

**COMMONWEALTH OF MASSACHUSETTS**

**TOWN OF BRAINTREE**

**BOARD OF HEALTH**

**SECTION I**

**RULES AND REGULATIONS GOVERNING THE DISTRIBUTION OF TOBACCO PRODUCTS**

A. Purpose

These rules and regulations are intended to protect the public health and general welfare by ensuring that access to and distribution of all tobacco products are in accordance with existing federal and state laws, including, but not limited to M.G.L. 270 section 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 rules and regulations are adopted by the Braintree Board of Health under the authority of Massachusetts General Law, Chapter 111, section 31.

## Sections II

### Definitions

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

<b>Board of Health</b>	means the Braintree Board of Health
<b>Business</b>	means any sole proprietorship, partnership, joint venture, corporation 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.
<b>Distributor</b>	Any person who furthers the distribution of cigarettes or any other tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for the purposes of this regulation.
<b>Employee</b>	means any individual who performs services for an employer for consideration.
<b>Employer</b>	means any individual, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Braintree or any agency thereof, which regularly uses the services of two (2) or more employees.
<b>Individual</b>	means any employee, volunteer or any other person who patronizes an area where tobacco products are sold.
<b>Manufacturer</b>	any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette or any other tobacco product.
<b>Permittee for Location &amp; Sale</b>	means 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 Braintree Health Department regulating the location and sale of tobacco products in the Town of Braintree.

## Section II – Definitions (continued)

### **Photographic Identification**

shall have customer's date of birth such as found in, but not limited to, a valid Massachusetts drivers license, Massachusetts identification issued by the Registry of Motor Vehicles, or valid United States passport.

### **Retail Food Establishment**

means any establishment commonly known as a supermarket or grocery store in which the primary activity is the sale of food items to the public for off-premise consumption.

### **Retail Tobacco Store/Retailer**

means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

### **Self-service Display**

means a display from which individual packages or cartons of manufactured nicotine containing products may be selected by a customer.

### **Tobacco Products**

cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

### **Smoking**

means the lighting of any cigar, cigarette, pipe or other tobacco product or having possession of any lighted cigar, cigarette, pipe or other tobacco product.

### **Tobacco Vending Machine**

means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon the insertion of coins, legal tender, trade checks or other forms of payment.

### 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.

##### B. Permit for Location and Sales of Tobacco

- After (August 1, 1997), and receipt of an application and fee from a retailer, the Braintree Board of Health will issue a "Permit for Location and Sales" that will specify the name, address and approved location per the Braintree Board of Health or their designated agent(s) for retailers, who sell tobacco products.
- After (August 1, 1997), all retailers who are required to hold a permit to sell cigarettes or other tobacco products, will be required to hold and maintain a valid "Permit for Location and Sales" from the Braintree Board of Health for each location at which tobacco products are sold.
- After receiving the permit, the merchant will receive signage that states "Sale of cigarettes or any tobacco products to persons under age eighteen (18) 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.
- The term for the permit shall be for one calendar year unless suspended or revoked. The initial permit, after enacted by the Braintree Board of Health, shall be in effect from August 1, 1997 through December 31, 1997. The cost for the initial permit for 1997 only will be pro-rated for the cost of the initial permit fee. Any permit issued throughout the year will not be pro-rated from that month to December 31<sup>st</sup>. The fee for one calendar year of a tobacco retailer's "Permit for Location and Sales" shall be one hundred dollars (\$100.00) per year.
- A "Permit for Location and Sales" is non-transferable except a new permit may 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 Braintree Board of Health. The required fee must accompany each application.

### **Section III B – Tobacco Sales to Minors Prohibited (continued)**

- Failure to hold a “Permit for Location and Sales” by any retailer selling cigarettes or other tobacco products shall constitute a violation of these regulations and shall be subject to fines in Section V.
- 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 area and kept under lock and key or they shall be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined according to Section V, until said permit is reinstated by the Braintree Board of Health or its designated agent(s).

#### **C. Tobacco Products Vending Machines**

After (August 1, 1997), retailers may not use vending machines to sell cigarettes or any other tobacco products except when the machines are located in facilities where the retailer ensures in writing to the Braintree Board of Health that no person younger than eighteen (18) years of age is present or permitted to enter at any time.

#### **D. Out-of Package Sales**

After (August 1, 1997), retailers are prohibited from opening any cigarette package or smokeless tobacco product to sell or distribute individual cigarettes. No manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

#### **E. Free Distribution/Free Samples**

No manufacturer, distributor or retailer shall distribute or cause to be distributed any free samples of cigarettes or any other tobacco products.

#### **F. Self-Service Displays**

After (August 1, 1997) self-service displays of all tobacco products are prohibited in the Town of Braintree except when such displays are located in facilities where the retailer insures in writing to the Braintree Board of Health that no person younger then eighteen (18) years of age is present or permitted to enter at any time.

#### **G. Sales by Employees**

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

## **Section IV**

### **Enforcement**

- A. It shall be the responsibility of the permit holder to assure compliance with all sections of these rules and regulations pertaining to their place of business. Failure to do so shall be a violation of the Permit for Location and Sales.
- B. Enforcement of these rules and regulations shall be by the Braintree Board of Health or its designated agent(s).
- C. Any citizen who desires to register a complaint of non-compliance with these rules and regulations or with M.G.L. Chapter 270, sections 6 and 7 may do so in writing to the Braintree Board of Health.
- D. Designated Agents for the Board of Health shall issue a written “Notice of Non-Compliance”, citing any reported or observed 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 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”.
- F. The holder of a “Permit for Location and Sales” receiving a non-compliance notice may request a hearing before the Braintree Board of Health. A request for a hearing 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 fourteen (14) calendar days of receipt of the written request for 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

### PENALTIES, FINES, SUSPENSION AND/OR REVOCATION OF PERMIT

A holder of a "Permit for Location and Sales" in violation of any of the provisions of these rules and regulations shall receive:

- (1) In the case of a first violation of any section of these rules and regulations, a suspension of the "Permit for Location and Sales" shall be for a **period of five (5) consecutive days, a fine of one hundred dollars (\$100.00), and the permit holder and all establishment employees directly involved in tobacco sales shall attend a tobacco sales education program within 30 days of the first day of the suspension.** 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 Braintree Board of Health.
- (2) In the case of a second violation within a two-year period calculated from the date of the first violation, a suspension of the "Permit for Location and Sales" shall be **for a period of ten (10) consecutive days and a fine of three hundred dollars (\$300.00).**
- (3) In the case of a third violation within a two-year period calculated from the date of the first violation, a suspension of the "Permit for Location and Sales" shall be **for a period of thirty (30) days and a fine of five hundred dollars (\$500.00).**
- (4) In the case of a fourth violation within a two-year period calculated from the date of the first violation, a revocation of the "Permit for Location and Sales" shall be for a period of one (1) year.

During such time that a "Permit for Location and Sale" of tobacco products has been suspended or revoked for continuous violation 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 reinstated by the Braintree Board of Health or its designated agent(s).

Failure to comply with any portion of this section shall result in a further subsequent violation.

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.

## **SECTION VI**

### **HEARINGS**

The Braintree Board of Health shall provide notice to the permit holder of the intent to suspend or to revoke a tobacco sales permit, which notice shall contain the reasons therefor 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 Braintree Board of Health's decision, and the reasons therefor, in writing. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove 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**

If any sentence, clause, or phrase thereof shall be held as invalid for any reason, the remainder of this regulation shall be held in full force.

