Board of Health Regulations

Town of Burlington

A compilation of the Burlington Board of Health Regulations adopted by the Board of Health on March 26, 2024

Public Health
Prevent. Promote. Protect.

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ARTICLE I: GENERAL PROVISIONS

1.0 Legal Authority

These regulations are adopted pursuant to the authority granted to local boards of health under M.G.L. ch.111 §31.

2.0 Severability

Each provision of these regulations shall be construed as separate to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

3.0 Enforcement

These regulations shall be enforced by the Town of Burlington, here in referred to as the "Town", Town of Burlington Board of Health, here in referred to as the "Board of Health", or its Agent.

4.0 Administrative Procedures

[Regulation Amended January 28, 2025]

4.1 Hearings

Any person that has received an Order issued pursuant to these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order. After said hearing, the Board of Health may affirm, modify or rescind said Order or take any other action it deems warranted and appropriate.

4.2 Variances

Upon written application and public hearing, the Board of Health may in its sole discretion vary the application of any provision of these regulations with respect to any particular case when it determines that the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board of Health that a sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board of Health deems appropriate.

5.0 Board of Health Fee Schedule

[Regulation Adopted February 28, 2023]

PERMIT TYPE	PERMIT FEE	PERMIT EXPIRATION DATE
Food Establishments		
Food Establishment: Food Process Type 1 (No Cook Food Preparation)	$100	November 1st

Food Establishment: Food Process Type 2 (Same Day Service Food Preparation)	$200	November 1st
Food Establishment: Food Process Type 3 (Complex Food Preparation)	$300	November 1st
Food Market: one department	$200	November 1st
Food Market: Supermarket/Multi-department (2 or more departments)	$600	November 1st
Retail Food	$100	November 1st
Frozen Dessert Machines	$50	November 1st
Residential/Cottage Kitchen	$100	November 1st
Special Process	$50	November 1st
Mobile Food	$50	June 30th
Temporary Food Event Organizer (more than 3 vendors)	$100	Upon Submittal
Seasonal Food Event Organizer (> 1 month)	$150	Upon Submittal
Temporary Food Vendor	$25	Upon Submittal
Facility Plan Reviews		
Food Establishment: New Establishment or Owner	$150	Upon Submittal
Swimming Pool/Special Purpose Pool: New Establishment or Owner	$150	Upon Submittal
Swimming Pool or Food Establishment Renovation: Same Owner	$75	Upon Submittal
Hazardous Materials Storage & Disposal		
Hazardous Materials Storage	$150	April 15th
Hazardous Materials Disposal–Commercial Renovation	$25	Upon Submittal
Hazardous Materials Disposal - Demolition	$50	Upon Submittal
Public and Semi-Public Swimming Pools		
Indoor and Outdoor (per pool)	$150	May 1st
Special Purpose Pools and Wading Pools (per pool)	$50	May 1st
Septic Systems		
Septic System Construction or Repair Permit	$100	Upon Submittal
Septic System Installer Permit	$100	Upon Submittal
Septic System Abandonment	$50	Upon Submittal
Septage/Grease Hauler Permit	$50	December 31st
Wells		
Monitoring Well Installation	$50	Upon Submittal
Irrigation Well Installation	$50	Upon Submittal
Other		
Biological Safety Permit	$750	February 28th
Body Art Permit	$100	Upon Submittal
Keeping of Animals Permit	$25	June 30th
Recreational Camps License	$100	Upon Submittal
Tanning Salon License	$50	July 1st
Tobacco Product Sales Permit	$150	December 31st

*Fees waived for non-profit organizations and the Town Municipal Departments

ARTICLE II: REGULATION FOR PROJECT REVIEW FEES

[Regulation Adopted February 28, 1995]

1.0 Purpose

These regulations are intended to protect the public health and safety of the community as well as the local environment by allowing the Board of Health to employ an outside consultant for review of applications or conducting project inspections.

2.0 Requirements

A. When reviewing an application, or when conducting inspections in relation to a project, the Board of Health may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts or because of the expertise required. The Board of Health may require that applicants pay a "review fee" consisting of the reasonable costs incurred by the Board of Health for the employment of outside consultants engaged by the Board of Health to assist in the review of an application or project.

B. In hiring outside consultants, the Board of Health may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board of Health in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to analyzing the application, inspecting the project during construction or implementation, and monitoring the project for compliance with the Board of Health's decision.

C. Funds received by the Board of Health pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the application/permit.

D. Review fees may only be spent for services rendered in connection with the specific project from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board of Health's review of a project, any excess amount in the account, including interest attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board of Health with documentation establishing such succession in interest.

3.0 Appeal

Any applicant may make an administrative appeal from the selection of the outside consultant to the Select Board. Such appeal shall be in writing and within 10 days of the Board of Health's decision. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board of Health shall be extended by the duration of the administrative appeal. In the event that no decision is made by the

Select Board within one month following the filing of the appeal, the selection made by the Board of Health shall stand.

ARTICLE III: ENVIRONMENTAL HEALTH

1.0 Biological Safety Regulations

[Regulation Adopted December 13, 2022]

1.1 Purpose

To safeguard the health and welfare of the residents of the Town, the Board of Health hereby promulgates this regulation governing the use of all Regulated Biological Agents (as defined herein) in the Town. The use of biological agents requiring Biosafety Level 4 (BSL-4) containment (as defined herein), and/or classified as a Risk Group 4 Agent in the National Institutes of Health Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules ("National Institutes of Health (NIH) Guidelines") or the current edition of the Department of Health and Human Services' Centers for Disease Control (CDC) publication entitled "Biosafety in Microbiological and Biomedical Laboratories" (BMBL) (as both are defined herein) shall not be permitted in the Town.

1.2 Applicability

These regulations shall apply to any individual person or a group of persons, and/or a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization and any other group acting as a unit (hereinafter collectively "Institutions") involved in or in any way undertaking any and all research or manufacturing involving Regulated Biological Agents in the Town and/or any Property Owner where any Institution is involved in or in any way undertaking any and all research or manufacturing involving Regulated Biological Agents in the Town.

1.3 Definitions

Biological Risk Group: Equivalent to the risk group for any biological pathogen as defined in Subsection II-A-1 (Risk Groups) of the latest amendment of the NIH Guidelines and as specified in the latest edition of BMBL. This designation pertains to the natural risk to human health and the likelihood of transmission associated with the unaltered form of that biological agent.

Biosafety Level: Physical containment as defined in Appendix G-II (Physical Containment Levels) of the latest amendment of the NIH Guidelines (published by the National Institutes of Health, Recombinant DNA Advisory Committee) and the latest edition of BMBL (published by the CDC and Prevention).

BMBL: The current edition of the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) Publication No. 21-1112, entitled "Biosafety in Microbiological and Biomedical Laboratories."

Clinical Laboratory: Healthcare facilities providing a range of laboratory procedures which aid physicians in carrying out the diagnosis, treatment, and management of patients.

Healthcare Facility: Places that provide healthcare including hospitals, clinics, outpatient care centers and specialized care centers, such as birthing centers and psychiatric care centers.

Institution: An individual person or a group of persons, and/or a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization and any other group acting as a unit responsible for compliance with the requirements set forth in this regulation.

Institutional Biosafety Committee (IBC): A committee established in accordance with Subsection IV-B-2 (institutional biosafety committee or IBC) of the NIH Guidelines and any applicable requirements of this regulation. The IBC shall be the final arbiter within an Institution with regard to the implementation of this regulation, with oversight by the Board of Health as described herein.

NIH Guidelines: The National Institutes of Health Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules published in the Federal Register of July 23, 1976, and any subsequent federal amendments thereto adopted by the Recombinant DNA Advisory Committee within the NIH.

Principal Investigator: An individual designated by an Institution to direct the biological research project or program conducted using Regulated Biological Agents (as defined herein).

Property Owner: Every person who alone or severally with others: (1) has legal title to any property or building in the Town; or (2) has care, charge or control of any property or building in the Town including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (3) is a mortgagee in possession of any such property; or (4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property. Each such person is bound to comply with Section 6B of these regulations.

Regulated Biological Agents: Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsia or protozoa) or infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance that:

A. Is identified as a "Recombinant or Synthetic Nucleic Acid Molecules " in Section I-B (Definition of Recombinant or Synthetic Nucleic Acid Molecules) of the most recent revision of the NIH Guidelines (as defined herein);

B. Is classified as a Risk Group 3 Agent in the NIH Guidelines or the BMBL (as both are defined herein); or

C. Is identified as a "select agent" by the United States Department of Health and Human Services or the United States Department of Agriculture (USDA), which shall mean any microbial and toxic agents listed at 42 C.F.R. §73.3 through 73.6, 7 C.F.R. §331.3 and 9 C.F.R. §121.4, and the rulings made by the CDC and the USDA relative thereto, as such regulations and rulings may be amended from time to time. However, "select agent" as herein defined shall not include any *de minimis* amount of agents or toxins which are excluded from 42 C.F.R. §73.00 et seq.

1.4 Professional Advisory Assistance

The Board of Health retains all final responsibility for enforcement of this regulation. Notwithstanding the foregoing, the Board of Health, whenever the facts and circumstances deem

necessary, shall be authorized to retain assistance from a professional consultant with appropriate professional and academic experience and training to support review of applications and required documentation. Costs incurred by the Board of Health in utilizing a professional consultant may be assessed to a permit holder/applicant according to the time required to inspect facilities and to review documentation for said permit holder/applicant. This cost assessment is in addition to any established permit fee(s).

1.5 General Requirements

A. Unless specifically exempted under this regulation, all research or manufacturing involving Regulated Biological Agents in the Town shall be undertaken only in strict conformity with the NIH Guidelines, the current edition of the BMBL, and all other health regulations of the Board of Health including those classes of experiments that are exempt the NIH Guidelines.

B. Any Property Owner whose property will be the location of an Institution that is proposing to use Regulated Biological Agents must notify the Board of Health in writing no less than 30 days prior to occupancy that an Institution is proposing to use Regulated Biological Agents at their property. Written notification shall be submitted on a form provided by the Board of Health.

C. All Institutions proposing to use or continue the use of Regulated Biological Agents at BSL-1, BSL-2 or BSL-3 containment levels must obtain a permit from the Board of Health before commencing or continuing said research, manufacturing, or other use of Regulated Biological Agents and annually thereafter. Institutions receiving such a permit shall conduct research, manufacturing or other use only as specifically set out in their permit applications, and supporting documents filed with such application. The use of Regulated Biological Agents requiring BSL-4 containment and/or classified as Risk Group 4 Agents in the NIH Guidelines or the BMBL shall not be permitted.

    a. Transition Rules: Any Institution currently engaged in the regulated activities hereunder at the time of passage of these regulations, shall be required to apply for and receive a permit on or before 6 months from the passage hereof and then annually in accordance with the permit procedures set forth herein.

D. The Board of Health may impose conditions on a permit which it finds are necessary or prudent for the protection of public health, safety, and general welfare. If, under its discretion, the Board of Health determines that a permit cannot be conditioned in a manner which will protect public health, safety and general welfare then the Board of Health may deny a permit.

E. Institutions governed hereby shall establish and operate an IBC in accordance with NIH Guidelines unless otherwise stated herein. The IBC shall:

    a. Include at least one member of the Board of Health or its designee.

    b. Meet no less than once a year. All minutes of the IBC meetings must be forwarded to the Board of Health.

c. Provide to the Board of Health a complete roster of all IBC members, including names, email addresses and resumes or curriculum vitae (CVs) with the submission of a permit application. If there is a change in IBC membership, an updated roster of IBC members, with resumes or CVs of new members (community or institutional) appointed to the IBC shall be provided immediately following the new member's appointment.

d. IBC established herein need not include a community representative unless utilizing Regulated Biological Agents identified as a "Recombinant or Synthetic Nucleic Acid Molecule" in the most recent revision of the NIH Guidelines.

F. Each Institution seeking permit approval shall certify and attest in its application that it will comply with the following requirements and that it shall:

a. Conform with the NIH Guidelines.

b. Conform with the biosafety standards established in the BMBL.

c. Conform with other conditions set forth in this regulation.

d. Conform with any special or specific requirements prescribed by the Board of Health as a condition of permit approval.

e. Allow access for site inspection of facilities and pertinent records by the Board of Health or its designees upon reasonable notice, should it be deemed necessary by the Board of Health.

f. Submit (with permit application and renewal) a copy of all minutes from IBC meetings held during the previous year. These minutes should provide sufficient detail to allow the Board of Health and its staff or professional consultants to understand the risk assessment or risk assignment process by which the IBC determined that all work approved by the committee would be conducted safely at the assigned Biosafety Level using corresponding safety practices and any additional special safety practices as specified by the IBC.

g. Submit (with permit application and renewal) a detailed table of all protocols reviewed and approved by the IBC within the previous year, including, at a minimum, a listing of all biological agents utilized (*e.g.*, host cell lines, biological vectors), any inserted gene sequences that would elevate risk (*e.g.*, oncogenes), the Biosafety Level (BSLs) assigned after IBC review and the rationale or guidance document upon which the selected BSL was based, and the name(s) of the principal investigator(s) who shall be responsible for each protocol.

h. Submit (with permit application and renewal) a protocol for strain verification of all known human pathogens that are considered to be attenuated or noninfectious approved by the IBC within the previous year for use within the permitted facility, if any, or sufficient documentation to demonstrate that such a screening process has been completed by another laboratory, in order to ensure the proper characterization of the virulence, replication competence, and extent of resistance to therapeutic antibiotics.

G. Laboratories permitted to operate at BSL-3 containment will additionally be required to submit a summary of protocols approved for BSL-3 containment that identifies the specific Regulated Biological Agents and describes the nature of the associated research, manufacturing and/or use to be conducted. This summary may conform to the NIH project registration format or may follow any other format that provides sufficient detail to understand the nature and extent of the biological risk associated with that project. Any IBC approval of a protocol or experiment that is deemed to require BSL-3 containment must be reported to the Board of Health within 30 days of that decision.

H. Institutions permitted pursuant to these regulations shall file an annual report with the Board of Health upon permit renewal. Such report, at a minimum, shall include complete copies of all IBC minutes for the previous year, certification that the entity is in compliance with this regulation and the NIH Guidelines and BMBL, a report on any quality assurance and quality improvement efforts made during the previous year, and a complete roster of current IBC members. To the extent IBC minutes contain information regarding the agent, its location, or security measures, where the release of the information may jeopardize the health and safety of the public or proprietary information, such information may be deemed confidential under the Massachusetts Public Records Law, however, the Board of Health cannot guarantee same.

The Board of Health may develop procedures for assuring confidentiality to the extent allowable under the Massachusetts Public Records Law.

I. Institutions permitted pursuant to these regulations shall provide a written summary of any incidents or adverse event involving Regulated Biological Agents that may have resulted in an exposure to a human pathogen within the facility or in the release of a human pathogen from the facility through wastewater or direct airborne release or through improper disposal of potentially contaminated solid waste. This report shall be sent to the Board of Health as soon as it is feasible, but not more than seven days from the date of the incident. Animal bites will be considered to represent potential human exposures, unless the animal was known to be free of infection and this can be documented upon request.

1.6 Permit Application Requirements

All Institutions which are subject to these regulations shall obtain a permit from the Board of Health must submit a completed application form obtained from the Board of Health, accompanied by a nonrefundable permit application fee as indicated in Article I, Section 4.0 of these regulations. The application must include the following information:

A. Institution name and address; and

B. Name(s) of corporate officer(s) authorized to sign the application and emergency contact information for those individuals signing on behalf of the Institution; and

C. Name and emergency contact information of the Institution's designated official responsible for compliance with this regulation. This is most often the designated biosafety officer, as defined in the NIH Guidelines; and

D. Designation of the appropriate biosafety levels (as defined in this regulation) for all laboratory areas, which are consistent with the NIH Guidelines or BMBL for all IBC-approved protocols. This designation shall be reflected in the IBC minutes before work commences in the permitted facility; and

E. Copy of a completed biosafety manual. Copies of updated biosafety manual(s) are to be submitted upon annual permit renewal; and

F. Floor plans showing laboratory areas. All biosafety containment, biosafety levels, and designated waste storage areas should be indicated. Updated floor plans to reflect any changes in assigned Biosafety Level or expansion of laboratory areas shall be submitted upon annual permit renewal; and

G. An Emergency Response Plan for the purpose of orienting Town representatives, including, but not limited to, the Board of Health, Fire and Police Departments, to the physical plant and to procedures to be utilized in the event of an emergency. This documentation must include a floor plan showing the internal layout of the facility with specific biological containment and non-biological laboratory areas, biological waste storage areas, and biological waste removal routes clearly indicated. Amendments to this plan must be submitted as they are incorporated; and

H. Documentation of a medical surveillance agreement with a qualified provider; and

I. Upon submission of a permit application, the applicants will present an overview of the use of rDNA or Regulated Biological Agents during a regularly scheduled meeting of the Board of Health. The presentation shall include a general introduction of the Institution, its mission, its research or production plans, a timeline of the use of rDNA or Regulated Biological Agents, an overview of the applicant's biosecurity risk assessment and program, and a discussion of the facilities. A presentation is not required for permit renewals and/or additional protocols or changes in protocols unless otherwise determined to be necessary by an Agent of the Board of Health; and

J. Permit renewal applications must be submitted by January 31 each year. Permits are valid for one year from March 1 to February 28. New permits will be issued after March 1 and the permit shall be valid from the date of issue through February 28.

1.7 Prohibitions and Exemptions

A. The use of biological agents requiring Biosafety Level 4 (BSL-4) containment (as defined herein), and/or classified as a Risk Group 4 Agent in the NIH Guidelines or the BMBL (as both are defined herein) shall not be permitted in the Town.

B. For the purposes of this regulation, clinical laboratories located within health care facilities or professional analytical services that directly support clinical or health care services shall not be required to obtain a permit or comply with any permit requirements stated herein.

C. Educational institutions utilizing only commercially available molecular biology teaching kits that have been designated by the manufacturer for use at BSL-1 shall not be required to obtain a permit or comply with any permit requirements stated herein.

1.8 Confidentiality of Information

A. Information submitted to the Board of Health is subject to public records laws. Upon receipt of any request for public records under these laws, the Burlington Records Access Officer may consult with the Board of Health and will make a determination as to whether the requested information is exempt from disclosure for safety and security or other enumerated purposes under M.G. L. c. 4, § 7(26) and withhold any documents, or portions thereof, that are covered by an exemption.

Any Institution seeking to qualify any particular document or submission as confidential shall:

a. Submit said information as "Confidential Information"; and

b. Provide the applicable statutory citation warranting the exclusion of such information from disclosure under the Commonwealth of Massachusetts' Public Records Law (M.G.L. ch.66).

B. Notwithstanding this designation by the Institution, any documents that are referred to during a public meeting may be subject to public review. The exchange of information pertaining to compliance with the permit may take place in an executive session, if the information shared in a public meeting would pose a security threat or compromise proprietary information.

1.9 Penalties

Whoever violates any provision of this regulation may be subject to penalties as follows:

A. If a designated Agent of the Board of Health determines that a party has violated this regulation, such Agent may issue a written order (“Order”) to the Institution (permit holder) and its designated Agent to correct the offending deficiencies within a reasonable specified time; and/or,

B. Violation of any provision of this regulation may subject the violator to a fine of $200 per day. Each day of violation shall constitute a separate and distinct offense. The Board of Health shall be empowered to enforce this regulation in any court of competent jurisdiction pursuant to the authority granted in M.G.L. c. 111 § 31. Each day or portion thereof shall constitute a separate offense; and/or

C. In addition to a fine, an Institution which violates any provisions of this regulation or for which continued conduct or recombinant DNA technology or other activity covered under this regulation poses an immediate threat to the public health or environment may be closed by the Board of Health; and/or,

D. The Board of Health may suspend or revoke a permit if it determines that the Institution has failed to comply with this regulation, or other applicable permit conditions. Suspension or revocation shall follow written notice and a hearing in accordance with the time frame set forth in Article III, Section 1.10.

E. In the event the Board of Health or its Agent determines there is an imminent threat to public health and safety it may suspend a permit immediately without prior notice. Any Institution thereafter may invoke the hearing process in Article III, Section 1.10 to appeal said suspension.

1.10 Hearing

Any person that has received an Order issued pursuant to Section 1.9 of this regulation may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order. After said hearing, the Board of Health may affirm, modify or rescind said Order or take any other action it deems warranted and appropriate.

1.11 Variances

Upon written application and public hearing, the Board of Health may in its sole discretion vary the application of any provision of this regulation with respect to any particular case when it determines that the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board of Health that a sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board of Health deems appropriate.

2.0 Regulations for the Storage and Disposal of Hazardous Materials

[Regulation Adopted February 28, 2023]

2.1 Purpose

To protect public health, safety, and the environment through the establishment of emergency plans and procedures for the safe management, handling, and disposal of hazardous materials (as defined herein).

2.2 Applicability

These regulations shall be applicable to the following:

A. Any Institution storing, processing, generating or using hazardous materials in a cumulative quantity of 100 kilograms or 220 pounds or more and/or storing, processing, generating or using any Extremely Hazardous Substance above its threshold planning quantity listed in the Environmental Protection Agency Title 40, Chapter I, Subchapter J, Part 355, Appendix A and B (List of Extremely Hazardous Substances and Their Threshold Planning Quantities) If materials are stored in liquid form (liters or gallons), then the Institution must determine if the 100 kilograms or 220 pounds is met through appropriate conversions of either a specific material and/or compressed gas; and/or,

B. Any property Property Owner where an Institution is storing, processing, generating or using toxic or hazardous materials as described in Section 3(A) of these regulations; and/or,

C. Any Institution who is planning the demolition of a commercial or residential building or the renovation of a commercial building.

2.3 Definitions

Container: Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous material.

Chemical: Any element, chemical compound or mixture of elements and/or compounds.

Clinical Laboratory: Healthcare facilities providing a range of laboratory procedures which aid physicians in carrying out the diagnosis, treatment, and management of patients.

Extremely Hazardous Substance: A substance listed in Appendices A and B the Environmental Protection Agency Title 40, Chapter I, Subchapter J, Part 355, Appendix A and B.

Fuel oil: Oil of grades 1, 2, 4, 5 and 6 in accordance with M.G.L. C.94, S.249H and 202 CMR.

Hazardous Materials: Any substance, including but not limited to, any material, in whatever form, which because of its quantity, concentration, chemical, corrosive, fire, reactive, toxic, infectious, and radioactive characteristics either separately or in combination with any substance or substances, constitutes a potential threat to human health, safety, welfare or to the environment, when improperly stored, handled, treated, transported, disposed of, used or otherwise managed. This definition includes any substance which is designated by its manufacturer, distributor or importer as possessing any health or physical hazard(s) pursuant to 29 C.F.R. § 1910.1200 as well as any substance which is determined to be a hazardous waste according to 310 CMR 30.100.

Hospital: An establishment that provides a range of different services for patients of various age groups and with varying disease conditions.

Incompatible Materials: Those substances which, if mixed, will create hazards greater than those posed by the individual substances alone, such as fire, explosion, or generation of toxic fumes.

Institution: An individual person or a group of persons, and/or a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization and any other group acting as a unit responsible for compliance with the requirements set forth in this regulation.

Primary health care center: An office or establishment that provides services which are usually the first point of contact with a health professional. They include services provided by general practitioners, dentists, community nurses, pharmacists and midwives, among others.

Property Owner: Every person or Institution who alone or severally with others: (1) has legal title to any property or building in the Town; or (2) has care, charge or control of any property or building in the Town including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (3) is a mortgagee in possession of any such property; or (4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property. Each such person and/or Institution is bound to comply with Section 5B of these regulations.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any toxic or hazardous material into the environment.

Retail Establishment: Establishment that sells goods to the public in relatively small quantities for end-use or consumption rather than for resale.

Safety Data Sheet (SDS): A document required by the Occupational Safety and Health Administration (OSHA) Communication Hazard Communication Standard used to communicate the hazards of hazardous chemical products. The document must be in a uniform format and include section numbers, headings, and associated information specified by OSHA.

Spill Control Plan: Document setting an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous materials which could threaten public health, safety, welfare, or the environment.

Underground Storage Tank: A tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground.

2.4 General Requirements

A. The Board of Health, by a majority vote, may require the collection of soil and/or groundwater samples at any location where hazardous materials or hazardous waste have been or are stored and used, or at any property where environmental contamination may exist. Soil and/or groundwater samples shall be collected and analyzed at the expense of the Property Owner.

B. Any Property Owner whose property will be the location of an Institution that is proposing to store, process, generate or use hazardous materials as described in Article III, Section 2.2 of these regulations must notify the Board of Health in writing no less than 30 days prior to

occupancy that an Institution located or planning to locate at their property may be required to adhere to these regulations. Written notification shall be submitted on a form provided by the Board of Health.

2.5 Permit Requirements

A. All Institutions undertaking the demolition of a commercial or residential building, or the renovation of a commercial building must first obtain a permit from the Board of Health prior to demolition or renovation.

B. All Institutions proposing to store, process, generate or use hazardous materials in amounts greater as described in Article III, Section 2.2 of these regulations must obtain a permit from the Board of Health. Permits shall be issued and renewed by an Agent of the Board of Health for a period of one year. The Director of Public Health and/or the Board of Health, or its Chair, may require, for any reason, an Institution appear before the Board of Health for permit renewal. Permit renewal applications must be submitted by April 15 each year. Permits are valid for one year from May 1 to April 30.

   a. Transition Rules: Any Institution subject to these regulations hereunder at the time of passage of these regulations, shall be required to apply for and receive a permit on or before 6 months from the passage hereof and then annually in accordance with the permit procedures set forth herein.

C. The applicant must demonstrate that the issuance of a permit shall not be detrimental in any way to the public welfare and would not endanger the health or safety of the municipality, and that all applicable requirements of this regulation have been satisfied. The Board of Health or its Agent may impose conditions, safeguards and other limitations on a permit consistent with the public health, safety and welfare.

D. The Board of Health may impose conditions on a permit which it may find necessary or prudent for the protection of public health, safety, and general welfare. If, under its discretion, the Board of Health determines that a permit cannot be conditioned in a manner which will protect public health, safety and general welfare then the Board of Health shall deny a permit.

E. All Institutions which are subject to these regulations must submit a completed application form obtained from the Board of Health accompanied by a nonrefundable, non-prorated, permit application fee as indicated in Article I, Section 4.0 and any required documentation as outlined in the application form.

F. Releases reportable under the Massachusetts Contingency Plan (310 C.M.R §40.0000) must also be reported to the Board of Health within the same time frame.

G. Institutions as defined in Article III, Section 2.2 of these regulations must provide easily accessible information on workplace hazards and safety controls to all employees, and to the Board of Health and/or its Agent upon request, including, but not limited to:

   a. A Spill Control Plan that is readily available for inspection by the Board of Health and posted in an area accessible to all employees that includes the name and telephone number of the Emergency Coordinator and a Cleanup Contractor; telephone numbers of the Burlington Fire Department, MA Department of

Environmental Protection Emergency Response, and the Board of Health; and a floor plan showing locations of fire extinguishers, spill control kits, fire alarms, and evacuation routes.

b. Safety Data Sheets that are readily available for inspection by the Board of Health and provided to all employees.

H. It shall be a condition of any permit issued under this regulation that the permit holder shall comply with all applicable federal, state and local laws, regulations and other requirements.

2.6 Exemptions

A. Retail Establishments including, but not limited to, pharmacies, hardware stores, department stores, and restaurants.

B. Fuel oil, propane, and liquefied petroleum gas (LPG) tanks installed solely for the purpose of heating a building and/or providing hot water.

C. Fuel oil, propane, and LPG tanks and batteries installed solely for the purpose of the operation of equipment, such as generators, torches, and consumptive use boilers.

D. Use of domestic cleaners for residential and business maintenance when kept in original manufacturer's containers and used as directed/intended by such manufacturer.

E. Primary healthcare centers and clinical laboratories.

F. Refrigerants other than ammonia or LPG.

G. Biological waste regulated by the MA Department of Public Health.

H. Swimming pools regulated under the MA Department of Public Health under 105 CMR 435.000.

2.7 Storage Requirements

A. All Hazardous Materials including, but not limited to, compressed gases shall be stored according to practices and procedures which prevent the contamination of air, groundwater, and surface water and which will minimize the possibility of accidental release and harm to human health and safety.

B. Hazardous Materials will be stored in product tight containers on an impervious, chemical resistant surface compatible with the material being stored.

C. Outdoor storage areas shall be enclosed with a permanent dike of impermeable construction and roofed, or other equally secure secondary containment.

D. Any enclosed area containing free liquids shall have the capacity to contain either 10% of the total possible contained volume of the containers or 110% of the volume of the largest container of free liquid, whichever is greater. Drainage shall be separately collected for safe disposal.

E. Secondary containment for inside storage areas of free liquids shall be provided when a release could follow a potential pathway and enter the environment (i.e. doorway, drain).

F. Incompatible materials shall be separated.

G. Containers holding Hazardous Materials must be labeled in a legible and prominent manner and be in accordance with all local, state and federal regulations.

H. Underground storage tanks must be in compliance with M.G.L. 310 CMR 80.00.

2.8 Confidentiality of Information

A. Information submitted to the Board of Health is subject to public records laws, M.G.L. c. 66, sec. 10. Upon receipt of any request for public records under these laws, the Burlington Records Access Officer may consult with the Board of Health and will make a determination as to whether the requested information is exempt from disclosure for safety and security or other enumerated purposes under M.G. L. c. 4, § 7(26) and whether to withhold any documents, or portions thereof, that are covered by an exemption.

Any Institution seeking to qualify any particular document or submission as confidential shall:

a. Submit said information as "Confidential Information"; and

b. Provide the applicable statutory citation warranting the exclusion of such information from disclosure under the Commonwealth of Massachusetts' Public Records Law (M.G.L. ch.66).

B. Notwithstanding this designation by the Institution, any documents that are referred to during a public meeting may be subject to public review. The exchange of information pertaining to compliance with the permit may take place in an executive session, if the information shared in a public meeting would pose a security threat or compromise proprietary information.

2.9 Penalties

Whoever violates any provision of this regulation may be subject to penalties as follows:

A. If a designated Agent of the Board of Health determines that a party has violated this regulation, such Agent may issue a written order ("Order") to the permit holder and its designated Agent to correct the offending deficiencies within a reasonable specified time.

B. Violation of any provision of this regulation may subject the violator to a fine of $50.00 per day in accordance with M.G.L. c. 40, § 21D and Article I (4) of the Town's General Bylaws. Each day of violation shall constitute a separate and distinct offense.

C. The Board of Health shall be empowered to enforce this regulation, through a civil or criminal action, in any court of competent jurisdiction pursuant to the authority granted in M.G.L. c. 111 § 31. Each day or portion thereof shall constitute a separate offense; and/or

D. In addition to or in lieu of a fine, an Institution or property Property Owner which violates any provisions of this regulation or for which any activity covered under this regulation poses an immediate threat to the public health or environment may be closed by the Board of Health, subject to any applicable requirements of M.G.L c. 111 and/or Article III, Section 2.10 of these regulations.

E. The Board of Health may suspend or revoke a permit if it determines that the Institution has failed to comply with this regulation, or other applicable permit conditions. Suspension or revocation shall follow written notice and a hearing in accordance with the time frame set forth in Article III, Section 2.10 of these regulations.

F. In the event the Board of Health or its Agent determines there is an imminent threat to public health and safety it may suspend a permit immediately without prior notice. Any Institution thereafter may invoke the hearing process in Article III, Section 2.10 of these regulations to appeal said suspension.

2.10 Hearing

Any Institution or Person that has received an Order issued pursuant to Article III, Section 2.9 of these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) business days after issuance of the Order. After said hearing, the Board of Health may affirm, modify or rescind said Order or take any other action it deems warranted and appropriate.

2.11 Variances

Upon written application and public hearing, the Board of Health may in its sole, uncontestable discretion vary the application of any provision of this regulation with respect to any particular case when it determines that the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board of Health that a sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board of Health deems appropriate.

2.12 Conflict

This regulation is intended to be interpreted and applied in the broadest manner allowed by law in accordance with the Board of Health's authority under M.G.L. c. 111, § 31 to protect the health, safety and welfare of the community. To the extent, any provision herein is also the subject of and/or regulated by a similar or overlapping federal or state requirement, the more restrictive applicable provision shall apply.

3.0 Floor Drain Regulations

[Regulation Adopted February 20, 2018]

3.1 Purpose

Whereas floor drains in industrial and commercial facilities are often tied to a system leading to a leaching structure or a septic system.

Whereas improper maintenance or inappropriate use of these systems may allow the passage of contaminants or pollutants entering the drain to discharge from the leaching structure or septic system to the ground.

Whereas discharges of hazardous wastes and other pollutants to floor drains leading to leaching structures and septic systems have repeatedly threatened surface and ground water quality throughout Massachusetts.

Now, therefore, it is the intention of the Burlington Board of Health to regulate the discharge of pollutants to the ground via floor drains as a preventive measure for the purposes of protecting the public and environmental health and preserving and protecting the community.

3.2 Definitions

For the purposes of this regulation, the following words and phrases shall have the following meanings:

Commercial and Industrial Facility: A public or private establishment where the principal use is the supply, sale, and/or manufacture of services, products, or information, including but not limited to: manufacturing, processing, or other industrial operations; service or retail establishments; printing or publishing establishments; research and development facilities; small or large quantity generators of hazardous waste; laboratories; hospitals.

MassDEP: Massachusetts Department of Environmental Protection.

Discharge: The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, incineration, or placing of toxic or hazardous material or waste upon or into any land or water so that such hazardous waste or any constituent thereof may enter the land or waters of the Commonwealth. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site leaching structure or sewage disposal system.

Floor Drain: An intended drainage point on a floor constructed to be otherwise impervious which serves as the point of entry into any subsurface drainage, treatment, disposal, containment, or other plumbing system.

Leaching Structure: Any subsurface structure through which a fluid that is introduced will pass and enter the environment, including, but not limited to, dry wells, leaching catch basins, cesspools, leach fields, and oil/water separators that are not water tight.

Oil/Water Separator: A device designed and installed to separate and retain petroleum based oil/grease, flammable wastes and sand particles from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity. Other common names for such systems include Metropolitan District Commission traps, gasoline and sand traps, grit and oil separators, grease traps, and interceptors.

Toxic or Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or waters. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under M.G.L. ch.21C and ch.21E or Massachusetts Hazardous Waste regulations (310 C.M.R §30.000), and also include such products as solvents, thinners, and pesticides in quantities greater than normal household use.

Use of Toxic or Hazardous Material: The handling, generation, treatment, storage, or management of toxic or hazardous materials.

Zone II: The delineated recharge area to a public drinking water well as approved by MassDEP and defined under the MA Drinking Water Regulations 310 C.M.R §22.00.

3.3 Applicability

These regulations shall be applicable to all new and existing commercial and industrial facilities located within the Town.

3.4 Prohibitions

With the exception of discharges that have received, or have applied and will receive, a MassDEP issued permit prior to the effective date of this regulation, no floor drain shall be allowed to discharge with or without pretreatment, such as an oil/water separator, to the ground, a leaching structure, or septic system in any industrial or commercial facility if such floor drain is located in:

A. An industrial or commercial process area; or

B. A petroleum, toxic, or hazardous materials and/or hazardous waste storage area; or

C. A leased facility lacking either A or B as described above, but which has the potential for a change in use to one which has either A or B; and is in the opinion of the Board of Health or its Agent, sufficient to warrant the elimination of the ground discharge present at this facility.

3.5 Requirements for Existing Facilities

A. The owner of a commercial or industrial facility in operation, prior to the effective date of this regulation, with a prohibited floor drain system as defined in Article III, Section 3.4 of these regulations shall:

   a. Where possible, disconnect and plug all applicable inlets to and outlets from applicable leaching structures, oil/water separators, and/or septic systems; and

   b. Remove all existing sludge in oil/water separators, septic systems and, where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations, 310 C.M.R §30.000. Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate MassDEP policies; and

   c. Alter the floor drain system so that the floor drain shall be either:

i. Connected to a holding tank that meets all applicable requirements of MassDEP policies and regulations, with hauling records submitted to the Board of Health at the time of hauling; or

ii. Connected to a municipal sanitary sewer line, if available, with all applicable MassDEP and local permits; or

iii. Permanently sealed. Any facility sealing a drain shall be required to submit for approval to the Board of Health a Hazardous Waste Management Plan detailing the means of collecting, storing, and disposing any hazardous waste generated by the facility, including any spill or other discharge of hazardous materials or wastes.

B. Any oil/water separator remaining in use shall be monitored weekly, cleaned not less than every 90 days, and restored to proper conditions after cleaning so as to ensure proper functioning. Records of the hauling of the removed contents of the separator shall be submitted to the Board of Health at the time of hauling.

C. Compliance with all provisions of this regulation must be accomplished in a manner consistent with Massachusetts Plumbing, Building, and Fire Code requirements.

D. Upon complying with one of the options listed under Article III, Section 3.5 (A) of these regulations the owner/operator of the facility shall notify MassDEP of the closure by filing the Underground Injection Control Pre-Closure Form BRP WS-06d and sending a copy to the Board of Health.

3.6 Hearing

Any person that has received an order or notice issued pursuant to these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order or notice. After said hearing, the Board of Health may affirm, modify or rescind said Order or notice or take any other action it deems warranted and appropriate.

3.7 Penalties

Whoever violates any provision of these regulations may be subject to penalties as follows:

A. Non-criminal disposition as provided in M.G.L. c. 40, § 21D and Article I, Section 4.0 of the Burlington General Bylaws

B. These regulations may be enforced through any other means available at law or in equity as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief. Whoever violates any provision of these regulations may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars ($1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

3.8 Variances

No variance of these regulations is allowed. Any request for a variance under 310 CMR 22.12(a) and (b) must be submitted to MassDEP pursuant to 310 CMR 22.21(5).

4.0 Regulations for Stormwater and Runoff Management

[Regulation Adopted March 10, 2015]

4.1 Purpose

The purpose of this regulation is to protect the public and environmental health by providing a level of protection from pollutants, flooding, icing, siltation, and other drainage problems while maintaining a level of protection for the health and safety, quality of life, and property of residents. These regulations are intended to supplement and expand other existing requirements but not to supersede or conflict with those requirements. As such they are generally intended to be more strict than state and/or federal regulations. In any given case where a Property Owner or its designate Agent believes that federal and/or state regulations are more strict than or sharply conflict with these regulations, that party shall request a variance of these regulations as set forth below.

4.2 Definitions

Agent: Any duly authorized Agent of the Board of Health including but not limited to the Director of Public Health, the Health Agent, and the Environmental Engineer.

Alter: Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land disturbance activities."

Alteration of Drainage Characteristics: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff from a pre-activity condition. Such changes from a pre-activity condition may include: change from distributed runoff to confined discrete point discharges, change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

Best Management Practice (BMP): Structural and nonstructural techniques that are generally recognized by appropriate professionals to be an effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote good stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide permanent or temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source. Nonstructural BMPs include managerial techniques that focus on the preservation and protection of natural features.

Detention Basin: A low lying area that is designed to temporarily hold a set amount of water while slowly draining to another location. They are used for flood control when large amounts of rain could cause flash flooding if not dealt with properly.

Development: Any alteration, construction, disturbance, improvement or modification of land or structures to accommodate a use, expansion or re-development on a site.

Land Disturbance: Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. Land disturbance includes, but is not limited to, changes in contour, increases in runoff rate or volume, changes in elevation, decreases in water absorption rate, changes in drainage patterns, changes to a stormwater structure, construction, enlargement or location of any building. See also *Alter*.

Massachusetts Stormwater Management Policy: The Policy issued by the Department of Environmental Protection, and as amended from time to time, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act M.G.L. c. 131 § 40 and Massachusetts Clean Waters Act M.G.L. ch.21 §23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

Municipal Separate Storm Sewer System (MS4), or Municipal Storm Drain System, or Municipal Drainage System: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

Rain Garden: A garden which takes advantage of rainfall and stormwater runoff in its design and plant selection. A small garden which is designed to withstand the extremes of moisture and concentrations of nutrients, particularly nitrogen and phosphorus.

Site: The parcel of land being developed or redeveloped or a designated planning area in which the land development or re-development project is located.

Stormwater Runoff: Water that accumulates on land because of storms, that flows overland and is not absorbed into the ground.

Stormwater Authority: The Board of Health, or its Agent(s), is responsible for coordinating the review and approval as defined in these Regulations. Other Boards and/or departments may participate in the review process.

Stormwater Management: The use of structural or nonstructural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

4.3 Applicability

These regulations shall be applicable to the following:

A. All new development and re-development projects that:

   a. Includes any activity that has resulted in a land disturbance where the effect of such disturbance has created, in the opinion of the Board of Health and/or its Agent, a repeated accumulation of stagnant water or flooding or any other drainage problem, either on the property where the land disturbance has occurred or any other property in the Town; or,

   b. Require a Special Permit, Site Plan Approval, or Subdivision Plan Approval as required under the Town Zoning Bylaw; or,

   c. Require Stormwater Management or other drainage mitigation measures required under the Town, General Bylaws, Article XIV, Environment, Section 1.0 (Wetlands Protection Bylaw) and/or Section 6.0 (Erosion and Sedimentation Control).

B. All properties in the Town that manage stormwater from a sump pump. Properties that utilize sump pumps for the management of stormwater must adhere to the following:

a. Storm water pumped from a sump must be infiltrated on the property where the sump is located or, if that is not possible, directed from the sump to the Town stormwater system via closed, underground piping or piped to an on-site dry well that is properly constructed as to allow for and promote storm water infiltration without impacting adjacent properties. If on-site infiltration is not possible, the homeowner can, with prior approval from the Department of Public Works, connect his/her sump to the Town stormwater system. All piping between the sump pump and the Town stormwater system must be installed underground. Overland hose or piping connections to stormwater drains are not allowed.

b. Sump pump water outfall shall occur at an up gradient portion of the property or a portion of the property which will allow for the water to infiltrate on the property of generation. The outfall shall not be proximal to a cross gradient or down gradient property boundary.

4.4 Goals and Requirements

All projects subject to Article III, Section 4.3 of these regulations, shall submit a Stormwater and Runoff Management Plan (the "Plan") to the Board of Health. Upon receipt of the Plan, an Agent of the Board of Health may at its discretion 1) approve the Plan, so long as the applicant has demonstrated, to the reasonable satisfaction of the Agent, that a level of protection, consistent with the below goals, requirements and guidelines, from pollutants, flooding, icing, siltation, and other drainage problems is achieved and the health and safety, quality of life, and property of residents is maintained; or, 2) request that the applicant(s) appear in person, including any representatives and experts, at a duly noticed, public hearing held by the Board of Health where the Board of Health may grant or deny the Plan or take any other action it deems warranted and appropriate.

A. Goals

The Plan shall accomplish the following goals:

a. Mitigate the effects of increased stormwater runoff onto public streets and adjacent private property due to development or re-development; and

b. Reproduce, as nearly as possible, the hydrogeologic conditions in the ground and surface waters prior to development or re-development; and

c. Have an acceptable Operation and Management Plan; and

d. Have a neutral effect on the natural and human environment; and

e. Be appropriate for the site, given physical restraints; and

f. Provide a sufficient level of health and environmental protection during the construction phase; and

g. Provide a sufficient level of protection to maintain the safety and quality of life of residents as well as the protection of property.

B. Requirements

a. A complete Stormwater and Runoff Management Plan Submittal Form with original signatures of all owners; and

b. A Plan that meets the goals outlined in Article III, Section 4.4 (A) of these regulations and contains the following:

i. A project narrative that includes a description of the proposed project and how and where stormwater will be controlled as well as erosion and sedimentation controls to be implemented, if any; and

ii. A site plan showing existing conditions including, but not limited to, physical features, topography, wetlands, septic systems, private wells, and buildings; and

iii. A site plan showing proposed conditions including, but not limited to, proposed grading, buildings or other structures, stormwater structures (i.e. drainage basins, rain gardens, underground infiltration areas, trenches).

c. Detention or retention basins shall be utilized only in non-residential applications. Rain gardens may be used in residential applications and must be shallow, flat on the bottom, contain deep rooted native plants and grasses, and prevent the collection of standing water.

d. The Board of Health and/or its Agent may require that hydrologic and hydraulic calculations, prepared by a Massachusetts Registered Professional Engineer, be included in the Plan.

e. Known or suspected areas of environmental contamination must be identified. Infiltration in known or suspected areas of environmental contamination will not occur, unless, in the opinion of a Massachusetts Licensed Site Professional, infiltration will not cause the migration and/or exacerbation of contaminants.

4.5 Penalties

A. A non-criminal disposition process as provided in M.G.L. c.40, § 21D and Burlington's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of these regulations shall, in accordance with Article 1, Section 4.0, be subject to a penalty in the amount of fifty dollars ($50.00) per day for each day of violation. Each day or portion thereof shall constitute a separate offense; and/or,

B. In the alternative, or in addition to the above, these regulations may be enforced through any other means available at law as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief.

4.6 Hearing

Any person that has received an Order or notice issued pursuant to this regulation may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order or notice. After said hearing, the Board of Health may affirm, modify or rescind said Order or notice or take any other action it deems warranted and appropriate.

4.7 Variances

Upon written application and public hearing, the Board of Health may in its sole discretion vary the application of any provision of this regulation with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of these regulations or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board of Health that an sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board of Health deems appropriate. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the Board of Health.

5.0 Private Well Regulations

[Regulation Adopted January 12, 1993, as Amended February 14, 2006; October 13, 2009; May 23, 2017]

5.1 Purpose

The purpose of these regulations is to ensure that private wells are sited, constructed, tested, and operated in a manner which will protect the public health, safety, welfare, and the environment. These regulations are also intended to protect the health and general welfare of individuals who rely upon private water supply systems, to protect the quality of the groundwater in the Town, and the aquifer from which it is derived.

5.2 Definitions

Agent: Any person designated and authorized by the Board of Health to implement and enforce these regulations. The Agent shall have all the authority of the appointing Board of Health and shall be directly responsible to the Board of Health and under its direction and control.

Applicant: Any person who intends to install or operate a private well.

Aquifer: A water bearing geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells and springs.

Board or Board of Health: The Board of Health of Burlington, Massachusetts, or its authorized Agent.

Certified Laboratory: A laboratory certified by the Massachusetts Department of Environmental Protection for the analysis of drinking water and required water quality analytes.

Certified Well Driller: Any person certified with the Massachusetts Department of Environmental Protection Well Driller Program to dig or drill wells in the Commonwealth of Massachusetts.

Contamination: The presence of any physical, chemical, biological, or radiological substance or matter in water at a concentration and for a duration or anticipated duration which, in the opinion of the Board of Health would present a threat to the public health, using existing federal and state standards and guidelines where applicable.

Person: An individual, corporation, company, association, trust, or partnership.

Private Commercial Well: Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter constructed or used for the sole purpose of commercial water use other than drinking or irrigation.

Private Drinking Water Well: Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter constructed or used to supply water intended and/or used for human consumption, that is not subject to regulation by 310 C.M.R §22.00 (or its successor provisions).

Private Ground Source Heat Pump (Geothermal) Well: Any excavation by any method for the purpose of transferring heat to or from the earth for heating and cooling purposes in which the ambient ground temperature is 90 degrees Fahrenheit or less.

Private Irrigation Well: Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter constructed or used for the sole purpose of watering or irrigation. The well shall not be connected at any time to a dwelling or a building unless it has met the requirements of a private drinking water well and has been issued a drinking water well permit from the Board of Health.

Private Monitoring Well: Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter constructed or used for the sole purpose of conducting groundwater analysis to determine the presence or extent of contamination.

Private Well: Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter developed to supply water intended and/or used for human consumption, irrigation, commercial use, or for environmental analysis and not subject to regulation by 310 C.M.R §22.00 (or its successor provisions).

Pumping (Aquifer) Test: A procedure used to determine the characteristics of a well and adjacent aquifer by installing and operating a pump.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, fence, or the like.

5.3 Well Types

A. Private Drinking Water Wells

The following sections of these regulations shall apply to private drinking water wells: Article III, Section 5.4 through Section 5.12.

B. Private Irrigation Wells

The following sections of these regulations shall apply to private irrigation wells: Article III, Section 5.4, Section 5.6, and Section 5.8 through Section 5.12.

C. Private Commercial Wells

The following sections of these regulations shall apply to private commercial wells: Article III, Section 5.4 and Section 5.8 through Section 5.12.

D. Private Monitoring Wells

The following sections of these regulations shall apply to private monitoring wells: Article III, Section 5.4 and Section 5.8 through Section 5.12.

E. Private Ground Source Heat Pump (Geothermal) Wells

The following sections of these regulations shall apply to private geothermal wells: Article III, Section 5.4 and Section 5.8 through Section 5.12.

5.4 Well Construction and Operation Permit

The Property Owner and a Massachusetts Certified Well Driller shall obtain a permit from the Board of Health prior to the commencement of construction of a private well.

Each permit application to construct a well shall include the following:

A. the Property Owner's name and address; and

B. the well driller's name and proof of valid Massachusetts certification; and

C. a plan with a specified scaleshowing the location of the proposed well in relation to existing or proposed above or below ground structures; and

D. a description and location of prior and current land uses within two hundred (200) feet of the proposed well location, which represent a potential source of contamination, including but not limited to the following:

    a. existing and proposed structures;

    b. subsurface sewage disposal systems;

    c. subsurface fuel storage tanks;

    d. public ways;

    e. utility right of ways;

    f. any other potential sources of pollution; and

E. proof that the owner of any property abutting the applicant's property has been notified of the applicant's intention to install a well; and,

F. the appropriate permit fee.

Water supply lines shall be installed at least ten (10) feet from and eighteen (18) inches above any sewer line. Whenever water supply lines must cross sewer lines, both pipes shall be constructed of class 150 pressure pipe and shall be pressure tested to assure water tightness. No private well, or its associated distribution system, shall be connected to either the distribution system of a public water supply system or any type of waste distribution system.

The Board of Health may grant a permit, when, in its opinion, the construction and/or operation of a private well will not result in harm to the public health, safety, welfare, and the environment. The Board of Health may deny the permit when, in its opinion, the construction and/or operation of a private well will result in harm to the public health, safety, welfare, or environment. The Board of Health may also request additional information from the applicant before rendering a decision, including, but not limited to, analytical sampling and testing and opinion(s) from environmental professionals.
The applicant shall comply with all other applicable local, state, and federal laws, statutes and regulations. It is the responsibility of the applicant to consult the Building Department and Conservation Commission to determine if any other bylaws or regulations mandate additional requirements or conditions.

Permission for well construction shall expire one (1) year from the date of issuance unless revoked for cause, or as extended by the Board of Health as stated herein. Well construction may be extended for one (1) additional six (6) month period provided that a written request is received by the Board of Health prior to the one (1) year expiration date.

Well Construction permits are not transferable. Following well installation, a copy of the Water Well Completion Report as required by the Massachusetts Department of Environmental Protection Well Driller Program regulations (310 C.M.R §46.00) and a plan with a specified scale showing the location of the installed well in relation to existing or proposed above or below ground structures will be provided to the Board of Health.

5.5 Water Supply Certificate

The issuance of a Water Supply Certificate by the Board of Health shall certify that the private well may be used as a drinking water supply. A Water Supply Certificate must be issued for the use of a private well prior to the issuance of an occupancy permit for an existing structure or prior to the issuance of a building permit for new construction which is to be served by the well. A Water Supply Certificate shall not be issued for any property where a municipal supply of water is accessible (adjacent or adjoining to) the property and permission to connect to such a supply can be obtained from the authority having jurisdiction over it.

A. The following shall be submitted to the Board of Health to obtain a Water Supply Certificate:

    a. a well construction permit; and

    b. a copy of the Water Well Completion Report as required by the Massachusetts Department of Environmental Protection Well Driller Program regulations (310 C.M.R §46.00, or their successor provisions); and

    c. a copy of the Pumping Test Report required pursuant to Article III, Section 5.8 of these regulations; and

    d. a copy of the Water Quality Report required pursuant to Article III, Section 5.7 of these regulations.

B. Upon the receipt and review of the above documents, the Board of Health shall make a final decision on the application for a Water Supply Certificate. A final decision shall be in writing and shall comprise one of the following actions:

    a. Issue a Water Supply Certificate; or

    b. Deny the applicant a Water Supply Certificate and specify the reasons for denial; or

    c. Issue a conditional Water Supply Certificate with those conditions which the Board of Health deems necessary to ensure fitness, purity and quantity of the water derived from that private well. These conditions may include, but not be limited to, requiring treatment and/or additional testing of the water.

5.6 Well Location and Operation Requirements

The applicant shall identify all potential and existing sources of contamination within two hundred (200) feet of the site. When possible, the well shall be located upgradient of all potential sources of contamination and shall be as far removed from potential sources of contamination as possible. Based on existing or potential future contamination, the Board of Health reserves the right to require periodic groundwater sampling and analytical testing at any time following well installation at the expense of the applicant.

Private wells must meet the following setback requirements except as otherwise provided below:

- 10 feet from the property line; and
- 25 feet from public or private roadway;* and
- 15 feet from right-of-way;* and
- 50 feet from building sewer line or septic tank; and
- 100 feet from leaching field or drywell; and
- 100 feet from stable, barnyard, manure storage;* and
- 15 feet from power line or overhead distribution line; and
- 25 feet from any surface water, including but not limited to wetlands.

*Setback not applicable to irrigation wells

In the operation of the well, the applicant and any future owners of the applicant's property must adhere to any town-wide water restrictions on non-essential outside water use as required by the Town Board of Selectmen or any other entity with jurisdiction.

5.7 Water Quality Testing Requirements

After the well has been completed and disinfected, and prior to using it as a private drinking water supply, baseline water quality testing shall be conducted.

A water sample shall be collected either after purging three well volumes or following the stabilization of the pH, temperature and specific conductance in the pumped well. The water sample to be tested shall be collected at the pump discharge or from a disinfected tap in the pump discharge line. In no event shall a water treatment device be installed prior to sampling.

The water quality test, utilizing an applicable US Environmental Protection Agency approved method for drinking water analysis shall be conducted by a Massachusetts certified laboratory and shall include analysis for the parameters listed in Table 1 below. The results shall not exceed applicable Massachusetts drinking water standards for public water supplies.

Table 1
Analytical Parameters and Sampling Frequency for Drinking Water Wells

Inorganic Compounds	
Antimony	Copper
Arsenic	Manganese
Asbestos	Mercury
Barium	Nitrate
Beryllium	Nitrite
Cadmium	Total Nitrate & Nitrite
Chromium (total)	Perchlorate
Cyanide (as free CN)	Selenium
Fluoride	Sodium
Lead	Thallium
Volatile Organic Compounds	
Benzene	Methyl Tertiary Butyl Ether (MTBE)
Carbon Tetrachloride	Monochlorobenzene

Dichloromethane	Styrene
1,2-Dichlorobenzene	Tetrachloroethylene (PCE)
1,4- Dichlorobenzene	Toluene
1,2-Dichoroethane	Trichloroethylene (TCE)
1,2-Dichloroethylene (cis)	1,1,1-Trichloroethane (1,1,1-TCA)
1,2-Dichloroethylene (trans)	1,2,4-Trichlorobenzene
1,1-Dichloroethylene	1,1,2-Trichloroethane
1,2-Dichloropropane	Vinyl Chloride
Ethylbenzene	Xylenes (total)
Bacteria	
Total Coliform Bacteria Enterococci	
Radionuclides	
Gross Alpha Activity Radon 222	
Pesticides and PCBs	
Analysis utilizing EPA Method 505 or 508	
Indicator Parameters	
Alkalinity	Nitrogen (ammonia)
Calcium	Odor
Chloride	pH
Color	Potassium
Copper	Sediment
Hardness	Sulfate
Iron	Total Dissolved Solids
Magnesium	
Manganese	

Following a receipt of the water quality test results, the applicant shall submit a Water Quality Report to the Board of Health, which includes:

A. A copy of the certified laboratory's test results; and

B. The name of the individual performing the sampling; and

C. Where in the system the water was obtained.

The Board of Health reserves the right to require retesting of the above parameters, periodic testing or testing for additional parameters when, in the opinion of the Board of Health, it is necessary due to local conditions or for the protection of the public health, safety and welfare. All costs and laboratory arrangements for the water testing are the responsibility of the applicant.

The Board of Health reserves the right to sample each well in order to determine/verify analytical results. Following the initial water quality test for a new well, the Board of Health may require or recommend that the applicant have the water tested periodically. The Board of Health may choose to

require that a water quality test be conducted any time that the property on which the well is located changes ownership.

5.8 Additional Requirements
The following provisions of the "*Private Well Guidelines*" issued by the Massachusetts Department of Environmental Protection, or their current successor provisions in the event such "*Private Well Guidelines*" are updated, revised or amended, are incorporated herein as requirements under these regulations: General Well Design and Construction, including general well design, well casing, well screen, grouting and sealing, pumps and pumping equipment, wellhead completion, and disinfection; Water Quantity (Pumping Test); and Decommissioning.

The "*Guidelines for Ground Source Heat Pump Wells*" issued by the Massachusetts Department of Environmental Protection, or their current successor provisions in the event such "*Guidelines for Ground Source Heat Pump Wells*" are updated, revised or amended, are incorporated herein as requirements for private ground source heat pump (geothermal) wells.

5.9 Decommissioning Requirements
Abandoned wells, test holes, and boring shall be decommissioned so as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.

The owner of a private well shall decommission the well if any of the following criteria are met:

A. construction of the well is terminated prior to completion of the well; or

B. the well owner notifies the Board of Health that the use of the well is to be permanently discontinued; or

C. the well has been out of service for at least three (3) years; or

D. the well is a potential hazard to public health or safety and the situation cannot be corrected; or

E. the well is in such as state of disrepair that its continued use is impractical or unsafe; or

F. the well has the potential for transmitting contaminants from the land surface into an aquifer or from one aquifer to another and the situation cannot be corrected.

The Property Owner shall ensure that all abandoned wells and test holes or borings associated with private well installation are properly plugged before work on the site is complete. Only certified well drillers may plug abandoned wells, test holes, and borings.

Within 30 days following the completion of the plugging procedure, the registered well driller who plugged the abandoned well test hole or boring must submit a decommissioning report to the Board of Health.

The following information should be included in the decommissioning report:

A. name and address of the Property Owner; and

B. name and address of the certified well driller who performed the plugging; and

C. reason for abandonment; and

D. location of the well, test hole, or boring referenced to at least two permanent structure or when possible, location coordinates determined by a registered land surveyor or registered civil engineer; and

E. all information know about the well, test hole, or boring including, but not limited to:

   a. depth;

   b. diameter;

   c. type of casing; and

F. calculations made to determine the volume of the well, test hole, or boring; and

G. water level before plugging; and

H. types of plugging material used, including mix specifications; and

I. quantity of each type of plugging material used; and

J. description of the plugging procedure including, but not limited to, notes regarding:

   a. removal of pump and other obstructions;

   b. removal of screen;

   c. perforation or removal of casing;

   d. method(s) used to place plugging material(s); and

K. a copy of the original certified well driller's report, when available.

5.10 Hearing

Any person that has received an Order or notice issued pursuant to these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order or notice. After said hearing, the Board of Health may affirm, modify or rescind said Order or notice or take any other action it deems warranted and appropriate.

5.11 Penalties

Whoever violates any provision of these regulations may be subject to penalties as follows:

A. Non-criminal disposition as provided in M.G.L. c. 40, § 21D and Article I, Section 4.0 of the Burlington General Bylaws

B. The Board of Health may suspend or revoke any permit issued pursuant to these regulations for any violation of these regulations. Such revocation or suspension may take place after a

hearing held by the Board of Health of which the permit holder is given seven (7) days written notice.

C. These regulations may be enforced through any other means available at law or in equity as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief. Whoever violates any provision of these regulations may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars ($1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

5.12 Variances

Upon written application and public hearing, the Board of Health may in its discretion issue a variance to any permit holder that can demonstrate to the reasonable satisfaction of the Board of Health that a level of protection to the public health, safety, welfare, and the environment at least equivalent to that provided under these regulations can be achieved without strict application of the provision from which a variance is sought.

Article IV: FOOD PROTECTION

1.0 Regulation Governing Food Service Establishments

[Regulation Adopted February 21, 2003, as Amended January 11, 2005; August 27, 2013]

1.1 Purpose

These regulations are intended to protect the public health and prevent foodborne illness by establishing a requirement that all Food Establishments employ and have present during all hours of operation a person in charge certified as a food protection manager, recognized by the MA Department of Public Health. A certificate implies that a person has knowledge of food safety and the prevention of foodborne illness through the control of risk factors. The certified person must be able to apply this knowledge in day-to-day operations in order to provide consumers with safe food. This requirement is intended to be additional and supplemental to the minimum requirements for a certified food protection manager as set forth in the Massachusetts Food Establishment Regulations, 105 CMR, 590.003(A)(2).

1.2 Person in Charge

In addition to the requirements set forth in 105 CMR 590.000, et seq (the "Food Code"), and any other federal, state or local law, all Food Establishments, as defined in 105 CMR 590.002, holding permits and/or licenses issued by the Board of Health pursuant to 105 CMR 590.014, shall comply with the following requirement:

A. there shall be at least one (1) person who shall be the person in charge, who shall be at least eighteen (18) years of age, and being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program recognized by the Massachusetts Department of Health on duty; and

B. at least one (1) such person in charge meeting the above-referenced criteria shall be on duty and present at the establishment at all times that the establishment is open to the public and in operation.

1.3 Penalties

Whoever violates any provision of this regulation may be penalized by a non-criminal disposition process as provided in M.G.L. c.40, § 21D and Burlington's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall, in accordance with Section Article 1, Section 4.0, be subject to a penalty in the amount of fifty dollars ($50.00) per day for each day of violation. Each day or portion thereof shall constitute a separate offense. In the alternative, or in addition to the above, these regulations may be enforced through any other means available at law as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief, and or the suspension or revocation of any current permits and/or licenses issued by the Board of Health in accordance with applicable law.

1.4 Hearing

Any food establishment that has received an Order or notice issued pursuant to this regulation may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order or notice. After said hearing, the Board of Health may affirm, modify or rescind said Order or notice or take any other action it deems warranted and appropriate.

1.5 Variance

Upon application, the Board of Health may issue a variance to any permit holder that can demonstrate to the reasonable satisfaction of the Board of Health that appropriate, alternative, on-site procedures are in place to ensure proper food handling procedures at all times that the establishment is open to the public and in operation.

2.0 Grease Interceptor Requirements for Food Establishments

[Regulation Adopted February 14, 2006, as Amended April 8, 2014]

2.1 Purpose

The purpose of this regulation is to protect residents, businesses, and the environment within the Town from blockages of the Town's sanitary sewer system caused by grease, kitchen oils, and other substances discharged from Food Establishments located in Town.

2.2 Definitions

Agent: Any duly authorized Agent of the Board of Health as specified under M.G.L., c. 111, sec 30, including but not limited to the Director of Public Health, the Health Agent, and the Environmental Engineer.

Building Sewer: A pipe or pipes maintained and controlled by private persons for the purpose of conveying wastewater from the any wastewater producing location to the sanitary sewer collection system.

Food Establishment: Any establishment issued a permit to operate a food establishment by the Board of Health under 105 CMR 590.000.

Grease: A material composed of fatty matter from animal or vegetable sources or hydrocarbons of petroleum origins. The terms "oil and grease" or "oil and grease substances" shall be deemed grease by definition.

Grease Interceptor: A water tight device constructed to separate and trap or hold grease from the wastewater discharged from a food establishment in order to prevent grease from entering the sanitary sewer system, also referred to as a Grease Trap or Grease Recovery Device. The grease interceptor may be an internal grease interceptor located within the facility, an external grease interceptor located outside the food establishment, or both.

Septage Handler: Any septage handler that has been issued a permit to transport septage within the Town from the Board of Health under 310 CMR 15.000.

Warewash Sink: A multi-compartment sink, usually with 3 basins, used to wash, rinse and sanitize food contact items such as utensils, dishware, and equipment.

2.3 Facilities Requiring Grease Interceptors

A. New Food Establishments: Newly proposed, constructed, or remodeled Food Establishments must install an internal and external grease interceptor according to applicable building, plumbing and health codes. For the purpose of this regulation, a newly proposed, constructed, or remodeled food establishment is a food establishment that undergoes new construction or a complex renovation requiring the submittal of plans to the Board of Health during the plan review process as required by 105 CMR 590.011.

B. Existing Food Establishments: Existing Food Establishments shall be required to install, modify or upgrade, an approved internal and/or external grease interceptor when the following occur:

   a. When the Board of Health or its Agent or the Town Department of Public Works determines that an establishment is discharging grease in quantities sufficient to cause sanitary sewer line blockages or to cause increased levels of maintenance of sanitary sewer lines; or

   b. When the Board of Health or its Agent, the Town Department of Public Works, or the Town Plumbing Inspector determines that the existing grease interceptor is undersized, nonfunctional, or not properly plumbed to all internal fixtures that generate grease or oil. Upgrades and/or modifications to existing systems may require additional plumbing and must comply with 248 C.M.R §10.00.

   c. When the Board of Health or its Agent, determines that a significant change in use and/or menu of the food establishment has occurred or will occur.

C. New and Existing Food Establishments: Internal grease interceptors must be installed on all warewash sinks and maintained in good working order.

2.4 Grease Interceptor Design and Installation

A. The Board of Health may at any time require the installation and/or relocation of an internal or external grease interceptor at a food establishment, as it may deem necessary to maintain any particular building sewer pipe, any lateral sewer pipe, or sewer main pipe free from obstructions caused by grease or oil emanating from a food establishment.

B. Internal grease interceptors must comply with 248 CMR Commonwealth of Massachusetts Rules and Regulations Governing Plumbers and Gas Fitters and the Plumbing and Drainage Institute Standard, PDI-G101, with sizing requirements based on wastewater flow rates directed to the interceptor.

C. External grease interceptors must be designed by a Massachusetts Registered Professional Engineer and sized according to 310 C.M.R §15.230 or other engineering BMP. Prior to the installation of an external grease interceptor, if sizing calculations are based on a method other than 310 C.M.R §15.230, a letter from a Massachusetts Registered Professional Engineer providing sizing calculations and estimated pump out frequency must be submitted to the Board of Health for approval by an Agent of the Board of Health.

2.5 Grease Interceptor Maintenance

All grease interceptors shall be maintained by the food establishment at the food establishment's expense. The food establishment shall conduct initial monitoring sufficient to identify the maintenance and cleaning schedules. At a minimum, internal grease interceptor(s) shall be serviced (inspected, cleaned and pumped) before the amount of grease exceeds twenty-five percent (25%) of the grease capacity of the grease interceptor or once every three (3) months, whichever comes first. At a minimum, external grease interceptors shall be serviced (inspected, cleaned, and pumped) before the amount of grease exceeds 25% of the grease capacity of the grease interceptor or once every six (6) months, whichever comes first. Written logs of inspections, cleaning and pumpings shall be

maintained in an on-site binder readily accessible to Board of Health agents for inspection upon reasonable request.

2.6 Best Management Practices

Food Establishments shall integrate best management practices to reduce grease discharged to the sewer system in addition to grease interceptor maintenance. Best management practices shall include at a minimum:

A. Using liquid oil instead of solid grease or lard; and

B. Dry wiping pots, pans, and dishes before putting them in the dishwasher or warewash sink; and

C. Collecting and disposal of used grease through a licensed septage handler and prohibiting the disposal of grease down the drain, toilet, or into outdoor storm drains; and,

D. Capturing the grease in ventilation and exhaust hoods.

2.7 Storage of Waste Grease from Food Preparation

All waste grease and other related wastes requiring storage at the food establishment as a result of removal from grease interceptors or otherwise, shall be collected and stored in appropriate container(s) in an approved location at the food establishment. Container(s) shall be stored on an impervious surface such as concrete or pavement. Containers shall be either sealed or stored in a sheltered area, and maintained to prevent entry of precipitation and animals. All waste grease and related wastes shall be removed from the food establishment only by a septage handler permitted by the Board of Health. All grease containers and surrounding areas must be kept in a sanitary condition at all times.

2.8 Disposal

All waste grease and related wastes shall be removed from the food establishment only by a septage handler permitted by the Board of Health. All material removed from grease interceptors, and hauling and disposal of grease and other related waste, shall be documented in a written log readily accessible to the Board of Health Agents for inspection upon reasonable request. The food establishment is responsible for assuring that all waste grease and related wastes are disposed of in accordance with all federal, state, and local disposal regulations.

2.9 Inspection and Record Keeping

Consistent with the laws of the Commonwealth, authorized Agents of the Board of Health shall have the right to inspect, observe, measure, sample, test, photograph, and/or review documents with respect to the grease interceptor(s) within a food establishment, at any reasonable time and without prior notification.

All records pertaining to grease interceptor inspection, maintenance, cleaning, removing, transporting and disposing of waste grease and related wastes shall be retained by the food establishment on the site for no less than two years, and shall be available upon request for review by the Board of Health or its Agent.

2.10 Penalties

Whoever violates any provision of this regulation may be penalized by

A. A non-criminal disposition process as provided in M.G.L. c.40, § 21D and Burlington's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall, in accordance with Section Article 1, Section 4.0, be subject to a penalty in the amount of fifty dollars ($50.00) per day for each day of violation. Each day or portion thereof shall constitute a separate offense; and/or

B. The Board of Health may suspend or revoke any permit to operate a food establishment issued pursuant to 105 CMR 590.000. Such revocation or suspension shall follow the procedure as outlined in 105 CMR 590.000 and/or

C. In the alternative, or in addition to the above, these regulations may be enforced through any other means available at law as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief

2.11 Hearing

Any food establishment that has received an Order or notice issued pursuant to this regulation may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order or notice. After said hearing, the Board of Health may affirm, modify or rescind said Order or notice or take any other action it deems warranted and appropriate.

2.12 Variance

Upon written application and public hearing, the Board of Health may in its discretion issue a variance to any permit holder that can demonstrate to the reasonable satisfaction of the Board of Health that a level of protection to the Town sanitary sewer system at least equivalent to that provided under this regulation can be achieved without strict application of the provision from which a variance is sought.

Variances from this regulation can be requested by the submittal of a complete Board of Health Variance Request Application. Variance applicants must appear in person, including any representatives and experts, at a duly noticed, public hearing held by the Board of Health and the variance application must be submitted one week prior to the hearing at which the applicant is scheduled to appear.

A variance under these regulations may be revoked, modified or suspended only after the food establishment has been notified in writing and given an opportunity to be heard at a regularly scheduled meeting of the Board of Health. Reasons for revocation, modification or suspension of a variance include, but are not limited to, a determination that the food establishment is discharging grease in quantities sufficient to cause sanitary sewer line blockages or increased maintenance of sewer lines.

Article V: COMMUNITY HEALTH

1.0 Rules and Regulations for Body Art Establishments and Practitioners

[Regulation Adopted February 13, 2001]

1.1 Purpose

Whereas body art is becoming prevalent and popular throughout the Commonwealth; and whereas knowledge and practice of universal precautions, sanitation, personal hygiene, sterilization and aftercare requirements on the part of the practitioner should be demonstrated to prevent the transmission of disease or injury to the client and/or practitioner; now, therefore the Board of Health of the Town passes these rules and regulations for the practice of body art in the Town as part of our mission to protect the health, safety and welfare of the public.

1.2 Definitions

Aftercare: means written instructions given to the client, specific to the body art procedure(s) rendered, about caring for the body art and surrounding area, including information about when to seek medical treatment, if necessary.

Applicant: means any person who applies to the Board of Health for either a body art establishment permit or practitioner permit.

Autoclave: means an apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.

Autoclaving: means a process which results in the destruction of all forms of microbial life, including highly resistant spores, by the use of an autoclave for a minimum of thirty minutes at 20 pounds of pressure at a temperature of 270 degrees Fahrenheit.

Bloodborne Pathogens Standard: means OSHA Guidelines contained in 29 C.F.R. § 1910.1030, entitled "Occupational Exposure to Bloodborne Pathogens."

Board of Health or Board: means the Board of Health that has jurisdiction in the community in which a body art establishment is located including the Board or officer having like powers and duties.

Body Art: means the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which procedures are prohibited.

Body Art Establishment or Establishment: means a location, place, or business that has been granted a permit by the Board of Health, whether public or private, where the practices of body art are performed, whether or not for profit.

Body Art Practitioner or Practitioner: means a specifically identified individual who has been granted a permit by the Board of Health to perform body art in an establishment that has been granted a permit by the Board of Health.

Body Piercing: means puncturing or penetrating the skin of a client with presterilized single use needles and the insertion of presterilized jewelry or other adornment into the opening. This definition excludes piercing of the earlobe with a presterilized single use stud-and-clasp system manufactured exclusively for ear- piercing.

Braiding: means the cutting of strips of skin of a person, which strips are then to be intertwined with one another and placed onto such person so as to cause or allow the incised and interwoven strips of skin to heal in such intertwined condition.

Branding: means inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.

Cleaning area: means the area in a body art establishment used in the sterilization, sanitation or other cleaning of instruments or other equipment used for the practice of body art.

Client: means a member of the public who requests a body art procedure at a body art establishment.

Contaminated Waste: means waste as defined in 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code, Chapter VIII and/or 29 Code of Federal Regulation part 1910.1030. This includes any liquid or semi-liquid blood or other potentially infectious material; contaminated items that would release blood or other potentially infectious material in a liquid or semi-liquid state if compressed; items on which there is dried blood or other potentially infectious material and which are capable of releasing these materials during handling; sharps and any wastes containing blood or other potentially infectious materials.

Cosmetic Tattooing: also known as permanent cosmetics, micro pigment implantation or dermal pigmentation, means the implantation of permanent pigment around the eyes, lips and cheeks of the face and hair imitation.

Disinfectant: means a product registered as a disinfectant by the U.S. Environmental Protection Agency (EPA).

Disinfection: means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

Ear piercing: means the puncturing of the lobe of the ear with a presterilized single use stud-and-clasp ear piercing system following the manufacturer's instructions.

Equipment: means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

Exposure: means an event whereby there is an eye, mouth or other mucus membrane, non-intact skin or parenteral contact with the blood or bodily fluids of another person or contact of an eye, mouth or other mucous membrane, non-intact skin or parenteral contact with other potentially infectious matter.

Hand Sink: means a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.

Hot water: means water that attains and maintains a temperature 110º-130ºF.

Instruments Used for Body Art: means hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during any body art procedure.

Invasive: means entry into the client’s body either by incision or insertion of any instruments into or through the skin or mucosa, or by any other means intended to puncture, break, or otherwise compromise the skin or mucosa.

Jewelry: means any ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel; solid 14k or 18k white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

Light colored: means a light reflectance value of 70 percent or greater.

Minor: means any person under the age of eighteen (18) years.

Mobile Body Art Establishment: means any trailer, truck, car, van, camper or other motorized or non-motorized vehicle, a shed, tent, movable structure, bar, home or other facility wherein, or concert, fair, party or other event whereat one desires to or actually does conduct body art procedures.

Operator: means any person who individually, or jointly or severally with others, owns, or controls an establishment, but is not a body art practitioner.

Permit: means Board of Health approval in writing to either (1) operate a body art establish- ment or (2) operate as a body art practitioner within a body art establishment. Board of Health approval shall be granted solely for the practice of body art pursuant to these regulations. Said permit is exclusive of the establishment's compliance with other licensing or permitting requirements that may exist within the Board of Health's jurisdiction.

Person: means an individual, any form of business or social organization or any other non-governmental legal entity, including but not limited to corporations, partnerships, limited-liability companies, associations, trusts or unincorporated organizations.

Physician: means an individual licensed as a qualified physician by the Board of Registration in Medicine pursuant to M.G.L. c. 112 § 2.

Procedure surface: means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

Sanitary: means clean and free of agents of infection or disease.

Sanitize: means the application of a U.S. EPA registered sanitizer on a cleaned surface in accordance with the label instructions.

Scarification: means altering skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

Sharps: means any object, sterile or contaminated, that may intentionally or accidentally cut or penetrate the skin or mucosa, including, but not limited to, needle devices, lancets, scalpel blades, razor blades, and broken glass.

Sharps Container: means a puncture-resistant, leakproof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the International Biohazard Symbol.

Single Use Items: means products or items that are intended for one-time, one- person use and are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.

Sterilize: means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Tattoo: means the indelible mark, figure or decorative design introduced by insertion of dyes or pigments into or under the subcutaneous portion of the skin.

Tattooing: means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.

Temporary Body Art Establishment: means the same as mobile body art establishment.

Three dimensional "3D" Body Art or Beading or Implantation: means the form of body art consisting of or requiring the placement, injection or insertion of an object, device or other thing made of matters such as steel, titanium, rubber, latex, plastic, glass or other inert materials, beneath the surface of the skin of a person. This term does not include body piercing.

Ultrasonic Cleaning Unit: means a unit approved by the Board of Health, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high frequency oscillations transmitted through the contained liquid.

Universal Precautions: means a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC), as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) to Health Care and Public-Safety Workers" in Morbidity and Mortality Weekly Report) (MMWR), June 23, 1989, Vo1.38 No. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures" in MMWR, July 12,1991, Vo1.40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood and body fluid-contaminated products.

1.3 Exemptions

A. Physicians licensed in accordance with M.G.L. c. 112 § 2 who perform body art procedures as part of patient treatment are exempt from these regulations.

B. Individuals who pierce only the lobe of the ear with a presterilized single use stud-and-clasp ear piercing system are exempt from these regulations.

1.4 Restrictions

A. No tattooing, piercing of genitalia, branding or scarification shall be performed on a person under the age of 18.

B. Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18 provided that the person is accompanied by a properly identified parent, legal custodial parent or legal guardian who has signed a form consenting to such procedure. Properly identified shall mean a valid photo identification of the adult and a birth certificate of the minor.

C. No body art shall be performed upon an animal.

D. The following body piercings are hereby prohibited: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or

vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called "deep" piercing of the penis–meaning piercing through the shaft of the penis, or "trans-penis" piercing in any area from the corona glandis to the pubic bone; so called "deep" piercing of the scrotum–meaning piercing through the scrotum, or "transcrotal" piercing; so called "deep" piercing of the vagina.

E. The following practices hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; three dimensional/beading/implementation tooth filing/fracturing/removal/tattooing; cartilage modification; amputation; genital modification; introduction of saline or other liquids.

1.5 Operation of Body Art Establishments

Unless otherwise ordered or approved by the Board of Health, each body art establishment shall be constructed, operated and maintained to meet the following minimum requirements:

A. Physical Plant

a. Walls, floors, ceilings, and procedure surfaces shall be smooth, durable, free of open holes or cracks, light colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.

b. Solid partitions or walls extending from floor to ceiling shall separate the establishment's space from any other room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.

c. The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.

d. Each operator area shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a dividers or partition at a minimum.

e. The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 foot candles 3 feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled and all cleaning areas.

f. All electrical outlets in operator areas and cleaning areas shall be equipped with approved ground fault protected receptacles.

g. A separate, readily accessible hand sink with hot and cold running water under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid soap, and disposable paper towels stored in fixed dispensers shall be readily accessible within the establishment. Each operator area shall have a hand sink.

h. There shall be a sharps container in each operator area and each cleaning area.

i. There shall be a minimum of one toilet room containing a toilet and sink. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A body art establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such body art establishment if the Board of Health-approved toilet facilities are located in the retail shopping center within 300 feet of the body art establishment so as to be readily accessible to any client or practitioner.

j. The public water supply entering a body art establishment shall be protected by a testable, reduced pressure back flow preventor installed in accordance with 248 C.M.R §10.00, as amended from time to time.

k. At least one covered, foot operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leakproof, rodent-resistant containers and shall be removed from the premises at least weekly.

l. At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-contaminated liquid wastes in accordance with all applicable federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.

m. All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.

n. The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit.

o. The establishment shall have a customer waiting area, exclusive and separate from any workstation, instrument storage area, cleaning area or any other area in the body art establishment used for body art activity.

p. No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (*e.g.*, Seeing Eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.

q. Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of non-alcoholic fluids being offered to a client during or after a body art procedure.

B. Requirements for Single Use Items Including Inks, Dyes and Pigments

a. Single use items shall not be used on more than one client for any reason. After use, all single use sharps shall be immediately disposed of in approved sharps containers pursuant to 105 CMR 480.000.

b. All products applied to the skin, such as but not limited to body art stencils, applicators, gauze and razors, shall be single use and disposable.

c. Hollow bore needles or needles with cannula shall not be reused.

d. All inks, dyes, pigments, solid core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.

e. Inks, dyes or pigments may be mixed and may only be diluted with water from an approved potable source. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single use paper cups or plastic cups. Upon completion of the tattoo, these single- use cups or caps and their contents shall be discarded.

C. Sanitation and Sterilization Measures and Procedures

a. All non-disposable instruments used for body art, including all reusable solid core needles, pins and stylets, shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water, (to remove blood and tissue residue), and shall be placed in an ultrasonic unit sold for cleaning purposes under approval of the U.S. Food and Drug Administration and operated in accordance with manufacturer's instructions.

b. After being cleaned, all non-disposable instruments used for body art shall be packed individually in sterilizer packs and subsequently sterilized in a steam autoclave sold for medical sterilization purposes under approval of the U.S. Food and Drug Administration. All sterilizer packs shall contain either a sterilizer indicator or internal temperature indicator. Sterilizer packs must be dated with an expiration date not to exceed six (6) months.

c. The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Board of Health. Autoclaves shall be located away from workstations or areas frequented by the public.

d. Each holder of a permit to operate a body art establishment shall demonstrate that the autoclave used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until the Board of Health receives documentation of the autoclave’s ability to destroy spores. These test records shall be retained by the operator for a period of three (3) years and made available to the Board of Health upon request.

e. All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. After sterilization, the instruments used in body art procedures shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

f. Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing.

g. If the body art establishment uses only single use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.

h. When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized sterile techniques to ensure that the instruments and gloves are not contaminated.

i. Reusable cloth items shall be mechanically washed with detergent and mechanically dried after each use. The cloth items shall be stored in a dry, clean environment until used. Should such items become contaminated directly or indirectly with bodily fluids, the items shall be washed in accordance with standards applicable to hospitals and medical care facilities, at a temperature of 160°F or a temperature of 120°F with the use of chlorine disinfectant.

D. Posting Requirements

The following shall be prominently displayed:

a. A Disclosure Statement, a model of which shall be available from the Board of Health. A Disclosure Statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures; and

b. The name, address and phone number of the Board of Health; and

c. An Emergency Plan, including:

i. a plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency; and

ii. a telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and

iii. a sign at or adjacent to the telephone indicating the correct emergency telephone numbers; and

d. An occupancy and use permit as issued by the local building official; and

e. A current establishment permit; and

f. Each practitioner's permit.

E. Establishment Recordkeeping

The establishment shall maintain the following records in a secure place for a minimum of three (3) years, and such records shall be made available to the Board of Health upon request:

a. Establishment information, which shall include:

i. establishment name; and

ii. hours of operation; and

iii. owner's name and address; and

iv. a complete description of all body art procedures performed; and

v. an inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement; and

vi. a Material Safety Data Sheet, when available, for each ink and dye used by the establishment; and

vii. copies of waste hauler manifests; and

viii. copies of commercial biological monitoring tests; and

ix. Exposure Incident Report (kept permanently); and

x. a copy of these regulations.

b. Employee information, which shall include:

i. full legal names and exact duties; and

ii. date of birth; and

iii. home address; and

iv. home /work phone numbers; and

v. identification photograph; and

vi. dates of employment; and

vii. Hepatitis B vaccination status or declination notification; and

viii. training records.

c. Client Information, which shall include:

i. name; and

ii. age and valid photo identification; and

iii. address of the client; and

iv. date of the procedure; and

v. name of the practitioner who performed the procedure(s); and

vi. description of procedure(s) performed and the location on the body; and

vii. a signed consent form as specified by 7(D)(2); and

viii. if the client is a person under the age of 18, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian.

Client information shall be kept confidential at all times.

d. Exposure Control Plan

Each establishment shall create, update, and comply with an Exposure Control Plan. The Plan shall be submitted to the Board of Health for review so as to meet all of the requirements of OSHA regulations, to include, but not limited to, 29 C.F.R. § 1910.1030 et seq, as amended from time to time. A copy of the Plan shall be maintained at the body art establishment at all times and shall be made available to the Board of Health upon request.

e. No person shall establish or operate a mobile or temporary body art establishment.

1.6 Standards of Practice

Practitioners are required to comply with the following minimum health standards:

A. A practitioner shall perform all body art procedures in accordance with universal precautions set forth by the U.S CDC and Prevention.

B. A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.

C. Practitioners who use ear piercing systems must conform to the manufacturers directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear piercing system on any part of the client's body other than the lobe of the ear.

D. Prior to performing a body art procedure on a client, the practitioner shall:

a. Inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:

i. history of diabetes; and

ii. history of hemophilia (bleeding); and

iii. history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants etc.; and

iv. history of allergies or adverse reactions to pigments, dyes, or other sensitivities; and

v. history of epilepsy, seizures, fainting, or narcolepsy; and

vi. use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and

vii. any other conditions such as hepatitis or HIV.

b. Require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents them from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by Article V, Section 1.6 (K).

E. A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

F. In performing body art procedures, a practitioner shall wear disposable single use gloves. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with Article V, Section 1.6 (E) before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single use gloves does not preclude or substitute for handwashing procedures as part of a good personal hygiene program.

G. The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

H. Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

I. Preparation and care of a client's skin area must comply with the following:

a. Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection; and

b. Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use; and

c. In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.

J. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded.

K. The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:

a. on the proper cleansing of the area which received the body art; and

b. to consult a health care provider for:

i. unexpected redness, tenderness or swelling at the site of the body art procedure; or

ii. any rash; or

iii. unexpected drainage at or from the site of the body art procedure; or

iv. a fever within 24 hours of the body art procedure; and

c. of the address, and phone number of the establishment.

A copy shall be provided to the client. A model set of aftercare instructions shall be made available by the Board of Health.

L. Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waster, State Sanitary Code, Chapter VIII.

1.7 Exposure Incident Report

An Exposure Incident Report shall be completed by the close of the business day during which an exposure has or might have taken place by the involved or knowledgeable body art practitioner for every exposure incident occurring in the conduct of any body art activity.

Each Exposure Incident Report shall contain:

A. A copy of the application and consent form for body art activity completed by any client or minor client involved in the exposure incident; and

B. A full description of the exposure incident, including the portion of the body involved therein; and

C. Instrument(s) or other equipment implicated; and

D. A copy of body art practitioner license of the involved body art practitioner; and

E. Date and time of exposure; and

F. A copy of any medical history released to the body art establishment or body art practitioner; and

G. Information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

1.8 Injury and/or Complication Reports

A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded by the operator to the Board of Health which issued the permit, with a copy to the injured client within five working days of its occurrence or knowledge thereof. The report shall include:

A. the name of the affected client; and

B. the name and location of the body art establishment involved; and

C. the nature of the injury, infection complication or disease; and

D. the name and address of the affected client's health care provider, if any; and

E. any other information considered relevant to the situation.

1.9 Complaints

A. The Board of Health shall investigate complaints received about an establishment or practitioner's practices or acts, which may violate any provision of the Board of Health's regulations.

B. If the Board of Health finds that an investigation is not required because the alleged act or practice is not in violation of the Board of Health's regulations, then the Board of Health shall notify the complainant of this finding and the reasons on which it is based.

C. If the Board of Health finds that an investigation is required, because the alleged act or practice may be in violation of the Board of Health's regulations, the Board of Health shall investigate and if a finding is made that the act or practice is in violation of the Board of Health's regulations, then the Board of Health shall apply whatever enforcement action is appropriate to remedy the situation and shall notify the complainant of its action in this manner.

1.10 Application for Body Art Establishment Permit

A. No person may operate a body art establishment except with a valid permit from the Board of Health. The applicant must attend the Board of Health public meeting in order to receive approval for this permit.

B. Applications for a permit shall be made on forms prescribed by and available from the Board of Health. An applicant shall submit all information required by the form and accompanying instructions. The term "application" as used herein shall include the original and renewal applications.

C. An establishment permit shall be valid from the date of issuance and for no longer than one year unless revoked sooner by the Board of Health.

D. The Board of Health shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:

   a. Name, address, and telephone number of:

      i. the body art establishment; and

      ii. the operator of the establishment; and

      iii. the body art practitioner(s) working at the establishment; and

   b. The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment; and

   c. A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board of Health's body art regulations; and

   d. A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board of Health, as part of the permit application process; and

   e. Exposure Report Plan; and

   f. Such additional information as the Board of Health may reasonably require.

E. The annual fee for the body art establishment permit shall be in accordance with Article I, Section 4.0 of these regulations.

F. A permit for a body art establishment shall not be transferable from one place or person to another.

1.11 Application for Body Art Practitioner Permit

A. No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board of Health. The applicant must attend the Board of Health public meeting in order to receive approval for this permit. The annual fee for the body art practitioner permit shall be in accordance with Article I, Section 4.0 of these regulations.

B. A practitioner shall be a minimum of 18 years of age.

C. A practitioner permit shall be valid from the date of issuance and shall expire no later than one year from the date of issuance unless revoked sooner by the Board of Health.

D. Application for a practitioner permit shall include:

   a. name; and

   b. date of birth; and

c. residence address; and

d. mailing address; and

e. phone number; and

f. place(s) of employment as a practitioner; and

g. training and/or experience as set out in Article V, Section 1.11 (E).

E. Practitioner Training and Experience

a. In reviewing an application for a practitioner permit, the Board of Health may consider experience, training and/or certification acquired in other states that regulate body art.

b. Training for all practitioners shall be approved by the Board of Health and, at a minimum, shall include the following:

i. bloodborne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; handwashing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques; and

ii. Current certification in First Aid and cardiopulmonary resuscitation. Examples of courses approved by the Board of Health include "Preventing Disease Transmission" (American Red Cross) and "Bloodborne Pathogen Training" (U.S. OSHA). Training/courses provided by professional body art organizations or associations or by equipment manufacturers may also be submitted to the Board of Health for approval.

c. The applicant for a body piercing practitioner permit shall provide documentation, acceptable to the Board of Health, that they completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin).

d. The applicant for a tattoo, branding or scarification practitioner permit shall provide documentation, acceptable to the Board of Health, that they completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin). Such other course or program as the Board of Health shall deem appropriate and acceptable may be substituted for the anatomy course.

e. The applicant for all practitioners shall submit evidence satisfactory to the Board of Health of at least two years actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner permit to perform, whether such experience was obtained within or outside of the Commonwealth.

F. A practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations.

1.12 Grounds for Suspension, Denial, Revocation, or Refusal to Renew Permit

A. The Board of Health may suspend a permit, deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for suspension, denial, revocation or refusal to renew:

a. any actions which would indicate that the health or safety of the public would be at risk; and/or

b. fraud, deceit or misrepresentation in obtaining a permit, or its renewal; and/or

c. criminal conduct which the Board of Health determines to be of such a nature as to render the establishment, practitioner or applicant unfit to practice body art as evidenced by criminal proceedings resulting in a conviction, guilty plea, or plea of *nolo contendere* or an admission of sufficient facts; and/or

d. any present or past violation of the Board of Health's regulations governing the practice of body art; and/or

e. practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability; and/or

f. being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects; and/or

g. knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit; and/or

h. continuing to practice while his/her permit is lapsed, suspended, or revoked; and/or

i. having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in the Board of Health's regulations; and/or

j. other just and sufficient cause which the Board of Health may determine would render the establishment, practitioner or applicant unfit to practice body art.

B. The Board of Health shall notify an applicant, establishment or practitioner in writing of any violation of the Board of Health's regulations, for which the Board of Health intends to deny, revoke, or refuse to renew a permit. The applicant, establishment or practitioner shall have seven (7) days after receipt of such written notice in which to comply with the Board of Health's regulations. The Board of Health may deny, revoke or refuse to renew a permit, if the applicant, establishment or practitioner fails to comply after said seven (7) days subject to the procedure outlined in Article IV, Section 1.14 of these regulations.

C. Applicants denied a permit may reapply at any time after denial.

1.13 Grounds for Suspension of Permit

The Board of Health may summarily suspend a permit pending a final hearing on the merits on the question of revocation if, based on the evidence before it, the Board of Health determines that an establishment and/or a practitioner is an immediate and serious threat to the public health, safety or welfare. The suspension of a permit shall take effect immediately upon written notice of such suspension by the Board of Health.

1.14 Procedure for Hearings

The owner of the establishment or practitioner shall be given written notice of the Board of Health's intent to hold a hearing for the purpose of suspension, revocation, denial or refusal to renew a permit. This written notice shall be served through a certified letter sent return receipt requested or by constable. The notice shall include the date, time and place of the hearing and the owner of the establishment or practitioner's right to be heard. The Board of Health shall hold the hearing no later than 21 days from the date the written notice is received.

In the case of a suspension of a permit as noted in Article IV, Section 1.12, a hearing shall be scheduled no later than 21 days from the date of the suspension.

1.15 Fine for Violation

The fine for a violation of any provision of these rules and regulations shall be $50.00 per offense. Each day that a violation continues shall be deemed to be a separate offense.

1.16 Non-Criminal Disposition

In accordance with M.G.L. chapter 40, section 21D and the Town Bylaws, whoever violates any provision of these rules and regulations may be penalized by non- criminal disposition.

2.0 Minimum Standards for the Keeping of Animals

[Regulation Adopted March 12, 2019]

2.1 Purpose

The purpose of this regulation is to provide minimum standards for the keeping of animals in the Town by enabling residents to have the opportunity to participate in the growing national trend for responsible, small scale agricultural protection while protecting public health, safety and welfare in the Town.

2.2 Definitions

Abutter: Owners of land or property physically abutting the applicant's property where animals are kept. A person will only qualify as an abutter, for the purpose of this regulation, if he or she owns abutting land or property.

Animal: All animals and livestock which are kept as domesticated animals but excluding the following: household pets as defined herein; research laboratory animals otherwise regulated; and non-exempt wild animals as regulated by M.G.L. Chapter 131, Section 23 and 321 CMR 9.00.

Animal Structure: Any structure used to house, shelter or contain livestock and animals.

Applicant: A person who applies for a permit to keep one or more animals pursuant to this regulation.

Agent: Any duly authorized Agent of the Board of Health as specified under M.G.L., c. 111, sec 30, including but not limited to the Director of Public Health, the Associate Health Inspector, the Health Agent, and the Environmental Engineer.

Best Management Practices: Methods that are generally recognized by the Massachusetts Department of Agriculture (MDAR) to be an effective and practical means for the housing and keeping of animals (Massachusetts Department of Agricultural Resources Division of Animal Health's Generally Acceptable Agricultural Practices), including but not limited to those practices enumerated in Article V, Section 2.5 (C) of these regulations.

Board or Health or "the Board: The Burlington Board of Health and/or its designated Agent(s). Where this regulation provides for the Board's review or determination of a matter, or the conduct of a public hearing, only the Board itself may conduct or issue such review, determination or public hearing, unless the Board has specifically authorized a designated Agent to take such action.

Cockerel: Young male chicken.

Corral: Any pen or enclosure for confining one or more animals.

Domesticated animals: Animals of a species of vertebrates that have been domesticated by humans to live and breed in a tame condition and depend on humankind for survival. Domesticated animals shall include, but not be limited to any equine or bovine animal, goat, sheep, swine, dog, cat, poultry or other domesticated beast or bird.

Dwelling: Any building, structure, or shelter used or intended for human habitation.

Facility: The total accommodations to be used for the keeping and care of one or more animals, including but not limited to land and any accessory or animal structure such as, but not limited to a barn and/or stable.

Fencing: Enclosure material installed for privacy or livestock and/or animal containment.

Feed Management Plan: A plan for the keeping and management of feed.

Household pets: Animals that are primarily kept indoors for non-agricultural purposes, including but not limited to dogs, cats, ferrets, pot-bellied pigs, fish, domesticated or exotic birds, guinea pigs, hamsters, and mice.

Keeping of Animals Permit or "Permit": A permit issued by the Board of Health for the keeping of one or more animals in accordance with the provisions of this regulation.

Livestock: Animals kept for agricultural purposes, including but not limited to cattle, goats, sheep, swine, equines, camelids, poultry and other fowl with the exception of roosters and cockerels.

Manure Management Plan (MMP): A plan for the handling of manure. The MMP shall address cleaning, composting, storage, utilization and removal of manure.

Permit holder: Any person who has met the conditions of this regulation and has received a permit issued by the Board of Health to keep animals.

Person: Every individual, partnership, corporation, firm, association, group, or other entity including a city, town, county, or other governmental unit, owning property or carrying on an activity regulated by this regulation.

Pest Management Plan: A plan, which adequately defines the measures that shall be taken by the owner to minimize the presence of rodents, insects and pests, and to minimize the creation of odors and other nuisances.

Rooster: An adult male chicken.

Stable: An accessory building or structure used for the shelter and/or feeding of one or more animals.

Stall: A compartment in a stable used for the keeping of one or more animals.

Usable area: Land area suitable for the raising of animals such as pastures, fields and wooded uplands. This area does not include wetlands, swellings, or any other area(s) as may be restricted by town, state or federal law, regulations or guidelines.

Wetlands: Land area or surface area so defined by the Wetlands Protection Act, Massachusetts General Law, Chapter 131, Section 40 and regulations promulgated pursuant to 310 C.M.R §10.00 or by the Town Bylaws and Burlington Conservation Commission regulations, or pursuant to Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. 1341.

Wild and exotic animals: Any animal not normally found or kept as a domesticated animal, and which require a permit to keep issued by either a Federal or State wildlife agency, including but not limited to deer, poisonous reptiles, alligators, monkeys, lions and tigers as defined as non-domesticated by M.G.L., Chapter 131, Section 23 and 321 CMR 9.00.

2.3 Applicability

A permit is required for anyone keeping one or more animals as defined in this regulation, except on commercial farms which meet the requirements of M.G.L. ch.40 §3 and/or M.G.L. ch.128 §1A. Household pets are exempt from this regulation with the exception that the Board of Health may impose a permit requirement in situations in which animals are kept in unreasonable numbers or in conditions that may result in a public nuisance or recognized hazard to the health and welfare of the Town.

2.4 Permit Requirements

A. The Board of Health, under its discretion, may limit the number of animals allowed under the permit.

B. At least fourteen days prior to the first session of the Board of Health public hearing on the application, the Board of Health will send notice of the public hearing via certified mail to abutters. The notice will include the date, time, and location of the public hearing.

C. Application(s) for a permit shall be submitted on a form supplied by the Board of Health for each location where animals are kept in the Town. The permit application shall be accompanied by the following information, and will be deemed incomplete if any information or fee is missing.

   a. Name, mailing address, phone number and email of all owners of the property, including an emergency contact number; and

   b. Location–street address of the premises to be used; and

   c. Maximum number and species of animals to be kept; and

   d. A plot plan, with dimensions of the area where animals will be kept. Also required on the plot plan are the locations of the primary residence, structure(s) (including fences), abutting structures(s), corrals, septic systems, private wells and wetlands. A hand-drawn plot plan is acceptable so long as it is determined in the Board of Health's discretion to be of sufficient detail and quality to allow for Board of Health review; and

   e. A written management plan for the following:

      i. Manure management;

      ii. Storage of feed;

      iii. Pest management; and

   f. Application fees as indicated in Article I, Section 4.0 of these regulations.

D. The applicant must demonstrate that the issuance of a permit shall not be detrimental in any way to the public welfare and would not endanger the health or safety of the municipality, and that all applicable requirements of this regulation have been satisfied. The Board of Health may impose conditions, safeguards and other limitations on a permit consistent with the public health, safety and welfare.

E. It shall be a condition of any permit issued under this regulation that the permit holder shall comply with all applicable federal, state and local laws, regulations and other requirements.

F. The permit shall not be transferable to other animals, or assignable or transferable for the use of other persons or the use of other premises.

G. The permit shall expire one year after its issuance, unless sooner revoked or suspended by the Board of Health after a hearing.

H. If the permit holder intends to increase the number of animals or change in species of animals to be kept prior to the end of the permit year, the permit holder must notify the Board of Health, and the Board of Health may require a public hearing if the Board of Health believes that the increase will materially change the application upon which the permit is based.

I. A permit holder must apply for a renewal of the permit at least thirty (30) days prior to the expiration of the permit. Unless a public hearing otherwise is required under this regulation, no public hearing is required with respect to an application for a renewal of the permit. However, if a permit holder fails to timely apply for a renewal of the permit, the permit holder's application shall be treated as an application for a new permit and shall require a public hearing.

J. If the permit holder is not the owner of the property, documentation must be provided indicating that the Property Owner consents to the application for the keeping of animals on the property.

K. Permits issued prior to the effective date of this regulation are valid. All renewal of permits after the effective date of this regulation shall be subject to this regulation.

2.5 General Requirements

A. All structures must comply with the applicable setback requirements for the zoning district in which such structures are located as set forth in the Town Zoning Bylaws and applicable MA building code requirements, notwithstanding any protection accorded by M.G.L. ch.40 §3 and the Wetlands Protection Act, 310 C.M.R §10.00.

B. All permitted animals must be confined to the property for which a permit is granted unless the permit holder has documented in writing to the satisfaction of the Board of Health, including obtaining any necessary permissions, arrangements for such animals to be kept elsewhere (*e.g.*, for grazing, pest control, etc.).

C. Permit holders shall integrate best management practices for the housing and keeping of animals. These include but are not limited to:

   a. Providing adequate housing with ventilation and room to move about; and

   b. Ensuring bedding is dry and absorbent (*e.g.*, soft wood shavings, corn cobs, peanut shells, or plant based tree free bedding), and removing saturated areas of litter such as under the water source or feeder, and wet, caked manure, as needed; and

   c. Composting waste away from animals to prevent exposure to ammonia, mold, and/or toxins; and

   d. Fencing the yard if animals roam free to prevent them from wandering onto neighboring property and to keep out potential predators; and

e. Providing water and a source of clean, dry food at all times; and

f. Keeping the housing area free from trash, debris, and old or soiled food to prevent pest activity; and

g. Keeping up to date with all vaccinations recommended for specific animals (*e.g.*, Eastern Equine Encephalitis vaccination for horses).

D. No person shall erect, occupy, use, rebuild, reconstruct, alter or structurally change a stable, accessory structure or corral intended for housing or confining of animals without submitting an initial or revised plan to the Board of Health, and obtaining the Board of Health's express approval thereof.

2.6 Prohibitions

The keeping of roosters, cockerels and non-exempt wild animals, in accordance with Massachusetts General Law Chapter 131, Section 23 is prohibited within the Town.

2.7 Penalties

Whoever violates any provision of this regulation may be subject to penalties as follows:

A. If a designated Agent of the Board of Health determines that a party has violated this regulation, such Agent may issue a written Order ("Order") to the person or persons owning or having control of the premises and to the permit holder and/or party (if different from the owner or controller of the premises) to correct the offending deficiencies within a reasonable specified time; and/or

B. A non-criminal disposition process as provided in M.G.L. c.40, § 21D and the Town's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall, in accordance with the Town General Bylaws Article 1, Section 4.0, be subject to a penalty in the amount of fifty dollars ($50.00) per day for each day of violation. Each day or portion thereof shall constitute a separate offense; and/or

C. The Board of Health may suspend or revoke any permit issued pursuant to this regulation for any violation of this regulation. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit holder is given fourteen (14) days written notice. Arrangements for re-homing the animals shall accompany any suspension, revocation, or denial of a permit; and/or

D. In the alternative, or in addition to the above, this regulation may be enforced through any other means available at law as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief.

2.8 Hearing

Any person that has received an Order issued pursuant to Article V, Section 2.7 (A) of this regulation may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order. After said hearing, the Board of Health

may affirm, modify or rescind said Order or take any other action it deems warranted and appropriate.

2.9 Variances

Upon written application and public hearing, the Board of Health may in its sole discretion vary the application of any provision of this regulation with respect to any particular case when it determines that the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board of Health that a sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board of Health deems appropriate.

3.0 Regulations Prohibiting Smoking in Workplaces and Public Places

[Regulation Adopted October 22, 2013, as Amended July 26, 2022]

3.1 Statement of Purpose

The purpose of this regulation is to protect the health of the employees and general public in the Town.

3.2 Authority

This regulation is promulgated under the authority granted to the Board of Health pursuant to M.G.L. ch.111 §31 that "[b]oards of health may make reasonable health regulations." It is also promulgated pursuant to M.G.L. Chapter 270, Section 22(j) which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the Commonwealth . . . or political subdivision of the Commonwealth."

3.3 Definitions

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Adult-Only Retail Tobacco Store (also known as "Retail Tobacco Store" in M.G.L. Ch.270): An establishment that does not share space with another establishment, that has a separate entrance, that does not sell food, beverages 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 paraphernalia, in which the entry of persons under the the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the 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.

Compensation: Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

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.

Membership Association: A not for profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

A. a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or

B. a corporation organized under chapter 180; or

C. an established religious place of worship or instruction in the Commonwealth whose real or personal property is exempt from taxation; or

D. a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

Municipal Building: Any building owned, leased, rented or operated by the Town.

Nursing home: An institution that serves as a residential facility for patients and is licensed pursuant to M.G.L. Ch. 111, § 71 and includes convalescent homes, rest homes, charitable homes for the aged, intermediate care facilities for persons with an intellectual disability and assisted living facilities.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Smoking (or smoke): The inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

Smoking bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a 3 tobacco product as required to be issued by the Town; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

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.

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, § 22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, § 22 and 105 CMR 661, the definition contained in this regulation shall control.

3.4 Smoking Prohibited

A. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in Article V, Section 3.4 (C).

B. Smoking is hereby prohibited in the Town in accordance with M.G.L. Ch. 270, § 22 (commonly known as the "Smoke Free Workplace Law") and 105 CMR 661, including enclosed common areas of multiunit residential buildings.

C. Pursuant to M.G.L. Ch. 270, § 22(j) smoking is also hereby prohibited in:

   a. Smoking Bars (cigar bars and hookah bars)

   b. Adult-Only Retail Tobacco Stores (tobacconists & vape shops)

   c. Municipal buildings (required by state law)

D. The use of electronic nicotine delivery systems is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, § 22 and wherever smoking is prohibited per Article V, Section 3.4 (C) of this regulation.

E. Smoking Bars are prohibited in the Town.

3.5 Enforcement

A. An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:

   a. $100 for the first violation.

   b. $200 for a second violation occurring within two (2) years of the date of the first violation.

   c. $300 for a third or subsequent violation occurring within two (2) years of the second violation.

B. Each calendar day on which a violation occurs shall be considered a separate offense.

C. This regulation shall be enforced by the Board of Health and its designees.

D. Violations of Article V, Section 3.4 of these regulations shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

E. Violations of Article V, Section 3.4 (A), (C), (D) and (E) of these regulations may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.

F. If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.

G. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

H. For purposes of the issuance of fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the M.G.L. for the same offense.

3.6 Conflict with Other Laws or Regulations

Notwithstanding the provisions of Article V, Section 3.4 of these regulations nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

4.0 Regulations Restricting the Sale of Tobacco and Vape Products

[Regulation Adopted April 10, 2018, as Amended July 26, 2022]

4.1 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[1];

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin[2] and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,[3] and that it is addiction to nicotine that keeps youth smoking past adolescence.[4]

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers[5];

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;[6]

Whereas 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[7];

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%[8];

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[1] Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet.* Retrieved from*:* http://www.cdc.gov/tobacco/data_statistice/fact_sheets/health_effects/effects_cig_smoking/index.htm.

[2] 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/.

[3] U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking–50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.

[4] Id. *at* Executive Summary p. 13. Retrieved from: http://www.surgeongeneral.gov/library/reports/50-years-ofprogress/exec-summary.pdf.

[5] United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al., 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

[6] SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services.

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

[8] 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

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12–17 year old's who smoked cigars reported smoking cigar brands that were flavored[9];

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking [10];

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[11];

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale[12];

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[13];

Whereas menthol makes it easier for youth to initiate tobacco use[14];

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[15];

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste"[16];

Underestimating the Magnitude of this Problem?, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.nebi.nim.gov/pubmed/21809109.

[9] Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey; Delneve CD et al., Tob Control, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

[10] 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. 508-530, www.surgeongeneral.gov/library/reports/preventing-youthtobacco-use/full-report.pdf.

[11] Food and Drug Administration. 2011. Fact Sheet: Flavored Tobacco Products, 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-youthtobacco-use/full-report.pdf.

[12] See fn. 3 at p. 85.

[13] www.fda.gov/downloads/ucm361598.pdf, Https://tobacco,ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-mentho

[14] www.tobaccofreekids.org/assets/factsheet/0390.pdf

[15] MA YRBS 2017

[16] 310 CMR 30.136

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

Whereas the Massachusetts Supreme Judicial Court has held that " . . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means[18];

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

4.2 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 M.G.L. Ch.270): An establishment that does not share space with another establishment, that has a separate entrance, that does not sell food, beverages 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 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 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 product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that me be used by the consumer to wrap or contain 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.

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 provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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.

[17] 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*.

[18] Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under M.G.L. ch.64 §1. Tobacco leaf in such kits or roll-your-own packages shall be considered "blunt wraps" for the purpose of this regulation.

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.

Coupon: Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

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

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 C.M.R 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist 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. *Listed or non-discounted price:* The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

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 products who applies for and receives a Tobacco Product Sales Permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retailer: A person who operates a retail establishment.

Rolling Papers: Sheets, rolls, tubes, cones or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a RYO machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly smoked herbs.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that:

A. exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; and

B. derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; and

C. prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; and

D. maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Board of Health; and

E. maintains a valid permit issued by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars", "hookah bars" and "vape bars".

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

Tobacco Product: Any product containing, 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 use cessation product or for other medical purposes and is marketed and sold or prescribed solely exclusively for the approved purpose.

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 or any other tobacco products, as defined herein.

4.3 Tobacco Sales to Persons Under Twenty-One (21) Years Old

A. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.

B. 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, § 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) except in the case of smoking bars, 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. 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 or smoking bar 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."

C. Identification: Each person selling or distributing tobacco products, or admitting entrance into an Adult-Only Retail Tobacco Store, shall first 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 21 years old or older.

D. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

4.4 Tobacco Product Sales Permit

A. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town without first obtaining a Tobacco Product Sales Permit issued annually by the Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in the Town.

B. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Town 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 product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

C. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.

D. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by Article I, Section 4.0 of these regulations.

E. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, 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.

F. Issuance of a Tobacco 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.

G. A Tobacco 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 the permit holder has not satisfied any outstanding permit suspensions.

H. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the age of 21 three times within the previous permit year and the

time period to appeal has expired. The violator may request a hearing in accordance with Article V, Section 4.13 (F) of these regulations.

I. Maximum Number of Tobacco Product Sales Permits.

a. At any given time, there shall be no more than twenty-five (25) Tobacco Product Sales Permits issued to retailers that are not Adult-Only Retail Tobacco Stores, per the definition, in the Town**.** No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.

b. At any given time, there shall be no more than four (4) Tobacco Sales Permits issued to Adult-Only Retail Tobacco Stores, per the definition, in the Town. No permit renewal by an Adult-Only Retail Tobacco Store will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New Adult-Only Retail Tobacco Store applicants for permits who are applying at a time when the maximum number of permits dedicated for Adult-Only Retail Tobacco Stores have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits to Retail Tobacco Stores are either not renewed, revoked, or are returned to the Board of Health. Applicants who purchase or acquire an existing Adult-Only Retail Tobacco Store that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the applicant intends to operate as an Adult-Only Retail Tobacco Store, as defined herein.

c. A Tobacco Product Sales Permit shall not be issued to any new applicant, other than one in compliance with subsection d below, for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

d. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the applicant intends to sell tobacco products, as defined herein. Permits for Adult-Only Retail Tobacco Stores will only be issued if one is available pursuant to Article V, Section 4.4 (I) (b) of these regulations.

4.5 Prohibition of Smoking Bars

Smoking Bars are prohibited in the Town.

4.6 Cigar Sales Regulated

A. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents ($2.90) or more.

B. No person shall sell or distribute or cause to be sold or distributed any original factory wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars and eighty cents ($5.80) or more.

C. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the Town.

D. The 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.

4.7 Sale of Flavored Tobacco Products Prohibited

No person shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein.. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010).

4.8 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. Retailers must obtain from a manufacturer documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

4.9 Free Distribution and Coupon Redemption

No person shall:

A. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein; and/or

B. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; and/or

C. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (*e.g.*, "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

4.10 Out-Of-Package Sales

A. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. 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.

B. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 C.M.R §30.000.

C. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §1471 through §1476 and 16 C.F.R §1700 et. Seq."

D. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

4.11 Prohibition and Restrictions

A. Self-Service Displays: All self-service displays of tobacco products, as defined herein, other than those located in Adult-Only Retail Tobacco Stores, are prohibited. All humidors including, but not limited to, walk in humidors, other than those located in Adult-Only Retail Tobacco Stores, must be locked.

B. Vending Machines: All vending machines containing tobacco products, as defined herein, are prohibited.

C. Non-Residential RYO Machines: All Non-Residential RYO machines are prohibited.

D. Sale of Tobacco Products by Health Care Institutions: No health care institution located in Burlington shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

E. Sale of Tobacco Products at Educational Institutions: No educational institution located in the Town shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

F. Blunt Wraps: No person or entity shall sell or distribute blunt wraps in the Town**.**

4.12 Incorporation of State Laws and State Regulations

A. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§ 6, 6A, 7, 28, 29 and M.G.L. Ch. 112, § 61A.

B. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 C.M.R §21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts") and 940 C.M.R §22.00 ("Sale and Distribution of Cigars in Massachusetts").

4.13 Violations

A. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate M.G.L. Ch. 270, Section 6 and 105 CMR 665, the following penalties apply:

   a. In the case of a first violation, a fine of one thousand dollars ($1000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 665 040(d), for 3 consecutive business days.

   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 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 thirty (30) consecutive business days.

B. For violations of all other sections specific to the Town, the violator shall receive:

   a. In the case of a first violation, a fine of one hundred dollars ($100.00).

   b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars ($200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

   c. In the case of three or more violations within a thirty-six (36)-month period, a fine of three hundred dollars ($300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

   d. State Law Fines and Local Regulation Fines:

      i. Policies Subject to State Law Fines (M.G.L. Chapter 270, § 6 (Section S. 1)):

         1. Tobacco and Vape Sales to persons under the age of 21 (M.G.L. Ch. 270, § 6)

         2. Flavored Tobacco Product Sales Restrictions (M.G.L. Ch. 270, § 6)

         3. Required Retailer Signage (105 CMR 665.015)

         4. Ban on Free Distribution (105 CMR 665.025)

5. Ban on Self-Service Displays (105 CMR 665.010(B))

6. Ban on Out-Of-Package Sales (105 CMR 665.030)

7. Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))

8. Failure to Check Identification of Purchaser (105 CMR 665.020)

9. Nicotine Content in Electronic Nicotine Delivery Systems (M.G.L. Ch. 270, § 6)

10. Coupon Redemption (105 CMR 665.025)

11. Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)

12. Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))

13. Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))

14. Admitting a minor into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))

ii. Policies Subject to Local Regulation Fines:

1. Prohibition of the Sale of Blunt Wrap

2. Ban on Smoking Bars

3. Cigar Sales Regulated

4. Tobacco Product Sales in Health Care Institutions

5. Tobacco Product Sales in Educational Institutions

6. Non-Residential RYO Machines Ban

7. Mass. Department of Revenue license(s)

8. Retailer possessing, holding, keeping prohibited flavor products

9. Local Tobacco Sales Permit Requirement for retailers who are not Retail Tobacco Stores

Permit suspensions and permit revocations are calculated using the total number of a retailer's violations, combining those violations that receive state-mandated fines and those that receive local fines. Where there is a difference in permit suspension periods, the longer period shall apply.

C. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.

D. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

E. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple Tobacco Product Sales Permit suspensions shall not be served concurrently.

F. The Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder 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 therefor in writing. After a hearing, the Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

G. For purposes of such fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the M.G.L. for the same offense.

4.14 Non-Criminal Disposition

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in M.G.L., Chapter 40, Section 21D where the penalty calls for a monetary fine not exceeding three hundred ($300.00) dollars.

4.15 Separate Violations

Each day any violation exists shall be deemed to be a separate offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

APPENDIX A. COMMONWEALTH OF MASSACHUSETTS REGULATIONS ENFORCEABLE BY THE BOARD OF HEALTH

Minimum Sanitation Standards for Food Establishments (105 CMR 590.00: State Sanitary Code Chapter X)

Minimum Standards of Fitness for Human Habitation (105 CMR 410.00: State Sanitary Code, Chapter II)

Minimum Standards for Swimming Pools (105 CMR 435.00: State Sanitary Code Chapter V)

Minimum Standards for Recreational Camps for Children (105 CMR 430.00: State Sanitary Code Chapter IV)

Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements (105 CMR 300.00)

Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage (310 CMR 15.000: The State Environmental Code, Title V)

Standards for Management of Tuberculosis Outside Hospitals (105 CMR 365.00)

Tanning Facilities (105 CMR 123.000)

APPENDIX B. LIST OF FEDERAL, STATE, and LOCAL LAWS AND REGULATIONS REFERENCED

- 7 C.F.R. §331.3
- 9 C.F.R. §121.4
- 16 C.F.R §1700
- 29 C.F.R. §1910.1030
- 29 C.F.R. §1910.1200
- 42 C.F.R. §73.3 through 73.6
- 105 C.M.R §435.000
- 105 C.M.R §480.000
- 105 C.M.R §590.000
- 105 C.M.R §661.000
- 105 C.M.R §665.000
- 247 C.M.R §6.00
- 248 C.M.R §10.00
- 310 C.M.R §10.00
- 310 C.M.R §15.230
- 310 C.M.R §22.00
- 310 C.M.R §30.000
- 310 C.M.R §40.0000
- 310 C.M.R §46.00
- 321 C.M.R §9.00
- 940 C.M.R §21.00 & §22.00
- M.G.L. ch.4 §7
- M.G.L. ch.21 §23-56
- M.G.L. ch.21C
- M.G.L. ch.21E
- M.G.L. ch.40 §21D
- M.G.L. ch.40 §3
- M.G.L. ch.64 §1
- M.G.L. ch.66
- M.G.L. ch.111 §31
- M.G.L. ch.111 §71
- M.G.L. ch.112
- M.G.L. ch.128 §1A
- M.G.L. ch.131 §23
- M.G.L. ch.131 §40
- M.G.L. ch.270
- 15 U.S.C. §1471 through §1476
- 33 U.S.C § 1341
- 40 U.S.C. ch.1
- Town of Burlington General Bylaws, Article XIV Section 1.0 & 6.0
- Town of Burlington Zoning Bylaws

APPENDIX C. LIST OF DOCUMENTS INCORPORATED BY REFERENCE

Biosafety in Microbiological and Biomedical Laboratories

"*Guidelines for Ground Source Heat Pump Wells*" issued by the Massachusetts Department of Environmental Protection

Massachusetts Department of Agricultural Resources Division of Animal Health's Generally Acceptable Agricultural Practices

310 CMR 80.00: Underground Storage Tank (UST) Systems

National Institutes of Health Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules

"*Private Well Guidelines*" issued by the Massachusetts Department of Environmental Protection

Standard PDI-G 101, Plumbing and Drainage Institute Standard

TABLE OF ABBREVIATIONS

BMBL	Biosafety in Microbiological and Biomedical Laboratories
BMP	Best Management Practice
BSL	Biosafety Level
CDC	Centers for Disease Control
EPA	Environmental Protection Agency
HBV	Hepatitis B Virus
HIV	Human Immunodeficiency Virus
IBC	Institutional Biosafety Committee
LPG	Liquefied petroleum gas
MDAR	Massachusetts Department of Agricultural Resources
M.G.L.	Massachusetts General Law
MMP	Manure Management Plan
MMWR	Morbidity and Mortality Weekly Report
MYHS	Massachusetts Youth Health Survey
NIH	National Institutes of Health
OSHA	Occupational Safety and Health Administration
RYO	Roll-Your-Own
USDA	United States Department of Agriculture

RECORD OF AMENDMENTS & MODIFICATIONS

Date	Name	Description
1/28/25	Sarah Courtemanche	Added Section 4.0 Admin Procedures, 4.1 & 4.2 and shift BOH Fee Schedule to Section 5.0 in Article I