



## Town of Randolph, Massachusetts

**Board of Health**  
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### REGULATIONS GOVERNING THE DISTRIBUTION OF NICOTINE AND TOBACCO PRODUCTS

#### SECTION 1

##### A. Purpose

These regulations are intended to protect the public health and general welfare by ensuring that access to and distributions of all tobacco products are in accordance with existing Federal and State laws, including, but not limited to M.G.L. Chapter 270 sections 6 and 7, governing the use, sale and distribution of tobacco products which have been declared injurious to public health by the Surgeon General of the United States.

##### B. Authority

These regulations are adopted by the Randolph Board of Health under the authority of Massachusetts General Law, Chapter 111, section 31.

C. Rational Statement

"Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year (McGinnis JM, Goerge W, 'Actual Causes of Death in the United States', JAMA 1993 270:2207-2212); and whereas the U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); now therefore, the Board of Health of Randolph recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in public places and workplace.

Section II

DEFINITIONS

The definitions in this section apply to words and phrases used in these regulations:

Board of Health	The Randolph Board of Health.
Business	Any sole proprietorship, partnership, joint venture, corporation, trust or other business entity, including retail establishments where goods and services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional and commercial services are delivered.
Employee	Any individual who performs services for an employer for consideration.
Employer	Any business, including the Town of Randolph or any agency thereof, which regularly uses the services of two (2) or more employees.
Individual	An employee, volunteer or any other person who patronizes an area where tobacco products are sold.
Permittee for Location & Sale	Any sole proprietorship, partnership, joint venture, corporation or other place of business including retail establishments and bars that have been issued a permit by the

	Town of Randolph Health Department regulating the location and sale of tobacco products in the Town of Randolph.
Photographic Identification	A document containing a person's photographic likeness, and date of birth such as found in, but not limited to, a valid Massachusetts driver's license, Massachusetts identification card issued by the Registry of Motor Vehicles, or valid United States passport.
Retailer	For the purpose of these regulations, any retail store utilized for the sale of tobacco products and accessories.
Self-service	A display from which individual packages or cartons of manufactured nicotine containing products may be selected by a customer.
E-Cigarette-	Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.
Nicotine Delivery Product:	Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.
Private Club:	Any not-for-profit entity created and organized pursuant to M.G.L. Chapter 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather is distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Public place: Any Municipally owned park or Athletic field or place of gathering.

Smoking: The inhaling, exhaling, burning, holding or carrying of any lighted cigar, cigarette, pipe, or other lighted tobacco product in any form or other tobacco products or non-tobacco products designed to be combusted and inhaled.

Smoking bar: An establishment that is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Products Products containing tobacco in any of its forms including but not limited to cigarettes, cigars, smokeless tobacco, pipe tobacco or snuff.

**Tobacco Product shall be defined as a cigarette, cigars, chewing tobacco, pipe tobacco, bidi, snuff, other tobacco or nicotine delivery product in any form.**

Smoking The lighting of any cigar, cigarette, pipe or other tobacco Product or having possession of any lighted cigar, cigarette, Pipe or other tobacco product.

### Section III

#### TOBACCO SALES TO MINORS PROHIBITED

##### A. Identification Required

No retailer shall sell or permit to be sold cigarettes or other tobacco products to anyone under the age of eighteen (18). Additionally, retailers must request to see a customer's photo identification bearing the customer's date of birth before selling cigarettes or other tobacco products to anyone who has not yet reached his or her twenty-seventh (27<sup>th</sup>) birthday.

• **Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:**

**1. No person shall sell tobacco products or permit tobacco or electronic delivery products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal**

sales age. The minimum legal sales age in [Randolph] is [21] Years.

B. Permit for Location and Sales of Tobacco

As of January 1, 1999, and upon receipt of an application and fee from a retailer, the Randolph Board of Health will issue a "Permit for location and Sales" that will specify the name, address and approved location for retailers who sell tobacco products.

As of January 1, 1999, all retailers who sell tobacco products will be required to hold and maintain a valid "Permit for Location and Sales" from the Randolph Board of Health for each location at which tobacco products are sold. Any person or entity selling tobacco products without said permit shall be fined according to Section V, until such permit is issued by the Randolph Board of Health or its designated agent(s).

After receiving said permit, the merchant will receive signage from The Board of Health reading "Sale of cigarettes or any tobacco products to persons under age eighteen (~~18~~21) is illegal, M.G.L. chapter 270, Sections 6 & 7." Any merchant not posting said signage will be in non-compliance of this regulation and subject to penalties per Section V.

Section III (continued)

The term for the permit shall be for one calendar year unless suspended or revoked. The initial permit shall be in effect from January 1, 1999, to December 31, 1999. Any permit issued after January 1 will not be prorated. The fee for one calendar year, or fraction thereof, of a tobacco retailer's "Permit for Location and Sales" shall be one hundred dollars (\$100.00).

A "Permit for Location and Sales" is non-transferable. A new Permit must be issued to a tobacco retailer who changes locations.

Applications for renewal of a "permit for Location and Sales" shall be filed in accordance with the administrative procedures established by vote of the Randolph Board of Health. The required fee must accompany each application.

During such time that a "Permit for Location and Sales" of tobacco products has been suspended for violations of this regulation, all tobacco products must be removed from all sales areas and kept under lock and key or removed from the premises.

C. Out-of-Package Sales

As of January 1, 1999, no person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes.

D. Free Distribution/Samples

No person or business shall distribute or cause to be distributed any free samples of cigarettes or any other tobacco products.

E. Self-Service Displays

As of January 1, 1999, self-service displays of all tobacco products are Prohibited in the Town of Randolph except when such displays are Located in facilities where the retailer ensures in writing to the Randolph Board of Health that no person younger than eighteen (~~18~~21) Years of age is present or permitted to enter at any time. Counter Displays which prohibit self-service are permitted within the Town of Randolph.

Section III (continued)

F. Sales by Employees

No commercial entity selling tobacco products shall allow any employee to see cigarettes or other tobacco products until such employee reads the Randolph Board of Health's regulations regarding the sale of tobacco and signs a statement, copy of which will be placed on file in the office of the employer, that he/she has read the regulations.

G. Smoking bars are prohibited in the Town of Randolph.

H. Nicotine Delivery Products Sales are prohibited for persons under ~~18~~21 year old.

I. All self-service displays of tobacco products and/or Nicotine Delivery Products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

1. Tobacco Vending Machines and Roll-Your-Own Machines are prohibited.

2. All tobacco vending and or Nicotine Delivery Product machines are prohibited.

• SECTION IV SMOKING PROHIBITED

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• No person shall smoke in any public place

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- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- (b) Smoking is hereby prohibited in the **Town of Randolph** in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law).
- (c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
  - a. Town-owned public parks, playgrounds, beaches, fields, swimming areas athletic and non- school athletic fields.
  - b. The use of e-cigarettes, all non-tobacco smoking products and marijuana is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

Section ~~IV~~V

ENFORCEMENT

- A. It shall be the responsibility of the permit holder to assure compliance with all sections of these regulations pertaining to the place of business. Failure to do so shall be a violation of the “Permit for location and Sales”.
- B. Enforcement of these regulations shall be by the Randolph Board of Health and/or its designated agent(s). Except for Section IV whereby the Randolph Police Department will enforce violations regarding public place smoking.
- C. Any citizen who desires to register a complaint of non-compliance with these rules and regulations of with M.G.L. Chapter 270 sections 6 and 7 may do so in writing to the Randolph Board of Health.
- D. The Board of Health shall issue a written “Notice of Non-Compliance” citing any non-compliance, the corrective action to be taken within ten (10) working days of receipt of the Notice of Non-Compliance; and the right to a file a written request for a hearing before the Board of Health in accordance with section IV (F).
- E. All ‘Notices of Non-Compliance’ shall be sent by certified mail to the Holder of the “Permit for Location and Sales”.

Section ~~IV~~V (continued)

- F. The holder of a “Permit for Location and Sales” receiving a non-compliance notice may request a hearing before the Randolph Board of Health. Said request shall be in writing and filed with the Board of Health within seven (7) calendar days of receipt of the written notice of non-compliance.

- G. The Board of Health shall schedule the requested hearing within Twenty-one (21) calendar days of receipt of the written request of a Hearing.
- H. Following the hearing, the Board of Health shall uphold, amend or rescind the penalty noted in the Notice of Non-Compliance. Written notice of the Board of Health's action shall be given to the holder of the "Permit for Location and Sales".

Section ~~V~~VI

PENALTIES, FINES SUSPENSION AND/OR RECVOICATION OF PERMIT

- A. A holder of a "Permit for Location and Sales" in violation of any of the provisions of these regulations shall receive:
  - (1) In the case of a first violation of any section of these rules and regulations, suspension of the "Permit for Location and Sales" shall be for a period of three (3) consecutive days and a fine of one-hundred dollars (\$100.00), except where tobacco sales are made without a "Permit for Location and Sales" then the seller will be subject to a fine of an additional fifty dollars (\$50.00) per day until a permit application is received by the Randolph Board of Health.
  - (2) In the case of a second violation within twenty-four (24) months, a suspension of the "Permit for Location and Sales shall be for a period of twenty-one (21) consecutive days and a fine of two-hundred dollars (\$200.00).
  - ~~(3)~~ In the case of a third violation within twenty-four (24) months, suspension of the "Permit for Location and Sales" shall be for a period of ninety (90) days and a find of three hundred dollars (\$300.00).

Section ~~V~~VI (continued)

During such time that a "Permit for Location and Sales" of tobacco products has been suspended for violations of this regulation, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined fifty dollars (\$50.00) per day until said permit is issued or reinstated by the Randolph Board of Health or its designated agent(s).

All associated costs could be charged against the violator if found as such and shall not be limited to court costs, fees, or any associated costs.

Failure to pay fines will result in revocation of permit.

Section ~~V~~VII

HEARINGS

The Randolph Board of Health shall provide notice to the permit holder of the intent to suspend or revoke a tobacco sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Randolph Board of Health's decision and the reasons therefore, in writing. All tobacco products shall be removed from the premises upon suspension of the tobacco sales permit. Failure to remove said products shall constitute a separate violation.

#### Section VII

#### OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

#### Section VIII

#### SEVERABILITY

The invalidity of any section or provision of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, fine or suspension which previously has been issued.

Section XI

EFFECTIVE DATE

These regulations shall take effect on January 1, 1999.

Regulations amended on Monday, April 5<sup>th</sup>, 2010 effective July 1<sup>st</sup>, 2010

Regulations amended on Monday, May 4<sup>th</sup>, 2015 effective July 1<sup>st</sup>, 2015

Regulations amended on Monday, October 3<sup>rd</sup> 2016 effective January 1<sup>st</sup> 2017

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FOR THE BOARD OF HEALTH

\_\_\_\_\_  
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