This includes:

- Educating retailers about the ban;
- Conducting inspections of retail establishments to ensure compliance;
- When necessary, issuing cease and desist letters to any retailers still selling or displaying vaping products, and conducting follow up inspections 24 hours later to ensure compliance (DPH will issue a form cease and desist letter); and
- Following up on any complaints DPH receives, which will be relayed to local health departments.

The Massachusetts Department of Public Health will be issuing further guidance on this Emergency Order in the coming days, but you may contact Brian Riley (briley@k-plaw.com) or Gregg Corbo (gcorbo@k-plaw.com) at 617.556.0007 with any further questions.

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