



## Board of Health Agenda

Date: December 16, 2020

Time: 4:00 PM

Location: Conducted by Remote Participation

### 1. Administrative

#### **BOARD OF HEALTH MEETING AGENDA**

Date: Wednesday, December 16, 2020

Time: 4:00pm

Location: Conducted by Remote Participation

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency, the July 29, 2020 public meeting of the Arlington Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

#### ***Public access to this meeting shall be provided in the following manner:***

Real-time public comment can be addressed to the Board of Health utilizing the Zoom virtual meeting software for remote participation. This application will allow attendees to request an opportunity for public comment, and allow the Board Chair to grant attendees the opportunity for public comment. Attendees can use either phone or computer to participate in the meeting. Public comment can also be sent in advance of the meeting by emailing the Board of Health at [boh@town.arlington.ma.us](mailto:boh@town.arlington.ma.us) by no later than 5pm on December 15, 2020. Submitted public comment will be read into the record at the appropriate points in the meeting.

#### ***Zoom Login instructions:***

Instructions and the meeting link for this specific meeting can be found on the Board's agenda and minutes page or on the Town's meeting calendar. The meeting registration information is listed below. When attendees enter the meeting, they will be placed into a virtual waiting room. Attendees will be admitted into the meeting from the waiting room at the start of the meeting.

Please register in advance for this meeting:

<https://town-arlington-ma-us.zoom.us/join/91234567890>

After registering, you will receive a confirmation email containing information about joining the meeting.

#### **On this agenda:**

2. Acceptance of Meeting Minutes from November 18, 2020
3. COVID-19 Situational Update
4. Public Health Nurse Update

HEARING:

5. HEARING:

Variance Request - Ginger Exchange

DISCUSSION:

6. DISCUSSION:

REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE  
DELIVERY PRODUCTS

DISCUSSION:

7. DISCUSSION:

Board of Health 2021 Meeting schedule

UPDATES:

8. UPDATES:

Environmental Health

9. UPDATES:

Restaurants

PUBLIC COMMENT

Adjourn



## Town of Arlington, Massachusetts

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### Acceptance of Meeting Minutes from November 18, 2020

#### ATTACHMENTS:

	Type	File Name	Description
▢	Reference Material	11182020_Minutes_Board_of_Health_Draft.pdf	11182020MeetingMinutes



Town of Arlington  
Department of Health and Human Services  
Office of the Board of Health  
27 Maple Street  
Arlington, MA 02476

Tel: (781) 316-3170  
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## BOARD OF HEALTH MEETING MINUTES

Date: Wednesday, November 18, 2020

Time: 2:00pm

Location: Conducted by Remote Participation

In accordance with the Governor's [Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20](#) relating to the COVID-19 emergency, the August 19, 2020 public meeting of the Arlington Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

***Public access to this meeting shall be provided in the following manner:***

Real-time public comment can be addressed to the Board of Health utilizing the Zoom virtual meeting software for remote participation. This application will allow attendees to request an opportunity for public comment, and allow the Board Chair to grant attendees the opportunity for public comment. Attendees can use either phone or computer to participate in the meeting. Public comment can also be sent in advance of the meeting by emailing the Board of Health at [boh@town.arlington.ma.us](mailto:boh@town.arlington.ma.us) by no later than 5pm on November 17, 2020. Submitted public comment will be read into the record at the appropriate points in the meeting.

***Zoom Login instructions:***

Instructions and the meeting link for this specific meeting can be found on the [Board's agenda and minutes page](#) or on the [Town's meeting calendar](#). The meeting registration information is listed below. When attendees enter the meeting, they will be placed into a virtual waiting room. Attendees will be admitted into the meeting from the waiting room at the start of the meeting.

Please register in advance for this meeting:

<https://town-arlington-ma-us.zoom.us/meeting/register/tJEucuiqjpotGtC0B-t9K1DEz2y1VVEtlynM>

After registering, you will receive a confirmation email containing information about joining the meeting.

**On this agenda:**

1. Administrative:

Hello, this is Natasha Waden, Arlington's Director of Public Health. Consistent with the Governor's orders suspending certain provisions of the Open Meeting Law and allowing us to adhere to social distancing requirements during the COVID-19 crisis, this Town of Arlington Board of Health meeting is being held virtually via Zoom for audio and video participation of Board Members and the public. When you entered this meeting, you were automatically muted. During this meeting you will be unmuted

individually as needed. These controls are in place to ensure that today's meeting is safe and effective. At this time, I would like to confirm that all members and persons anticipated on today's agenda are present and can hear me.

Board Members, when your name is called, please respond in the affirmative.

1. Marie Walsh Condon, Aye
2. Ken Kohlberg, Aye
3. Kevin Fallon, Not Present

Health Department staff, please respond in the affirmative when your name is called.

1. Natasha Waden, Aye
2. Kylee Sullivan, Aye
3. Pat Martin, Aye
4. Jessica Kerr, Aye
5. Ashley Jean, Aye
6. Annette Curbow, Aye

Applicants and Representatives, do we have anyone on the call representing an application? N/A

Thank you everyone.

As stated, this Open Meeting of the Arlington Board of Health is being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the COVID-19 Virus.

In order to mitigate the transmission of the COVID-19 Virus, the Town of Arlington has been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor's Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting, allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will have one public comment period, at the end of the meeting. If you would like to comment during one of the public comment periods, please use the "Raise Hand" function if on a computer, or "Dial \*9" if on the phone. When your name or phone number is called, and you are unmuted, please state your name and provide your comment. All attendees will be afforded 3 minutes for any comments.

For this meeting, the Board of Health is convening by telephone and computer conference via Zoom as posted on the Town's Website identifying how the public may join.

Only Health Department staff will be able to share their screen during this meeting. Board Members and Department Staff may be participating by video conference. Accordingly, please be aware that other folks may be able to see you. Anything that you broadcast may be captured by the recording.

All of the materials for this meeting are available on the Novus Agenda dashboard, and I recommend that Board Members and the public follow the agenda as posted on Novus unless otherwise noted. Members of the public are encouraged to provide written public comments.

Before we get to today's agenda, I am going to cover some ground rules for effective and clear conduct of our business and to ensure accurate meeting minutes.

Dr. Marie Walsh Condon, the Board Chair, will introduce each agenda item. After the item is presented, she will go down the list of Board Members, inviting each by name to provide any comment, questions, or motions. Please hold comments or questions until your name is called and you are unmuted.

For any response, please wait until the Chair yields the floor to you, and state your name before speaking.

Finally, each vote taken during this meeting will be conducted by roll-call vote.

Dr. Walsh Condon, can you please now review today's agenda. Floor yielded to Dr. Marie Walsh Condon.

Dr. Walsh Condon welcomed everyone to today's Board of Health meeting.

1. Acceptance of Meeting Minutes from October 14, 2020

Motion made by Marie Walsh Condon, which was seconded by Ken Kohlberg to accept the October 14, 2020 meeting minutes.

Dr. Marie Walsh Condon, Aye  
Ken Kohlberg, Aye  
Motion approved 2-0 (unanimously)

2. COVID-19 Situational Update

Director Waden reported 507 COVID-19 cases to date since the start of the pandemic. Breaking down the cases, there were 17 cases in August, 30 in September, 66 in October, and 71 in November at the time of the meeting. Director Waden stated that this is in line with the increasing numbers seen across the Commonwealth. This, in part, is a result of "COVID fatigue" as people are tired of complying with COVID-19 safety precautions to prevent the spread of the disease.

Director Waden outlined the new order updates recently announced by Governor Baker effective November 6, 2020. The updated orders include the mask order which now requires anyone in public to wear facial coverings. This would apply to federal employees in Massachusetts as well. There is a mandatory closing period for various sectors between 9:30 PM – 5:00 AM. Additionally, the gathering order has changed to limit gatherings in private residential settings and at event venues. Updates have been made to the Youth and Amateur Adult Sports Safety Standards requiring masks for all athletes during active play except for low risk sports where athletes can distance themselves 14 feet from others. Dr. Walsh Condon confirmed that cross country may fall into the exemption. Additionally, these sports

standards were updated to include the travel order. There was a two-week ice rink shut down across the Commonwealth due to a large number of cases connected to hockey and ice sports. Governor Baker has teamed up with six other State Governors in surrounding states to prohibit inter-state hockey.

Director Waden explained how the weekly local metrics reported by the State have changed to better accommodate for the variability in types of communities throughout the Commonwealth. This decision was made, in part, to ensure that data reporting would not unnecessarily affect in-person schooling for children due to a lack of spread within schools. Waden reported that Arlington is currently in Phase III, Step II of re-opening.

Director Waden discussed contact tracing updates. The Department is interacting with more positive cases who are resistant to disclosing contact information which may contribute to the spread of COVID-19 if contacts do not properly quarantine. The Department is working with legal counsel to determine the feasibility of issuing cease and desist orders or fining for violations. Dr. Walsh Condon asked for clarification regarding the issuance of cease and desist orders related to COVID-19. Director Waden explained that these orders could be issued for violation of isolation/quarantine or possibly for failing to disclose close contacts – the Department is seeking guidance on this.

It was reported that Inspector Kylee Sullivan and Arlington School Resource Officer Bryan White conducted surveillance around parks and busy areas around Town for mask compliance. The team educated residents who were not wearing masks and provided masks to anyone without one. The overwhelming majority of residents were wearing masks in compliance with the mask order.

Inspector Sullivan has been reassigned as a communicable disease surveillance team leader to assist Public Health Nurse Jessica Kerr in the management of the Town's Contact Tracing Team.

Dr. Walsh Condon commented on the lack of COVID-19 transmission observed in the schools. She credited the success of the schools to the planning and procedures implemented within the school system. Dr. Walsh Condon reported that healthcare systems are planning for major surge and are in a high need for staffing. Mr. Kohlberg commented that he is very thankful for all the work taking place.

### 3. Public Health Nurse Update

Nurse Kerr reported that the State has mandated every school-aged child enrolled in school, daycare, etc. to get vaccinated for the flu by December 31, 2020. As a result, the Department conducted four flu vaccination clinics for Arlington residents 18 years and younger. Nurse Kerr reported that the clinics were successful, but the Department anticipated a higher attendance rate for the clinics. When working with the school nurses, they report that many students still are not vaccinated. As a result, the Department will coordinate the vaccination of students in a small, in-school setting by the school nurses. The Department will assess the status of vaccinated Arlington children in December to determine if there is a need for more clinics.

Dr. Walsh Condon commented that she has observed a large increase in the number of her patients getting their flu vaccine in her office. She also reported that many families are going to pharmacies which may in part explain the numbers at the Department flu clinics.

Nurse Kerr explained that the State has yet to provide guidance around responding to students who have not been vaccinated for the flu if there is a school-wide flu outbreak. Dr. Walsh Condon reported that flu screening will most likely be limited. Some doctors' offices will not be screening for the flu as the swabs used for flu screening are the same swabs used for COVID-19 testing.

Nurse Kerr reported that Arlington Public Schools is offering free COVID-19 testing for teachers on a weekly basis.

#### 4. Hearing: Regulation Restricting the Sale of tobacco Products and Nicotine Delivery Products

Inspector Martin reported that the Department updated tobacco regulations to make them more consistent with State Law. Language from the MA Association of Health Boards' regulations template was used for the update. Inspector Martin recommended removing the definition for "Smoking Bar" as Arlington prohibits smoking bars at the local level with the Tobacco Workplace Regulations. Inspector Martin also proposed the removal of Section E, Number 14; "Expiration of the Waiting List" as the waiting list expired at the beginning of 2020 and is no longer relevant.

Additionally, Inspector Martin brought Section Q, Violations to the Board's attention as the State Law lists a permit suspension after a 2nd violation, while at the local level, Arlington has historically issued a permit suspension as a result of a 1st violation. Discussion ensued about when to have permit suspensions and for what length of time permits should be suspended.

Dr. Walsh Condon stated that the Department should stay consistent with the State for a 7 day permit suspension on a 2nd violation. However, in order to be consistent at a local level, the Department should also retain the 7 day permit suspension for a 1st violation as well. Mr. Kohlberg supported consistency with the State as much as possible and agreed that Arlington should retain the 7 day permit suspension for a 1st violation.

A motion was made to table the hearing until Dr. Fallon is available to review and comment on the updated regulations, including the topics discussed during this hearing.

#### 5. Updates: Environmental Health

Inspector Martin reported that the Department has seen an uptick in housing complaints, though not higher than usual in a normal year. Overall, rodent complaints have remained low since the last meeting.

#### 6. Updates: Restaurants

Inspector Martin informed the Board that the Department is in the process of permit renewals with food establishments. Retro Burger closed but there is another establishment interested in opening at the location. A plan review application has been received for Ginger Exchange Express for Great Wok's old location at 1181 Mass Ave.

Dr. Marie Walsh Condon concluded the Board of Health's agenda for the meeting. There was no public comment.



A Motion to adjourn was made by Mr. Kohlberg, seconded by Dr. Walsh Condon.  
Roll-call vote to close the Board meeting.

1. Marie Walsh Condon, Aye
2. Ken Kohlberg, Aye

Meeting adjourned at 2:47 pm.



## Town of Arlington, Massachusetts

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### Variance Request - Ginger Exchange

#### ATTACHMENTS:

	Type	File Name	Description
▢	Reference Material	Ginger_Exchange_Variance_Request_12- 10-2020.pdf	Ginger Exchange



**Town of Arlington**  
**Department of Health and Human Services**  
**Office of the Board of Health**  
27 Maple Street  
Arlington, MA 02476

Tel: (781) 316-3170  
Fax: (781) 316-3175

To: Board of Health Members  
From: Kylee Sullivan, Health Compliance Officer  
Date: December 10, 2020  
RE: Ginger Exchange Express (1181 Massachusetts Avenue) – Variance Request

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An establishment undergoing a plan review application, Ginger Exchange Express, has applied for a variance in accordance with the 2013 FDA Food Code, section 3-502.11. The establishment intends to use acidification, through the use of a vinegar solution, to render cooked rice a non-time/temperature control for safety (non-TCS) food. The variance request was accompanied by a Hazard Analysis and Critical Control Points (HACCP) plan, which follows for your review. A rice sample has been validated by a local food testing laboratory with a pH of 4.05, less than the target of 4.1. A recent test of the sushi rice at the Ginger Exchange Express Watertown location determined, that with the provided recipe, the sample had a pH of 3.82.

In the conditional approval letter issued to the applicant on December 8, 2020, the following sushi-related information was requested:

1. Please provide the following clarifications for your sushi rice variance request:
  - a. Please submit a flow diagram for your variance request in compliance with the 2013 FDA Food Code: 8-201.14 "Contents of a HACCP Plan: (B) A flow diagram by specific FOOD or category type identifying CRITICAL CONTROL POINTS and providing information on the following: (1) Ingredients, materials, and EQUIPMENT used in the preparation of that FOOD, and (2) Formulations or recipes that delineate methods and procedural control measures that address the FOOD safety concerns involved;"
  - b. Clarify if the raw fish used for sushi is received from suppliers as frozen in compliance with the 2013 FDA Food Code requirements or if freezing raw fish will occur onsite in the establishment.
  - c. On page 3 of the "Check List for sushi Bar Operations" it states the areas of the establishment in which different sushi-related preparation work is conducted in the Watertown location. Please clarify if this is the same for the Arlington location. If it is different for the Arlington location, please explain the process/location.
  - d. On page 3 of the "Check List for sushi Bar Operations" it discusses the retail preparation and display of sushi. Please clarify if the establishment plans on preparing sushi for retail sale or if sushi is made to order only.

I recommend granting this variance contingent upon the submission of the information requested above.



## SUSHI RICE VINEGAR

Yield: 19 Quarts

Ingredient	Amount
Rice Vinegar, Mizkan (4.2% acetic acid)	10 quarts
White Sugar	7 quarts
Rice Wine, Mirin	1 quart
Salt	1 quart
Lemon, cut in half	3 pieces
Orange, cut in half	1 pieces

### Instructions:

1. Combine all the ingredients (except for the lemons & oranges) into a clean, designated container for sushi rice vinegar. Mix well until sugar and salt are well dissolved into the solution.
2. Squeeze the juice from the lemons and oranges into the vinegar solution. Strain the seeds.
3. Allow the vinegar to sit in the cooler for a day or two.

## SUSHI RICE

Yield: 12 Quarts

Ingredient	Amount
Short-Grain Sushi Rice	4 quarts
Cold Water, tap	4 quarts
Sushi Rice Vinegar (from recipe above)	4 cups

### Sushi Rice Cooking:

1. Cover the rice in cold water and soak for 30 minutes.
2. Wash the rice thoroughly in cold water, changing the water 3 times or until the water runs clear.
3. Strain the rice and put in the electric rice cooker.
4. Add 4 quarts of water to the strained rice in the rice cooker.
5. Cover cooker and price time for 50 minutes.
6. When done, transfer the cooked rice immediately to a large mixing bowl.

### Acidification of the Sushi Rice:

1. Using a large stainless steel spoon, thoroughly loosen up the rice.
2. While slowly sprinkling the sushi rice vinegar evenly over the fresh cooked rice, run the large spoon through the rice in a cutting motion (from side-to-side), then from top to bottom for 10-20 minutes. (Note: When "cutting" the rice, never mash or stir the rice.)
3. Transfer the acidified rice to the designated 3" deep container and ensure properly spread out in a thin layer for cooling.
4. Transfer to rice warmer for service. Ensure to pH test and log for each batch of sushi rice made!
5. The pH value for our sushi rice is 4.1, if the batch is tested higher than that, continue to add the sushi rice vinegar until it reaches a pH of 4.1.
6. Sushi rice must be used within 24 hours and must be discarded beyond that timeframe.

# Check List for Sushi Bar Operations

## Receiving

**All food is obtained from an identifiable, approved source.** The source or supplier should be operating in accordance with applicable food safety requirements. Source identity includes the name and address of the immediate supplier. Identity of the supplier provides traceability of the food sources which can be important in food safety decisions. No seafood from a recreational fisherman or other non-approved sources is used in the sushi operations!

All seafood, including fish, shellfish, crustaceans, eggs (roe) and surimi comes from a source that operates under a HACCP plan. Evidence for such a source can include a letter from the supplier that indicates compliance with any pertinent HACCP requirements.

## Food Storage

All foods should be protected from contamination and stored in a manner to reduce or prevent bacterial growth that could promote spoilage or potential food safety problems. Food storage can involve items held at room temperature or in refrigeration or freezers. These items may require further preparation or packaging, or they could be ready-to-eat as raw or previously cooked foods. Raw ingredients and raw, unprepared foods should be stored segregated from finished products or ready-to-eat foods. It is best to segregate these items in separate storage units. Proper packaging and placement is necessary when these items have to be stored in the same unit. Storage can include temperature control units used to hold perishable foods.

### **The storage unit(s) are clean and orderly.**

Products are contained and/or covered for protection.

Containers of sushi products or ingredients that are removed from the original (identified) packages are relabeled, marked for identification and dated.

Ready-to-eat items and items ready-for-display are segregated from products that require further handling or processing.

Products are not stacked without adequate support and means to prevent any leakage between products.

Dripping is prevented in or on package products due to condensation, cooler pan leaks or other wet sources.

Products are stored above the floor (6 in.) and away from walls and the ceiling. Storage includes containers, shelves, supports, pallets or other materials that do not absorb water and can be easily cleaned.

The schedule for product rotation should use a 'First-in First-out' rule (FIFO).

**Display counters are not considered storage units and should not be used to store raw ingredients. Display counters for sushi should be maintained at or below 41°F (5°C).**

**Refrigeration unit(s) are operating to assure the food can be maintained at or below 41°F (5°C).**

**Frozen storage unit(s) are operating to assure the frozen foods are solidly frozen and maintained preferably at or below 0°F (-18°C).** Freezing to kill potential parasites requires frozen storage at -4°F (-20°C) or below for 7 days (total time), or freezing at -31°F (-35°C) or below until solid and stored at -31°F or below for 15 hours, or freezing at -31°F or below until solid and stored at -4°F or below for 24 hours.

**Routine monitoring for proper refrigerated storage unit temperatures involves use of a continuous time-temperature recording device or by periodic checks with a calibrated thermometer.** All recorders and thermometers are calibrated periodically or as needed (Appendix 3 - Calibrations). When storage conditions above 41°F (5°C) are detected, an evaluation is conducted of all products stored in the unit. The evaluations will record considerations for the actual temperature of the products and duration of exposure. All unacceptable temperature abused, off-color, off-odor, off-condition, out-of-date or otherwise suspect product is discarded.

**Frozen products are thawed under refrigeration at or below 41°F (5°C).** Thaw in a manner that prevents cross-contamination with other refrigerated foods. If more rapid thawing is necessary, the products are placed in clean flowing water no warmer than 70°F (21°C) **only until thawing is complete.** Once product is thawed and before exceeding 41°F (5°C), it should be processed or returned to proper refrigerated storage. Packaging is recommended to protect the product from direct contact with the thaw water. If thawing requires direct contact of water with the food, the procedure should be conducted in a clean and sanitized sink or container that is designated and dedicated to this operation. Thawing is not conducted in standing water, at room temperature or in running water warmer than 70°F (21°C) or at room temperature.

### **Preparation – Sushi**

**The work area, facilities and utensils should be designated or dedicated to the sushi operations.** If it is necessary to share work space and facilities, a schedule of operations, personnel traffic, product traffic and cleaning should be planned to prevent potential cross-contamination of the ready-to-eat sushi products.

**Standard Operating Procedures for basic sanitation and food safety are used and documented daily (Appendix 4 - Daily SOP's Check List).**

**Bamboo and plastic mats are lined with plastic film and rewrapped within 4 hours of continuous use and between contact with different sushi products.** All mats are cleaned and sanitized daily.

**The preparation schedule should be arranged to prevent the exposure of potentially hazardous foods for more than 4 hours outside of refrigeration.**

**Fruits and vegetables should be washed before cutting for use in sushi. Any cutting surface should be cleaned to avoid cross-contamination before proceeding with further processing for the sushi.**

## **On-Site Preparation of Sushi Rice**

Special care is taken in preparation of the rice used with sushi to prevent potential bacterial growth while assuring the rice can still be formed into balls and rolls. Bare hand contact should be minimized to prevent cross-contamination that can grow and release toxins unless the rice is preserved or refrigerated. Refrigerated rice is more difficult to form for sushi. For this reason, sushi rice should be carefully protected during handling without refrigeration.

Proper acidification of cooked rice with vinegar recipes helps preserve the rice for temporary handling at temperatures above 41°F (5°C), but the acid level, measured by pH, should be carefully monitored for each batch. It is best to acidify the rice when it is warm to assure better mixing and penetration of the acid solution.

**The production time and final acid level (pH) is recorded for each batch of sushi rice.**

According to the Ginger Exchange acidified rice recipe, the targeted pH is 4.1.

Properly acidified rice is not considered a potentially hazardous food.

At the Ginger Exchange – Watertown location, sushi rice will be washed in the basement prep area and then brought upstairs to be cooked (in the designated rice cooking area), acidified, tested for pH, and held for service.

## **DISPLAY**

Display involves holding the finished products in temperature control units for a specified duration and condition for public sale. Originally, preparation of sushi was for immediate consumption. Retail preparation and display introduces more prolonged holding that should be controlled and monitored to assure product safety before consumption.

**The display unit maintains the sushi products at or below 41°F (5°C).**

## APPENDICES

1. Food Safety Hazards
2. Sushi Rice
3. Calibrations
4. Daily SOP Check List



# Appendix 1

# Food Safety Hazards – Sushi

The following information and list of fish species with potential seafood safety hazards is based on FDA’s “Fish & Fisheries Products Hazards & Controls Guidance” available in third edition (June 2001) from <www.ifasbooks.ufl.edu> or by phone 800-226-1764 as publication no. SGR-121 (\$20) or it can be viewed at [www.cfsan.fda.gov/~comm/haccp4.html](http://www.cfsan.fda.gov/~comm/haccp4.html). The retail processing of sushi must assure the use of proper controls to prevent, eliminate or reduce these potential hazards. The controls are often a shared responsibility between the supplier and retailer.

Fish:

The list of potential fish hazards includes live parasites, elevated histamine, the natural toxin, ciguatera, and no hazard listed. The listing is by common names of certain related fish species. Retailers should consult the FDA Hazards Guide for the specific fish species in question. Species listed with concerns for live parasites would require freezing either by the supplier or retailer prior to serving a raw ready-to-eat food.\* For tuna, the concern for parasites is distinguished by species. The larger tuna (yellowfin, bluefin, blackfin, bigeye, and albacore) do not present a significant parasite problem that would require freezing prior to use in sushi.

Fish Type	Parasites	Histamine	Ciguatera	No Hazard
Bass, Sea	×			
Bluefish		×		
Cod	×			
Corvina	×			
Eel				×
Flounders	×			
Grouper	×		×	
Halibut	×			
Jacks	×	×	×	
Mackerels	×	×		
Mahi Mahi		×		
Marlin		×		
Perch, Ocean	×			
Pollock	×			
Pompano			×	
Salmon	×			
Salmon, Farm-Raised				×
Sea Trout	×			
Snappers	×		×	
Sole	×			
Rainbow Trout	×			
Tuna – small*	×	×		
Tuna – large*		×		
Turbot	×			
Wahoo		×		
Yellowtail				×

Crustaceans (Shellfish):

**Crab, Lobster and Shrimp** - typically supplied as previously cooked items that are subject to bacterial cross-contamination after cooking. These items can include surimi based products such as imitation crab meat made from fish. Retailers should question the processing procedures, post-processing conditions, and sanitation records prior to selecting a supplier.

Mollusk (Shellfish):

**Clams, Oyster and Mussels** - must be harvested from approved waters and handled by certified dealers that maintain harvest tags on shellstock or labels on the shucked products to identify the product harvest locations and dates. Retailers must check for the tags or label information on all deliveries of shellstock or shucked meats (meat removed from the shell). The shellstock tags must be stored in their retail establishment for 90days. Abalone is included in this group but does not require tags.

**Conch, Whelks, Octopus, Squid and Urchin** - typically supplied as raw shucked meat (meat removed from the shell) that is subject to bacterial contamination during processing. Harvest tags are not required but suppliers should assure harvest from safe sites. Retailers should determine the processing and sanitation conditions.

## Biological

### Hazard: Parasites

**Problem:** Consumption of certain raw seafood that may contain 'live' parasites that are naturally found in certain fish and could infect consumers.

**Controls:** Freezing or cooking of the fish or seafood product before consumption. According to the FDA's Food Code, seafood is properly cooked when it reaches an internal temperature of 145°F (63°C) for 15 seconds.

Freezing to kill potential parasites requires frozen storage at -4°F (-20°C) or below for 7 days (total time), or freezing at -31°F (-35°C) or below until solid and stored at -31°F or below for 15 hours, or freezing at -31°F or below until solid and stored at -4°F (-20°C) or below for 24 hours.

### Hazards: Bacterial and Viral Pathogens

**Problem:** Certain bacteria, i.e., *Salmonella*, *Listeria* and *Vibrio* spp. and certain viruses, i.e., Hepatitis A, noroviruses and others, can contaminate and, in the case of bacteria, grow on ready-to-eat sushi products due to previous handling of the ingredients.

**Controls: Ensure that** ingredients come from approved sources, monitor condition of incoming products, maintain and monitor proper temperatures and time in storage and preparation; properly acidify the sushi rice, practice proper hygiene, and monitor SOP's for sanitation.

## Chemical

### Hazard: Histamines

**Problem:** Certain fish are prone to develop an elevated histamine content, the result of bacterial degradation of histidine, if they are thermally abused after harvest and during further

handling. They can cause temporary illnesses in some people following consumption of the raw or cooked fish.

**Controls:** Proper handling time and temperatures that provide immediate and proper refrigeration or freezing of the fish as evident in a suppliers HACCP program, and continuing refrigeration or frozen storage until consumed. Retailers should examine each fish or fish portions carefully for signs of thermal abuse or initial decomposition. Questionable fish and fish with a temperature in excess of 41°F should be rejected.

**Hazard: Ciguatera**

**Problem:** A natural toxin that can accumulate through the normal food chain of certain fish that can cause illness in some consumers when the fish is eaten raw or cooked.

**Controls:** Do not use certain fish species when harvested from known or designated areas that are problematic for ciguatera. The original producer or supplier's HACCP program should monitor to prevent harvest and use of such fish. Potential problems cannot be detected by sensory judgments of the raw or cooked fish.

Since Ginger Exchange Watertown uses farm-raised salmon, the FDA defines farm-raised salmon as "No Hazard" and, therefore, does not need to follow the 7-day freezing method required for non-farm raised salmon.

All other types of fish/seafood carried that require freezing are done by the supplier and arrive to us in a frozen state.

Ginger Exchange carries the larger tuna (yellow fin or blue fin depending upon market prices), which does not need freezing.

Special care is taken in preparation of the rice used in sushi to prevent potential bacterial growth while assuring the rice can still be formed into balls and rolls. Heat during the cooking of rice can activate certain bacterial spores that can grow to be toxic unless the rice is preserved or refrigerated. Refrigerated rice is more difficult to form for sushi. Acidification of cooked rice with vinegar recipes helps preserve the rice for temporary handling at temperatures above 41°F (5°C), but the acid level, measured by pH, must be carefully monitored for each batch.

### Preparation of the Sushi Rice (white)

#### The work area should include:

A dedicated or designated sink and table for preparation of the rice and sushi should be cleaned and sanitized before handling the food. A designated sink should be segregated from other concurrent food handling activities. Use of single-use gloves to prevent bare hand contact with ready-to-eat food.

Clean and properly supplied hand washing facilities.

Orderly storage of clean, sanitized containers and utensils, i.e., rice bowls and shamoji for handling the rice.

A written recipe that specifies:

The amount of rice and water prior to cooking, and the cook schedule. The cooked rice and vinegar solution is to be thoroughly mixed to acidify the rice to an initial target pH of 4.1. It is best to acidify the rice when it is warm to assure better mixing and penetration of the acid solution.

The vinegar solution, with salts and sugar. It should be made fresh for use or from a designated container labeled to identify the contents, concentration and age of the vinegar solution to assure a proper acidifying formulation.

A clean mixing bowl deep enough to allow adequate mixing without clumping, yet shallow enough to allow proper cooling. It is best to have less than 4 inches depth in the rice for proper cooling.

### Measuring & Recording pH of Sushi Rice

Conduct the pH test within 30 minutes after acidification of the cooked rice and as often as necessary to assure a targeted pH of 4.1.

Make a rice slurry by gathering a 1/4 cup sample of the cooked, acidified rice taken from various locations in the batch and add 1/4 cup of distilled water in a clear plastic or metal blend cup (Do not use glass containers in the food preparation area). Blend the slurry for approximately 20 seconds to create a thorough mix.

Insert a pH probe or paper into the liquid portion of the slurry. Repeated measurements with a new slurry from the same batch of rice are recommended to assure a proper reading (Appendix 3 - Calibrations)

Record the measurement(s).

## Brown Rice

Typically this rice is not acidified since the harder surface coating on the brown rice is difficult to penetrate with typical acid solutions. In the non-acidified condition, cooked rice is considered a potentially hazardous food that must be maintained at a temperature greater than 140°F (60°C) or at or below 41°F (5°C). For cooling, this potentially hazardous food should be cooled within 2 hours from 140°F (60°C) to 70°F (21°C); and within 4 hours from 70°F (21°C) to 41°F (5°C) or below. The cooked brown rice should be chilled immediately after preparation to reduce the chance of foodborne illness.

**Acidity Monitoring Devices – pH Meters**

Devices for monitoring acidity or pH can range from complex laboratory size units to convenient hand-held battery operated units. Also, in certain situations firms can use simple pH test strips or papers. It is essential to understand the limitations and operation of these devices to assure accurate readings in food operations. The meters are preferred for their more precise readings, but the probes used with the meters should be made of unbreakable substances such as epoxys, plastics or ceramics.

**Calibration of pH Monitoring Devices**

The **pH meters** need to be calibrated immediately before use and when readings are suspect. The calibration is based on the readings from standard buffer solutions selected to provide specific pH readings. Only use buffers that have not exceeded the labeled expiration dates. Use buffers that provide readings that range about the targeted level of pH to be monitored in the food operations. For example, if the target pH is 4.1, two buffers for calibration should provide readings of 4.0 and 7.0. If the pH meter does not read the buffers correctly, make the necessary adjustment in the device according to the manufacturer's instructions or replace the device.

**Since the target for sushi rice is a pH of approx 4.1, the pH meter must be calibrated with two buffer solutions, the pH buffer solution of 4.0 and the pH buffer solution of 7.0.**

# Appendix 4

# Daily SOP Check List

Store Name: \_\_\_\_\_

Storage		Time/Temp	Time/Temp	Time/Temp	Time/Temp
Refrigerators (°F/Time)		°F	°F	°F	°F
Freezers (°F/Time)		°F	°F	°F	°F
Display		Time/Temp	Time/Temp	Time/Temp	Time/Temp
Display temperature (°F/Time)		°F	°F	°F	°F
Clean and Orderly. Food in good condition and properly labeled.					
Sushi Rice Preparation	Prep Time				
	Rice pH				
	Lot #				

## SOP Check List

Work Area	Comments		
Orderly - clean and sanitize tables, countertops, and sinks. Orderly, all work surfaces cleared. Clean floor and drains.			
Proper storage and labeling of chemicals and cleaning items.			
Wet and dry trash separate and removed from work area.			
All utensils, pots, pans, bowls, cutting boards, cooking or heating equipment properly cleaned and sanitized.			
pH meter and recorder available and calibrated			
Personnel			
Personnel Health, hand-washing practices, glove use, clean and well maintained outer garments, proper hair covering, and no jewelry.			
Food Storage			
All food protected, dated and labeled properly.			
Refrigerators and freezers clean, orderly and operating correctly.			
Pre-Op	Time	Post-Op	Time
Employee Initials			
Manager Review			

## SUSHI pH LOG

## SUSHI pH LOG

*Calibrate pH meter w/ 4.0 & 7.0 buffers. Use equal part distilled water for rice slurry. Mash rice well for slurry.*

Date	Time	Batch	pH	Calibrated?	Signature

Date	Time	Batch	pH	Calibrated?	Signature

**CORRECTIVE ACTION LOG**

Date / Time / Batch	Corrective Action Taken	Chef & MOD Signatures

<b>Corrective Action Steps:</b>	<ul style="list-style-type: none"> <li>• Verify use of correct recipe. Verify proper use of pH meter including calibration. Remix. Retest.</li> <li>• If pH of rice slurry is &gt; 4.3 &amp; rice made &lt;1 hr, add vinegar. Remix. Retest.</li> <li>• If pH of rice slurry is &gt; 4.3 &amp; rice made &lt;1 hr, can immediately cool to &lt;41°F. Use standard temp controls.</li> <li>• If pH &gt; 4.6 &amp; rice made &gt;1 hr, discard.</li> </ul>
---------------------------------	--



*Champ*<sup>®</sup> is a rugged pH tester with replaceable electrode and renewable reference junction. The instrument can be calibrated at one point by the user, simply acting on the calibration trimmer.

*Champ*<sup>®</sup> is in compliance with the CE directives.

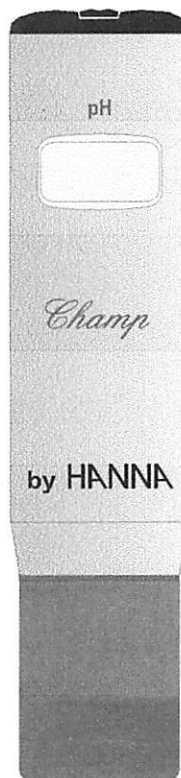


#### SPECIFICATIONS

Range	0.0 to 14.0 pH
Resolution	0.1 pH
Accuracy (@20°C/68°F)	±0.2 pH
Typical EMC Deviation	±0.1 pH
Calibration	Manual, 1 point
Environment	0 to 50°C (32 to 122°F); 95% RH
Battery Type	4 x 1.5V alkaline
Battery Life	approx. 800 hours of use
Dimensions	175 x 41 x 23 mm (7.9 x 1.8 x 1")
Weight	78 g (2.7 oz.)

#### ACCESSORIES

HI 73106	Spare electrode
HI 70004P	pH 4.01 solution (25 x 20 mL)
HI 70007P	pH 7.01 solution (25 x 20 mL)
HI 70010P	pH 10.01 solution (25 x 20 mL)
HI 7004M	pH 4.01 solution, 230 mL bottle
HI 7007M	pH 7.01 solution, 230 mL bottle
HI 7010M	pH 10.01 solution, 230 mL
HI 70300M	Storage solution, 230 mL bottle
HI 7061M	Cleaning solution, 230 mL bottle
HI 731326	Calibration screwdriver (20 pcs)



*Champ* is a registered Trademark of  
Hanna Instruments

EST98106/05 05/05

**HANNA**<sup>®</sup>  
instruments

[www.hannainst.com](http://www.hannainst.com)

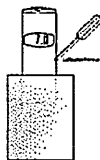
### CONDITIONING

- Remove the cap.
- To activate the electrode, immerse it in HI70300 storage solution for 2 hours.

### CALIBRATION

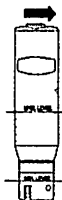
- Immerse the tester in a pH buffer solution (for example, HI 7007 pH 7.01 buffer).
- Allow the reading to stabilize and with the supplied screwdriver adjust the calibration trimmer to read "7.0" pH.

The calibration is now complete.



### OPERATION

- Remove the protective cap and turn the *Champ*® on, by sliding the ON/OFF switch on the top of the meter.
- Immerse it into the solution to be tested without exceeding the maximum immersion level.
- Stir gently and wait for the reading to stabilize.
- After use, switch the meter off, rinse the electrode with water and store it with a few drops of storage (HI70300) or pH 7 (HI7007) solution in the protective cap. Always replace the cap after use.



### NEVER USE DISTILLED OR DEIONIZED WATER FOR STORAGE PURPOSES.

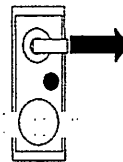
- Large differences in pH readings ( $\pm 1$  pH) could be due to lack of calibration or dry electrode.

### MAINTENANCE

The sensor should be kept moist at all times. For this purpose, always keep wet the tissue inside the protective cap.

In case of erroneous readings even after an accurate conditioning and calibration, the reference junction might be contaminated or clogged.

Pull out 2 mm (1/8") of the cloth junction to renew the electrode reference (it is recommended to cut the cloth leaving always at least 2 mm -1/8" over the reference compartment) and recalibrate the meter.



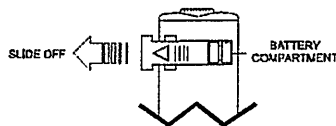
The cloth junction can be pulled out approximately 20 times. After that, the electrode should be replaced.

### ELECTRODE REPLACEMENT

For replacing the electrode contact your Dealer or the nearest Hanna Service Center.

### BATTERY REPLACEMENT

When display fades the batteries must be replaced. Slide off the battery compartment cover and replace all four 1.5V alkaline batteries while paying attention to the correct polarity.



Batteries should only be replaced in a nonhazardous area using the battery type specified in this instruction manual.

### WARRANTY

This meter is guaranteed for one year against defects in workmanship and materials when used for their intended purpose and maintained according to instructions. This warranty is limited to repair or replacement free of charge. Damages due to accident, misuse, tampering or lack of prescribed maintenance are not covered. If service is required, contact the dealer from whom you purchased the instrument. If under warranty, report the model number, date of purchase, serial number and the nature of the failure. If the repair is not covered by the warranty, you will be notified of the charges incurred. If the instrument is to be returned to Hanna Instruments, first obtain a Returned Goods Authorization Number from the Customer Service department and then send it with shipment costs prepaid. When shipping any instrument, make sure it is properly packaged for complete protection.



◆ Water Analysis    ◆ Food/Seafood Analysis    ◆ Metals/Chemical Analysis    ◆ Microbiological Testing

246 Arlington Street, Quincy, MA 02170    Tel: (617) 328-3663    Fax: (617) 472-0706

## REPORT

Lab. ID #: 84078

Report Date: 2/6/18

Attn: Mr. Ray Young  
Ginger Exchange Watertown  
98 Main St.  
Watertown, MA 02472

Sample Received Date/Time: 2/2/18, 3:50 PM  
Sample Received Temperature: N/A  
Sample Collected Date/Time: 2/2/18, 11:00 AM  
Sample Collected By: D.D. (Client)  
Sample Analyzed Date/Time: 2/2/18, 4:10 PM  
Sample Identification: One (1) sample labeled:  
1) Sushi Rice

### TEST RESULTS:

<u>Test</u>	<u>Unit</u>	<u>Result</u>	<u>Method Reference</u>
pH (10% Soln)	s.u.	4.05	AOAC International

Report reviewed  
and approved by:

Diana F. [Signature] 2/6/18  
Lab. Director                      Signed Date

## REPORT

**Lab. ID #: 95684****Report Date: 9/9/20**Attn: Mr. Ray Young  
Ginger Exchange Watertown  
92-98 Main St.  
Watertown, MA 02472

**Sample Received Date/Time:** 9/4/20, 4:30 PM  
**Sample Received Temperature:** N/A  
**Sample Collected Date/Time:** 9/4/20, 4:00 PM  
**Sample Collected By:** R.Y. (Client)  
**Sample Analyzed Date/Time:** 9/4/20, 5:00 PM  
**Sample Identification:** One (1) sample labeled:  
1) Sushi Rice

**TEST RESULTS:**

<u>Test</u>	<u>Unit</u>	<u>Result</u>	<u>Method Reference</u>
pH (10% Soln)	s.u.	3.82	AOAC International

Report reviewed  
and approved by:

9/10/20

Lab. Director

Signed Date



# CHAIN OF CUSTODY RECORD

246 Arlington Street, Quincy, MA 02170  
Tel: (617) 328-3663 Fax: (617) 472-0706

RAY @ Gingerexchange.com

COMPANY: Ginger Exchange  
ADDRESS: 92-56 Main St  
Waterdown, NY 02472  
PHONE #: 607392889 FAX #: 607392882  
P.O. #: \_\_\_\_\_

CLIENT CONTACT: \_\_\_\_\_  
PROJECT ID/LOCATION: \_\_\_\_\_

LAB I.D. #: 95684

DUE DATE: \_\_\_\_\_

## ANALYSES

### SAMPLE TYPE CONTAINER TYPE

- 1 WATER P - PLASTIC
- 2 SOIL G - GLASS
- 3 SLUDGE V - VOA
- 4 OIL
- 5 TISSUE
- 6 DRINKING WATER
- OTHER

PH

SAMPLE IDENTIFICATION	SAMPLE TYPE	CONTAINER		SAMPLING		PRESERVATIVE	COMMENTS
		SIZE	TYPE	#	DATE TIME		
Sushi Rice			P	1	9/4	Y/200	
sample collected by: <u>RAY</u>							
RELINQUISHED BY:	DATE:	9 - 4	-	2000	RECEIVED BY:	DATE:	9 - 4 20
<u>Raymond Young</u>	TIME:	4 - 30	-	-	<u>Raymond</u>	TIME:	4:30 pm
RELINQUISHED BY:	DATE:	-	-	-	RECEIVED BY:	DATE:	-
	TIME:	-	-	-		TIME:	-
RELINQUISHED BY:	DATE:	-	-	-	RECEIVED FOR LAB BY:	DATE:	-
	TIME:	-	-	-		TIME:	-
METHOD OF SHIPMENT							

pay \$445 by cash  
W

### SPECIAL INSTRUCTIONS

- RUSH, ..... BUSINESS DAY TURNAROUND
- ROUTINE

Sample Disposal Information  
Are there any other known or suspected contaminants in these samples other than those listed above?

Yes  No  If Yes, list known \_\_\_\_\_



GOOD PEOPLE · GREAT SEAFOOD · Since 1887

### HACCP Certificate of Compliance

January 1, 2020

Attn: HACCP Coordinator/ Quality Control Manager

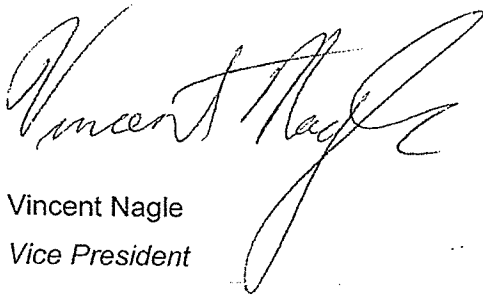
This letter certifies that John Nagle Co. continues to operate under HACCP guidelines and has since December 18, 1997 according to the mandate issued by the Food and Drug Administration under regulations 21 CFR 123 and CFR 117. Our Boston facility has been issued a registration number by the FDA as required by the Bioterrorism Act. As the FDA has recommended for security purposes, we do not publish our registration number as a company policy.

John Nagle Co. has implemented Standard Sanitation Operating Procedures (SSOP), conducted a Hazard Analysis of all seafood operations, identified Critical Control Points, and developed a HACCP plan in accordance with FDA guidelines.

In accordance with FDA Food Code 2017 Chapter 3- 402.11, all of our fresh farm raised species are fed commercially made pelletized diets free of live parasites and are not fed wet diets made from processing waste or by-catch fish. In addition, these fish are raised in open water cages/pens or land-based farms using ponds or tanks and comply with FDA regulations for proper use of all therapeutics and vaccines.

Please file this as part of your HACCP records. John Nagle Co. looks forward to serving your seafood needs and supplying you with the best HACCP protected seafood available.

Sincerely,



Vincent Nagle  
Vice President





GOOD PEOPLE · GREAT SEAFOOD · *Since 1887*

John Nagle Co.  
306 Northern Ave  
Boston, MA 02210

**Parasite Control Certificate of Compliance**

January 4, 2020

Attn: HACCP Coordinator/ Quality Control Manager

In accordance with FDA Food Code 2017 Chapter 3- 402.11, all of our whole fresh farm raised species are fed commercially made pelletized diets free of live parasites and are not fed wet diets made from processing waste or by-catch fish. In addition, these fish are raised in open water cages/pens or land-based farms using ponds or tanks and comply with FDA regulations for proper use of all therapeutics and vaccines.

Please file this as part of your HACCP records. John Nagle Co. looks forward to serving your seafood needs and supplying you with the best HACCP protected seafood available.

Sincerely,

Julia Poust  
SQF Lead Practitioner





NSF Certification, LLC  
 789 Dixboro Rd.  
 Ann Arbor, MI 48105

# Certificate Of Registration

## John Nagle Co.

306 Northern Ave  
 Boston Massachusetts 02210 United States

is registered as meeting the requirements of the:

### SQF Food Safety Code for Manufacturing, Quality Edition 8.1

Certification Details:	
Date of Decision: Nov 06, 2019	Date of Expiry: Dec 17, 2020
Date of Audit: Oct 16, 2019	Date of Next Audit: Oct 03, 2020
Certificate Number: 109088	Certification Type: Unannounced

#### Registration Schedule:

Scope of Registration (*Food Sector Categories*): 9 Seafood Processing

Certified Products: Boneless Salmon Filets, Boneless Groundfish Filets, Sword and Tuna Loins



One world. One standard.

SQF Institute is a division of the Food Marketing Institute (FMI).



*Tom Chestnut*

Tom Chestnut  
 Senior Vice President, Global Food Division

Authorized by

*Robert Provendar*

Robert Provendar  
 Global Managing Director, Supply Chain Food Safety

Issuing Officer



# Certificate of Conformity

## MSC Chain of Custody

MRAG Americas certifies that

John Nagle Company  
306 Northern Avenue  
Boston, MA 02210  
USA

meets the Marine Stewardship Council (MSC) Chain of Custody Standard.

Version No. Default Version 4.0, 20 February 2015

*Please refer to the MSC website  
for the most up-to-date  
scope of this Certificate:  
<http://cert.msc.org/supplierdirectory>*

*This certificate authorizes the holder to, after  
approval from MSC, apply the MSC ecolabel to fish  
and fish products that are bought as MSC-certified  
and within the scope of this certification.*

MRAG Americas  
Accreditation No.  
ACC-MSC-014

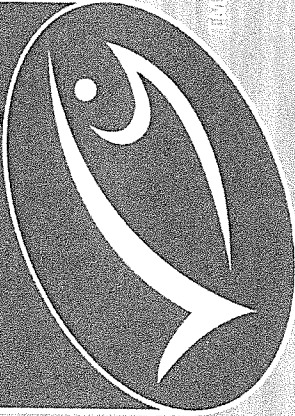
Certificate Issued by:  
MRAG Americas Certification Committee

Signature

# MRAG Americas

CERTIFIED  
SUSTAINABLE  
SEAFOOD

MSC  
www.msc.org



**CERTIFICATE NO:**

MSC-C-50597

**ISSUE DATE:**

17-April-2017

**EXPIRY DATE:**

16-April-2020

MRAG AMERICAS, INC.  
8950 MLK Jr. St. N, Suite 202  
St. Petersburg FL 33702  
Tel: 727-563-9070  
Fax: 727-563-0207

www.mragamericas.com  
certification@mragamericas.com

This Certificate is the property of MRAG Americas, and its use is subject to conformance with the standards of the Marine Stewardship Council.



**Town of Arlington, Massachusetts**

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**REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS**

**ATTACHMENTS:**

	Type	File Name	Description
▢	Reference	Draft_12-16-2020-	Tobacco
	Material	Regulations_Restricting_the_Sale_of_Tobacco_and_Nicotine_Delivery_Products.pdf	Regulation



**Town of Arlington**  
**Department of Health and Human Services**  
**Office of the Board of Health**  
27 Maple Street  
Arlington, MA 02476

Tel: (781) 316-3170  
Fax: (781) 316-3175

**REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE  
DELIVERY PRODUCTS**

**A. STATEMENT OF PURPOSE:**

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat<sup>1</sup>;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station<sup>2</sup>;

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes<sup>3</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>4</sup>;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth<sup>5</sup>;

---

<sup>1</sup> Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

<sup>3</sup> CDC Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: [www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf](http://www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf).

<sup>4</sup> CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009<sup>6</sup>;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation<sup>7</sup>

Whereas menthol makes it easier for youth to initiate tobacco use<sup>8</sup>;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018<sup>9</sup>;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported<sup>10</sup>;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history<sup>11</sup>;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%<sup>12</sup>;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes<sup>13</sup>;

---

<sup>5</sup> CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

<sup>6</sup> CDC (2009) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 72 (No SS-55)). Retrieved from: [www.cdc.gov](http://www.cdc.gov); and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

<sup>7</sup> [www.fda.gov/downloads/ucm361598.pdf](http://www.fda.gov/downloads/ucm361598.pdf), <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

<sup>8</sup> [www.tobaccofreekids.org/assets/factsheet/0390.pdf](http://www.tobaccofreekids.org/assets/factsheet/0390.pdf)

<sup>9</sup> MA YRBS 2017

<sup>10</sup> 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

<sup>11</sup> Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: [http://www.mass.gov/Eeohhs2/docs/dph/tobacco\\_control/adolescent\\_tobacco\\_use\\_youth\\_trends\\_1993\\_2009.pdf](http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf).

<sup>12</sup> Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug; 32(3-4):161-70. Retrieved from: [www.ncbi.nlm.nih.gov/pubmed/21809109](http://www.ncbi.nlm.nih.gov/pubmed/21809109).

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit<sup>14</sup> and high prices deter youth from starting.<sup>15</sup> Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)<sup>16</sup>;

Whereas the sale of tobacco products and nicotine delivery products are incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products and nicotine delivery products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010<sup>17</sup>; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;<sup>18</sup>

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009,

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<sup>13</sup> National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

<sup>14</sup> Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: [www.TobaccoAtlas.org](http://www.TobaccoAtlas.org).

<sup>15</sup> Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>.

<sup>16</sup> TTB (2011). *Statistical Report – Tobacco (2011)* (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

<sup>17</sup> Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

<sup>18</sup> SAMSHA, Analysis of data from the 2011 National Survey on Drug Use and Health

prohibited candy- and fruit-flavored cigarettes,<sup>19</sup> largely because these flavored products were marketed to youth and young adults,<sup>20</sup> and younger smokers were more likely to have tried these products than older smokers;<sup>21</sup>

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,<sup>22</sup> neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;<sup>23</sup>

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;<sup>24</sup>

Now, therefore it is the intention of the Arlington Board of Health to regulate the sale of tobacco products and nicotine delivery products.

#### **B. AUTHORITY:**

This regulation is promulgated pursuant to the authority granted to the Arlington Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

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<sup>19</sup> 21 U.S.C. § 387g.

<sup>20</sup> Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>21</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>22</sup> 21 U.S.C. § 387g

<sup>23</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>24</sup> King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], [www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract](http://www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract).

### **C. DEFINITIONS:**

For the purpose of this regulation, the following words shall have the following meanings:

**Adult-Only Retail Tobacco Store** (also known as “Retail Tobacco Store” in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Arlington Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

**Blunt Wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

**Characterizing flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

**Child-Resistant Package:** Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

**Component part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

**Distinguishable:** Perceivable by either the sense of smell or taste.

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.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Liquid Nicotine Container: A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine



delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

Minor: Any individual who is under the age of eighteen (18).

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.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco or nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product sales permit or any person who is required to apply for a Tobacco and Nicotine Delivery Product Sales Permit pursuant to these regulations, or his or her business agent.

Self-Service Display: Any display from which customers may select a tobacco product or a nicotine delivery product without assistance from an employee or store personnel.

Tobacco Product: A product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that "tobacco product" shall also include any component, part or accessory of a tobacco product; and provided further, that "tobacco product" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or nicotine delivery product.

**D. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PROHIBITED:**

No person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to any person under the age of twenty-one (21) or not being the recipient's parent or legal guardian, give tobacco products or nicotine delivery products to any person under the age of twenty-one.

2. Required Signage

- a. All retail establishments, including adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 7 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.
- b. In addition to the notice required Section D 2. (a), a notice provided by the Arlington Board of Health shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco and nicotine delivery products at retail. Such notice shall state that the sale of tobacco products to person's under the age as outlined in Section D.1. is illegal.
- c. All adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

3. Identification: Each person selling or distributing tobacco or nicotine delivery products, or admitting entrance into a adult-only retail tobacco store, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is at the age stated in Section (D) (1) or older. Verification is required for any person that appears under the age of 27.

4. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer and occur at the permitted location.

**E. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT:**

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail establishments within the Town of Arlington without first obtaining a Tobacco and Nicotine Delivery

Product Sales Permit issued annually by the Arlington Board of Health. Only owners of establishments with a permanent, non-mobile location in Arlington are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Arlington.

2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Arlington Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco and nicotine delivery product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.

4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be \$500.00, renewable on January 1.

5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.

6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. Issuance and holding of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

11. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

12. **Mandatory Retailer Training:** As part of the Tobacco and Nicotine Delivery Product Sales Permit renewal process, permit holders are required to send at least one (1) employee who works on the premises to a tobacco retailer training conducted by the Arlington Board of Health once per year. The Arlington Board of Health will schedule the trainings and notify permit holders of the date (s). Failure of the establishment to send a retailer may result in suspension or revocation of a permit to sell tobacco and nicotine delivery products in the Town of Arlington.

13. **Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits:** The maximum number of permits allowed shall be nineteen (19), reduced by the number of permits not renewed pursuant to Section E (14). New applicants for permits who are applying at a time when the total number of outstanding permits meets or exceeds the maximum number of permits allowed will be placed on a waiting list and will be eligible to apply for a permit on a “first-come, first-serve” basis as permits are either not renewed or returned to the Arlington Board of Health.

14. Any permit holder who has failed to renew an existing permit within 30 days of expiration will be treated as a first-time permit applicant.

15. A purchaser of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or nicotine delivery products. An owner of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit that intends to change the physical location of the business in Arlington must notify the Board of Health in writing thirty (30) days before such change of location occurs. The permit will be reissued reflecting the continuation of said business at the new address. Any permit holder who has failed to notify the Board of Health in writing thirty (30) days before changing the physical location of the business will be treated as a first-time applicant.

#### **F. CIGAR SALES REGULATED:**

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

2. This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

3. The Arlington Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

**G. PROHIBITION OF THE SALE OF BLUNT WRAPS:**

No person or entity shall sell or distribute blunt wraps in Arlington.

**H. PROHIBITION OF THE SALE OF FLAVORED TOBACCO AND NICOTINE DELIVERY PRODUCTS:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Per 105 CMR 665.010(E), manufacturers shall provide documentation certifying those products, sold by the retailer, that do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer.

**I. NICOTINE CONTENT IN ELECTRONIC NICOTINE DELIVERY SYSTEMS:**

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores. Per 105 CMR 665.010(C), manufacturers shall provide documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter.

**J. FREE DISTRIBUTION AND COUPON REDEMPTION:**

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

**K. OUT-OF-PACKAGE SALES:**

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

**L. SELF-SERVICE DISPLAYS:**

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.

**M. VENDING MACHINES:**

All tobacco and/or nicotine delivery product vending machines are prohibited.

**N. NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES:**

All Non-Residential Roll-Your-Own machines are prohibited.

**O. PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS  
BY HEALTH CARE INSTITUTIONS:**

No health care institution located in Arlington shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products or nicotine delivery products.

**P. PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS  
BY EDUCATIONAL INSTITUTIONS:**

No educational institution located in Arlington shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

**Q. VIOLATIONS:**

1. 1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:
  - a) In the case of a first violation, a fine of one thousand dollars (\$1000.00).
  - b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for a minimum of one (1) day and up to seven (7) consecutive business days.
  - c) In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for a minimum of seven (7) days and up to thirty (30) consecutive business days.
2. For violations of all other sections specific to the Town of Arlington, the violator shall receive:

- a) In the case of a first violation, a fine of one hundred dollars (\$100.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
- b) In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
- c) In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- d) The Board of Health reserves the right to revoke a Tobacco and Nicotine Delivery Product Sales Permit.

3. If a permit holder has obtained a permit or license from any other licensing or permitting authority within the Town of Arlington, the Board of Health shall notify such authority in writing of any violations of this regulation.

4. Refusal or failure to cooperate with inspections pursuant to this regulation may result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended may be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

6. The Arlington Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product 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 or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Arlington Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

**R. NON-CRIMINAL DISPOSITION:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

**S. ENFORCEMENT:**

Enforcement of this regulation shall be by the Arlington Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Arlington Board of Health or its designated agent(s) and the Board shall investigate.

**T. SEVERABILITY:**

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

**U. EFFECTIVE DATE:**

This regulation shall take effect on November 18, 2020.

1. \_\_\_\_\_ 2. \_\_\_\_\_  
Marie Walsh Condon, MD Kenneth Kohlberg, JD, MPH

3. \_\_\_\_\_  
Kevin Fallon, DVM

Amended on 4/11/2018  
Amended on 09/11/2013  
Amended on 12/03/2014  
Amended on 03/15/2015  
Amended on 04/11/2018





## Town of Arlington, Massachusetts

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### Board of Health 2021 Meeting schedule

#### ATTACHMENTS:

	Type	File Name	Description
▢	Reference Material	2021_BOH_Meeting_Schedule.pdf	2021 BOH Meeting Schedule



Town of Arlington  
Department of Health and Human Services  
Office of the Board of Health  
27 Maple Street  
Arlington, MA 02476

Tel: (781) 316-3170  
Fax: (781) 316-3175

## Proposed 2021 Board of Health Meeting Schedule:

- January 20, 2021
- February 24, 2021
- March 24, 2021
- April 21, 2021
- May 19, 2021
- June 16, 2021
- July 21, 2021
- August 18, 2021
- September 15, 2021
- October 13, 2021
- November 17, 2021
- December 15, 2021

Time: 2 PM

Location: Conducted by Remote Participation

