

# Town of Reading Massachusetts Community Services Health

**Health Regulations** 

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# SECTION 01 ADMINISTRATION

The Board of Health, pursuant to the authority granted under MGL Chapter 111 Section 31, hereby adopts the following regulations to protect the public health of the community. These regulations shall take effect May 22, 1992 at which time all regulations previously made by the Board of Health shall no longer be in effect.

# 1.1 Definitions

Board: The Reading Board of Health or its agent or designee

**Employer**: Any person, partnership, corporation, including a municipal corporation, or nonprofit entity, who employs the services of one or more individual persons.

<u>Person</u>: Any individual, manager, or owner of a business, partnership, company, corporation, firm, group, town, county or city.

**Restaurant**: Any food service establishment licensed by the Board of Health under the definition of a food service establishment as defined by 105 CMR 590.001(B).

**Retail Food Establishment:** Any food establishment licensed by the Board of Health under the definition of food retail as defined by 105 CMR 590.001(B)

**<u>Retail Tobacco Store</u>**: A retail store utilized for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

<u>Vending Machine</u>: Any machine or device designated for or used for the vending of a product upon the insertion of coins, trade checks or slugs.

Person: Restaurant: Retail Tobacco Store: Vending Machine: Employer: And their employer:

# **SECTION 02**

# **KEEPING OF ANIMALS**

# 2.1 Purpose

As the Reading Board of Health is responsible for the protection of the public health in Reading, these regulations are promulgated to protect the health and safety of the public.

### 2.2 Authority

- **2.2.1** These regulations are adopted in accordance with the provisions of MGL Chapter 111 Sections 31 and 155.
- 2.2.2 These regulations are not intended to unreasonably regulate the use of land for commercial agriculture. Commercial agriculture may be limited by town bylaw to activities on parcels of 5 acres or more or on parcels of 2 acres or more if the sale of products produced from the agriculture use on the parcels annually generates at least \$1000 per acre based on gross sales dollars in accordance with MGL Chapter 40A Section 3.

### 2.3 Definitions

**Abutter:** shall mean the owner of properties physically abutting a property.

<u>Agriculture:</u> for the purpose of this regulation shall mean the raising of livestock including horses, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes as defined in MGL Chapter 128 Section 1A.

<u>Animal Shelters And Corrals:</u> shall include all stables, coops, pens, piggeries, cages, and any other means of protecting an animal from the environment or for containing an animal.

**Board:** shall mean the Reading Board of Health.

<u>Generally Acceptable Agricultural Practices:</u> shall mean those practices that the applicant can demonstrate are consistent with the Massachusetts Department of Agricultural Resources' Bureau of Animal Health (DAR) "Best Management Practices", and, if deemed necessary by DAR, the Massachusetts Society for the Prevention of Cruelty to Animals and the Animal Rescue League.

<u>Person:</u> shall mean a person, persons, association, partnership, trust, company, corporation or other legal entity.

<u>Poultry:</u> shall include, but is not limited to, chickens, ducks, geese, guinea fowl, peafowl, pheasants, partridges, quail and turkey.

Swine: shall not include pigs kept primarily indoors as companion animals.

### 2.4 License

- **2.4.1** No person shall keep within the limits of the Town of Reading, in any building or on any premises of which he is the owner, lessee, tenant, or occupant, any horse, cattle, sheep, goats, swine, poultry, or domesticated pigeons without first obtaining a license from the Board.
- **2.4.2** Said license shall not be transferable as to other animals nor assignable for the use of other persons nor as to the use of other premises.
- **2.4.3** Said license shall expire on June 30 of each year. Fees for such license shall be included in the Board of Health Fee Schedule.
- 2.4.4 No license shall be issued for more than 14 pigeons or 6 poultry per property, unless the applicant presents a plan consistent with guidelines promulgated by the Massachusetts Department of Agriculture and/or the United States Department of Agriculture that enables the applicant to keep more pigeons or poultry in a manner the Board of Health deems adequate.

# 2.5 Application

- **2.5.1** Any person desiring to obtain a license shall file a written application with a form provided by the Board.
- **2.5.2** Such application shall include, but not be limited to the following:
  - a Name, mailing address and telephone number of the owner of the property
  - **b** Name, mailing address and telephone number of the occupant of the property

- c Number and types of animals to be housed
- **d** Source of each animal
- **e** Written verification that each abutter has been notified of the applicant's intent and informed that they have the right to express grievances, if any, to the Board at/or before a Public Hearing. Notification will be sent to abutters by the Health Department with stamped envelopes supplied by the Applicant.
- f A plot plan which includes topographical information, size of lot with structures present as well as structures planned for the use of intended animals (including fences & wells), distances of animal housing and enclosures from all abutters' structures and property lines, any other conditions which could influence the safety and health of the community if said animal(s) were kept on the applicant's premises.
- **g** A written plan for the disposal of manure.
- **h** A written plan for the storage of feed.
- **2.5.3** The burden shall be upon the applicant to establish that the granting of such a license shall not be detrimental in any way to the public welfare and would not endanger the safety or health of the community.

# 2.6 Construction and Construction Changes

Any person who proposes to remodel a building or portion thereof, which is being used as an animal housing facility or who proposes to construct a new building, which is intended to be used in whole, or in part, as an animal housing facility shall, prior to such remodeling, renovating, or construction, submit to the Board a new application for a license, as specified in Section 6.

### 2.7 Animal Shelters and Corrals

- **2.7.1** All horses, cattle, goats, sheep, swine, poultry, and domesticated pigeons shall be provided space and conditions according to the generally acceptable agricultural practices for that species as defined in Section 2.3 above.
- **2.7.2** No person shall erect or use as a stable any building unless use is licensed by the Board and complies with all applicable Building Codes and Zoning Ordinances.
- **2.7.3** All shelters shall be of sound construction, well lighted, and have adequate ventilation, either mechanical or natural, with no access points for stray animals.
- **2.7.4** All glass windows and ventilation openings shall be screened for fly control.
- **2.7.5** All shelters and corrals shall have sufficient drainage to prevent the collection of water inside said confines. No shelter or corral shall be located in an area subject to flooding.
- **2.7.6** All shelters and corrals for horses, cattle, sheep, goats, and swine shall be supplied with an adequate and potable water source.
- 2.7.7 When shelter for more than one animal is provided, stalls or other adequate separation according to generally acceptable agricultural practices as defined in Section 2.3 above, for that species shall be provided.
- 2.7.8 Any person wishing to remodel or construct a building or any portion thereof which is currently or will be used as a stable or other animal shelter shall submit plans to do so to the Board for approval prior to any construction. After approval is obtained, all work shall begin within 30 days of approval and be completed within 90 days of the issuance of the building permit.
- **2.7.9** All corrals shall at all times have adequate shade for the animals, as appropriate for that species as determined by generally acceptable agricultural practices as defined in Section 2.3 above.
- **2.7.10** Manure shall be stored in such a manner as to control flies and odors.
- **2.7.11** All feed shall be properly stored and shall be adequately protected so as to keep the food source free of contaminants and rodents.
- **2.7.12** All shelters and corrals shall comply with local zoning bylaws.
- **2.7.13** A minimum land area of 26,780 square feet (half acre) shall be required for one goat or sheep and one acre for one horse or cattle with an additional 10,000 square feet required for each additional animal required unless the applicant can demonstrate that a different amount is consistent with generally acceptable agricultural practices as defined in Section 2.3 above.
- **2.7.14** All fences shall be adequate to appropriately contain the animal(s) as determined by generally acceptable agricultural practices as defined in Section 2.3 above.

# 2.8 Animal Health

Communicable diseases and animal diseases with zoonotic potential must be reported as outlined in MGL Chapter 129 Section 28 and CMR300.140.

# 2.9 Poultry

- 2.9.1 Any person with a license for poultry will comply with MGL 272 section 80D
- **2.9.2** All poultry shall be purchased from S. pullorum clean sources from National Poultry Improvement Plan (NPIP) participants. Chicks must originate from S. pullorum clean stock.
- **2.9.3** The shelter must be cleaned in conformance with normal agricultural procedures as defined in Section 2.3 above.
- 2.9.4 New birds must be in a separate pen as far from the resident birds as possible for at least 14 days.
- **2.9.5** Each chicken must have a minimum of 2.5 square feet of enclosed living space unless the applicant can demonstrate that the space proposed is consistent with generally acceptable agricultural procedures as defined in Section 2.3 above.

# 2.10 **Special Animal Provisions**

- 2.10.1 No rooster shall be kept in the Town of Reading.
- **2.10.2** No poisonous snakes shall be kept in the Town of Reading.
- **2.10.3** Where domesticated pigeons are kept, every effort shall be taken to minimize flying or roosting on, above, or proximate to abutting properties.

# 2.11 Complaints

Upon the receipt of a written complaint, the Board or its agent shall investigate the matter and provide a written response to the complainant and licensee. If it is determined that a hearing should be held, such hearing will be conducted as noted in Section 2.13.

### 2.12 Variances

- **2.12.1** Variance to any of these regulations may be requested in writing to the Board. When such a request is received, a hearing shall be scheduled and held in accordance with the requirements of Section 13.
- **2.12.2** Variances shall be granted only under the following conditions:
  - a strict enforcement of these regulations will constitute a manifest injustice, AND
  - **b** the granting of the variance shall not in any way impair public health.
- **2.12.3** The Board may impose any conditions it deems appropriate to protect the public health.

# 2.13 Hearing

- **2.13.1** The Public Hearing shall be held at the next scheduled Board of Health meeting but in no case earlier than 14 days of the request.
- **2.13.2** The applicant for a variance shall notify all abutters of the property as noted in Section 6.2 of these regulations.
- **2.13.3** The Public Hearing shall be advertised in a Legal Notice in a local paper at least 7 days in advance of the date of the hearing. The cost of the Legal Notice for a variance shall be borne by the applicant.
- **2.13.4** Any person to whom an Order to Correct is received shall have the opportunity to request a hearing before the Board. The request shall be in writing and received in the office of the Health Department within seven (7) days of the date it is served.

### 2.14 Penalties

2.14.1 These regulations may be enforced by the use of the Non-Criminal Disposition as put forth in MGL Chapter 40, section 21D. If enforced by means of Non-Criminal Disposition, fines shall be \$50 for the first violation, \$100 for the second violation, and \$150 for the third and any subsequent violation.

**2.14.2** Any person who is issued a license by the Board and is found to be in violation of these or any other applicable regulation may be subject to the immediate suspension or revocation of said license.

- **2.14.3** Any person found in violation of these regulations may be fined not more than \$1,000 per violation.
- **2.14.4** Each day of non-compliance shall constitute a separate and new offense.

# 2.15 Severability

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

# 2.16 Effective Date

These regulations will take effect April 5, 2013

Legal Notice:March 20, 2013Public Hearing:March 27, 2013Vote by Board of Health:March 27, 2013Legal Notice:April 4, 2013Certified copy to MassDEP:April 1, 2013

SECTION 03 RESERVED

# SECTION 04 DUMPSTERS

- 4.1 The dumpster must be located and placed in a manner approved by the Board of Health. A plan shall be submitted and approved showing the location of the dumpster and all businesses and buildings on the site. The dumpster is to be situated as not to cause a visual obstruction of traffic.
- 4.2 The dumpster shall be enclosed or screened in such a manner as to be not visible from public ways (except from above). Screening shall be approved by the Board of Health. Dumpsters meant for temporary use, i.e., less than 30 days, do not need to be screened.
- 4.3 The dumpster is not to be filled or emptied between 11 PM and 6:30 AM. Extenuating circumstances will be determined on a case by case basis by the Health Director. The business filing for an exemption must do so in writing and receive approval before the fact.
- 4.4 The dumpster must be of sufficient size and capacity to eliminate overflowing. The lids must be closed when the dumpster is not in use. The property owner and authorized agent of the business utilizing the service is responsible for ensuring that the dumpster is kept free from odors, rodents, flies, insects, scattered debris and all other nuisances.
- **4.5** The contractor shall have his/her name and telephone number conspicuously displayed on the dumpster.
- 4.6 The dumpster contractor shall have the dumpster deodorized, washed and sanitized as needed, or as needed, or as directed by the Board.
- 4.7 The contractor shall prevent spillage during the emptying process, and also during the transporting of dumpster contents. In the case of spillage, it is the responsibility of the property owner to clean the area.
- **4.8** These regulations shall apply to all dumpsters or similar units, whether for residential, commercial, industrial or municipal use.
- **4.9** Violations of these regulations are subject to a fine of (\$50.00) per offense. Each day that the offense continues shall constitute a separate offense.
- **4.10** Permit all dumpsters shall be permitted by the Board of Health on an annual basis \$50 per dumpster. Temporary permits shall be issued for all projects residential, commercial, industrial or municipal <> 30 days cost of \$50.00.

# **SECTION 05**

# SALE OF AUTOMOTIVE LUBRICATING OIL

- 5.1 Every automobile service station and retail outlet selling automobile lubricating oil shall, no later than September 1, 1989, install on the premises and maintain waste oil facilities, properly sheltered and protected to prevent spillage, seepage or discharge of the waste oil into the storm or sanitary sewers or into the waters of the Commonwealth.
- **5.2** Every such station and outlet shall be required to accept at no additional charge, waste oil in quantities not exceeding two gallons per day from any individual with sales receipts or other proof of purchase from such outlet.
- 5.3 Every such station and outlet shall periodically remove or have removed the accumulated waste oil so as not to violate any water pollution control or other statute or regulation. Violations of state statute or regulations will be forwarded to the appropriate agency for enforcement.
- **5.4** Violations of these regulations shall be subject to a fine of \$100 per offense. Each day that the offense continues shall constitute a separate offense.

SECTION 06 REPEALED

# SECTION 07 TANNING

# 7.1 Purpose

The purpose of these regulations is to set forth the licensure procedures and the requirements for the maintenance and operations of tanning facilities.

b These regulations apply to all tanning facilities, except for those facilities having a phototherapy device used by or under the supervision of a licensed physician who is trained in the use of such phototherapy devices in which patients are intentionally exposed to ultraviolet radiation for the purpose of treatment of disease by licensed health care professionals.

### 7.2 Definitions

**Applicant**: Any person who applies to the Board of Health for a license to maintain and operate a tanning facility

**Board:** Reading Board of Health

<u>Customer</u>: Any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or any individual who is afforded use of the facility as a condition or benefit of membership or access

**Department:** The Massachusetts Department of Public Health Radiation Control Program

Facility: Tanning facility

Injury: Bodily harm resulting from the use of a tanning device, which requires medical attention

<u>Inspection</u>: An official examination or observation by the Department or Board, which includes but not limited to tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Board or Department

<u>Jeopardy</u>: A situation or condition which the Board has determined presents an imminent threat to the health or safety of a customer

License: A license to operate a facility issued by the Board in accordance with these regulations

Licensee: Any person licensed by the Board in accordance with these regulations

<u>Operator</u>: An individual designated by the licensee to control the operation of a tanning facility and to instruct and assist the customer in the proper operation of the tanning devices

<u>Phototherapy Device</u>: Equipment that emits ultraviolet radiation and is used by health care professionals in the treatment of disease

Radiation: Ultraviolet radiation

Radiation Machine: Any device capable of producing radiation

**Spray Tanning Device:** Any device used to apply temporary dye to the skin to simulate change in skin tone

<u>Tanning Device</u>: Any equipment used for tanning the skin that emits electromagnetic radiation with wavelengths in the air between two hundred and four hundred nanometers, including, but not limited to, a tanning booth, tanning bed, tanning spray booth or sunlamp which includes high pressure tanning lamps. Tanning devices shall also include any accompanying equipment including, but not limited to, eye wash sink where appropriate, handrails, protective eyewear, timers

**Tanning Facility:** Any location, place, area, structure or business which provides access to tanning devices

<u>Ultraviolet Radiation</u>: Electromagnetic radiation with wavelengths in the air between 200-400 nanometers

# 7.3 Operation of Tanning Facilities

Unless otherwise ordered to operate a tanning facility each tanning facility shall be constructed, operated and maintained to meet the following minimum requirements.

# 7.3.1 Physical Plant

# a Warning Signs

- 1 A warning sign shall be posted within three feet of each tanning device.
- 2 The warning sign shall be easily readable and legible, clearly visible, and not obstructed by any barrier, equipment or other item so the user can easily view the warning sign before energizing the ultraviolet light generating device.
- 3 The warning sign shall be printed in white on a red background.
- 4 The lettering on each sign shall be 3/8 inch high for all words shown in capital letters and at least 3/16 high for all lower case letters.
- 5 The warning sign shall be at least eight and half (8.5) inches wide by eleven (11) inches long.
- **6** The warning sign shall contain the following information:

### **DANGER - ULTRAVIOLET RADIATION**

### Follow instructions

- Avoid too frequent or lengthy exposure. As with natural sunlight, exposure to a tanning lamp may cause eye and skin injury and/or an allergic reaction. Repeated exposure may cause chronic damage characterized by wrinkles, dryness, fragility, bruising of skin and skin cancer
- Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG TURN INJURY TO THE EYES
- Ultraviolet radiation from tanning lamp aggravates the effects of the sun. Do not sunbathe before or after exposure to ultraviolet radiation.
- Abnormal or increased skin sensitivity or burning may be caused by certain food, cosmetics
  or medications, including but not limited to tranquilizers, diuretics, high blood pressure
  medications, birth control pills and skin creams. Consult a physician before using a sunlamp
  or tanning device if you are using medication, have a history of skin problems or believe you
  are especially sensitive to sunlight. Pregnant women or women on birth control medication
  who use a tanning device may develop discolored skin.
- IF YOU DO NOT TAN IN THE SUN YOU WILL NOT TAN FROM THE USE OF THIS DEVICE. Use of a tanning device does not provide a substantial protective base against the effects of the sun.

# **b** Requirements for Tanning Devices

- Only tanning devices manufactured and certified to comply with the Code of Federal Regulations (CFR) 21 CFR 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products" as amended from time to time, shall be used in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR 1010.3, as amended from time to time.
- 2 Each tanning device shall have a timer which complies with the requirements of 21 CFR 1040.20 (c) (2), as amended from time to time. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error greater than plus or minus 10% of the maximum time interval for the product.
- 3 Tanning devices shall meet the requirements of the relevant sections of the National Fire Protection Association's National Electrical Code and shall have been inspected and satisfy all local electrical code requirements.
- 4 There shall be physical barriers in tanning facilities to protect customers from injury induced by touching or breaking the lamps.
- 5 Additional requirements for stand-up booths
  - There shall be physical barriers of other methods, such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the customer's skin.

**b** The construction of the booth shall be such that it will withstand the stress of use and impact of falling on a person.

- **c** Access to the booth shall be rigid construction; doors shall open outwardly. Handrails or non-slip floors shall be provided.
- 6 Defective or burned out lamps or filters shall be replaced with the type intended for use in that tanning device which is specified on the product label or with lamps or filters that are "equivalent" under USFDA regulations and policies and applicable at the time of lamp manufacture.
- 7 The licensee shall maintain records of the recommended exposure time established by the manufacturer of the tanning device. Such records shall be available to each operator. The operator shall follow the recommended exposure times and limit each customer to the maximum exposure established by such records.
- 8 The interior temperature of the tanning device shall not exceed 100° Fahrenheit.
- 9 Requirement for chemical spray mist tanning devices shall be
  - a Nonporous floor in chemical mist tanning spray equipment to be easily sanitized after each use.
  - **b** Special warning release form indicating eyes remain closed until mist stops.
  - **c** An eye wash sink will be installed and operable within easy access of the chemical mist tanning spray equipment.

# c Protective Eyewear

- 1 Protective eyewear which meets the requirements of 21 CFR 1040.20 (c) (4) as amended from time to time, shall be made available to the customer before each tanning session with instructions for its mandatory use.
- 2 The licensee shall maintain in the facility manufacturer's eyewear literature which documents compliance with 21 CFR 1040.20 (c) (4) as amended from time to time.
- 3 Protective eyewear, other than eyewear designed for one-time use only shall be properly sanitized before each use, using a sanitizing agent which is registered by United States Environmental Protection Agency and which is specified for use with protective eyewear. Exposure to the ultraviolet radiation produced by the tanning device itself is not considered a sanitizing agent.

### d Operators

- 1 Each operator must be trained and sufficiently knowledgeable in the correct operation of tanning devices used at the facility. That knowledge shall contain:
  - **a** the requirements of 105 CMR 123.000 and 21 CFR 1040.20
  - **b** proper use of FDA recommended exposure schedule
  - **c** photosensitizing agents such as: foods, cosmetics and skin medications that may produce an abnormal or increased skin sensitivity
  - **d** skin type determination
  - e recognition of injuries from overexposure to the ultraviolet radiation
  - f manufacturer's procedure for correct operation and maintenance of the tanning device(s)
  - g use of protective eyewear
  - **h** emergency procedures in case of injury
  - effects of ultraviolet radiation, acute and chronic exposure, biological effects and health risks
  - j electromagnetic spectrum with emphasis on the photobiology and physics within 200-400 nanometer range
- 2 A list of the facility's operators must be present at the tanning facility at all times during operating hours.
- 3 A trained operator must be present at a tanning facility at all times during operating hours.

### e Records

1 Each time a customer uses a tanning facility, or each time a customer executes or renews a contract to use the facility, such customer shall be given a written statement of warning as described in 105 CMR 123.003 (A) (1) and sign a written statement acknowledging that he/she has read and has understood the warning statement. For illiterate or the visually impaired, the warning shall be read by the operator to the customer in the presence of a witness. Both the witness and the operator shall sign the statement indicating it has been read to the customer.

- 2 No person 14 years of age to 17 years of age, inclusive, shall use a tanning device without the prior consent of a parent or legal guardian who shall indicate therein that such a parent or guardian has read and understood the warnings required under the provisions of 105 CMR 123.003 (A) (1). The operator must sign the consent form as a witness to the signing of the parent.
- 3 No person under the age of 14 years of age shall use a tanning device.
- 4 A record shall be kept by the facility operator of each customer's total number of tanning visits and tanning times. Such records shall be maintained for twelve (12) months from the time the date of that customer's last tanning session.
- 5 Copies of all applications and the license information outlined in 105 CMR 123.005 (C) (1)-(7), must be maintained at the tanning facility and be available for review by inspectors and tanning facility customers upon request.

# f Injury Reports

A written report of any tanning injury to a customer or complaint of injury shall be forwarded by the facility's operator or licensee to the Board and to the Department with a copy of the complainant of injured person within five (5) working days of its occurrence or knowledge thereof. The report shall include:

- a the name of the affected person
- **b** the name and location of the tanning facility
- c the nature of the injury
- **d** the name and address of the affected individual's health care provider, if any
- **e** any other information considered relevant to the situation

# g Sanitation

- 1 The operator shall provide to the customers of the tanning facility access to toilet and hand washing facilities. Such facilities shall meet the following requirements:
  - **a** they shall be cleaned and disinfected at least once every 24 hours
  - **b** they shall contain liquid soap, paper towels and a receptacle for the used paper towels
- **2** Each customer shall have access at all times to a safe and sanitary supply of drinking water.
- **3** Each facility shall provide to its customers paper or cloth towels which may not be shared. Cloth towels must be washed and sanitized after each use.
- **4** All surfaces with which customers have contact within the tanning device shall be disinfected after each use. Disinfection shall be EPA approved and effective against bacteria, viruses and fungi.
- **5** Each tanning device shall be capable of being ventilated so that there is a minimum of 20 cubic feet per minute (cfm) of fresh air per occupant.
- **6** If showers are provided:
  - **a** hot water shall be between 110-130 degrees Fahrenheit
  - **b** shower floors shall be constructed of non-absorbent, non-slippery materials and sloped to a properly installed floor drain. The use of duckboards or rubber mats is not permitted.
  - c shower floors and walls shall be cleaned and disinfected at least once every 24 hours.

7 The interior of the facility shall be maintained in good repair and in a safe, clean, sanitary condition, free from all accumulation of dirt and rubbish.

- **8** All equipment and fixtures in the facility, if appropriate, shall be installed in accordance with accepted plumbing, gas fitting and electrical wiring standards.
- **h** No tanning facility shall claim or distribute promotional material that claims that the use of a tanning device is safe and free from risk.

# 7.4 Inspections

- The Board of Health shall inspect each tanning facility within 30 days of licensure, every six months thereafter, and upon receipt of any written complaint.
- **b** The Board of Health, local health agent or Department shall have access at all reasonable times to any tanning facility for the purpose of inspecting the facility.

# 7.5 Application for a License

- a No person shall maintain or operate a tanning facility unless he/she is the holder of a valid license granted by the Board of Health.
- **b** Application shall be made of forms prescribed by and available from the Board. Each applicant shall provide all the information required by the form and the accompanying instructions. The term "application" as used herein shall include original and renewal applications.
- **c** The Board shall require that the applicant provide at least the following information in order to issue a license to operate:
  - 1 Name, address and telephone number of the tanning facility
  - 2 Name, address and telephone number of the owner
  - 3 The manufacturer, model number, model year, serial number (if available) and type of each ultraviolet lamp or tanning device in the facility.
  - 4 Geographic areas within the Board's jurisdiction to be covered if the facility is mobile.
  - **5** The name and address of the tanning device supplier, installer, date of installation of each tanning device and service agent.
  - **6** A signed and dated certification that the applicant has received, read and understood the requirements of 105 CMR 123.000.
  - 7 A copy of the consent form to be used by the facility in accordance with the requirements of 105 CMR 123.003 (D) (2) and (3).
- **d** Each applicant shall provide such additional information as the Board may reasonably require.
- **e** Each applicant shall submit the appropriate license fee. The fee for a license and annual renewal fee shall be determined by the Board.

# 7.6 <u>Issuance of a License</u>

- **a** Upon a determination by the Board or it's agent that an applicant meets the requirements of 105 CMR 123.005, the Board or it's agent shall issue to maintain and operate a tanning facility.
- **b** The Board may incorporate in the license at the time of issuance or any time thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession and use of the license to operate as it deems appropriate or necessary.
- **c** All licenses are valid from July 1 June 30 of each year. No license fee is prorated if issued during the licensing year.
- **d** Each facility must display the license in a conspicuous location in the facility.

### 7.7 Renewal of License

- a An application to renew a license shall be filed in accordance with the requirements of the Board.
- In order to renew a license, an application shall be filed with the Board in proper form not less than 30 days prior to the expiration of his/her license, where upon the licensee's existing license shall not expire until the renewal application status has been finally determined by the Board.

# 7.8 Report of Changes

All information required by 105 CMR 123.005 and otherwise required by the Board shall be kept current by each licensee. The licensee shall notify the Board in writing before making any change which would render the information reported to 105 CMR 123.005 and contained in the application for license no longer accurate. This requirement shall not apply to changes involving replacement of the original lamp types which have been certified with the USFDA as "equivalent" lamps under the USDA regulations and policies applicable at the time of replacement of the lamps. The facility owner shall maintain at the facility manufacturer's literature demonstrating the equivalency of any replacement lamp.

# 7.9 Non-Transferability of License

No license shall be transferred from one person to another or from one tanning facility to another.

# 7.10 Suspension of License

The Board or its authorized agent may summarily suspend a license pending a hearing whenever the Board finds that there is a situation causing jeopardy to customers at a tanning facility. A facility may not operate during the period of suspension.

# 7.11 Denial, Revocation or Refusal to Renew a License

- The Board may deny, revoke or refuse to renew a license sought or issued pursuant to 105 CMR 123.000 for any one of the following reasons:
  - 1 The applicant or licensee has failed to submit the information required under 105 CMR 123.005 which demonstrates that the facility will be operated and maintained in accordance with requirements of 105 CMR 123.000.
  - 2 The applicant or licensee has submitted incorrect, false or misleading information in the documents required under 105 CMR 123.005
  - 3 The applicant or licensee has failed to operate or maintain the tanning facility in accordance with the specifications approved by the Board except as such maintenance may involve the replacement of lamps by "equivalent" lamps which have been defined in 105 CMR 123.008.
  - 4 The tanning facility is operated in a way that causes or creates a nuisance or hazard to the public health or safety.
  - 5 The applicant or licensee has violated any condition upon which the license was issued by the Board.
  - **6** The applicant or licensee has failed to allow duly authorized agents of the Board or Department to conduct inspections of the facility at reasonable hours and in a reasonable manner.
  - 7 The applicant or licensee has failed to pay license fees
  - **8** The tanning facility has been found to be in violation of MGL c 111, § 207-214 or 105 CMR 123.000, or any additional requirements, adopted by the Board and has not complied within seven days of written notice of said violations by the Board.
  - **9** The applicant or licensee has failed to pay fines or penalties imposed for violations of MGL c 111 § 207-214 or 105 CMR 123.000 or local rules, regulations or orders respecting tanning facilities.
- b The Board shall notify any applicant or licensee in writing of any violation of 105 CMR 123.000 for which the Board intends to deny, revoke or refuse to renew a license. The applicant or licensee shall have seven days after receipt of such written notice in which to comply with 105 CMR 123.000. The Board may deny, revoke or refuse to renew a license of a tanning facility which fails to comply after said seven days.

# 7.12 Procedure for Hearings

- a Suspension of a license
  - 1 Upon written request to the Board, the licensee shall be afforded an opportunity to be heard concerning the suspension of a license by the Board.
  - 2 Such a hearing shall be initiated pursuant to 801 CMR 1.00 et.seq. no later than twenty-one (21) calendar days after the effective date of the suspension.

In cases of suspension of a license the Board shall by a preponderance of the evidence that there existed immediately prior to or at the time of the suspension a jeopardy situation at a tanning facility. The Board shall issue a written decision which contains a summary of the testimony and evidence considered and the reasons for the decision.

# 7.13 Procedure for Appeal

Following a hearing by the Board, any applicant or licensee aggrieved by a determination of the Board, pursuant to Section 7.12 may appeal in writing to the Department within 20 days of said determination. Any applicant or licensee or the Board, if aggrieved by a determination of the Department may appeal said decision pursuant to provisions of MGL c.30 A § 14.

# 7.14 Penalties

These regulations may be enforced by these procedures noted in the Town of Reading General By Laws Article 21. In the event that procedure is followed, a person shall be subject to a fine of two hundred dollars (\$200). Each day the offense continues shall constitute a separate offense.

# 7.15 Exemptions

- **a** The Board and/or the Department may, upon application therefore or upon its own initiative, grant such exemptions from the requirements of these regulations as it determines are authorized by law and will not result in undue hazard to public health and safety.
- **b** Devices intended for purposes other than the deliberate exposure of parts of living human body to ultraviolet radiation, and which produces or emit ultraviolet radiation incidental to its proper operation are exempt from the provisions of these regulations.
- **c** Tanning devices which are in transit or storage incidental thereto are exempt from the provisions of these regulations.
- **d** Phototherapy devices used by or under the supervision of a licensed physician who is trained in the use of such phototherapy devices are exempt from the provisions of these regulations.

# **SECTION 08**

# **PRIVATE WELLS**

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# I <u>Purpose</u>

The purpose of this regulation is to provide for the protection of the public health, safety welfare and the environment of Reading by, among other things, requiring the proper siting, construction and testing of private wells.

# **II** Authority

These regulations are adopted by the Reading Board of Health, pursuant to its authority under MGL Chapter 111 Section 31. These regulations supersede all previous Regulations for Private Wells adopted by the Board of Health.

### **III** Definitions

**Agent:** Any person designated and authorized by the Board to implement, in whole or part, these regulations. To the extent provided by the Board, the agent shall have all the authority of the Board and shall be directly responsible to the Board and under its direction and control.

Applicant: Any person who applies to have a private well constructed

**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.

**<u>Bentonite Grout:</u>** A mixture of bentonite (API Standard 13A) and water in a ratio of not less than one pound of bentonite per gallon of water.

**Board:** The Board of Health of Reading, Massachusetts or its authorized agent.

<u>Business of Digging or Drilling:</u> A person who charges a fee for digging or drilling a well, or a person who advertises for hire to dig or drill wells within the Commonwealth of Massachusetts.

<u>Casing:</u> Impervious durable pipe placed in a boring to prevent the walls from caving and to serve as a vertical conduit for water in a well.

<u>Certified Laboratory:</u> A laboratory certified by the MA Department of Environmental Protection for the analysis of drinking water and required water quality analytes. Provisional certification is acceptable.

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

<u>Concrete:</u> A mixture consisting of Portland cement (ASTM Standard C150, type I or API Standard 10, Class A), sand, gravel, and water in a proportion of not more than five parts of sand plus gravel to one part cement, by volume, and not more than six gallons of water. One part cement, two parts sand, and three parts gravel are commonly used with up to six gallons of water.

<u>Irrigation Well:</u> Well 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 they meet the requirements of a Private Drinking Water Well and have the Board's written approval.

MassDEP: Massachusetts Department of Environmental Protection

<u>Neat Cement Grout:</u> A mixture consisting of one bag (94 pounds) of Portland cement (ASTM Standard C 150, Type I or API Standard 10, Class A) to not more than six gallons of clean water. Bentonite (API Standard 13A), up to two percent by weight of cement, shall be added to reduce shrinkage. Other additives, as described in ASTM Standard C494, may be used to increase fluidity and/or control setting time.

**<u>Person:</u>** An individual, corporation, company, association, trust, or partnership.

<u>Private Drinking Water Well:</u> Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter constructed or used to supply water for human consumption that is not regulated by 310 CMR 22.00

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

<u>Sand Cement Grout:</u> A mixture consisting of Portland cement (ASTM Standard C150, Type I or API Standard 10, Class A), sand, and water in the proportion of one part cement to three or four parts sand, by volume, and not more than six gallons of water per bag (94 pounds) of cement. Up to five percent, by weight of bentonite (API Standard 13A) shall be added to reduce shrinkage.

Static Water Level: The level of water in a well under non-pumping conditions.

<u>Structure:</u> 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.

### IV Well Construction Permit

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:

- 1 the property owner's name and address
- 2 the well driller's name and proof of valid Massachusetts certification a plan with a specified scale, signed by a registered surveyor or engineer, showing the location of the proposed well in relation to existing or proposed above or below ground structures.
- a description 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 and private ways
  - e utility rights-of-way
  - f any other potential sources of pollution
- 4 proof that the owner of any property abutting the applicant's property has been notified of the applicant's intention to install a well.
- 5 a permit fee of \$100

The permit shall be on site at all times that work is taking place. Each permit shall expire one (1) year from the date of issuance unless revoked for cause, or extended. Permits may be extended for one additional six (6) month period provided that a written explanation for the request is received by the Board prior to the one year expiration date.

Well Construction Permits are not transferable.

### V Water Supply Certificate

The issuance of a Water Supply Certificate by the Board 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.

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

- 1 a well construction permit
- 2 a copy of the Water Well Completion Report as required by MassDEP Well Driller Program regulations (310 CMR 46)
- 3 a copy of the Pumping Test Report required pursuant to Section VII of these regulations
- 4 a copy of the Water Quality Report required pursuant to Section VIII of these regulations

Upon the receipt and review of the above documents, the Board 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:

- 1 Issue a Water Supply Certificate
- 2 Deny the applicant a Water Supply Certificate and specify the reasons for the denial.

Issue a conditional Water Supply Certificate with those conditions, which the Board 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.

# VI Well Location and Use Requirements

In locating a well, the applicant shall identify on a plan all potential sources of contamination, which exist or are proposed within two-hundred (200) feet of the site, including but not limited to the location of hazardous waste sites, underground storage tanks, agricultural land uses, permitted groundwater discharges and utility rights-of way. When possible, the well shall be located upgradient of all potential sources of contamination and shall be as far away from potential sources of contamination as possible, given the layout of the property.

No well shall be permitted for use as a potable water source unless it meets the following setback requirements:

15 feet from the property line

25 feet from public or private roadway

15 feet from right of way

50 feet from building sewer line or septic tank

100 feet from leaching field or drywell

100 feet from stable, barnyard, manure storage

15 feet from power line or overhead distribution line

50 feet from any surface water, including but not limited to wetlands

The Board reserves the right to impose minimum setback requirements from other potential sources of contamination not listed above. All such additional setback requirements shall be listed, in writing, as a condition of the well construction permit.

Each private well shall be located so that it is accessible for repair, maintenance, testing, and inspection. The well shall be completed in a water bearing formation that will produce the required volume of water under normal operating conditions.

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 lines shall be constructed of Class 150 pressure pipe and shall be pressure tested to assure watertightness.

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.

### VII Water Quantity and Pumping Test

The applicant shall submit to the Board for review and approval a Pumping Test Report. The Pumping Test Report shall include at a minimum: the name and address of the well owner, well location referenced to at least two permanent structures or landmarks, date the pumping test was performed, depth at which the pump was set for the test, location for the discharge line, static water level immediately before pumping commenced, discharge rate and, if applicable, the time the discharge rate changed, pumping water levels and respective times after pumping commenced, maximum drawdown during the test, duration of the test, including both the pumping time and the recovery time during which measurements were taken, recovery water levels and respective times after cessation of pumping, and reference point used for all measurements.

In order to demonstrate that the well capacity can provide the required volume of water, a pumping test shall be conducted in the following manner:

The volume of water necessary to support the household's daily need shall be determined using the following equation: (number of bedrooms plus one bedroom) x (110 gallons per bedroom) x (safety factor of 2) = number of gallons needed daily.

- 2 The storage capacity of the well shall be determined using the measured static water level and the depth and radius of the drillhole or casing.
- 3 The required volume shall be calculated by adding the volumes of water in (1) and (2) above. It is this volume of water that must be pumped from the well within a twenty-four (24) hour period.

The pumping test may be performed at whatever rate is desired. Following the pumping test, the water level in the well must be shown to recover to within eighty-five (85) percent of the prepumped static water level within a twenty-four (24) hour period.

**Example 1:** a one bedroom house with a well six (6) inches in diameter containing 200 ft. of standing water:

- 1 bedroom + 1 bedroom = (2 bedrooms) x (110 gallons per bedroom) x (safety factor of 2) = 440 gallons needed daily.
- 2 the volume of a 6-inch well is 1.5 gallons for every foot of water column length. Therefore, (200 ft. of standing water) x (1. 5 gal/ft.) = 300 gallons.
- 3 440 gallons + 300 gallons = 740 gallons that must be pumped from the well in 24 hours or less to demonstrate suitable capacity. Recovery to at least 85% of the static water level must also occur within 24 hours after cessation of pumping.

**Example 2:** For a 4 bedroom house with a well that is six (6) inches in diameter containing 100 ft. of standing water:

- 1 4 bedroom house + 1 bedroom = (5 bedrooms) x (110 gallons per bedroom) x (safety factor of 2) = 1,100 gallons needed daily.
- 2 the volume of a 6-inch well is 1.5 gallons for every foot of water volume length. Therefore, (100 ft. of standing water) x (1. 5 gal/ft.) = 150 gallons.
- 3 1,100 gallons + 150 gallons=1250 gallons that must be pumped from the well in 24 hours or less to demonstrate suitable capacity. Recovery to at least 85% of the static water level must also occur within 24 hours after cessation of pumping.

# VIII Water Quality Testing

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

A water sample shall be collected either after purging three (3) 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.

Water quality tests utilizing the applicable US EPA approved method for drinking water testing, shall be conducted by a Massachusetts certified laboratory and shall include analysis for the following parameters:

Arsenic

Chloride

Copper

Fluoride

Hardness

Iron

Lead

Manganese

рΗ

Sodium

Total Coliform bacteria

E. coli bacteria

Nitrate/Nitrite

In wells drilled into bedrock the Board of Health requires that in addition to the parameters listed above, a Gross Alpha Screen and Radon test be performed. If the Gross Alpha screen detects radiation of 15 pci/l or more, then the water must be analyzed for Radium and Uranium concentrations.

The owner of every well used for drinking water including those serving a property which is rented or leased shall have its water tested at a Massachusetts certified laboratory for the following chemical and bacteriological parameters at a minimum of once a year: total coliform bacteria, e. coli bacteria, nitrate, nitrite, pH, conductivity, sodium, and iron. All other required chemical parameters should be tested at a minimum of every ten (10) years. The Board of Health may require more frequent testing, or testing for additional parameters, where other water quality problems are known or suspected to exist.

The owner of a rental property shall provide results of all water quality tests to all tenants of the property and the Board of Health. In cases where the well water does not meet the water quality standards outlined above, the Board of Health may require the property owner to provide an alternative approved source of drinking water for the tenants.

Prior to selling, conveying, or transferring title to real property, the owner shall have tested the water of every private drinking water well serving that property. A water sample from each well shall be submitted to a Massachusetts certified laboratory for testing for the parameters listed in the Water Quality section of this document. This water quality testing shall have been performed not more than one (1) year prior to transfer of the property. Results of the water quality testing shall be submitted to the Board of Health prior to property transfer.

In addition, the owner shall give copies of all available water quality test results of which he/she has knowledge (regardless of age of results) for the private well in question to any buyer and/or broker involved in the transfer. In the event that there is no buyer at the time the water is tested, a copy of all water test results must be given by the owner to the buyer before the property is put under agreement.

For irrigation wells, the Board requires annual testing for E. coli bacteria and Nitrate/Nitrite, as accidental consumption could result in acute exposure.

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

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

- 1 a copy of the certified laboratory's test results
- 2 the name and contact information of the individual who performed the sampling
- **3** where in the system the water sample was obtained

This regulation requires that private drinking water wells meet all current Massachusetts' Primary and Secondary Drinking Water Standards and Guidelines adopted by the MassDEP Office of Research and Standards (ORS). In any case where a private drinking water well does not meet such Standards or Guidelines, as it deems necessary for the protection of public health, safety or welfare, that the Board may take action, but not limited to, requiring the property owner to provide an alternative source of drinking water.

### IX Well Construction

Pursuant to 310 CMR 46.02 (1), no person in the business of digging or drilling shall construct a well unless certified by the MassDEP Well Drillers Program.

Any work involving the connection of the private well to the distribution system of the residence must conform to the local plumbing code. All electrical connections between the well and the pump controls

and all piping between the well and the storage and/or pressure tank in the house must be made by a pump installer or certified well driller, including the installation of the pump and appurtenance(s) in the well or house.

A physical connection is not permitted between a water supply, which satisfies the requirements of these regulations, and another water supply that does not meet the requirements of these regulations without prior approval of the Board.

### a General Well Design and Construction

All private wells shall be designed and constructed such that:

- 1 the materials used for the permanent construction are durable in the specific hydrogeologic environment that occurs at the well site
- 2 no unsealed opening is be left around the well that could conduct surface water or contaminated groundwater vertically to the intake portion of the well or transfer water from one formation to another.

Permanent construction materials shall not leach or contribute toxic substances, taste, odors, or bacterial contamination to the water in the well.

The driller shall operate all equipment according to generally accepted standards in the industry and shall take appropriate precautions to prevent damage, injury or other loss to persons and property at the drilling site.

Well construction design shall ensure that surface water does not enter the well through the opening or by seepage through the ground surface. Construction site waste and materials shall be disposed of in such a way as to avoid contamination of the well, any surface water or the aquifer. During any time that the well is unattended, the contractor shall secure the well in a way as to prevent either tampering with the well and/or the introduction of foreign material into the well.

All water used for drilling, well development, or to mix a drilling fluid shall be obtained from a source, which will not result in contamination of the well or the water bearing zones penetrated by the well. Water from wetlands, swamps, ponds and other similar surface features shall not be used.

Water shall be conveyed in clear sanitary containers or water lines and shall be chlorinated to an initial concentration between 50 mg/l and 100 mg/1.All drilling equipment including pumps and down hole tools, shall be cleaned and disinfected prior to drilling each new well or test hole.

All drilling fluids shall be nontoxic. Drilling fluid additives shall be stored in clean containers and shall be free of material that may adversely affect the well, the aquifer, or the quality of the water to be pumped from the well. Surfactants shall be biodegradable. The use of biodegradable organic polymers shall, when possible, be avoided.

All wells, including those that have been hydrofractured, shall be developed in order to remove fine materials introduced into the pore spaces or fractures during construction. One or more of the following methods shall be used for development: overpumping, backwashing, surging, jetting, air-lift pumping.

The completed well shall be sufficiently straight so that there will be no interference with installation, alignment, operation or future removal of the permanent well pump.

### b Well Casing

Private water supply wells shall be constructed using either steel or thermoplastic well casing. The casing shall be of adequate strength and durability to withstand anticipated formation and hydrostatic pressures, the forces imposed on it during installation, and the corrosive effects of the local hydrogeologic environment.

All casing used in the construction of private wells shall be free of pits, breaks, gouges, deep scratches and other defects. If previously used casing is installed, it shall be decontaminated and disinfected prior to installation.

Installation of water well casing shall be done in a manner that does not alter the shape, size, or strength of the casing and does not damage any of the joints or couplings connecting sections of the casing. A standard driveshoe shall be used when casing is installed. The drive shoe shall be either welded or threaded to the lower end of the string of casing and shall have a beveled metal cutting edge forged, cast, or fabricated for this specific purpose.

Upon completion of the installation procedure, the entire length of the casing above the intake shall be watertight.

Well casing shall not be cut off below the land surface unless a pitless adapter or a pitless unit is installed or an abandoned well is being permanently plugged. Well casing terminating above-grade shall extend at least twelve (12) inches above the predetermined ground surface at the wellhead except when the well is located in a floodplain. When a well is located in a floodplain, the well casing shall extend at least two (2) feet above the level of the highest recorded flood. The top of the well casing shall be reasonably smooth and level.

### c Well screen

A well screen is required for all drilled wells that are completed in unconsolidated formations. All well screens shall be of Grade 304 stainless steel. Wells completed in bedrock do not require a screen unless the bedrock formation is brittle in nature or has a potential for collapse. The well screen aperture openings, screen length, and diameter shall be selected so as not to limit the aquifer's water yielding characteristics while preventing access of soil particles that would detract from well efficiency and yield.

### d Grouting and Sealing

Private wells drilled in bedrock shall be grouted from the ground surface or to the bottom of the pitless adaptor (if present) to fifteen (15) feet into competent bedrock. Neat cement grout, sand cement grout, or Bentonite grout shall be used. It shall have a permeability of at least 1 x 10-7 and be emplaced using standard grouting techniques as described in the MassDEP Private Well Guidelines, as amended.

All wells completed with the casing extending above grade shall have a surface seal designed to eliminate the possibility of surface water flowing down the annular space between the well casing and the surrounding backfilled materials. The surface seal shall extend to a depth below the local frost line.

# e Wellhead Completion

All wells shall be equipped with a sanitary seal or watertight cap designed to prevent surface water and foreign matter from entering the well.

All wells except flowing artesian and dug wells shall be vented. The opening of the vent pipe shall be covered with a 24 mesh corrosion resistant screen and shall be large enough to prevent water from being drawn into the well through electrical conduits or leaks in the seal around the pump when the pump is turned on. The vent pipe shall terminate in a downward position at or above the top of the casing.

All connections to a well casing made below ground shall be protected by either a pitless adapter or a pitless unit that complies with the most recent revision of National Sanitation Foundation Standard Number 56, entitled "Pitless Well Adapters."

Above-grade connections into the top or side of a well casing shall be at least twelve (12) inches above the established ground surface or two (2) feet above the level of the highest known flood, whichever is higher. Above-grade connections shall be sealed so that they are watertight.

The ground immediately surrounding the well casing shall be sloped downward and away from the well in all directions to eliminate the possibility of surface water ponding.

### f Disinfection

Upon completion of well construction, the well driller shall disinfect the well. If a pump is to be installed immediately upon completion of the well, the pump installer shall disinfect the well and the pumping equipment after the pump has been installed.

If the pump is not installed upon completion of the well, the pump installer shall, upon installation, disinfect the well and the pumping equipment. The pump installer shall also disinfect the entire water supply system immediately after any maintenance or repair work is done on the pump.

When a well is disinfected, the initial chlorine concentration shall be 100 mg/l throughout the entire water column.

For newly constructed or altered wells in which the pump is not immediately installed, the chlorine concentration used to disinfect the well shall be 100 mg/l. Upon installation of the pump, the well, the pumping equipment, and the distribution system, if connected, shall be disinfected with a chlorine concentration of 100 mg/l.

The disinfectant solution shall remain undisturbed in the well for a minimum of two (2) hours. After all the chlorine has been flushed from the water supply system, a water sample shall be collected and submitted to a Massachusetts certified laboratory. For new wells, the sample shall be tested pursuant to Section VI of these regulations.

Only certified well drillers are authorized to physically alter, or repair a well. For wells, that have undergone repair, a sample shall be tested for total coliform bacteria and any other parameters deemed appropriate by the Board, prior to being put back in use.

# X <u>Decommissioning</u>

Abandoned wells, test holes, and borings 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:

- 1 construction of the well is terminated prior to completion of the well
- 2 the well owner notifies the Board that the use of the well is to be permanently discontinued.
- 3 the well has been out of service for at least three (3) years
- 4 the well is a potential hazard to public health or safety and the situation cannot be corrected
- 5 the well is in such a state of disrepair that its continued use is impractical or unsafe
- 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 that all abandoned wells and test holes or borings associated with the well installation are properly plugged before work at the site is completed. Only certified well drillers may plug abandoned wells, test holes, and borings.

Abandoned overburden wells or borings shall be completely filled with a low permeability grout, which cures with a final permeability of less than 1x10-7 cm/sec. Wells shall be plugged with neat cement grout, sand cement grout, concrete, or bentonite grout.

Regardless of the type used, the grout used for plugging shall:

- be sufficiently fluid so that it can be applied through a tremie pipe from the bottom of the well upward
- 2 remain as a homogeneous fluid when applied to the subsurface rather than disaggregating by gravity into a two phase substance
- 3 be resistant to chemical or physical deterioration

4 not leach chemicals, either organic or inorganic, that will affect the quality of the groundwater where it is applied

The plugging materials shall be introduced at the bottom of the well or boring and placed progressively upward to a level approximately four (4) feet below the ground surface. Sealing materials shall not be poured from the land surface into the well, borehole, or annular space being sealed.

The well driller shall install a surface seal after the well or boring has been plugged. Before the surface seal is placed, casing remaining in the hole shall be cut off. The remaining four (4) feet at the top of the well or boring shall then be filled with concrete. The top of the seal shall comprise a concrete slab above the top of the plugged well or boring. This concrete slab shall be at least six (6) inches thick and shall be at least two (2) feet greater in diameter than the well casing or borehole wall.

# XI <u>Enforcement</u>

The Board has authority to investigate suspected or known violations of these regulations and/or violations of any Water Supply Certificate conditions. The Board may take actions, as it deems appropriate, within its authority for the protection of public health, safety welfare, or the environment, and to enforce any of the provisions of this regulation.

If any investigation reveals a violation of these regulations or the Water Supply Certificate Conditions, the Board may order the private well owner to comply with the violated provision(s), and/or take other action within its authority as the Board deems appropriate.

Any Order the Board issues shall be in writing and served in the following manner:

- **a** personally, by any person authorized to serve civil process,
- **b** by any person authorized to serve civic process by leaving a copy of the Order at the property owner's address
- **c** by sending the property owner a copy of the Order by registered or certified mail, return receipt requested, or
- **d** by posting a copy of the Order in a conspicuous place on or about the premises and by advertising it for at least three (3) out of five (5) consecutive days in one or more newspapers of general circulation within the municipality where the private well is located, if the property owner's last and usual place of residence is unknown or outside the Commonwealth.

### XII Hearing

Any person to whom the Board issues an Order may request a hearing before the Board by filing with the Board within seven (7) days after the day the Order was served a written request for a hearing. Upon receipt of a hearing request, the Board shall set a time and place for the hearing and shall inform the well owner in writing. The hearing shall commence within thirty (30) days from the day on which the written request was made, unless a later time is agreed to in writing by the Board and the person requesting the hearing. At the hearing the person requesting the hearing shall be given an opportunity to be heard and show why the Order should be modified or withdrawn. After the close of the hearing, the Board shall issue a written decision to sustain, modify, or withdraw the Order and shall mail a copy of the decision, by certified mail, return receipt requested, to the person who requested the hearing. If the Board sustains or modifies the Order, it shall be carried out within the time period allotted in the original order or in the modification.

Every notice, order, or other record prepared by the Board in connection with the hearing shall be entered as a matter of public record in the office of the clerk of the city or town, or in the office of the Board.

If a request for a hearing is not filed with the Board within seven (7) days after the day an Order has been served or if after a hearing, the Order has been sustained in whole or any part, each day's failure to comply with the order as issued or sustained shall constitute a separate violation.

# XIII Appeal

Any person aggrieved by the final Order, Variance, Well Construction Permit, or Certificate of Water Supply determination of the Board may appeal to any court of competent jurisdiction as provided by the laws of the Commonwealth.

# XIV Penalties

Any person who violates any provision of these regulations, or who fails to comply with any final Order of the Board and is issued a ticket pursuant to MGL C. 40 section 21 D and Town of Reading By-laws Section 1-7 shall pay a fine of \$50 for the first offense, \$100 for the second offense, and \$150 for the third and each subsequent offense. Each section of these regulations shall constitute a separate violation. Each day's failure to comply with a final Order or any provision of this regulation shall constitute a separate violation.

# XV <u>Variance</u>

The Board may, grant a variance to any provision of this regulation when, in its opinion, the enforcement would result in manifest injustice, and the applicant has demonstrated that the equivalent degree of protection will be provided without strict application of the particular provision(s) sought to be varied.

Every request for a variance shall be in writing shall state the specific provision of this regulation from which variance is sought, the reasons for seeking the variance and proof of the notice required below. The request shall also contain the information to establish manifest injustice and equivalent degree of protection. At least ten (10) days prior submission of the application to the Board, the applicant shall provide notice of their intent to the request a variance as follows: a) by certified mail, return receipt requested to all abutters of the property upon which the private well will be or is located and b) publication in a newspaper of general circulation in the town or city in which the private well will be or is located. The notice shall include at a minimum: the name and address of the applicant, a statement of the provision(s) of this regulation from which a variance is sought, and the reason for seeking the variance. Any grant or denial of a variance shall be in writing and shall contain a brief statement of the reasons for approving or denying the variance. A copy of each variance shall be conspicuously posted for thirty (30) days following its issuance and shall be available to the public at all reasonable hours in the Office of the Town Clerk or Office of the Board of Health. No work shall be done under any variance until thirty (30) days elapse from its issuance, unless the Board certifies in writing that an emergency exists.

The Board may issue a variance subject to such conditions as it deems necessary to public health, safety, welfare or the environment. Any such conditions shall be stated in writing in the Board's grant of the variance. The Board may revoke, modify or suspend, in whole or in part, a variance after the property owner has been notified in writing and is afforded an opportunity to be heard, pursuant to Section XI of these regulations.

### XVI Severability

If any provision of these regulations or the application thereof is held to be invalid by a court of competent jurisdiction, the invalidity shall be limited to said provision(s) and the remainder of these regulations shall remain valid and effective. Any part of these regulations subsequently invalidated by a new state law or modification of an existing state law shall automatically be brought into conformity with the new or amended law and shall be deemed to be effective immediately, without recourse to a public hearing and the customary procedures for amendment or repeal of such regulation.

# XVII Effective Date

These regulations were adopted by vote of the Reading Massachusetts Board of Health, at their regularly scheduled meeting held on May 24, 2012 and are to be in full force and effect on and after June 15, 2012. Before said date, these regulations shall be published and a copy placed on file in the Board of Health Offices and filed with the Department of Environmental Protection, Division of Wastewater Management in Boston. These regulations or any portions thereof may be amended, supplemented or repealed from time to time by the Board, as provided by law and applicable regulations.

# XVIII <u>Disclaimer</u>

The issuance of a well permit shall not be construed as a guarantee or certification by the Board or its agents that the water system will function satisfactorily or that the water supply will be of sufficient quality or quantity for its intended use.

# SECTION 09 FOOD CODE

**9.1** 105 CMR 590.000 Chapter 10 of the State Sanitary Code as most recently amended is hereby adopted as a local regulation with the additions of the following:

# 9.2 Penalties

# 1 Criminal Complaint

Whoever violates any provision of these rules and regulations may be penalized by complaint brought in Woburn District Court. Each day on which a violation exists shall be deemed to be a separate offense.

# 2 Non-criminal Disposition

Whoever violates any provisions of these rules and regulations may be penalized by a non-criminal complaint in the Woburn District Court pursuant to the provisions of MGL c. 40 s. 21D and Town of Reading By-Law Article 1.8. In the event that procedure is followed, non-critical violations shall be subject to a fine of twenty-five dollars (\$25) per offense; critical violations shall be subject to a fine of fifty dollars (\$50) per offense. Each day that the offense continues shall constitute a separate offense.

### 9.3 Effective

These regulations will take effect	April 1, 2012
Vote amendment change 9.4.2 Effective	2/13/2003
Amendment change	2/10/2005
Effective	2/10/2005
Legal notice	3/7/2012
Public hearing	3/15/2012
Board of Health vote	3/15/2012
Copy sent to MassDEP	
Legal notice	3/26/2012
Effective date	4/1/2012

# SECTION 10 HUMAN HABITATION

105 CMR 400.000 State Sanitary Code I General Administrative Procedures and 105 CMR 410.000 State Sanitary Code II Minimum Standards of Fitness for Human Habitation are hereby adopted as most recently amended as a local regulation with the additions of the following:

# 400.700 Penalties

(c) (1) These regulations may be enforced by those procedures noted in the Town of Reading General By-Law Article 21. In the event that procedure is followed, a person shall be subject to a fine of thirty-five dollars (\$35.00). Each day that the offense continues shall constitute a separate offense

# 410.600 Storage of Garbage and Rubbish

(D) The occupants of each dwelling, dwelling unit and rooming unit shall be responsible for the proper placement of this garbage and rubbish in the receptacles required in 105 CMR 410.600 (C) or at the point of collection by the owner. Garbage and rubbish shall be placed at the curb no earlier than 4:00 PM the day before the scheduled collection day.

# 410.910 Penalty for Failure to Comply with Order

Any person who shall fail to comply with any order issued pursuant to the provisions of 105 CMR 410.000 shall upon conviction be fined not less than ten nor more than five hundred dollars. Each day's failure with an order shall constitute a separate violation. See also 105 CMR 410.854 (B). These regulations may be enforced by those procedures noted in the Town of Reading By-Law Article 21. In the event that procedure is followed, a person shall be subject to a fine of thirty-five dollars per offense. Each day that the offense continues shall constitute a separate offense.

# 410.920 Penalty for Other Offense

Any person who shall violate any provision of 105 CMR 410.000 for which penalty is not otherwise provided in any of the General Laws or in any other provision of 105 CMR 410.000 shall upon conviction be fined not less than ten nor more than five hundred dollars. These regulations may be enforced by those procedures noted in Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of thirty-five dollars per offense. Each day that the offense continues shall constitute a separate offense.

# SECTION 11

# MINIMUM STANDARDS FOR SWIMMING POOLS

105 CMR 435 / 000 State Sanitary Code V Minimum Standards for Swimming Pools are hereby adopted as most recently amended as a local regulation with the additions of the following:

### 435.45 Penalties

Any person who operates or maintains a swimming, wading or special purpose pool without the unexpired and unrevoked written permission of the Board of Health shall upon conviction be fined not less than two hundred and fifty nor more than five hundred dollars. This regulation may be enforced by those procedures noted in Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of two hundred fifty dollars. Each day the offense continues shall constitute a separate offense.

Any person who shall violate any provision of 105 CMR 435.00 for which penalty is not otherwise provided in any of the General Laws or in any other provisions of 105 CMR 435.000 or 105 CMR 400.000 shall upon conviction be fined not less than fifty nor more than five hundred dollars. This may be enforced by those procedures noted in Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of fifty dollars. Each day the offense continues shall constitute a separate offense.

Any person who shall fail to comply with any order issued pursuant to the provisions of 105 CMR 435.000 shall upon conviction be fined not less than fifty or more than five hundred dollars. This may be enforced by those procedures noted in the Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of fifty dollars. Each day the offense continues shall constitute a separate offense.

# SECTION 12 RECREATIONAL CAMPS

105 CMR 430.00 State Sanitary Code V Minimum Standards for Recreational Camps for Children are hereby adopted as most recently amended as a local regulation with the additions of the following:

### **Enforcement and Penalties**

Any person who operates a recreational camp without the unexpired and unrevoked written permission of the Board of Health shall upon conviction be fined not less than two hundred and fifty nor more than five hundred dollars. This regulation may be enforced by those procedures noted in Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of two hundred fifty dollars. Each day the offense continues shall constitute a separate offense.

Any person who shall violate any provision of 105 CMR 430.00 for which penalty is not otherwise provided in any of the General Laws or in any other provisions of 105 CMR 430.000 or 105 CMR 400.000 shall upon conviction be fined not less than fifty nor more than five hundred dollars. This may be enforced by those procedures noted in Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of fifty dollars. Each day the offense continues shall constitute a separate offense.

Any person who shall fail to comply with any order issued pursuant to the provisions of 105 CMR 430.000 shall upon conviction be fined not less than fifty or more than five hundred dollars. This may be enforced by those procedures noted in the Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of fifty dollars. Each day the offense continues shall constitute a separate offense.

SECTION 13 REPEALED

# SECTION 14 SEPTIC SYSTEMS

# The State Environmental Code Title V Minimum Requirements for the Subsurface Disposal of Sanitary Sewage

The State Environmental Code Title V Minimum Requirements for the Subsurface Disposal of Sanitary Sewage is hereby adopted as most recently amended as a local regulation with the additions of the following:

### 15.26 Penalties

- Any person who shall violate any provision of this title for which penalty is not otherwise provided in any of the General Laws or in any other provision or in any other provision of this Title or Title 1 of this Environmental Code (310 CMR 11.00) shall upon conviction be fined not less than ten nor more than five hundred dollars. These regulations may be enforced by those procedures noted in Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of fifty dollars per offense. Each day that the offense continues shall constitute a separate offense.
- 2 Any person who shall fail to comply with any order issued pursuant to the provisions of this Title shall, upon conviction be fined not less than ten nor more than five hundred dollars. These regulations may be enforced by those procedures noted in the Town of Reading General By-Law Article 21. In the event that procedure is followed, the person shall be subject to a fine of fifty dollars per offense. Each day that the offense continues shall constitute a separate offense.

## SECTION 15 PUBLIC NUISANCES

The Board of Health shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth or cause of sickness found thereon within twenty-four hours, or within such other time as it considers reasonable after notice and an owner or occupant shall forfeit twenty-five dollars (\$25) for every day during which he knowingly violates such an order.

#### **Posting Board of Health Order**

Such order shall be in writing, and be served personally on the owner, occupant or his authorized agent by any person authorized to serve civil process; or a copy of the order may be left at the last and usual place abode of the owner, occupant or agent, if he is known and within or without the commonwealth; or a copy of the order may be sent to the owner, occupant or agent by registered mail, return receipt requested, if he is known and within the commonwealth. If the order is directed against the owner and if the residence and whereabouts of the owner of his agent are unknown or without the commonwealth, the Board may direct the order to be served by posting a copy thereof in a conspicuous place on the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building is situated.

# **Compliance to BOH Order**

If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall constitute a debt due the Town upon the completion of the removal and the rendering of an account therefore to the owner, his authorized agent, or the occupant, and shall be recoverable from such owner or occupant in an action of contract.

# Payment of Action by Board of Health

A debt due the Town shall constitute a lien on the land upon which the structure is located if a statement of claim, signed by the Board of Health and setting forth the amount claimed without interest, is filed with the Registry of Deeds within ninety days after the debt becomes due. Such lien shall take effect upon the filing of the statement and shall continue for two years from the first day of October next following the date of such filing. Within a reasonable time after filing the statement of claim with the Registry of Deeds (and certainly before the expiration of the two year period during which the lien is in effect), the Board of Health shall certify to the assessors the claims upon the land. The assessors shall turn in; commit such claims with their warrant to the collector of taxes, who shall have the same powers and duties with respect to such claim as in the case of the annual taxes upon real estate. The provisions of law relative to the collection an annual tax, the sale or taking of land for the nonpayment thereof, and the redemption of land sold or taken shall apply to such claim.

The provisions of the above paragraph relative to lien for such debt and the collection of the claims for such debt shall apply to any debt referred to in this section; expect that the Board of Health shall act hereunder in place of the Board of Selectmen.

## SECTION 16 TOBACCO

# Regulation Restricting the Sale of Tobacco Products & Nicotine Delivery Products

## a **Statement of Purpose:**

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat (Centers for Disease Control and Prevention (hereinafter "CDC"), Health Effects of Cigarette Smoking Fact Sheet, (January 2012)); whereas among the 15.7% of students nationwide who currently smoked cigarettes and were aged less than eighteen (18) years, 14.1% usually obtained their own cigarettes by buying them in a store (i.e., convenience store, supermarket, or discount store) or gas station during the thirty (30) days before the survey (CDC, Youth Risk Behavior, Surveillance Summaries. 2009, MMWR 2010:59 (No. SS-55) at 11); whereas nationally in 2000, sixty-nine (69%) percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (CDC, Youth Tobacco, Surveillance Summaries. 2000, MMWR 2001:50 (No. SS-04)); whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.); whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; whereas according to the CDC, cigarette price increases reduce the demand for cigarettes and thereby reduce smoking prevalence, cigarette consumption, and youth initiation of smoking (U.S. Department of Health and Human Services. Reducing Tobacco Use: A Report of the Surgeon General. Atlanta, GA. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000 at 358);

whereas commercial Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health; whereas commercial Roll Your Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the federal and state excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit and deter youth from starting. Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

whereas the sale of tobacco products and nicotine delivery products are incompatible with the mission of health care institutions because they are detrimental to the public health and undermine efforts to educate patients on the safe and effective use of medication;

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

now, therefore it is the intention of the Reading Board of Health to regulate the access of tobacco products.

## b <u>Authority:</u>

This regulation is promulgated pursuant to the authority granted to the Reading Board of Health by MGL Chapter 111 Section 31 that "Boards of Health may make reasonable health regulations".

#### c Definitions:

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

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

<u>Business Agent:</u> 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.

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

<u>Commercial Roll-Your-Own (RYO) Machine:</u> A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products. RYO machines located in a private home, used for private consumption, and not located in a business or used for sale or distribution of tobacco are not Commercial Roll-Your-Own machines.

**E-Cigarette:** Any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

**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.

<u>Health Care Institution</u>: 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 subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Membership Association (also known as a private club): 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: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one 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 purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

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

<u>Nicotine Delivery Product:</u> Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery product includes, but is not limited to, e-cigarettes.

<u>Permit Holder:</u> Any person engaged in the sale or distribution of tobacco or nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product

sales permit or any person who is required to apply for a tobacco and nicotine delivery product sales permit pursuant to these regulations, or his or her business agent.

<u>Retail Tobacco Store:</u> an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Reading Board of Health.

<u>Self-Service Display:</u> Any display from which customers may select or make a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel.

<u>Tobacco Product:</u> Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

<u>Vending Machine:</u> Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or Nicotine Delivery Product.

# d <u>Tobacco and Nicotine Delivery Product Sales to Minors Prohibited:</u>

- No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco or nicotine delivery products to a minor.
- 2 Required Signage
  - In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of MGL, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Reading Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder 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 (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
  - **b** The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Reading Board of Health that discloses current referral information about smoking cessation.
  - c The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating that "The sale of nicotine delivery products to minors under 18 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notice shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. This notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
- 3 Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.
- 4 All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer, with the exception as noted in Section K.

#### e Tobacco and Nicotine Delivery Product Sales Permit:

- 1 No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within the Town of Reading without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Reading Board of Health. Only owners of establishments with a permanent, non-mobile location in Reading are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Reading.
- 2 As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Reading Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco and nicotine delivery product sales regarding both state laws regarding the sale of tobacco and this regulation.
- 3 Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
- 4 The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Reading Board of Health annually. All such permits shall be renewed annually by July 1.
- 5 A separate permit is required for each retail establishment selling tobacco or nicotine delivery products.
- **6** Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
- 7 No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
- 8 A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- 10 Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's agreement to abide by the current Massachusetts Department of Revenue list for minimum retail prices of tobacco products, including multiple pack sales.
- 11 A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

## g Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps within Reading.

# h **Prohibition of Commercial Roll-Your-Own Machines:**

No establishment shall have a commercial Roll-Your-Own machine.

#### i Free Distribution and Coupon Redemption:

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

## j <u>Out-of-Package Sales:</u>

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.

# k <u>Self-Service Displays:</u>

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

# I <u>Vending Machines:</u>

All tobacco and/or nicotine delivery product vending machines are prohibited. The only exception is tobacco vending machines are permitted if equipped with a lock out device, located in a membership association since January 1, 2012 where the membership association ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.

# m <u>Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care</u> Institutions:

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

# n <u>Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:</u>

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

#### o Violations:

- It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:
  - a In the case of a first violation, a fine of one hundred dollars (\$100.00).
  - **b** In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - **c** In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- 2 Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.
- 3 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.
- 4 The Reading Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons 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 therefore in writing. After a hearing, the Reading Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the MGL for the same offense. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

# p Non-Criminal Disposition:

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

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

# q <u>Enforcement:</u>

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

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

# r <u>Severability:</u>

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

# s <u>Effective Date:</u>

This regulation shall take effect on July 1, 2012.

**SECTION 17** 

# APPLICATION REVIEW FEES SPECIAL ACCOUNT

In accordance with Chapter 593 and Chapter 111 Section 31 of the MGL the Reading Board of Health adopts these regulations to protect the health and safety of the community.

Application Review Fees Special Account

- 17.1 When reviewing an application, 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.
- 17.2 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, ordinances/bylaws and regulations.
- 17.3 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 the special account may be made at the direction of the Board of Health without further appropriation. Expenditures from this special account shall be made only in connection with the review of a special 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.
- 17.4 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.
- Any applicant may make an administrative appeal from the selection of the outside consultant to the Board of Selectmen. 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 Board of Selectmen within one month following the filing of the appeal, the selection made by the Board of Health shall stand.

## SECTION 18

## INDOOR ICE SKATING RINK STANDARDS

State Sanitary Code 105 CMR 675.000 Standards-Indoor Ice Skating Rink certification/renewal application is hereby adopted as most recently amended as a local regulation with the addition of the following:

# 18.1 Application

By no later than April 26, 1997, any person currently operating an indoor skating rink desiring to continue operating said rink shall file a written application for a certificate of approval with the Board of Health, on forms prepared by the Bureau and obtained from the Board of Health (105 CMR 670.016B). Any person desiring to commence operating an indoor skating rink after the effective date of these regulations must file and receive a **certificate of approval** prior to commencing operating.

## 18.2 License Fee

The fee to operate an indoor ice arena used for skating shall be assessed at \$50 and shall accompany the annual application.

# SECTION 19 VARIANCES

The Board of Health may vary any provision of these regulations 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 standards and Department of Public Health Regulations, and provided further, such variance may be granted only after notice is given to all affected occupants and after a hearing is held.

# SECTION 20 ENFORCEMENT AND PENALTIES

# 20.1 Criminal Complaint

Whoever violates any provision of these rules and regulations may be penalized by complaint brought in the District Court. Each day on which a violation exists shall be deemed to be a separate offense.

# 20.2 Non-criminal Disposition

Whoever violates any provision of these rules and regulations may be penalized by a non-criminal complaint in the Woburn District Court pursuant to the provisions of MGL Chapter 40 section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalties for violations are noted in each section of these regulations.

# SECTION 21 SEVERABILITY

In the event any section, subsection or provisions of the regulations are held to be invalid, such invalidity shall not affect the validity of any other section, subsection or provision thereof.

# SECTION 22 FEE SCHEDULE

- **22.1** Fees are not prorated.
- 22.2 All permit and license fees are issued on an annual basis with an expiration date of December 31 unless otherwise noted by state statute or regulation.

_	<u>Fee</u>
ANIMALS – Effective July 1st	
Animals: Birds, Fowl (maximum 24)	\$10.00
Animals: Cattle, Cows, Horses, Sheep, Goats (each)	\$10.00
Animals: Pigeons (maximum 14)	\$10.00
Animals: Pigs (maximum 3)	\$10.00
Animals: Stable (for 5 or more horses)	\$40.00
BODY ART	
Body Art: Initial Application	\$500.00
Body Art: Licensed Artist	\$100.00
Body Art: Establishment	\$200.00
DEATH	
Burial Permit – per permit	\$15.00
Funeral Director (expires April 30)	\$50.00

DISPOSAL	No Groups or Individuals are Exempt from Fees
Disposal Works Construction Permit for Septic	\$50.00
Disposal Works Installer	\$50.00
Septic Abandonment	\$50.00
Portable Toilet (Per Unit)	\$25.00
Transporter of Garbage, Offal or Other Offensive Sub	\$150.00
Dumpster (Less than 2 yards)	\$0.00
Dumpster (More than 2 yards)	\$50.00
Dumpster (Recycling Materials Only)	\$0.00
Dumpster (Temporary, 90-Days)	\$40.00

FOOD**  Plan Review: Minor Renovation or Residential Kitchen Plan Review: New Business or Extensive Renovation Residential Kitchen: Initial Application Residential Kitchen (including B&B with Continental Breakfast)	**Waived for Non-Profit Organizations \$50.00 \$150.00 \$50.00 \$25.00
Food service: 0-50 seats	\$100.00
Food Service: 51-100 seats	\$150.00
Food Service: more than 100 seats	\$200.00
Food Service: Food Establishment Plus Catering	add \$25 to Food Establishment Permit Fee
Food Service: Catering Only Establishment	\$100.00
Food Service: Frozen Dessert	\$40.00
Food Service: Incidental	\$25
Food Service: Non Profit	\$0.00
Food Service: Temporary	\$25.00
Food Service: Seasonal	\$50 plus \$25 for Each Additional Unit
Food Service: Mobile	\$75 plus \$25 for Each Additional Mobile Unit
Farmers' Market (Seasonal)	\$0.00
Retail Food: 0-9,000 square feet	\$100.00

Retail Food: 9,001-30,000 square feet \$150.00
Retail Food: more than 30,000 square feet \$350.00
Retail Food: Incidental \$25.00

<<When an establishment does both food service and retail food, there will be one fee, whichever is the greater.>>

ICE RINK

Ice Rink \$50.00

**LATE FEE** 

Late Fee for any Permit \$50/day

**LODGING** 

Lodging: hotel, motel, B&B, rooming \$8/Room, Min \$24/Max \$160

**RECREATIONAL CAMP** 

Recreational Camp \$10.00

**SWIMMING POOLS** 

Swimming Pool/Special Purpose - outdoor \$75.00 Swimming Pool/Special Purpose - indoor \$150.00

**TANNING – Effective July 1st** 

Tanning est. initial application \$100 + \$25/bed or booth Tanning est. annual fee \$25/bed or booth

**TOBACCO** 

Sale of tobacco products \$200.00 Tobacco: Smoke Shop \$200.00

**WELL** 

Well construction permit \$100.00

**22.3** This regulation takes effect May 1, 2012

Voted 1/1997 Revised 6/2000 Revised 2/2001 Voted 2/8/2001 Effective date 7/1/2001 Voted 8/14/2003 Effective 7/1/2004 Number 14 effective 10/1/2003 Revised 4/14/2005 Effective 7/1/2005 Legal notice 3/7/2012 Public hearing 3/15/2012 Board of Health vote 3/15/2012 Copy sent to MassDEP 3/21/2012 Legal notice 3/26/2012 Effective date 5/1/2012

22.4 Sealer of Weights and Measures Fee Schedule

**DEVICE:** 

BALANCES AND SCALES Over 10,000 lbs

\$150.00 \*

5,000 to 10,000 lbs 1,000 to 5,000 lbs	100.00 75.00 *
100 to 1,000 lbs	50.00 *
>10 to <100 lbs	30.00 *
10 lbs or less	15.00 *
WEIGHTS	
Avoirdupois (each)	2.00 *
Metric (each)	2.00 *
Apothecary (each)	2.00 *
Troy (each)	2.00 *
CAPACITY MEASURES	
Liquid	20.00 *
LIQUID MEASURING METER	
Inlet ½" or less (oil, grease)	20.00 *
Inlet >1/2" to 1" (gasoline)	25.00 *
More than 1" (vehicle tank pump	
or gravity, bulk storage)	50.00
OTHER DEVICES	
Taxi meters	25.00 *
Machine for determining linear	
or area measurement	25.00 *
Can or bottle return machine	25.00 *
Self-service coin counter	25.00 *
LINEAR MEASURE	
Yardstick	25.00 *
Tape Measure	25.00 *
<u>MISCELLANEOUS</u>	
Adjusting repair or use of	
special facilities	30.00 per hour
Return visit	10.00
Minimum charge	10.00
ELECTRONIC SCANNERS	
1-3 Cash registers/computer terminals	75.00
4-11 Cash registers/computer terminals	200.00 *
11+ Cash registers/computer terminals	350.00 *

## **SECTION 23**

#### **BODY ART ESTABLISHMENTS AND PRACTITIONERS**

#### 23.1 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 of Reading passes these rules and regulations for the practice of body art in the Town of Reading as part of our mission to protect the health, safety and welfare of the public.

#### 23.2 Authority

These regulations are promulgated under the authority granted to the Board of Health under Massachusetts General Law 111, section 31.

## 23.3 Definitions

<u>Aftercare</u> 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.

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

<u>Autoclave</u> means an apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.

<u>Autoclaving</u> 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 (PSI) at a temperature of 270 degrees Fahrenheit.

<u>Bloodborne Pathogens Standard</u> means OSHA Guidelines contained in 29 CFR 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 in towns where there is no Board of Health.

**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, whether public or private, where the practices of body art are performed, whether or not for profit.

<u>Body Art Practitioner or Practitioner</u> means a specifically identified individual who has been granted a permit by the Board to perform body art in an establishment that has been granted a permit by the Board.

<u>Body Piercing</u> 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.

<u>Cleaning Area</u> 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.

<u>Contaminated Waste</u> 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 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.

<u>Cosmetic Tattooing</u> 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.

<u>Disinfectant</u> means a product registered as a disinfectant by the U.S. Environmental Protection Agency (EPA).

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

**<u>Ear Piercing</u>** means the puncturing of the lobe of the ear with presterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.

<u>Equipment</u> 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 parental contact with the blood or bodily fluids of another person or contact with of an eye, mouth or other mucous membrane, non-intact skin or parental contact with other potentially infectious matter.

<u>Hand Sink</u> 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 110°-130°F.

<u>Instruments Used for Body Art</u> 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.

<u>Invasive</u> means entry into the client's body 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.

<u>Jewelry</u> 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.

<u>Mobile Body Art Establishment</u> 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.

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

<u>Permit</u> means Board approval in writing to either (1) operate a body art establishment or (2) operate as a body art practitioner within a body art establishment. Board 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's jurisdiction.

<u>Person</u> 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.

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

<u>Procedure Surface</u> 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.

<u>Scarification</u> 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.

<u>Sharps Container</u> means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal that is labeled with the International Biohazard Symbol.

<u>Single Use Items</u> 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.

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

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

<u>Tattooing</u> 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.

<u>Three Dimensional "3D" Body Art or Beading or Implantation</u> 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.

<u>Ultrasonic Cleaning Unit</u> means a unit approved by the Board, 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.

<u>Universal Precautions</u> 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, Vol.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, Vol.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.

#### 23.4 Exemptions

- **23.4.1** Physicians licensed in accordance with MGL Chapter 112 Section 2 who perform body art procedures as part of patient treatment are exempt from these regulations.
- **23.4.2** Individuals who pierce only the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system are exempt from these regulations.

#### 23.5 Restrictions

- **23.5.1** No tattooing, piercing of genitalia, branding or scarification shall be performed on a person under the age of 18.
- **23.5.2** 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.
- **23.5.3** No body art shall be performed upon an animal.
- 23.5.4 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 piercing in any area from the corona glandis to the pubic bone; so called "deep" piercing of the scrotom meaning piercing through the scrotum, or "transcrotal" piercing; so called "deep" piercing of the vagina.
- **23.5.5** 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

## 23.6 Operation of Body Art Establishments

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

#### 23.6.1 Physical Plant

- **a** Walls, floors, ceilings and procedure surfaces shall be smooth, durable, and 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 divider 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, 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 (GFCI) 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 pints, shall not be required to provide a separate toilet room within such body art establishment if Board-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 142 Code of Massachusetts Regulation 248, 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.
- I 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.

## 23.6.2 Requirements for Single Use Items Including Inks, Dyes and Pigments

- 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.

#### 23.6.3 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. 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 documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three (3) years and made available to the Board 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.

## **23.6.4** Posting Requirements

- **a** A Disclosure Statement, a model of which shall be available from the Board. A Disclosure Statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures.
- **b** An Emergency Plan, including:
  - **a** a plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency;
  - **b** a telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and
  - **c** a sign at or adjacent to the telephone indicating the correct emergency telephone numbers.
- **c** An occupancy and use permit as issued by the local building official.
- **d** A current establishment permit.

Community Services

Health

e Each practitioner's permit.

## 23.6.5 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 upon request:

- **a** Establishment information, which shall include:
  - 1 establishment name;
  - 2 hours of operation;
  - 3 owner's name and address
  - 4 a complete description of all body art procedures performed;
  - 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;

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

- 6 copies of waste hauler manifests
- 7 copies of commercial biological monitoring tests
- 8 Exposure Incident Report (kept permanently)
- 9 a copy of these regulations
- **b** Employee information, which shall include:
  - 1 full legal names and exact duties;
  - 2 date of birth;
  - 3 home address:
  - 4 home/work phone numbers;
  - 5 identification photograph;
  - 6 dates of employment'
  - 7 Hepatitis B vaccination status or declination notification; and
  - 8 Training records
- **c** Client Information, which shall include:
  - 1 name;
  - 2 age and valid photo identification;
  - 3 address of the client;
  - 4 date of the procedure;
  - 5 name of the practitioner who performed the procedure(s);
  - **6** description of procedures(s) performed and the location on the body;
  - 7 a signed consent form as specified by 23.7.4(B); and
  - **8** 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 for review so as to meet all of the requirements of OSHA regulations, to include, but not limited to, 29 Code of Federal Regulation 1910.1030 OSHA Bloodborne Pathogens Standards 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 upon request.

e No person shall establish or operate a Mobile or Temporary Body Art Establishment.

# 23.7 Standards of Practice

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

- **23.7.1** A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S. Centers for Disease Control and Prevention.
- **23.7.2** A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.
- **23.7.3** Practitioners who use ear-piercing systems must conform to the manufacturer's 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.
- **23.7.4** Health History and Client Informed Consent. 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:
    - 1 history of diabetes;
    - 2 history of hemophilia (bleeding);
    - 3 history of skin diseases, skin lesions, or skin sensitivities to soap, disinfectants etc.;
    - 4 history of allergies or adverse reactions to pigments, dyes or other sensitivities;
    - 5 history of epilepsy, seizures, fainting or narcolepsy;
    - 6 use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and
    - 7 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 section 23.7.9.2.
- 23.7.5 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.
- 23.7.6 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 section 23.7.5 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.
- **23.7.7** 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.
- **23.7.8** 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.
- **23.7.9** 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.
  - **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.
- **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.
- 23.7.9.1 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 content. The applicator or gauze shall be used once and then discarded.
- 23.7.9.2 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;
  - **b** to consult a health care provider for:
    - 1 unexpected redness, tenderness or swelling at the site of the body art procedure'
    - 2 any rash;
    - 3 unexpected drainage at or from the site of the body art procedure; or
    - 4 a fever within 24 hours of the body art procedure;
  - **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.

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

# 23.8 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:

- 1 A copy of the application and consent form for body art activity completed by any client or minor client involved in the exposure incident;
- 2 A full description of the exposure incident, including the portion of the body involved therein;
- 3 Instrument(s) or other equipment implicated;
- **4** A copy of body art practitioner license of the involved body art practitioner;
- **5** Date and time of exposure:
- 6 A copy of any medical history released to the body art establishment or body art practitioner; and
- 7 Information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

#### 23.9 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 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;
- **b** the name and location of the body art establishment involved;
- **c** the nature of the injury, infection complication or disease;
- **d** the name and address of the affected client's health care provider, if any;
- **e** any other information considered relevant to the situation.

#### 23.10 Complaints

- The Board shall investigate complaints received about an establishment or practitioner's practices or acts, which may violate any provision of the Board's regulations.
- **b** If the Board finds that an investigation is not required because the alleged act or practice is not in violation of the Board's regulations, then the Board shall notify the complainant of this finding and the reasons on which it is based.
- **c** If the Board finds that an investigation is required, because the alleged act or practice may be in violation of the Board's regulations, the Board shall investigate and if a finding is made that the act or practice is in violation of the Board's regulations, then the Board shall apply whatever enforcement action is appropriate to remedy the situation and shall notify the complainant of its action in this manner.

# 23.11 Application for Body Art Establishment Permit

- a No person may operate a body art establishment except with a valid permit from the Board.
- **b** Applications for a permit shall be made on forms prescribed by and available from the Board. 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.
- **d** The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:
  - 1 Name, address and telephone number of:
    - **a** the body art establishment
    - **b** the operator of the establishment; and
    - **c** the body art practitioner(s) working at the establishment;
  - 2 The manufacturer, model number, model year and serial number, where applicable, of the autoclave used in the establishment:
  - A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board's body art regulations;
  - 4 A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process; and,
  - **5** Exposure Report Plan
  - 6 Such additional information as the Board may reasonably require.
- e The annual fee for the Body Art Establishment Permit shall be \$1,500.
- **f** A permit for a body art establishment shall not be transferable from one place or person to another.

#### 23.12 Application for Body Art Practitioner Permit

- 23.12.1 No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board. The Board shall set a reasonable fee for such permits.
- **23.12.2** A practitioner shall be a minimum of 18 years of age.
- 23.12.3 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.
- **23.12.4** Application for a practitioner permit shall include:
  - 1 name:
  - 2 date of birth;
  - 3 residence address;
  - 4 mailing address;
  - 5 phone number
  - 6 place(s) of employment as a practitioner; and
  - 7 training and/or experience as set out in (E) below.

#### 23.12.5 Practitioner Training and Experience

a In reviewing an application for a practitioner permit, the Board 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 and, at a minimum, shall include the following:
  - 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
  - Current certification in First Aid and cardiopulmonary resuscitation (CPR). Examples of courses approved by the Board include "Preventing Disease Transmission" (American Red Cross0 and "Bloodborne Pathogen Training" (U.S. OSHA). Training/courses provided by professional body art organizations or associations by equipment manufacturers may also be submitted to the Board for approval.
- **c** The applicant for a body piercing practitioner permit shall provide documentation, acceptable to the Board, that s/he 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, that s/he 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 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 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.
- **23.12.6** A practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations.

## 23.13 Grounds for Suspension, Denial, Revocation or Refusal to Renew Permit

- 23.13.1 The Board 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:
  - any actions which would indicate that the health or safety of the public would be at risk;
  - **b** fraud, deceit or misrepresentation in obtaining a permit, or its renewal:
  - c criminal conduct which the Board 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 contendre or an admission of sufficient facts:
  - **d** any present or past violation of the Board's regulations governing the practice of body art;
  - **e** practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
  - f being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
  - **g** knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;
  - h continuing to practice while his/her permit is lapsed, suspended or revoked; and
  - 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's regulations.
  - j Other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice body art;

- 23.13.2 The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board 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's regulations. The Board 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 Section 15.
  - **a** Applicants denied a permit may reapply at any time after denial.

## 23.14 Grounds for Suspension of Permit

The Board 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 determines that an establishment and/or 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.

## 23.15 Procedure for Hearings

The owner of the establishment or practitioner shall be given written notice of the Board'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 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 Section 13, 1 hearing shall be scheduled no later than 21 days from the date of the suspension.

# 23.16 Severability

If any provision contained in the regulations is deemed invalid for any reason, it shall be severed and shall not affect the validity of the remaining provisions.

## 23.17 Fine for Violation

The fine for a violation of any provision of these Rules and Regulations shall be \$50 per offense. Each day that a violation continues shall be deemed to be a separate offense.

## 23.18 Non-criminal Disposition

In accordance with MGL chapter 40, section 21D and Town of Reading Board of Health whoever violates any provision of these Rules and Regulations may be penalized by non-criminal disposition.

# 23.19 Effective Date

These rules and regulations shall be effective as of March 8, 2001.

## SECTION 24 GREASE TRAPS

#### **Purpose**

The purpose of this regulation is to protect residents, businesses and the environment within the Town of Reading from blockages of the Town's Sanitary Sewer caused by grease discharged from food service establishments located in the Town.

#### 24.1 Definitions

<u>Permitted Offal Hauler:</u> means any Offal Hauler which is issued a Permit to Haul Offal by the Reading Health Division

<u>Food Establishment:</u> is defined as any establishment issued a Permit to Operate a Food Establishment by the Reading Health Division under FC 1-201.10 (N) (31)

<u>Grease Trap:</u> also referred to as a grease interceptor by the State Plumbing Code, is a device designed to remove dissolved and/or suspended grease and waste oil from wastewater

<u>Sewer pipe:</u> means any building or town sanitary sewer piping including but not limited to interior and exterior building sanitary sewer piping, any main, or lateral sanitary sewer piping regardless whether it is located on private or municipal land

<u>Waste grease or oil:</u> means waste oil or grease generated by a Food Service Establishment during the cooling process

## 24.2 Grease trap installation

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

## 24.3 Food establishment or related business

In every case where a food establishment is preparing or selling food, or other business in which grease is a by-product of production, a suitable internal or external grease trap conforming to applicable building and plumbing codes must be installed.

#### 24.4 New or remodeled food establishments

New or remodeled establishments that prepare food with a seating capacity in excess of 150 seats must install an external grease trap with a 1500 gallon capacity.

#### 24.5 Grease trap maintenance

Internal grease traps must be cleaned monthly. Exceptions may be granted on a case by case basis as determined by the Board of Health. Internal grease traps must be cleaned by the owner, operator, or permitted Offal Hauler, external grease traps must be pumped by a permitted Offal Hauler every six months. Service records must be maintained on a monthly basis in a binder readily accessible to Board of Health inspectors and agents.

# 24.6 Waste grease and oil storage and removal

Waste grease oil shall not be disposed by the sanitary sewer. All waste oil and grease must be collected in an appropriate container provided by an approved vendor, stored in an approved location on premise. The container must be stored on an impervious surface such as concrete or pavement. Containers must be capable of being sealed to prevent entry of precipitation or stored in a sheltered area. All waste and grease oil shall be removed by a Permitted Offal Hauler; said material should be removed from the premises monthly. While being stored all grease containers and surrounding areas must be kept in a sanitary condition at all times.

#### 24.7 ENFORCEMENT AND INSPECTION

- **24.7.1** The Board of Health shall enforce the provisions of this regulation. Any Agent of the Board of Health may, according to law, enter the premises of any food establishment at any reasonable time to inspect for compliance.
- 24.7.2 All records pertaining to purchasing, storage and removal of grease related products and waste products shall be retained by the owner or operator on premise for no less than two years.
- 24.7.3 Upon request by an agent of the Board of Health, an owner or operator shall furnish all information required to enforce and monitor compliance with this Regulation, including but not limited to, a complete inventory of all food and maintenance related products that are purchased by the establishment, receipts from Permitted Offal Haulers retained to remove waste grease or oil from the establishment.
- **24.7.4** The Board of Health may, after providing opportunity for a hearing, order the suspension, or the revocation of a Permit to Operate a Food Establishment or the termination of one or more particular operations for:
  - 1 Serious or repeated violations of the regulation
  - 2 Interference with the Board of Health in the performance of its duty
  - 3 For keeping or submitting any misleading or false records or documents required by the regulation

#### 24.8 Violation

Written notice of any violation of this Regulation shall be given to the owner and/or operator by the Health Administrator or Health Inspector, specifying the nature, time and date of the violation, any preventative measure required to avoid future violations and a correction time frame.

#### 24.9 Variance

Any requests for a variance from the provisions of this regulation must be presented in writing. The reasons for the request must be clear and specific. To consider variances regarding the size of grease trap, the application must include kitchen flow calculations prepared by a Massachusetts licensed plumber supporting an alternate size.

#### 24.10 Hearing

The person or persons, to whom any order or notice issued pursuant to this regulation has been directed, may request a hearing before the Board of Health. Such request shall be in writing and shall be filed in the office of the Board of Health within ten days after receipt of the order or notice.

# 24.11 Severability

Each provision of this Regulation 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.

# SECTION 25 ETS REGULATION

Prohibiting Smoking in Workplaces and Public Places

#### SECTION 1 PURPOSE

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

#### SECTION 2 AUTHORITY

This regulation is promulgated under the authority granted to the Town of Reading Board of Health pursuant to MGL Chapter 111 Section 31 that "[b]oards of health may make reasonable health regulations. "It is also promulgated pursuant to MGL Chapter 270 Section 22j 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."

#### SECTION 3 DEFINITIONS

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

<u>Compensation</u>: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

**E-<u>Cigarette</u>**: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid, or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**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 minimus 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 of Reading.

**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.

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

Retail Tobacco Store: an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Town of Reading Board of Health.

<u>Smoking (or smoke):</u> the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

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

<u>Workplace:</u> 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 MGL Chapter 270 Section 22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with MGL Chapter 270 Section 22 and 105 CMR 661, the definition contained in this regulation shall control.

#### SECTION 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.
- **b** Smoking is hereby prohibited in the Town of Reading in accordance with MGL Chapter 270 Section 22 (commonly known as the "Smoke-free Workplace Law).
- **c** The use of e-cigarettes is prohibited wherever smoking is prohibited per MGL Chapter 270 Section 22 and Section 4c of this regulation.

# SECTION 5 ENFORCEMENT

- 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 three (3) years of the date of the first offense; and
  - **c** \$300 for a third or subsequent violation occurring within three (3) years of the second violation.
- 2 Each calendar day on which a violation occurs shall be considered a separate offense.
- 3 This regulation shall be enforced by the Board of Health and its designees.
- Violations of Section 4(b) 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.
- Violations of Section 4(c) and 4(d) 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.
- 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 the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- 7 Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

#### SECTION 6 SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

# SECTION 7 CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation 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.

# SECTION 8 EFFECTIVE DATE

This regulation shall be effective as of July 1, 2012.