



**Town of Foxborough
Board of Health Regulations**

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ARTICLE CREATING THE BOARD OF HEALTH

§ 35-1 Elected officials pursuant to Massachusetts General Laws

The Town, at its Annual Meeting on the first Monday of May, shall, in every year when the term of office of any incumbent expires, and except when other provision is made by statute, choose by official ballot from its registered voters the following Town offices for the following terms of office:

G. Three members of the Board of Health, each for the term of three years, of which one shall be elected at each Annual Meeting.

APPOINTMENT OF HEALTH AGENT

§ A289-1 An Act Providing for a Selectmen – Town Manager Form of Government in the Town of Foxborough

(4) Manage and direct the daily reporting and supervision of the following town departments: building commission, department of health, council on aging, police, civil defense, animal control officer, gas inspector, plumbing inspector, wiring inspector and weights and measures inspector, recreation, highway, tree and park, finance, finance director, collector, treasurer, accounting, veterans, town counsel, other committees appointed by and under the jurisdiction of the BOS; provided, however, that the listing of the department of health herein shall not affect the subject matter or policy jurisdiction or authority of the board of health of the town of Foxborough except as to the transfer herein established to the town manager of the responsibility of appointment, supervision, and removal of health department staff including, but not limited to, the health agent, secretary/environmental specialist and sanitarians. The appointment and removal of the town finance director shall remain with the BOS. The town manager shall manage and direct the daily reporting and supervision of the water and sewer department employees. (Amended January 19, 2012; Acts 2012, Chapter 11, Sections 1and

FEE SCHEDULE

License period is from January 1st thru December 31st unless otherwise noted.

PUBLIC LODGING PLACES

Trailer Coach Park, Manufactured Housing Community, Cabins	\$ 10
Hotel/Motel Permit and Inspection Fee:	
0 - 50 units	\$ 210
51- 200 units	\$ 310
201- 500 units	\$ 510
501-1,000 units	\$ 810
1,001+ units	\$ 1,010
Other Inspectional Fees:	
Conditions deemed to endanger, or to impair health and safety (410.750) *	\$ 150
Subsequent Re-inspections for (410.750) *	\$ 150
<i>*These fees must be paid prior to scheduling the Board of Health re-inspection</i>	

TITLE 5

Septic Hauler Permits:	
Truck greater than 1,000 gallons	\$ 100/each
Truck less than 1,000 gallons	\$ 50/each
Non-pump Transport Trucks	\$ 50/each
Septic Installers License	\$ 100
Disposal Works Application (Construction or Repair – Multiple Component)	\$ 200
Disposal Works Application (Repair - Single Component)	\$ 100
Abandonment Application (Any System or Component)	\$ 100
Percolation Test	\$ 200
Re-percolation Test	\$ 100
Title 5 Inspection Report Review Fee	\$ 25/report
Innovative Technology/Non-Conventional Systems Review	\$ 25
<u>Fine:</u> Installation of septic system without an approved/stamped design plan on work site	\$ 100

FATS, OILS, AND GREASE (FOG)

FOG Plan Review	\$ 50
FOG Active Grease Trap	\$ 25/each
FOG Permit (1 - 3 passive grease traps/interceptors)	\$ 50/each
FOG Permit (Over 3 passive grease traps/interceptors)	\$ 200
FOG Re-inspection Fee	\$ 50

ADDITIONAL PERMIT FEES

Animal & Fowl	\$ 10
Body Art Establishment	\$ 500
Body Art Practitioner	\$ 100
Demolition Inspection	\$ 50
Family Style Campground (per individual campsite, max \$1,010)	\$ 10
Funeral Directors License (License period: 5/1-4/30)	\$ 25
Ice Rink w/combustible equipment	\$ 100
Private Well	\$ 100
Recreational Camps for Children	\$ 250
Regulated Biological Agent	\$ 1,000
Swimming Pools, Special Purpose Pools, and Spas (public or semi-public)	\$ 100/each
Tanning Salon	\$ 100

Tobacco and Nicotine Delivery Product Sales:	\$ 250
Trash Hauler - Trash trucks and all roll off trucks	\$ 100/each
Underground Storage Tank Removal	\$ 200/each

FOOD SERVICE ESTABLISHMENTS

Food Establishment Permit Fee:	
1-100 seats	\$ 100
101-200 seats	\$ 250
201-500 seats	\$ 500
501-1000 seats	\$ 800
1001+ seats	\$1,000
Bakery	\$ 100
Catering	\$ 100
Concession Stand	\$ 350
Frozen dessert, manufacturer of	\$ 50
Limited Food and/or Retail Food	\$ 50
Mobile Food*	\$ 150
Ice Cream Truck Mobile Vendor	\$ 100
Residential Kitchen	\$ 50
Supermarket	\$ 800
Temporary Food Service Permit (maximum 14 days) *	\$ 50
Pantry Kitchen	\$ 250
Vending Kitchen	\$ 250
HACCP Inspection/Annual Review Fee/Variance	\$ 50

**The Board of Health/Agents reserves the right to deny the issuance of any permit if an application is submitted less than 7 days prior to the scheduled event.*

**Any non-profit organization that benefits the Town of Foxborough or its residents and has been solvent for at least 3 years may be eligible for reduced payment. Reduced fees for non-profit organizations shall be at the discretion of the Director of Public Health.*

PLAN REVIEW OR SITE INSPECTION FEES (All Categories) \$ 200

New Food Establishments, Motels/Hotels, Pools/Spas, Tanning, and/or other items requiring a plan review or site inspection.

(Mobile Food, Limited Food/Retail Food Establishments Plan Reviews - Under the discretion of the Director of Public Health)

HEARING NOTICE

Hearing notice fees will be the sole responsibility of the applicant.

INSPECTION FEES (All Categories Except Critical Housing) \$ 100

Subsequent follow-up inspection fee \$ 50

LATE FEES (All Categories) \$ 75

In accordance with local requirements, a late fee* will be charged if an application is submitted within 7 days of planned opening/event.

ANIMAL AND FOWL

Regulations Governing the Keeping of Animals and Fowl

Section 1 Authority

These Regulations are adopted under the authority of M.G.L. chapter 111, section 31, section 122 and section 155, as reasonable health regulations designed to protect and improve the health and quality of life of those who reside within the Town of Foxborough.

Section 2 Statement of Purpose

The purpose of this Regulation is to protect the public health, safety and welfare by establishing minimum standards relative to the keeping of animals and fowl, including and without limitation, the minimum standards relative to drainage, ventilation, size and character of stalls and other structures for the keeping of animals and fowl, bedding, the number of animals, and the storage and handling of manure.

Section 3 Definitions

Abutters: owners of abutting land or property within one hundred (100) feet of the applicant's property line. A person will only qualify as an abutter for the purpose of this regulation if they possess an ownership interest in the abutting land.

Accessory Structure: a structure subordinate to the principle building on the same lot and serving an animal related use.

Animal: all mammals and birds including but not limited to horses, ponies, donkeys, cattle, goats, sheep, swine, equines, llamas, alpacas, vicunas, poultry, pigeons, ostrich, emu, ratite, and livestock, which are kept or harbored as domesticated animals. Household pets shall be exempt under these regulations, such as: dogs, cats, rabbits up to six in number, rodents up to five in number, exotic birds, fish, reptiles, and amphibians. Dogs must be licensed according to provisions of Foxborough Bylaws and Massachusetts State Laws. Wild animals, exotic birds, fish, reptiles, and amphibians may be kept as pets subject to the licensing requirements of State Law (M.G.L. chapter 131, §23, 25 and 26A).

Animal Unit: for the purpose of permitting a given number of mature animals or fowl, the following shall be considered equivalent, and each will be regarded as a single animal unit.

Horse, donkey, mule, pony, llamas 1

Bovine	1
Goats, sheep (ovine), alpaca, vicuna, deer	1
Swine	1
Rabbits	7
Fowl	10
Chickens	10
Rooster	1
Pigeons	10

The Board of Health or agent may determine unit(s) to any animal not specifically listed above.

Applicant: one who applies for a permit to keep one (1) or more Animal Units and whose responsibility it is to maintain responsibility for such animals.

Board of Health or “the Board”: the Foxborough Board of Health or its authorized agent(s).

Building/Coop (see structure): a structure built, erected and framed of component structural parts, designed for the housing, shelter, enclosure and support of animals.

Corral: any pen, or enclosure for the confining of one or more animals.

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

Exotic: refers to an animal not native to this region and/or country that requires a state or federal permit to keep.

Facility: the total accommodations to be used for the keeping or housing and care of one or more animals, including but not limited to a barn, stable, pen, coop, or loft.

Fowl: members of the bird family kept for food, show, or hunted as game including but not limited to chickens, turkeys, pigeons, doves, capons, hens, pheasants, guinea fowl, ducks, roosters, swans, and geese other than wild species.

Household Pets: animals that are normally kept inside an owner’s residential dwelling or commercial building including but not limited to dogs, cats ferrets, pot-bellied pigs, fish, domesticated or exotic birds, certain reptiles and guinea pigs, hamsters, and mice.

Keeping of Animals and Fowl Permit: refers to a permit issued for the keeping or housing of one (1) or more Animal Units in accordance with the provisions of this regulation.

Lot: a parcel of land, which is or may be occupied by a building and accessory structure, including open spaces required under this Article. “Lot” includes the words “plot” or “parcel.”

Manure Management Plan (MMP): is a plan for the handling of manure but shall not apply to the normal deposition of wastes by animals in pastures.

Noise: sound of sufficient intensity and/or duration as to cause a nuisance, be injurious to or, because of current information, potentially injurious to human health, or unreasonably interfere with the comfortable enjoyment of life and property. This definition shall be subject to M.G.L. chapter 111, § 125A.

Nuisance: shall mean any condition including, but not limited to, noise, offensive odor, attraction or breeding of insects, an environment supporting growth of vermin, presence of rodents, or any other condition having public health or environmental significance. This definition shall be subject to M.G.L. chapter 111 §125A.

Owner: every person who alone or jointly with one or more other persons has legal title to any lot, building, structure, dwelling or dwelling unit.

Pen: a structure for the keeping or housing of one or more animals.

Pest Management Plan (PMP): is a plan, which adequately defines the measures that shall be taken by the owner to minimize the presence of rodents and insects.

Pigeons: member of the Columbidae family of birds that include 'racing', 'fancy', and 'sporting' pigeons.

Poultry: refers to domesticated or semi-domesticated birds including chickens and avian species, ordinarily kept for food or eggs.

Rodentia: includes domestic rats, mice, guinea pigs, hamsters, ferrets, chinchillas, and other members of the family *Rodentia*.

Runoff: water from natural or unnatural sources that flows over the surface of the ground.

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

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

Structure: an assembly of materials forming a construction for use including but not limited to open sheds, shelters, stables, and coops.

Town: means the Town of Foxborough and its officers, agents and employees including the health department.

Unsanitary Conditions: the state of being or condition of any facility which, in the judgment of the Board of Health, are conducive to or results in, breeding of flies, creation of offensive odors, rodent infestation, liquid effluent, contaminated runoff,

and/or noise, in such concentrations and/or such duration as to cause a nuisance, be injurious, or that may be considered potentially injurious to human health.

Usable Area: land area suitable for the raising of animals such as pastures, fields, wooded uplands. This area does not include dwellings, or any other area(s) as may be restricted by town, state, or federal regulations.

Vermin: various types of insects, bugs, and/or rodents or other nuisance animals determined on case-by-case basis.

Watercourse: any river, stream, drain, pond, lake, and tributaries thereto or other body of water drained by a stream, dry ditch, or other depression that will permit drainage water to empty into any waters of the Commonwealth.

Wetlands: land area or surface area so defined by Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 and regulations promulgated pursuant thereto at 310 CMR 10.00 or pursuant to Section 404 of the Federal Water Pollution Control Act, U.S.C. 1341.

Section 4 General Requirements

The useable area for calculating the number of animals allowed on a lot shall not be limited to upland area only. Lot dimensions may be considered by the Board of Health when determining the total number of animals allowed on a parcel or parcels of land. The minimum lot area shall be one (1) acre of useable land and may be stocked according to the chart in 4.1.1. Additional animals up to a total of four (4) shall not be permitted unless the lot contains a minimum of two thirds (2/3) of an acre per each additional animal number per the stocking chart depicted.

Stocking Rate/Acre

	1 Acre	+2/3 Acre	+2/3 Acre	+2/3 Acre	3+ Acre
Horse, Donkey, Mule, Pony, Llama	2	2	NA	BOH determination needed	BOH determination needed
Bovine	1	1	1	1	BOH determination needed
Goat, Sheep, Alpaca, Vicuna, Deer	2	2	NA	BOH determination needed	BOH determination needed
Swine	2	2	NA	BOH determination needed	BOH determination needed

More than four (4) animals or numbers exceeding the above limitations may be permitted, provided that the general provisions of these Regulations are satisfied, and that the granting of such permit and any necessary variance, will not adversely affect the public health, safety, and welfare.

A building, coop or stable shall be located no less than:

1. 50 feet from a side lot line or rear lot line for livestock.
2. 100 feet from a side lot line or rear lot line for swine.
3. 100 feet from any well used as a public drinking water supply.

Section 4 of these Regulations (General Requirements) shall not apply to parcels of 5 acres or more in area.

Section 5 Permit and Application Requirements

A permit is required for anyone keeping one (1) Animal Unit as defined in this regulation. At time of the application, the applicant shall provide the Board of Health with the following documents:

A. Application(s) for a permit for the purpose of keeping animals shall be submitted on a form supplied by the Board of Health for each location where animals are kept in the Town. Such application shall be accompanied by the following information:

1. Full name, address, and telephone number of the applicant
2. Location - street address of the premises to be used.
3. Number and species of animals to be kept. No animals more than the specified number on initial application shall be kept. The addition of any new Animal Units requires an applicant to make application for a modification of said permit with the Board of Health.
4. Applicant shall submit to the Board of Health a copy of all required immunizations upon request.
5. A site plan, acceptable to the Board, showing the lot borders with dimensions of area where the animals will be kept and used by animals, location of accessory structure(s), principal structure(s), abutting structure(s), confining fences and barriers, any wetlands located on the lot of the housing for the one (1) or more animals, location of any septic system on the premises, location of any private wells within the perimeter of the area where the one (1) or more animals will be kept or within one hundred (100) feet of the perimeter, showing location of manure containers, and drainage details. Also, the plan shall show the locations of all lots and with the houses (dwellings) shown thereon within 400 feet of the proposed area for keeping of the animals.
6. Written plans for the management and disposal of manure, storage of feed, and control of flies and vermin.
7. Name of the principal veterinarian for each animal.

- B. The initial application must be signed or approved by the Foxborough Building Commissioner to indicate compliance with all applicable set-back and zoning requirements.
- C. The initial application must be signed or approved by the Foxborough Conservation Agent to indicate compliance and protection of wetland resources.
- D. For the initial application for a permit to keep animals after the effective date of this regulation, the applicant shall notify abutters within 100 feet of the subject property by certified mail with return service or by written notification signed by the abutter indicating that they have been notified that an application has been filed at the Board of Health for a permit to keep animals and they have the right to appeal the issuance of a permit. A copy of the signed notifications received or sent to the abutters shall be provided to the Board.
- E. If a property abutter submits a permit appeal to the Health Department within 7 business days of receiving the notification, the Board of Health shall hold a public hearing on the initial permit application at the next regularly scheduled Board of Health meeting. Within forty-five (45) days after the close of the hearing, the Board shall issue a decision on the application.
- F. Fees for permits shall be determined by the Board of Health's fee schedule and shall be subject to annual review.
- G. Permits shall expire on December 31 of each year, unless sooner suspended or revoked by the Board of Health or agent, upon violation of any of the provisions of these regulations. Any permit holder must apply for a renewal of the permit at least forty-five (45) days prior to the expiration of said permit. Any changes from the previous permit shall be provided on the renewal application.
- H. Exotic and Wild animal(s) shall not be kept within the Town of Foxborough limits without expressed written approval of the Board of Health or its authorized agent and shall be in accordance of Massachusetts General Laws.
- I. No person shall propose or erect, remodel, occupy or use a stable, or accessory structure intended for the permanent housing of animals unless and until he/she has submitted an initial or revised plan to the Board of Health for review and the same has been approved.
- J. Permits are not transferable and shall be posted in a conspicuous area.
- K. An applicant must comply with all federal, state and local regulations and bylaws.

Applicants and permit holders are also subject to applicable provisions of the Foxborough Zoning By-laws. Approval from the Building Commissioner must be received to ensure that any proposed use subject to this regulation complies with zoning. Other state, local, and federal regulations may also apply and it is the responsibility of the applicant to demonstrate compliance with same. Issuance of a permit hereunder does not indicate compliance with other applicable regulations and laws.

Section 6 Facility Standards

All buildings, coops, stables, and other areas frequent by or for the livestock or fowl shall maintain the following standards:

- A. All buildings, coops, stables, and animal areas shall be constructed, and/or maintained in a clean and sanitary manner.
- B. The facility shall have a supply of fresh potable water available for drinking and cleaning purposes.
- C. A building, coop, or stable used to house animals shall be adequately ventilated to prevent odors. In addition, the building, coop, or stable shall provide suitable protection from the weather and must house an appropriate amount of food and water for the animals for which are cared for.
- D. Outdoor areas for animals shall be securely fenced to prevent the escape of animals there from. Animals at no time shall be allowed to roam unattended from the facility.
- E. All buildings, coops, stables, or structures for the housing of animals shall be maintained structurally sound, free from chronic moisture, and have adequate space to house the animals within.
- F. The facility shall be maintained in such a manner as to prevent the spread of infectious or contagious diseases and shall be kept in a clean and sanitary condition, free from decaying food, filth, feces, vermin infestation and stagnant water.
- G. All animal foods shall be stored within moisture-proof and vermin-proof containers except for hay.
- H. Dead animals shall be disposed of lawfully within a reasonable time, but in no event more than forty-eight hours (48) hours after death.
- I. The operator of the facility shall comply with all applicable provisions of M.G.L. c. 129 regarding Livestock Disease Control.

Section 7 Manure Management

The following are requirements for the keeping and maintenance of manure and fecal matter within a building, coop or stable. The permit holder shall implement a manure management plan (MMP) for a building, coop or stable. The MMP must be approved by the Board or its authorized agent at the time the permit is granted.

Drainage or liquid effluent containing urine, fecal matter and manure from any building, coop or stable shall not be discharged in runoff, or flow over the surface of the ground onto a neighboring property, public way, watercourse, or wetlands. Water including such drainage or liquid effluent, shall not become stagnant or collect or create a ponding effect upon said facility.

The owner and/or permit holder of the building, coop or stable shall provide for the sanitary storage and disposal of all waste, fecal matter, and manure other than the normal deposition of wastes by animals in pastures.

Manure and soiled bedding from buildings, coops and stables shall be stored and disposed of to minimize odors, breeding of flies, and the attraction of vermin. Manure from buildings, coops and stables shall be collected and kept in suitable containment area or receptacle at a single location. This location shall be chosen to maximize the distance from abutting properties and wetlands and with due consideration of the prevailing winds.

The following requirements shall apply to the use, accumulation and/or disposal of manure from buildings, coops, or stables:

- A. The accumulation, stock piling, and storage of manure from buildings, coops and stables is prohibited outside of the containment area or a receptacle.
- B. No manure storage area shall be closer than the distances shown to the components listed in the following table. The distances shown are minimum distances and may be increased with the Board's approval where required by conditions particular to the location.

Wetland -150' or as governed by M.G.L. Chapter 131, Section 40

Surface/subsurface drains -100'

Abutting dwellings - 100'

Side & rear lot lines - 25'

Public or private roadway - 50'

Tributary to a public water supply - 200' or as governed by M.G.L. Chapter 131, Section 40

Private water supply - 100'

Public water supply - 200'

However, no portion of a stable, corral, or manure storage area shall be located within the Zone 1 of a Public Water Supply.

- C. The dimensions and/or drainage conditions of any lot may, in the opinion of the Board or its authorized agent, require off-property disposal of manure from buildings, coops or stables. It shall be the responsibility of the owner and/or permit holder to dispose of manure in a safe and sanitary manner and not be allowed to accumulate more than the timeframe allowed under MMP on property or interior of an accessory structure.
- D. Subject to applicable law, the Board or its authorized agent may allow the composting of manure generated at a facility upon specific written Board approval.

Section 8 Pest Management

The owner and/or permit holder is responsible to implement a Pest Management Plan for the facility. This plan requires approval by the Board or its authorized agent. If in the opinion of the Board or Agent a rodent infestation exists, the owner and/or permit holder shall enter into a contract with a licensed pest control company to exterminate said property. Extermination shall be performed as deemed necessary by the pest control operator to meet the expectations of the Board of Health or its authorized agent.

Section 9 Keeping of Poultry

No rooster shall be allowed on a lot less than 2 acres, unless a permit is issued by the Board of Health.

Roosters must be kept cooped between the hours of 9:00PM and 7:00AM and efforts must be made to minimize crowing during these hours.

Coops shall be cleaned regularly to maintain sanitary conditions and thoroughly disinfected, when needed to control nuisance conditions.

Permits for poultry may be granted provided the site plan and manure/waste management plan demonstrate to the Board that, the applicable provisions of these Regulations have been met, and that the granting of such permit and any necessary variance, will not adversely affect the public health, safety, and welfare. This provision shall not apply to parcels of 5 acres or more in area.

Section 10 Keeping of Pigeons

All pigeons shall be confined to their coop except for limited periods necessary for exercise, training, and competition. At no time shall pigeons be allowed to perch or linger on buildings or on the property of others.

Coops shall be cleaned regularly to maintain sanitary conditions and thoroughly disinfected, when needed to control nuisance conditions.

Additional pigeons up to a total of one hundred (100) shall be permitted if the lot contains a minimum of twenty-five hundred (2,500) square feet per each additional twenty-five pigeons, the provisions of these Regulations have been met, and the granting of such permit and any necessary variance, will not adversely affect the public health, safety, and welfare. This provision shall not apply to parcels of 5 acres or more in area.

Section 11 Variance/Hearing

Any person whose application for a permit or permit renewal has been denied may request a hearing before the Board of Health by submitting a written request within seven (7) days of said denial. The Board of Health shall hear the request at the next available Board of Health Meeting date.

The Board of Health may, after a public hearing, grant a variance to the application of these regulations when, in its opinion, the enforcement thereof would do manifest injustice, and the applicant has demonstrated that the public health, safety and welfare will be adequately protected without strict application of provisions of these Regulations.

Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons. The request shall contain all the information needed to demonstrate to the Board that, despite the issuance of a variance, the public health, safety, and welfare will be adequately protected. The initial granting or denial of the variance shall be in writing, shall expire at the end of the calendar year, and shall contain a statement of the reasons for approving or denying the variance. A variance may be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has had an opportunity to be heard, except in the case of an emergency.

The health agent may renew variances in good standing or revoke a permit when they believe the housing of animals is creating a nuisance condition. Any permit revoked by the health agent may be appealed to the Board of Health. The Board may approve or rescind the decision of the health agent to continue granting, denying, or put conditions on the variance request.

These regulations shall not apply to household pets or animal units below the ones seen above. However, upon a documented nuisance condition by the Agent the Board may cause a lesser number of animals to be permitted. The Board may impose any of the above conditions to a lesser number of animals, to resolve the public nuisance or hazard to the health and welfare of the community.

Section 12 Compliance with Animal Health Requirements

It is required that all animals be immunized in accordance with the requirements of the US Department of Agriculture, Animal and Plant Health Inspection Service (USDA, APHIS) and the Massachusetts Department of Agricultural Resources, Bureau of Animal Health.

The feeding of garbage to swine or the other animals is not permitted without the obtaining of any permit required pursuant to M.G.L. c. 129, § 14B. This shall not apply to a person who feeds his own household garbage to a pig raised for such person's own use.

Owner must comply with conditions required to address an outbreak of communicable animal disease as determined by USDA, APHIS and/or the Massachusetts Department of Agriculture, Bureau of Animal Health.

Section 13 Suspension/Revocation of Permit

A permit granted under these Regulations may be suspended, revoked, or denied for cause by the Board of Health or its agent, provided that a hearing may be requested by the owner/applicant within 7 days' notice of the suspension, revocation, or denial of the permit. Notice shall be given to the owner/applicant via certified mail and sent to the address shown on the most recent permit application.

The following shall be grounds for an immediate emergency suspension or revocation of a permit to keep animals:

- a) An unsanitary condition which in the opinion of the Board of Health or its agent that is creating a hazard to the public's health, safety, and welfare.
- b) An infestation or harborage of insects, rodents, and wildlife at the property that endangers the health, safety, and welfare of the public.
- c) At any time, the owners/applicant's animals are subject to a zoonotic disease that is capable of infecting humans and may endanger public health. (i.e., avian flu, leptospirosis, rabies, swine flu, Yersinia pestis, or other disease considered dangerous by the Board)

- d) Failure of the owner/applicant to allow the Board of Health or its agent inspect within 14 days of a request.

Whenever the Board of Health or its agent has cause, due to an emergency condition noted above, the Board or its agent may without prior notice or hearing, issue an order stating the existence of the emergency condition exists and order that the permit be immediately be revoked, suspended, or modified as specified therein. The permit holder may request a hearing within seven (7) days after the service of the order and a hearing shall be granted as soon as practicable, provided however, that such a request for hearing shall not stay or in any way modify the terms of the emergency order.

Section 14 Enforcement/Penalties

The Board of Health, its agent(s), and/or the Town's Animal Control Officer shall investigate violations of these Regulations and may take such action that the Board deems necessary for the protection of the public health and the enforcement of these Regulations.

If an investigation reveals a violation of these regulations, the Board shall order the permit holder to comply with the violated provision(s) within fourteen (14) days or such other time as the Board deems necessary.

Any person who fails to comply with or violates the provisions of these Regulations shall be subject to a fine of fifty (\$50.00) dollars per day, per violation. Each violation of these Regulations shall be considered a separate offense.

The Board of Health or its agent may enforce through a non-criminal proceeding pursuant to the provisions of M.G.L. c. 40, § 21D. For each violation of the provisions outline above, the penalty shall be \$50.00 dollars, for each day a violation of the provisions continue shall constitute a separate offense. Nothing within shall, negate the Board of Health or its agent with filing in a court of competent jurisdiction to have a nuisance condition abated.

The Board of Health may deny, suspend, revoke, or refuse to renew a permit for failure to comply with any provision within these Regulations.

The person(s) who have had a permit denied, suspended, revoked, or renewal refused by the Board of Health, or its agent shall be ordered to remove all animals from the property within 30 days receipt of said notice.

The person(s) who have had a permit denied, suspended, revoked, or renewal refused by the Board of Health, or its agent shall not keep an animal unit lesser than the ones defined within, unless approved by the Board of Health.

The continuance of any violation of these Regulations beyond a date specified by the Board of Health or its agent shall be cause for revocation of permit and/or initiation of legal proceedings to eliminate said conditions.

Section 15 Right to a Hearing

Any person or persons aggrieved by a Board of Health order that has been served pursuant to any section of these Regulations may request a hearing before the Board of Health by filing a written petition with the Board within seven (7) days of receipt of said order.

Any person who believes that an Animal and Fowl Permit holder is causing a nuisance to their property, may request a hearing before the Board of Health. Upon receiving such hearing request, the health agent shall attempt to inspect said nuisance conditions to document nuisances and to order abatement of said conditions, if occurring.

Section 16 Applicability

The effective date of these Regulations is the date of their approval by a majority vote of the Board as stated below. These Regulations shall apply to all permit applications filed after that date.

A permit update shall be required for all new structures and/or facilities, any substantial expansion of existing structures and/or facilities, any substantial increase in the number of Animal Units and/or the intensity of the permitted use. As used herein, the term “substantial” means an increase of more than 25% in size of facility or structure and/or increase of more than 25% in total animal units.

In the event of transfer of ownership of a licensed property, the new owner must within thirty (30) days, apply for a new license and will be granted provisions established by previous owner relative to structures, animal type and numbers as contained in previous records on-file and as approved by the Board of Health.

Section 17 Severability

If any section, subsection, sentence, clause, phrase, or portion of these Regulations is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provisions and such holding shall not affect the validity of the remaining portions thereof. The provisions of these Regulations are hereby declared severable.

Section 18 Effective Date

Approved and in full effect this April 15, 2024.

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Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: March 1, 2010

Revision Date: April 8, 2024.

BIOLOGICAL SAFETY REGULATIONS

Section 1 Authority

This regulation is adopted pursuant to the authority granted to local Boards of Health under Massachusetts General Laws, Chapter 111, Section 31.

Section 2 Purpose

To safeguard the health and welfare of the residents of the Town of Foxborough, as well as the general public who visit Foxborough. The Board of Health (BOH) hereby promulgates this regulation governing the use of all Regulated Biological Agents, as defined herein, within the Town of Foxborough. The use of biological agents requiring Biosafety Level 4 (BSL-4) containment is not permitted in the Town of Foxborough.

Section 3 Applicability

These regulations shall apply to any institution involved in or in any way undertaking all types of research or manufacturing involving Biological Agents in the Town of Foxborough. All research or manufacturing involving Regulated Biological Agents, as defined below, in the Town of Foxborough shall be undertaken only in strict conformity with the most recent edition or version of the "NIH Guidelines", CDC's "Biosafety in Microbiological and Biomedical Laboratories (BMBL)," and all other health regulations as the Board of Health may promulgate. Any Institution currently engaged or initiating activity in these regulated activities at the time of passage of these Regulations, shall be required to apply for and receive a permit on or before 6 months from the passage hereof and then annually in accordance with the permit procedures set forth herein. For the purposes of this regulation, clinical laboratories that exist in direct support of healthcare or veterinary services, unless these facilities are also engaged in research or production of biological agents, are not required to comply with these permitting requirements. Educational institutions or groups utilizing only commercially available molecular biology teaching kits that have been designated by the manufacturer for use at Biosafety Level 1 are not required to comply with these permitting requirements.

Section 4 Definitions

The following terms are used in this Regulation as defined below.

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

Biological Risk Group: Equivalent to the risk group for any biological pathogen as defined in Risk Groups (Subsection II-A-1) of the latest amendment of the NIH Guidelines (defined below), and as specified in the latest edition of the BMBL (defined below). Risk

Group designation describes the natural risk to human health and the likelihood of transmission associated with the unaltered form of each biological agent.

Biosafety Level: Physical containment as defined in Physical Containment Levels (Appendix G-II) of the latest amendment of the NIH Guidelines (defined below) and the latest edition of BMBL (defined below).

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

Board of Health: The Foxborough Board of Health.

Healthcare Facility: Places that provide healthcare including hospitals, clinics, outpatient care centers and specialized care centers, such as birthing centers and psychiatric care centers. Institution: Any public or private entity (individual person or group, corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization) acting as a unit responsible for compliance with the requirements set forth in this regulation. Institutional Biosafety Committee (IBC): A committee established in accordance with Subsection IV-B-2 of the NIH Guidelines (defined below) and any applicable requirements of this regulation. The IBC shall be the party responsible within an institution regarding the implementation of this regulation, with oversight by the Board of Health as described.

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

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

1. Is identified as a "Recombinant or Synthetic Nucleic Acid Molecules " in Section I-B (Definition of Recombinant or Synthetic Nucleic Acid Molecules) of the most recent revision of the NIH Guidelines (as defined above), or
2. Is classified as a Risk Group 3 or 4 agent in the NIH Guidelines or the BMBL (as defined above), or
3. Is identified as a "select agent" by the United States Department of Health and Human Services (USDHHS) or the United States Department of Agriculture (USDA), which shall mean any microbial and toxic agents listed at 42 CFR 73.3, 73.4, 73.5, 73.6, 7 CFR 331.3 and 9 CFR 121.4, and the rulings made by the CDC and the USDA relative thereto, as such regulations and rulings may be amended from time to time. "Select agent" as used herein shall not include de minimis amounts of agents or toxins which are excluded from 42 CFR 73.00 et seq. Veterinary Facility: Places that provide clinical care and/or laboratory

support for healthcare of animals including hospitals, clinics, outpatient care centers, and specialized care centers such as dental or surgical facilities.

Section 5 Professional Advisory Assistance

The Board of Health retains all final responsibility for enforcement of this regulation, however, whenever the facts and circumstances deem necessary, the Board of Health shall be authorized to retain assistance from a professional consultant with appropriate professional and academic experience and training to support review and assessment of applications, documentation, inspections, and proposals. Costs incurred by the Board of Health in utilizing a professional consultant may be assessed to a permit holder/applicant according to the time required to inspect facilities, review documentation, and communicate opinions. This cost assessment is in addition to any established permit fee(s).

Section 6 General Requirements

A. All Institutions proposing to use Regulated Biological Agents, unless specifically exempt herein, must obtain a permit from the Board of Health before commencing or continuing research, manufacturing, or other use of regulated biological agents.

B. Institutions receiving such a permit shall conduct research, manufacturing or other use only as specifically set out in their permit applications and supporting documents as filed with said application. The use of regulated biological agents requiring BSL-4 containment as described in the NIH Guidelines and the BMBL shall not be permitted in Foxborough.

C. Each institution applying for a permit under these regulations shall establish and operate an Institutional Biosafety Committee (IBC) in accordance with NIH Guidelines unless specifically exempted.

D. Each institution seeking permit approval shall certify and attest in its application that it will comply with the NIH Guidelines, the biosafety standards established in the BMBL, and all other conditions set forth in this regulation. Access for site inspection of facilities and pertinent records by the Board of Health or its agents upon reasonable notice, should it be deemed necessary by the Board of Health, is required by the Board of Health as a condition of the permit approval.

E. Institutions permitted pursuant to these regulations shall file a report to the Board of Health annually, and for permit renewal. This report, at a minimum, shall include copies of all IBC minutes for the previous year consistent with instructions below, certification that the entity is following this regulation and the NIH Guidelines and BMBL, a report on any quality assurance and quality improvement efforts made during the previous year, and a complete roster of current IBC members.

F. Institutions permitted pursuant to these regulations shall provide a written summary of any incidents or adverse event involving biological agents, toxins, or other hazardous materials, that may have resulted in an exposure within the facility, or in the release from

the facility involving groundwater, wastewater, direct airborne release, or any improper disposal of potentially contaminated solid waste. This report shall be sent to the Board of Health as soon as it is feasible, but not more than seven days from the date of the incident.

Section 7 Institutional Biosafety Committee Requirements

A. Each institution applying to the Board of Health for a permit under these Regulations must form an Institutional Biosafety Committee (IBC), as defined by the NIH Guidelines. The IBC shall include as members representatives of the institution, one member of the Board of Health or its designated agent, plus one additional community representative, appointed by the Board of Health, who is a resident of Foxborough.

B. Members of the IBC representing the Board of Health and community shall not have a substantial conflict of interest in the applicant/permitted institution or in any institution in relevant competition. Representatives shall be bound to the same provisions of non-disclosure and non-use of proprietary information and trade secrets as all other members of IBC, except to the extent necessary to alleviate any public health hazard. As used in these regulations proprietary information and trade secrets shall be defined as set forth under the law of the Commonwealth of Massachusetts.

C. The IBC will provide to the Board of Health with the submission of a permit application a complete roster of all IBC members, including names, e-mail addresses and resumes or curriculum vitae (CVs). The Board of Health will be provided with an updated roster of IBC members, including resumes or CVs of new members, in a timely manner following any change in IBC membership.

D. The IBC will meet no less than once a year. All minutes of the IBC meetings must be forwarded to the Board of Health. The minutes of the IBC submitted at least annually to the Board of Health will include sufficient detail to allow the Board of Health and its staff or professional consultants to understand the risk assessment or risk assignment process by which the IBC determined biosafety level and corresponding safety practices. All protocols reviewed and approved by the IBC within the previous year, including, at a minimum, a listing of all biological agents utilized (e.g., host cell lines, biological vectors), any inserted gene sequences that would elevate risk (e.g., oncogenes), the BSLs assigned after IBC review and the rationale or guidance document upon which the selected BSL was based.

E. The IBC, acting on behalf of an institution, shall review and approve all work involving regulated biological agents, assessing risk and biosafety policy in compliance with NIH Guidelines and BMBL, in an ongoing manner. The IBC is responsible for assuring all work in the facility is following the standards set forth in these regulations at all times. The IBC will provide the Board of Health description of each project or protocol as approved by the IBC, indicating the assigned biosafety containment level, in a format that provides sufficient detail to understand the nature and extent of the biological risk associated with that project.

F. Information sent to the Board of Health may have essential proprietary information and trade secrets removed, however, the full text of meetings shall remain on file in the

records of the institution and must be available for inspection at all reasonable times by any member of the IBC, the Board of Health, or a professional consultant acting on behalf of the Board of Health.

G. Upon request of the Board of Health or its agent, institutional representatives of the IBC shall attend Regional or Local Emergency Response meetings or other emergency response trainings or drills hosted by the Town of Foxborough.

Section 8 Permitting Requirements

All Institutions which are subject to these Regulations shall obtain a permit from the Board of Health. Permit applications will be provided by the Board of Health. Application for permitting must be accompanied by a nonrefundable permit application fee. The application must include the following information:

A. Institution name and address.

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

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

D. An emergency response plan for the purpose of orienting Town representatives, including but not limited to the Board of Health, Fire, and Police Departments, to the physical plant and to procedures to be utilized in the event of an emergency. This documentation must include the location of the facility on a local map, a plot plan showing the location of the permitted facility with all points of entry clearly indicated, and a floor plan showing the internal layout of the facility with specific biological containment and non-biological laboratory areas, biological waste storage areas, and biological waste removal routes clearly indicated.

E. Designation of the appropriate biosafety levels (as defined in this regulation) for all laboratory areas, which are consistent with the NIH Guidelines or BMBL for all IBC-approved protocols.

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

G. Description of all organisms in use, and all protocols reviewed and approved by the IBC in the past year, in sufficient detail to allow the Board of Health and its Agents or professional consultants to understand the risk assessment and risk assignment process by which the IBC determined biosafety level and corresponding safety practices. Documentation must include, at a minimum, a listing of all biological agents utilized (e.g., host cell lines, biological vectors), any inserted gene sequences that would elevate risk

(e.g., oncogenes), and the BSLs assigned after IBC review, with the rationale or guidance document upon which the selected BSL was based.

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

I. An evaluation of the public health and environmental risks associated with all biotechnology byproduct effluents generated by the facility and a determination of the applicability of conditions, including appropriate effluent treatment requirements for waste disposal, consistent with 105 CMR 480.

J. A treatment and/or monitoring plan and signed vendor agreement for systematic pest control management in laboratories, contiguous facilities, and food service establishments (separately permitted by the Board of Health) in any and all facility buildings.

K. The institution's health monitoring and surveillance plan for an appropriate medical surveillance program including oversight by an occupational health physician, or documentation of a signed medical surveillance agreement with a qualified provider. Plan must include consideration of workers from susceptible populations such as pregnant or immunocompromised.

L. Upon submission of a permit application, the applicants will present an overview of the use of all regulated biological agents during a regularly scheduled meeting of the Board of Health. The presentation shall include a general introduction of the institution, its mission, its research or production plans, a timeline of the use of rDNA or other biological agents, an overview of the applicant's biosecurity risk assessment and program, and a discussion of the facilities. Questions raised by the Board of Health during or subsequent to this the presentation must be addressed by the institution to the satisfaction of the Board of Health to be granted a permit.

M. The application fee for a permit or annual renewal by the Board of Health shall be defined in the most recent fee schedule.

N. Acceptance of this permit is acknowledgement that it is the responsibility of the institution to properly decommission the facility at end of use. Upon moving or closing a facility permitted by the Board of Health under these regulations, the institution commits to and will submit a report to the Board of Health indicating that the facility was properly decommissioned; including, but not limited to, cleaning and sanitizing drain lines and tanks, removal of all hazardous materials and wastes and removal of all biological material and wastes. Upon receipt of this documentation, the Board of Health may conduct a final inspection of the facility.

O. Permit renewal applications must be submitted by November 30 each year. Permits are valid for one year from January 1 to December 31. Any permit issued after January 1 shall expire on December 31.

Section 9 Prohibitions and Exemptions

A. The use of biological agents determined by the IBC to require BSL-4 containment shall not be permitted in Town of Foxborough.

B. Agents classified as a Risk Group 4 in the NIH Guidelines or the BMBL shall not be permitted in Town of Foxborough.

C. The IBC is responsible for completion of a comprehensive risk assessment to assign an appropriate containment level when one is not prescribed in the NIH Guidelines. The IBC risk assessment may be completed independently or in consultation with an outside agency or consultant.

D. Use of more than 1500 gallons of live culture of any Regulated Biological Agent(s) shall not be permitted on site unless a variance is first obtained from the Board of Health.

E. Precautions and testing as requested by the Board of Health shall be followed in order to prevent the release of any viable biological organisms into the environment, of particular concern are contamination of the local aquifer or aerosol releases, and to comply with all provisions of 105 CMR 480, Minimum Requirements for the Management of Medical or Biological Waste.

F. The institution shall report within 24 hours to an agent of the Board of Health, followed by a written report within 15 days to the Board of Health, any significant accident or risk of illness or major release to the environment related to the use of Regulated Biological Agents if that release constitutes a violation of 105 CMR 480 and/or involves the release of a viable and potentially infectious agent. An additional inspection of facilities and procedures may be deemed necessary by the Board of Health based upon its judgment of the nature and extent of the event.

Section 10 Enforcement

The Board of Health may require any institution permitted by these Regulations, at any time or on a schedule set by the Board of Health, to comply with water, air, effluent, or soil testing and evaluation or other procedure to demonstrate conditions are following the health and safety needs of the community.

This regulation shall be enforced by the Board of Health or its agent.

Section 11 Penalties

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

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

B. Violation of any provision of this regulation may subject the violator to a fine of \$500 per day. Each day of violation shall constitute a separate and distinct offense.

C. In addition to a fine, an institution which violates any provisions of this regulation, or persists in activities covered under this regulation, that pose an immediate threat to the public health or environment may be closed by the Board of Health.

D. An Institution to whom an order has been served pursuant to this Regulation may request a hearing before the Board of Health by filing a written petition requesting a hearing with the Board of Health within seven days after the day the order was served. Upon receipt of such petition, the Board of Health will set a time and place for such hearing at the next available Board of Health Meeting date. The Board of Health may postpone the date of a hearing for a reasonable time, no more than a 30- day period, if in the judgment of the Board of Health the petitioner has submitted sufficient reason for such postponement.

E. The Board of Health may suspend or revoke a permit if it determines that the institution has failed to comply with this regulation, or other applicable permit conditions. Suspension or revocation shall follow written notice and a hearing.

F. In the event the Board of Health or its agent determines there is an imminent threat to public health and safety it may suspend a permit immediately without prior notice. Any Institution thereafter may invoke a hearing process to appeal said suspension. After a hearing, the Board may affirm, modify, or rescind said Order, or take any other action it deems warranted and appropriate.

Section 12 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 13 Variance

Variances from these Regulations may be authorized by the Board of Health 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 this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board that a sufficiently equivalent level of protection can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board deems appropriate.

Section 14

Effective Date

Approved and in full effect this April 15, 2024.

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Betsy Allo, MPH
Chair

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Robin Chapell, M.S., R.S.
Vice-Chair

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Sophia Manos
Clerk

BODY ART

Regulations for Body Art Establishments and Practitioners

Section 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 must 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 Foxborough hereby passes these rules and regulations for the practice of body art in the Town of Foxborough as part of our mission to protect the health, safety and welfare of the public.

Section 2 Authority

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

Section 3 Definitions

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

Applicant means any person who applies to the Board of Health for either a Body Art Establishment permit or Practitioner permit.

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

Autoclaving means a process which results in the destruction of all forms of microbial life, including highly resistant spores, by the use of an autoclave for a minimum of thirty minutes at 20 pounds of pressure (PSI) at a temperature of no less than 270 degrees Fahrenheit.

Bloodborne Pathogens Standard 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 having jurisdiction in the Town of Foxborough, the community in which the Body Art Establishment is located, including the Board and its agent(s), each having like powers and duties.

Body Art means the practice of physical body adornment by permitted Establishments and Practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, microblading, 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.

Body Art Practitioner or Practitioner 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.

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

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

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

Cleaning Area means the area in a Body Art Establishment used in the sterilization, sanitation or other cleaning of instruments or other equipment used for the practice of body art.

Client means a member of the public who requests a body art procedure at a Body Art Establishment.

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

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

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

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

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

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

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

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

Hot Water means water that attains and maintains a temperature 110^o-120^oF.

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

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

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

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

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

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

Operator means any person who individually, or jointly or severally with others, owns, or controls an Establishment, but is not a Body Art Practitioner.

Permit means Board approval in writing to either (1) operate a Body Art Establishment or (2) operate as a Body Art Practitioner within a permitted 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 or within any other Board's jurisdiction in the Town of Foxborough.

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

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

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

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

Sanitize means the application of a U.S. EPA registered chemical product to be used as a sanitizer on a cleaned surface in accordance with the manufacturer's label instructions.

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

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

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

Single Use Items means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary

coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.

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

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

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

Temporary Body Art Establishment means the same as Mobile Body Art Establishment.

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

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

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

Section 4 Exemptions

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

- (B) 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.

Section 5 Restrictions

- (A) No tattooing, or piercing shall be performed on a person under the age of 18.
- (B) Children under 18 years of age may have ear or nostril piercings, if the person is accompanied by a properly identified parent, legal custodial parent, or legal guardian who has signed a form consenting to such procedure. Properly identified shall mean a valid photo identification of the adult and a birth certificate of the minor.
- (C) No body art shall be performed upon an animal.
- (D) The following body piercings are hereby prohibited: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called “deep” piercing of the penis – meaning piercing through the shaft of the penis, or “trans-penis” piercing in any area from the corona glandis to the pubic bone; so called “deep” piercing of the scrotum – meaning piercing through the scrotum, or “transcrotal” piercing; so called “deep” piercing of the vagina.
- (E) The following practices hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; branding, scarification; cosmetic tattooing of upper/lower eyelids or lips; three dimensional/beading/implementation/tooth filing/fracturing/removal; cartilage modification; amputation; genital modification; introduction of saline or other liquids.

Section 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:

- (A) Physical Plant

- (1) Walls, floors, ceilings, and procedure surfaces shall be smooth, durable, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.
- (2) Solid partitions or walls extending from floor to ceiling including closeable entryway (door) 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.
- (3) The Establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the Establishment.
- (4) 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(s) or partition at a minimum.
- (5) 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.
- (6) All electrical outlets in operator areas and cleaning areas shall be equipped with approved ground fault (GFCI) protected receptacles.
- (7) 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.
- (8) There shall be a sharps container in each Practitioner area and each cleaning area.
- (9) Each Practitioners area shall have a designated, and leakproof receptacle for blood soaked and/or blood contaminated waste. This container shall have a foot operated cover and shall be clearly labeled with the international infectious waste symbol. This waste

must be handled in accordance with 105 CMR 480.00. All waste must be manifested using the Foxborough Board of Health Medical Waste Manifest. Copies 1 and 4 of the manifests must be retained on premises for no less than 3 years.

- (10) There shall be a minimum of one toilet room containing a toilet and sink, which must comply with all ADA requirements. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A Body Art Establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such Body Art Establishment if 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.
- (11) The public water supply entering a Body Art Establishment shall be protected in accordance with 248 CMR 10.00, as amended from time to time.
- (12) 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.
- (13) At least one janitorial sink installed in accordance with 248 CMR 10.00 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.
- (14) 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.
- (15) 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.
- (16) 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.

- (17) 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.
 - (18) Smoking, eating, or drinking is prohibited in the area where body art is performed, except for non-alcoholic fluids being offered to a client during or after a body art procedure.
 - (19) A plan of the proposed Establishment shall be filed with the Board of Health at the time of application.
- (B) Requirements for Single Use Items Including Inks, Dyes and Pigments
- (1) 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.
 - (2) 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.
 - (3) Hollow bore needles or needles with cannula shall not be reused.
 - (4) 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.
 - (5) Inks, dyes or pigments may be mixed and may only be diluted with sterile water from an approved sterile source and shall be labeled as such. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded.
- (C) Sanitation and Sterilization Measures and Procedures
- (1) 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 cleaning unit sold for cleaning purposes under approval of the U.S. Food and Drug Administration and operated in accordance with manufacturer's instructions.

- (2) 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.
- (3) 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.
- (4) Each holder of a permit to operate a Body Art Establishment shall demonstrate that the autoclave used can attain 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 submitted to the Board of Health on a quarterly basis, with the originals being retained by the operator for a period of three (3) years and made available to the Board upon request.
- (5) 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.
- (6) Sterile packages must be inspected prior to use. Instruments in these packages may not be considered sterile and therefore shall not be used if the package has been breached or if it is after the expiration date without first sterilizing and repackaging.
- (7) If the Body Art Establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
- (8) 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 have not been contaminated.
- (9) Reusable cloth items shall be mechanically washed with detergent and mechanically dried after each use. The cloth items shall be

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

(D) Posting Requirements

The following shall be prominently displayed:

- (1) 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.
- (2) The name, address, and phone number of the Foxborough Board of Health.
- (3) 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, posted at or adjacent to the telephone indicating the correct emergency telephone numbers.
- (4) An occupancy and use permit as issued by the Foxborough Building Commissioner.
- (5) A current Establishment permit issued by the Foxborough Board of Health.
- (6) Each Practitioner's permit issued by the Foxborough Board of Health.

(E) Establishment Record Keeping

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:

- (1) Establishment information, which shall include:
 - (a) establishment name.

- (b) hours of operation.
 - (c) owner's name and address.
 - (d) a complete description of all body art procedures performed.
 - (e) an inventory of all instruments and body jewelry, all sharps, and all inks used for all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement.
 - (f) a Safety Data Sheet, when available, for each ink and dye used by the establishment.
 - (g) copies of waste hauler manifests.
 - (h) copies of commercial biological monitoring tests.
 - (i) Exposure Incident Reports (kept permanently).
 - (j) a copy of these regulations.
 - (k) a copy of the Universal Health Precautions, US CDCP.
- (2) Employee information, which shall include:
- (a) full legal names and exact duties.
 - (b) date of birth; home address.
 - (c) home /work phone numbers.
 - (d) identification photograph; dates of employment.
 - (e) hepatitis B vaccination status or declination notification.
 - (f) and training records.
- (3) Client information, which shall include:
- (a) name.
 - (b) age and valid photo identification.
 - (c) address of the client.
 - (d) date of the procedure.
 - (e) name of the Practitioner who performed the procedure(s).
 - (f) description of procedure(s) performed and the location on the body.
 - (g) a signed consent form as specified by 7(D)(2); and,
 - (h) 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 always kept confidential and will be made available to the Board of Health or its agent upon request.

(4) 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 always maintained at the Body Art Establishment and shall be made available to the Board or agent upon request.

- (F) No person shall establish or operate a Mobile or Temporary Body Art Establishment.
- (G) The Establishment shall require that all Body Art Practitioners have completed the hepatitis B vaccination series and that said vaccinations are current. Records documenting compliance with this requirement shall be provided to the Board upon request and will be a condition of the permit.

Section 7 Standards of Practice

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

- (A) A Practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S Centers for Disease Control and Prevention.
- (B) A Practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.
- (C) Practitioners who use ear-piercing systems must conform to the 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.
- (D) Health History and Client Informed Consent. Prior to performing a body art procedure on a client, the Practitioner shall:
 - (1) Inform the client, orally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:
 - (a) history of diabetes.
 - (b) history of hemophilia (bleeding).
 - (c) history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants etc.
 - (d) history of allergies or adverse reactions to pigments, dyes, or other sensitivities.
 - (e) history of epilepsy, seizures, fainting, or narcolepsy.
 - (f) use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and
 - (g) any other conditions such as hepatitis or HIV.
 - (h) client undergoing chemotherapy or undergoing treatment, which may reduce platelet count.

- (2) 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 7(K).
- (E) A Practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the Practitioner must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.
- (F) In performing body art procedures, a Practitioner shall wear disposable single-use gloves. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with section (E) before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for handwashing procedures as part of the required good personal hygiene program.
- (G) The skin of the Practitioner shall be free of rash or infection. No Practitioner affected with boils, infected wounds, open sores, abrasions, uncovered wounds, weeping dermatological lesions or acute respiratory infection shall work in any area of a Body Art Establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
- (H) Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.
- (I) Preparation and care of a client's skin area must comply with the following:
 - (1) Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
 - (2) 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.

- (3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.
- (J) Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded, and shall not be reintroduced into any container of soaps, jellies, etc.
- (K) The Practitioner shall provide each client with oral and written instructions on the aftercare of the body art site. The written instructions shall advise the client:
 - (1) on the proper cleansing of the area which received the body art.
 - (2) to consult a health care provider for:
 - (a) unexpected redness, tenderness or swelling at the site of the body art procedure.
 - (b) any rash.
 - (c) unexpected drainage at or from the site of the body art procedure; or
 - (d) a fever within 24 hours of the body art procedure; and
 - (3) of the address, and phone number of the Establishment.

A copy shall be provided to the client.

- (L) Contaminated waste shall be stored, treated, and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waster, State Sanitary Code, Chapter VIII.
- (M) Practitioner must operate in a permitted Establishment.

Section 8 Exposure Control Plan and Incident Report

An Exposure Control Plan shall be available to all employees at the Body Art Establishment and physically present at the establishment while it is in operation. 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 any party at the establishment. The Body Art Practitioner shall document every exposure incident in writing that occurring

in the conduct of any body art activity to the establishment owner and shall be available to the Board of Health or agent at times of inspection.

Each Exposure Incident Report shall contain:

- (A) a copy of the application and consent form for body art activity completed by any client or minor client involved in the exposure incident.
- (B) a full description of the exposure incident, including the portion of the body involved therein.
- (C) instrument(s) or other equipment implicated.
- (D) a copy of Body Art Practitioner license of the involved Body Art Practitioner.
- (E) date and time of exposure.
- (F) a copy of any medical history released to the Body Art Establishment or Body Art Practitioner; and
- (G) information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

Section 9 Injury and/or Complication Reports

A written report of any injury, infection complication or disease because of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded by the operator to the Board of Health, 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.

Section 10 Complaints

- (A) The Board of Health or its agent shall investigate complaints received about a Body Art Establishment or Practitioner's practices or acts, which may violate any provision of this regulation.
- (B) If the Board of Health or its agent 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 of Health or agent 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.

Section 11 Application for Body Art Establishment Permit

- (A) No person may operate a Body Art Establishment except with a valid permit from the Board of Health.
- (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 shall expire on December 31 of that year unless revoked sooner by the Board. Permit renewal shall run from January 1 to December 31.
- (D) The Board shall require that the applicant provide, at a minimum, the following information 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.

- (3) 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 Control Plan and Incident Report.
 - (6) Such additional information as the Board may reasonably require.
- (E) The annual fee for the Body Art Establishment Permit shall be reflected in the most recent Department fee schedule.
- (E) A license for a Body Art Establishment shall not be transferable from one place or person to another.
- (F) All Body Art Establishments shall employ at least one Body Art Practitioner that is permitted and in good standing with these regulations.

Section 12 Application for Body Art Practitioner Permit

- (A) No person shall practice body art or perform any body art procedure without first obtaining a Practitioner permit from the Board. The annual fee for Body Art Practitioners shall be reflected in the most recent Department fee schedule.
- (B) A Practitioner shall be a minimum of 18 years of age.
- (C) A Practitioner license shall be valid from the date of issuance and shall expire December 31, for the year issued unless revoked sooner by the Board.
- (D) 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.
- (E) Practitioner Training and Experience

- (1) 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.
- (2) Training for all Practitioners shall be approved by the Board and, at a minimum, shall include the following:
 - (a) 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
 - (b) current certification in First Aid and cardiopulmonary resuscitation (CPR).

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

- (3) The applicant for a Body Art 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 an accredited college. This course must include the basic biology of the integumentary system (skin). In the event, the Practitioner seeks to perform limited services, such as microblading only, the Practitioner can seek a variance on educational requirements. All variance requests shall be at the discretion of the Board or its agent.
 - (7) The applicant for a Body Art Practitioner permit shall submit evidence satisfactory to the Board of at least two years actual experience in the practice of performing the body art activities of the kind for which the applicant seeks a Body Art Practitioner permit to perform, whether such experience was obtained within or outside of the Commonwealth.
- (F) A Practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations.

Section 13 Grounds for Denial of Permit, Revocation of Permit or Refusal to Renew Permit

- (A) 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:

- (1) any actions which would indicate that the health or safety of the public would be at risk.
 - (2) fraud, deceit, or misrepresentation in obtaining a permit, or its renewal.
 - (3) 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 contendere or an admission of sufficient facts.
 - (4) any present or past violation of the Board's regulations governing the practice of body art.
 - (5) practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability.
 - (6) being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects.
 - (7) knowingly permitting, aiding, or abetting an unauthorized person to perform activities requiring a permit.
 - (8) continuing to practice while his/her permit is lapsed, suspended, or revoked; and
 - (9) practicing body art, etc. on a person not of legal age pursuant to these regulations without receiving duly signed and approved legal consent.
 - (10) practicing body art, etc. on a person at risk, under the influence of alcohol or drugs or any violation of section (7) Standards of Practice.
 - (11) 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.
 - (12) other just and sufficient cause, which the Board may determine would render the Establishment, Practitioner or applicant unfit to practice body art.
- (B) 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.

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

Section 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 a Practitioner is an immediate and serious threat to the public health, safety, or welfare. The suspension of a permit shall take effect immediately upon oral or written notice of such suspension by the Board.

Section 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, a hearing shall be scheduled no later than 21 days from the date of the suspension.

Section 16 Severability

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

Section 17 Fine for Violation

The fine for a violation of any provision of these Rules and Regulations shall be in accordance with the Town of Foxborough Policy on Non-criminal Disposition. Each day that a violation continues shall be deemed to be a separate offense.

Section 18 Non-criminal Disposition

The Board of Health or its agent may enforce through a non-criminal proceeding pursuant to the provisions of M.G.L. c. 40, § 21D. In accordance with the Town of Foxborough, whoever violates these Rules and Regulations may be fined \$100 for the

first offense, \$200 for the second offense, and \$300 for the third and subsequent offenses. If a violation of the provisions above continues, each day a violation exists shall constitute a separate offense. Nothing within shall, negate the Board of Health or its agent with filing in a court of competent jurisdiction to have a nuisance condition abated.

The Board of Health may deny, suspend, revoke, or refuse to renew a permit for failure to comply with any provision within these Regulations.

Section 19 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: March 12, 2001

Revision Date: April 8, 2024.

DEMOLITION

Regulations pertaining to the Demolition of Buildings within Foxborough

Section 1 Authority

This regulation adopted by the Foxborough Board of Health under the provisions of MGL Ch. 111, § 31, in the exercise of its power to protect the health and welfare of the public.

Section 2 Purpose

The purpose of this Regulation is to protect Foxborough residents, visitors, and businesses from the potential nuisances, negative health effects, and the environmental impacts from the demolishment of buildings.

Section 3 Pre-Demolition Survey

The Health Department shall ensure that a property owner or contractor performs and documents the following activities before a structure is demolished within the Town of Foxborough:

The property is inspected for the presence of hazardous building materials and/or the storage of hazardous materials or special wastes before it is demolished. If these materials are found, the owner/contractor shall remove and properly dispose of any hazardous building material, hazardous material, or special wastes that are present.

The owner or contractor shall provide documentation supporting the proper disposal of the materials, which shall include the following:

- A. A completed application form as provided by the Health Department and the appropriate fee as outline in the Board of Health's most recent fee schedule.
- B. A contract with a MA licensed asbestos inspector to conduct an inspection of building materials for asbestos content and to remove the asbestos materials, if found.
- C. The Laboratory results of suspected building materials at the property which either confirm or disprove the presence of asbestos within the building.
- D. If positive laboratory results are provided to the Health Department, the owner or contractor shall also provide a contract with a Massachusetts's Licensed Abatement Contractor to remove the identified asbestos containing material.

- E. Abatement contractor shall provide a MA DEP notification form, documentation confirming that asbestos was removed from the site (including a volume of material removed) and documentation confirming the material was properly disposed of at a licensed facility.
- F. The documented and permitted removal of all known above ground or underground storage tanks of hazardous materials.
- G. Any other hazardous material manifest or contractor agreement pertinent to the disposal of materials at the subject property.

All reports and documentation generated from the above process shall be kept on file in the Health Department.

Prior to demolition, all properties shall be treated by a Massachusetts Licensed Pest Control Company/Technician to exterminate rodents and/or remove nuisance wildlife from the property before it is demolished. The Pest Control Company's report shall be submitted to the Health Department shall include the following:

- A. The address of the property that was inspected and baited by the Pest Control Company.
- B. The date the inspection was conducted, and the baiting took place.
- C. The findings of the Pest Control Company that a rodent infestation or wildlife harborage does not exist at the subject property.
- D. The locations where interior or exterior traps have been set-up, if necessary, and the types of baits used.

If in the opinion of the Foxborough Health Department, the demolition of a building shall not create a nuisance due to rodents or wildlife, the inspector may waive this requirement. However, to waive the pest control requirement the inspector shall document that no evidence of rodents or wildlife exist on the property.

Section 4 Building Demolition

Before any Building Permit for the demolition of a structure is issued by the Town of Foxborough, a pre-demolition survey of the building shall be performed by the Health Department.

Any person or company demolishing a building within the Town of Foxborough, shall take reasonable measures to mitigate nuisance air pollution caused by the demolition of said building. As such, all contractors shall have an adequate supply of water on-hand to use wetting techniques during demolition, that will ensure that nuisance dust conditions do not exist.

If nuisance conditions are found due to demolition of a building, the Board of Health or agent shall order the nuisance condition abated by proper means.

Section 5 Violations

Any person that violates any provision of this Regulation may be punished, under Chapter 111, Section 31 of the Massachusetts General Laws as a criminal offense or Chapter 40 section 21D of the Massachusetts General Laws as a noncriminal offense.

Failure to have a pre-demolition survey conducted by the Health Department, failure to submit proof of the removal of hazardous or asbestos containing material shall result in a fine of not more than \$200 dollars.

Failure to abate a nuisance condition caused by rodents or wildlife shall result in a fine not less than \$50 dollars nor more than \$100 dollars.

Any other violation of this regulation not outlined above shall result in a \$50 dollar fine.

Section 6 Severability

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

Continued

Section 7 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

DUMPSTERS

Regulations Pertaining to Dumpsters and the Hauling of Waste

Section 1 Authority

This regulation adopted by the Foxborough Board of Health under the provisions of MGL Ch. 111, § 31, in the exercise of its power to protect the health and welfare of the public.

Section 2 Purpose

The purpose of this Regulation is to protect residents, businesses, and the environment within the Town of Foxborough from: noise, odors, insects, birds, rodents, scavengers, environmental discharges, and other nuisances caused by dumpsters or the storage of garbage within the Town.

Section 3 Definitions

Construction and Demolition (C&D) Materials: means waste generated from: construction, renovation or demolition of buildings, but not including garbage or mixed garbage and rubbish.

Dumpster: means any container two (2) cubic yards or larger, that is used to hold; C&D material, garbage, rubbish, or recyclable materials

Garbage: means the animal, vegetable or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food, and containers and cans which have contained food unless such containers and cans have been cleaned or prepared for recycling.

Rubbish: means combustible and noncombustible waste materials, except garbage, and includes but is not limited to such material as paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tin cans, metals, mineral matter, glass or any other discarded solid or liquid matter.

Hauler: means any person, entity, firm, corporation, or company, which transports, delivers, removes, or stores dumpsters within the Town of Foxborough.

Section 4 Hauler Requirements

- A. No hauler shall install, maintain, or empty a dumpster within the Town of Foxborough until it has been granted a Hauler Permit by the Health Department.
- B. If the Board of Health or its agent has evidence of a nuisance condition that is occurring, due to early morning pick-up of a dumpster, the Health Department may require dumpsters be emptied, delivered, or picked up between the hours of 7:00AM to 9:00 PM.
- C. All haulers shall have the name and phone number of the company or individual owner on the transporting vehicle.
- D. All haulers shall ensure that dumpster contents are not spilled during removal or transportation. If a spill does occur, the hauler shall cause the affected area to be cleaned immediately.

Section 5 Dumpster Requirements

- A. Each dumpster owned, controlled, or serviced by a hauler/contractor shall be conspicuously marked with the name and telephone number of said company.
- B. Dumpsters shall be of sufficient size and capacity to contain the waste accumulated between collections. No overflow of materials shall be stored in or outside them or in the immediate vicinity or enclosure.
- C. Dumpsters shall be covered by an intact lid and kept closed except when placing refuse in them.
- D. Dumpsters shall be constructed in such a way to be leak-proof and vermin proof except for allowing a small built in drainage port as may be required.
- E. Dumpsters shall be cleaned and deodorized with sufficient frequency as to prevent objectionable conditions and odors. The Health Department may at any time require cleaning or deodorizing or relocation to prevent objectionable odors.
- F. Dumpsters shall be located as to not interfere with the health, safety, or well-being of any resident or business.
- G. The Health Department may at any time order the relocation of a dumpster if it is deemed to be interfering with the health, safety, or well-being of others.

- H. Dumpsters shall be placed on a solid surface such as: asphalt, concrete or stone block.
- I. All new industrial or commercial garbage dumpster areas shall be screened or fenced to contain windblown debris.
- J. No construction dumpster shall be located within 10 feet of a habitable structure or be placed in manner that blocks the visibility of motorists entering or exiting a right-of-way.
- K. If upon inspection a dumpster is found to be creating a nuisance condition the Board of Health or agent shall order that the dumpster be removed, emptied, cleaned, enclosed, screened, moved, or any other correction that is appropriate.

Section 6 Exemption

- A. Construction and demolition dumpsters shall be exempt from Section 5, Subsection C, and Subsection H.

Section 7 Enforcement and Inspection

Both the owner/agent of the property on which the dumpster is located, and the hauler of the dumpster shall be responsible for meeting the requirements of this Regulation.

Health Department Inspectors shall investigate dumpster complaints or concerns and issue notices to property owners and/or haulers, as deemed necessary to correct the violation cited.

Any person that violates any provision of this Regulation may be punished, under Chapter 111 Section 31 of the Massachusetts General Laws as a criminal offense or Chapter 40 section 21D of the Massachusetts General Laws as a noncriminal offense, by a fine not less than \$50 dollars nor more than \$200 dollars, or by criminal complaint in the appropriate venue. Each day or portion thereof during which a violation continues shall constitute a separate offense. Failure by any hauler/contractor to correct a violation of any provision of this Regulation may result in the suspension or revocation of their Hauler Permit within the Town of Foxborough.

Section 8 Variance

Variances from these Regulations may be authorized by the Board of Health 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 this regulation or any minimum standards required by Federal or State law; and provided that the applicant demonstrates to the reasonable satisfaction of the Board that a sufficiently equivalent level of protection

can be achieved. Any variance granted by the Board of Health shall be in writing and shall be subject to such conditions as the Board deems appropriate.

Section 9 Severability

If any word, clause, phrase, sentence, paragraph, or section of this Regulation shall be declared invalid for any reason whatsoever, that portion shall be severed, and all other provisions of the Regulation shall remain in full force and effect.

SECTION 9 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

GASOLINE AND HEATING OIL TANKS

Regulations Pertaining to the Installation and Removal of Above Ground and Underground Storage Tanks of Hazardous Materials

Section 1 Authority

This regulation adopted by the Foxborough Board of Health under the provisions of MGL Ch. 111, § 31, in the exercise of its power to protect the health and welfare of the public.

Section 2 Purpose

The purpose of this regulation is to protect, preserve and maintain the existing and potential groundwater supply, groundwater recharge areas and surface water within the Town of Foxborough from contamination from hazardous materials.

Section 3 Definition.

As used in this chapter, the following terms shall have the meanings indicated:

Discharge: The deposit, disposal, injection, spilling, leaking, incineration, or placing of any hazardous materials into or onto any land or water so that such hazardous materials, or any constituent thereof, may enter the environment, or be emitted into the air, or discharged into any waters, including but not limited to groundwaters.

Hazardous Material: A product or waste, or combination of substances which because of quantity, concentration, or physical, chemical or infectious characteristics, in the Board's judgment, poses a substantial present or potential hazard to the human health, safety, or welfare, or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed. Any substance deemed a hazardous waste in MGL c. 21C shall also be deemed a hazardous material for the purpose of these regulations.

Section 4 Installation, Removal, and Replacement of Underground Storage Tanks

A. Following the effective date of this regulation, the installation of underground storage tank/tanks for the purposes of storing waste oil, fuel oil, or heating oil is prohibited. Underground storage tanks composed of double-walled fiberglass used exclusively for the commercial distribution of gasoline, diesel, or other hazardous material to the public at large shall be exempt from this regulation.

B. Existing underground heating oil tank/tanks and lines that are less than 10 years of age, that were installed according to 527 CMR 4-4.08 and 9-9.08 in their entirety and have been inspected and certified by the Fire Department to be in full compliance with all current regulations shall be exempt until they reach the age of 10 years.

C. All underground heating oil storage tanks, regardless of condition, must be removed upon reaching ten (10) years of age or upon the sale or transfer of ownership of residence or property. Replacement of underground storage tanks is not permitted or allowed.

D. Any property owner or contractor that intends to remove an underground storage tank of hazardous material shall notify the Fire Department and Board of Health of the exact date and time of the tank(s) removal. Tank owner shall obtain a "Permit to Remove" the tank(s) and/or piping from the Fire Department.

E. During the removal of all underground hazardous material storage tanks, a Licensed Site Professional (per MA LSP Board) or other appropriate representative shall measure for the presence of a release of product that was stored in the tank(s), through soil, water, or air sampling. If contamination is found, the owner(s)/operator and contractor shall immediately notify the Fire Department and Board of Health, as well as the Department of Environmental Protection, Bureau of Waste Site Cleanup per MGL Ch. 21E.

In addition, if in the opinion of the Fire Department or Board of Health Official that the environmental sample taken, is not a representative sample of the tank bed or contamination encountered, they may cause the owner or contractor to submit additional samples to a MA DEP approved laboratory from an area they so choose.

F. Tank removals shall be done by a contractor licensed by the Commonwealth of Massachusetts and approved by the Town of Foxborough Board of Health or Fire Department for such removal.

G. All underground storage tanks which are required to be removed (reaching removal age, have leaked, or property sale, etc.) must be removed from the ground. Closure in place is not allowed unless variance is granted by Fire Department and Board of Health. Closure in place does not preclude testing for a release per section E. above. In no case will closure in place be allowed if contamination is present.

H. Any property owner may request a variance from the Board of Health or agent if other sources of fuel storage are not feasible at the location. Any variance granted shall expire yearly and require environmental monitoring or a UST inspection to be renewed.

Section 5 Installation and Replacement of Aboveground Storage Tanks

Following the effective date of this regulation, the installation and replacement of all aboveground hazardous material storage tanks as per definition shall conform to the following criteria. This includes any size tank(s) for commercial or home heating purposes.

- A. Following the effective date of this regulation, it shall be unlawful to have a single walled aboveground storage tank.
- B. Upon property transfer or installation of new heating system, all property owners shall replace single-walled tanks to double-walled tanks.
- C. All newly installed above ground tanks within the Town of Foxborough shall have secondary containment of all tanks, piping, and supply lines, either inside or out.
- D. All newly installed delivery lines shall be encased in a nonmetallic protective sleeve.
- E. Interior tanks shall be installed so that any basement flooding will not deteriorate or compromise the integrity of the tank.
- F. No exterior aboveground tank(s) shall be permitted within 35 feet of any water body, vernal pool, stream, river, wetland, well, one-hundred-year flood zone, pond, brook, swamp, marsh as defined in state regulations 310 CMR 10.00 to 10.99 of Wetlands Protection Act.

Section 6 Requirements for the New Construction or Replacement of Tanks

In any new construction or replacement of existing commercial and/or home heating fuel aboveground storage tank/tanks, either inside or outside a building, double-walled tank/tanks shall be required to have more capacity than the amount of material within. In addition, all delivery lines must have a protective sleeve. Home heating fuel storage tank/tanks and lines shall not be installed underground. Interior and exterior tanks shall be installed on a concrete subfloor. Both the Fire Chief and the Board of Health agent must approve all storage tanks.

Section 7 Reporting of Leaks and Spills

- A. Any person who is aware of a spill, loss of product, or unaccounted for increase in the consumption which may indicate a leak shall report such spill, loss of product, or increase immediately to the Fire Department and to the Board of Health.
- B. If a leak, loss of product, or unaccounted increase in consumption is confirmed, the leak shall be identified, isolated, contained and repaired forthwith and shall be brought

up to code as specified in these regulations. Said upgrade shall be under the direction of the Fire Chief or his designee. If determined by the Board of Health and the Fire Chief or his designee, a hazardous waste handler licensed by the Department of Environmental Protection Agency for the Commonwealth of Massachusetts must dispose of all contaminated soils and/or liquids including contaminated water or groundwater.

Section 8 Enforcement; Violations and Penalties

Any person that violates any provision of this Regulation may be punished, under Chapter 111, Section 31, of the Massachusetts General Laws as a criminal offense or Chapter 40, Section 21D of the Massachusetts General Laws as a noncriminal offense, by a fine not less than \$50 dollars nor more than \$200 dollars. Each day or portion thereof during which a violation continues shall constitute a separate offense.

Section 9 Variances

The Board of Health may grant a variance from the regulations within, to an applicant, after a hearing before the Board. The Board of Health shall take in mind the following conditions, while considering the variance:

A. Shall the installation or leak from an aboveground or underground storage tank/tanks adversely affect public or private water resources, water body, vernal pool, stream, river, wetland, well, pond, brook, swamp, marsh, and any flood zone to which the tank will be located.

B. The Board of Health shall take into consideration the direction of groundwater flow, soil conditions, depth to groundwater, size, shape, and slope of the lot and existing and known future water supplies when deciding on whether to grant the variance or not.

All approved variance requests shall expire on or before the tank reaches 10 years of age.

Section 10 Severability

If any word, clause, phrase, sentence, paragraph, or section of this Regulation shall be declared invalid for any reason whatsoever, that portion shall be severed, and all other provisions of the Regulation shall remain in full force and effect.

Section 11 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

FATS, OILS, AND GREASE

Fats, Oils and Grease (FOG) Regulations

Section 1 Authority

The Town of Foxborough Board of Health, in accordance with, and under the authority granted by Section 31 of Chapter 111 of the General Laws of the Commonwealth of Massachusetts hereby adopts the following rules and regulations relative to the generation and management of fats, oils and grease and maintenance of permitted sewer and septic systems within the Town of Foxborough.

Section 2 Purpose

These regulations are adopted to protect the public health, safety, and the environment relative to the generation of fats, oils, and grease (FOG) when discharged into the sewer and septic systems. These regulations provide requirements and standards relative to the management of FOG and the maintenance of systems conveying, collecting, and storing these waste products. The goal of these regulations is to help prevent plumbing system obstructions, premature septic system failure, and sanitary sewage overflows that subject the community to unsanitary conditions of wastewater exposure which increase the potential of disease transmission, is a potential source of contamination of drinking water supplies and endangering the balance of the wetland ecosystems in Foxborough.

Section 3 Definitions

Best Management Practice(s): means a cultural or engineering technique, or a management strategy, that has been determined and accepted to be an effective and practical means of preventing or reducing non-point source pollution in a local area.

FOG (Fats, Oils, Grease): means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in the United States Code of Federal Regulations 40 CFR 136, as may be amended from time to time.

Food Service Establishment: includes, but is not limited to, any facility preparing and/or serving food for commercial use or sale. This includes restaurants, cafés, lunch counters, cafeterias, hotels, hospitals, convalescent homes, factory or school kitchens, catering kitchens, bakeries, grocery stores with food preparation and packaging, meat cutting and preparation (excluding grocery stores with only food

warming operations), meat packing facilities and other food handling facilities not listed above where fats, oil and grease may be introduced into the community sewer system and cause line blockages and sewer overflows.

Grease interceptor (sometimes called separators or traps): for the purposes of this document means an interior or exterior multi-compartment device designed to retain grease from one or more fixtures; it shall be of a size and design in compliance with all current Building and Plumbing codes adopted by the Town.

Sewer: means all sewers and facilities operated for carrying sewage including private septic systems.

Yellow grease: is the used oil from fryers disposed of in a collection container located outside the building.

Section 4 Regulations Pertaining to Fats, Oils, and Grease

These regulations become effective upon the date of the signature of the Foxborough Board of Health (Board). At such time:

- A. All existing food service establishments with internal or external grease interceptor units are required to have a contract with a licensed septic hauler company that is permitted with the Town of Foxborough. External grease interceptors must be inspected once each month on a set schedule and must be pumped if the fats, oils, grease, (FOG) and sludge layers are 25% of the effective depth of the interceptor or must be pumped every 3 months, whichever is sooner. This enforcement action will be equivalent to the requirements under 310 CMR 15.351(2) (Title 5).
- B. All indoor passive FOG interceptors located within the establishment must be inspected and cleaned once each month on a set schedule. Internal interceptors can be serviced by properly trained establishment staff that have completed a self-training packet provided by the Health Department and follow the inspection, service, and documentation requirements within. If interceptors are serviced by establishment staff an inspection of the interceptor must be conducted once per year by a professional.
- C. All indoor active FOG interceptors located within the establishment shall be emptied daily, inspected quarterly, and cleaned pursuant to manufacturers recommendations.
- D. Establishments that operate for 30 days or less a calendar year or are closed for periods of time which exceed 30 consecutive days are exempt from pumping and inspecting FOG systems during those months or times which the establishment is closed. Proof of closure must be provided to the Health Department upon request.

- E. Establishments can petition the Director of Public Health to adjust the maintenance schedule for interceptors. The petition must be in writing and include six months of maintenance reports and supporting documentation from a licensed septic hauler or plumber with a detailed explanation for the adjustment to the cleaning frequency. Variances to the above stated maintenance schedule will be approved at the discretion of the Director of Public Health. If the applicant is aggrieved by the variance decision of the Director of Public Health, they may appeal to the Board of Health who shall rescind, correct, or uphold the Director's decision.
- F. All food service establishments must keep maintenance logs for all FOG interceptors and must have these documents available to the Town of Foxborough upon inspection.
- G. All food service establishments that have grease interceptors must have proper FOG signage (see State of Massachusetts Plumbing Code 248 CMR 10.09 (2m) (3)).
- H. Biological and/or chemical treatments are not permitted for use in grease interceptors in the Town of Foxborough unless approved by the Board of Health. It will be the responsibility of the establishment owner to provide adequate supporting documentation for review by the Board.
- I. All food service establishment staff and Septic/FOG Haulers are required to be trained on FOG management and maintenance practices. The following training is required and will constitute appropriate "Certification":
- Must read the self-training materials provided by the Board of Health and receive any additional training by management staff, as needed for proper maintenance of the FOG system. The business will keep a staff training log sheet with the names, signatures, and date the staff member received training. This log will be kept on site and must be available for viewing at any time by the Board of Health or its agents. Review of training logs will be part of Health Department inspections.
 - Certification is valid until and unless changed or otherwise modified by the Board of Health.
- J. All establishments that handle FOG must have spill cleanup stations and/or kits with grease absorbent pads and/or cat litter or a similar product to cleanup FOG spills and prevent (slip, trip, and fall) injury in the workplace.
- K. All external vegetable waste oil containers shall be placed on a hard surface, kept sealed from the weather and pollutants, as well as, kept in a clean and sanitary condition.
- L. If an establishment is in violation of proper grease interceptor maintenance, the Board of Health or its agent may require the facility to install a secondary indoor

passive grease trap, install an exterior grease trap, install an active grease trap, or provide proof of FOG service on a reoccurring basis, as seen fit, by the Board of Health or its agent.

- M. All Septic Haulers that service grease interceptors within the Town of Foxborough must complete a Grease Interceptor Service Report form. If the form is different from that supplied by the Board of Health, it must contain the same information and must include the percent of FOG and solids in the interceptor and the condition of the interceptor. If pumping is not required for an external interceptor at the time of inspection a detailed inspection report must be provided along with the calculation information. This report must be filled out and submitted to the customer at the time of service. All manifests must be submitted to the Board of Health within sixty (60) days of a pumping service.

- N. Areas of concern to the Water and Sewer Superintendent and/or Director of Public Works or areas known to be affected by municipal sewer back-ups shall be required to have a FOG Pretreatment System upon substantial remodel of the facility. A FOG Pretreatment System shall consist of one of the following:
 - i. An exterior grease interceptor that is 1,000 gallons or more which is connected to an interior passive grease interceptor.
 - ii. A secondary interior passive grease interceptor that is connected to an interior passive grease interceptor. Or
 - iii. An indoor active grease interceptor that is maintained pursuant to manufactures recommendations.

- O. There will be a FOG plan review fee of \$50.00 for all new food service establishments and renovations on existing food service establishments.

- P. Failure to comply with these regulations will result in a follow-up inspection fee of \$50.00 per inspection.

- Q. Frequent violations of this regulation may result in providing the Health Department with documented FOG maintenance, changes to the physical facility, or suspension and/or revocation of the establishment's food permit.

- R. All Septic/FOG Hauler trucks that service systems in the Town of Foxborough will be required to have a Septic/FOG Hauler Permit. Permitted FOG Haulers will be issued a truck/trailer sticker for each truck permitted. This yearly sticker must be always displayed on the truck/trailer. FOG Haulers must provide a list of all FOG customers in Foxborough as part of the permit application.

- S. All Septic Haulers must have strict conformance to the FOG regulations for pumping and maintenance under the Board of Health FOG Control Regulations for systems on town sewer and 310 CMR 15.351(2) (Title 5) for private onsite septic systems.

Failure to comply with these regulations may result in the loss of Permit for the year and repeat offenses can result in a permanent loss of permit at the discretion of the Board of Health.

- T. If a Hauler is found to be illegally discharging FOG under any Federal, State, or Local laws this will result in the loss of all FOG Permits indefinitely and could also face criminal charges.
- U. All food service establishments in the Town of Foxborough that use, generate, or store FOG will be required to hold a FOG Permit.
- V. New large habitable structures such as hotels or resorts, hospitals, assisted living community, or any other habitable structure with over 80 habitable rooms will install a 1,000 gallon or more exterior interceptor to capture larger debris, such as cleaning rags and other sanitary products that often clog or overload the system.

Section 5 Fees

- A. \$50.00 per year for establishments with up to 3 passive grease interceptors and/or 1 yellow grease collection container.
- B. An additional \$50.00 per year for each passive grease interceptor over 3 to a maximum charge of \$200.00 per year.
- C. \$25 dollars per year fee for establishments that solely use interior active grease interceptors.

Exemptions to FOG yearly fee:

- Seasonal mobile food service units.
- Non-profit, clubs, and religious organizations approved by the Board of Health or its agent.

Section 6 Penalty

Any person that violates any provision of this Regulation may be punished, under Chapter 111, Section 31 of the Massachusetts General Laws as a criminal offense or Chapter 40 section 21D of the Massachusetts General Laws as a noncriminal offense, by fine of 50 dollars per day, per grease interceptor. Failure to correct violations of any provision of this Regulation may result in the suspension or revocation of a Permit to Operate a Food Establishment as provided in 105 CMR 590.12 or 105 CMR 590.014.

Section 7 Severability

If any word, clause, phrase, sentence, paragraph, or section of this Regulation shall be declared invalid for any reason whatsoever, that portion shall be severed, and all other provisions of the Regulation shall remain in full force and effect.

Section 8 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

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Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: April 4, 2011

Revision Date: April 8, 2024

FOOD ESTABLISHMENTS

Regulation Pertaining Food Establishment Safety

Section 1 Authority

The Foxborough Board of Health, pursuant to the authority granted under Massachusetts General Laws, Chapter 111 Section 31 hereby adopts the following regulation to protect the public health of the community.

Section 2 Purpose

The Foxborough Board of Health recognizes that an ideal food program is supported by a partnership effort between industry and food regulatory officials. Educated managers and food handlers along with an effective inspection program can reduce the incidence of high-risk practices that can lead to foodborne illnesses, as well as other hazards.

Section 3 Definitions

Board: The Board of Health in the Town of Foxborough.

Certified Food Manager: An individual employed by a food establishment who has taken a course in food safety for managers and demonstrated their knowledge by passing an exam as described in Section 5.

Food Establishment: Any place where food is prepared and intended for individual portion service. The term includes any such place, regardless of whether consumption is on or off premises, and regardless of whether there is a charge for the food. The term includes but is not limited to restaurants, caterers, nursing and retirement homes, hospitals, private clubs, industrial cafeterias, public and private educational institutions, and delicatessens in retail food stores that cook and/or offer prepared food for individual portions service.

Full-time Equivalent: An individual or combination of individuals, who work a total of at least thirty-five hours per week.

Any terms not specifically defined herein are to be constructed as in accordance with the definitions of the Federal Food Code and Chapter 10 of the State Sanitary Code 105 CMR 590.000.

Section 4 Food Protection Manager Certification Requirements

- A. All food service establishments shall have a certified food protection manager on-site during all hours when the establishment is open and/or food is being served to

the public. Additionally, this certified food manager shall have the authority, and be expected to, enforce the regulations of the State and Federal Food Codes, including the supervision of all other establishment employees.

- B. If a certified food manager position should become vacant during the term of any food service permit, the permit holder shall immediately notify the Board in writing and the permit holder shall have sixty (60) days to fill the position by either hiring a new manager with the proper certification or having an existing employee become certified at the expense of the establishment. The notice to the Board shall include a statement of how the permit holder will ensure adequate protection of public health and safety during the period of vacancy.
- C. All existing permit holders shall achieve compliance with this regulation within ninety (90) days after the effective date of this regulation. New establishments must comply within thirty (30) days after opening.
- D. Certification shall be achieved by fully completing a food safety and sanitation course for managers and attaining a passing grade on an exam provided by the Educational Testing Services (Food Protection Certification Program) or the Educational Foundation of the National Restaurant Association (ServSafe-Registered Trademark) or an equivalent exam recognized by the Massachusetts Department of Public Health and approved by the Board.
- E. The certificate(s) shall be posted on the premises in view of the public.
- F. The certification shall be valid for the time indicated on the certificate, or five years, whichever is less.
- G. Certificates are not transferable from one individual to another.

Section 5 CPR and Chokesaver Certification

- A. If a food service establishment with 25 seats or more should lose a manager or employee certified in CPR or Chokesaver during the term of any food permit, the permit holder shall immediately notify the Board in writing, and the permit holder shall immediately obtain a device designed to dislodge food from someone's throat that is choking. All food service establishments shall have additional employee(s) trained in CPR or Chokesaver within thirty (30) days of the vacancy.
- B. Certification shall be achieved by completing a CPR training conducted by the American Red Cross, American Heart Association, Local YMCA, or other Board of Health approved trainer.

C. The certification shall be valid for the time indicated on the certificate.

D. Certificates are not transferable from one individual to another.

Section 6 Variances

A variance may be granted if, in the opinion of the Board or agent, a health hazard or nuisance will not result from the variance. All variance applications shall be in writing and shall describe how the public health hazards addressed by this regulation will be alternatively addressed by the applicant. No variance request will be granted unless the applicant shows that (1) enforcement of this regulation would be manifestly unjust; and (2) the applicant has established that a level of public health protection at least equivalent to that provided under this regulation can be achieved without strict application of this regulation.

Any variance granted by the Board shall be in writing and be valid until the end of the calendar year. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the board of health.

A variance may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with the requirements for an order and hearing in 105 CMR 590.015.

Section 7 Enforcement and Penalties

Permit Suspension or Revocation:

- A. The Board of Health or agent may suspend or revoke any permit issued by the department for any violation of the regulation within, or any other applicable General Law, regulation, or by-law. Such revocation or suspension may take place in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15.

Non-Criminal Disposition:

- A. This regulation may be enforced by the Board of Health or its agent.
- B. Whosoever violates any provision of this regulation may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D. Any person who violated any provision of this regulation shall be subject to a penalty of not less than twenty-five dollars (\$25.00) per day for each day of the violation, nor more than one hundred dollars (\$100.00) a day. Each day's failure to comply with a final order or provision of this regulation shall constitute a separate offense.

Appeal:

- A. Any person aggrieved by the order of an agent, may appeal to the Board of Health by submitting a written request for a hearing within seven (7) days of the agent's order. A hearing shall be scheduled at the next available Board of Health Meeting. Any person may appeal the decision of the Board to a court of competent jurisdiction.

Section 8 Severability

Each provision of this regulation shall be constructed 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 9 Effective Date

Approved and in full effect this April 15, 2024.

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Betsy Allo, MPH
Chair

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Robin Chapell, M.S., R.S.
Vice-Chair

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Sophia Manos
Clerk

FLOOR DRAINS

FLOOR DRAIN REGULATION

Section 1 Purpose of Regulation

Whereas:

- Floor drains in industrial and commercial facilities are often tied to a system leading to a leaching structure (e.g., dry well, cesspool, leach field) or a septic system; and
- Poor management practices and accidental and/or intentional discharges may lead petroleum and other toxic or hazardous materials into these drainage systems in facilities managing these products; and
- Improper maintenance or inappropriate use of these systems may allow the passage of contaminants or pollutants entering the drain to discharge from the leaching structure or septic system to the ground; and
- Discharges of hazardous wastes and other pollutants to floor drains leading to leaching structures and septic systems have repeatedly threatened surface and ground water quality throughout Massachusetts; and
- Surface and ground water resources in the Town of Foxborough contribute to the town's drinking water supplies.

The Town of Foxborough adopts the following regulations, under its authority as specified in Section II, as a preventative measure for the purposes of:

- Preserving and protecting the Town of Foxborough's drinking water resources from discharges of pollutants to the ground via floor drains, and
- Minimizing the threat of economic losses to the Town due to such discharges.

Section 2 Scope of Authority

The Town of Foxborough Board of Health adopts the following regulation pursuant to authorization granted by M.G.L. c.111 s.31 and s.122. The regulation shall apply, as specified herein, to all applicable facilities, existing and new, within the Town of Foxborough.

Section 3 Definitions

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

Commercial and Industrial Facility: A public or private establishment where the principal use is the supply, sale, and/or manufacture of services, products, or information, including but not limited to manufacturing, processing, or other industrial

operations; service or retail establishments; printing or publishing establishments; research and development facilities; small or large quantity generators of hazardous waste; laboratories; hospitals.

Department: The Massachusetts Department of Environmental Protection.

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

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

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

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

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

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

Section 4 Prohibitions

With the exception of discharges that have received (or have applied and will receive) a Department issued permit prior to the effective date of this regulation, no floors drain(s) shall be allowed to discharge, with or without pretreatment (such as an oil/water

separator), to the ground, a leaching structure, or a septic system in any industrial or commercial facility if such floor drain is located in either:

- A. An industrial or commercial process area,
- B. A petroleum, toxic, or hazardous materials and/or waste storage area, or
- C. A leased facility without either A or B of this section, but in which the potential for a change of use of the property to a use which does have either A or B is, in the opinion of the Board of Health or its agent, sufficient to warrant the elimination of the ground discharge at the present.

Section 5 Requirements for Existing Facilities

- A. The owner of a facility in operating prior to the effective date of this regulation with a prohibited (as defined under Section IV) floor drain system shall:
 - 1. Disconnect and plug all applicable inlets to and outlets from (where possible) applicable leaching structures, oil/water separators, and/or septic systems.
 - 2. Remove all existing sludge in oil/water separators, septic systems, and where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations (310 CMR 30.000). Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate Department policies.
 - 3. Alter the floor drain system so that the floor drain shall be either:
 - a. Connected to a holding tank that meets all applicable requirements of Department policies and regulations, with hauling records submitted to the Foxborough Board of Health at the time of hauling.
 - b. Connected to a municipal sanitary sewer line, if available, with all applicable Department and local permits; or
 - c. Permanently sealed. Any facility sealing a drain shall be required to submit for approval to the Board of Health a hazardous waste management plan detailing the means of collecting, storing, and disposing any hazardous waste generated by the facility, including any spill or other discharge of hazardous materials or wastes.
- B. Any oil/water separator remaining in use shall be monitored weekly, cleaned not less than every 90 days, and restored to proper conditions after cleaning so as to ensure proper functioning. Records of the hauling of the removed contents of the separator shall be submitted to the Board of Health at the time of hauling.
- C. Compliance with all provisions of this regulation must be accomplished in a manner consistent with Massachusetts Plumbing, Building, and Fire code requirements.
- D. Upon complying with one of the options listed under Section V.A.3., the owner/operator of the facility shall notify the Department of the closure of said system by filing the Department's UIC Notification Form with the Department and sending a copy to the Foxborough Board of Health.

Section 6 Effective Date of all Facilities

The effective date of this regulation is the date posted on the front page of the regulation, which shall be identical to the original date of adoption of the regulation.

A. Existing Facilities:

1. Owners/Operators of a facility affected by this regulation shall comply with all of its provisions within 120 days of the effective date.
2. All applicable discharges to the leaching structures and septic systems shall be discontinued immediately through temporary isolation or sealing of the floor drain.

B. New Facilities:

1. As of effective date of the regulation, all new construction and/or applicable change of use within the Town of Foxborough shall comply with the provisions of this regulation.
2. Certification of conformance with the provisions of this regulation by the Board of health shall be required prior to issuance of construction and occupancy permits.
3. The use of any new oil/water separator shall comply with the same requirements as for existing systems, as specified above in Section V.B.

Section 7 Amendments

1. The Foxborough Board of Health or its Agent shall have the right to inspect floor drain systems within the Town to confirm compliance with these regulations. In addition, the Board of Health or it's agent may request the opinion of the local plumbing or fire inspectors upon request.
2. All underground storage tanks built for the purpose of holding industrial or commercial wastewater, pursuant to 314 CMR 18.00, shall be documented in Health Department files and approved by the Board of Health or its agent.
3. Underground injection control wells installed pursuant to 310 CMR 27.00 shall be documented and approved by the Board of Health or its agent. At the request of the Board of Health or its agent, a property owner shall submit laboratory results of any constituents of concern within the injection water.

Section 8 Enforcement

Any person that violates any provision of this Regulation may be punished, under Chapter 111 Section 31 of the Massachusetts General Laws as a criminal offense or Chapter 40 section 21D of the Massachusetts General Laws as a noncriminal offense, by fine not less than two-hundred (\$200) dollars per day, but not more than one-thousand (\$1,000) dollars per day, the violation exists or by criminal complaint at the appropriate venue.

Section 9 Severability

Each provision of this regulation shall be construed as separate to the end that, if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

Section 10 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: July 17, 1995

Revision Date: April 8, 2024.

HOUSING CODE

Regulations Pertaining to Pre-Occupancy Inspections and Certificates of Fitness

Section 1 Authority

The Foxborough Board of Health, acting under the authority of Massachusetts General Laws, Chapter 111, Section 31, and the provisions of the Sanitary Code, Article 1, hereby adopts the following regulation governing Certificates of Fitness or pre-rental housing inspections.

Section 2 Purpose

The purpose of this regulation is to implement a proactive rental inspection and to create a safe and healthy housing stock within the Town of Foxborough. It will also provide the Town with a uniform minimum standard of conditions exhibited by rental properties and provide protection to individuals living within the Town.

Section 3 Definitions

Certificate of Fitness – a written document signed by the Board of Health or its agent that confirms that a rental unit meets the requirements of 105 CMR 410.000 The Minimum Standards of Human Habitation before it is rented to a consumer for residential use.

Owner- An owner shall be defined as a for profit or not for profit individual or corporation, an agent of a for profit or not for profit individual or corporation, or any person having legal charge of or authority over a private dwelling, tenement, lodging house, or other residential rental property dedicated to residential use.

Occupant- means every person living or sleeping in a dwelling.

Rental Unit- A non-owner-occupied room or group of related rooms within a dwelling used or intended for use by one family or household living, sleeping, cooking and eating. A rental shall also mean a non-owner-occupied condominium unit.

Order to Correct- means a written inspection report or violation notice that lists conditions in a dwelling, dwelling unit, mobile dwelling unit, or rooming house or upon a parcel of land which fails to meet any requirement of 105 CMR 410.000.

Section 4 General Provisions

- A. Whenever the Health Department becomes aware that a dwelling unit, apartment, tenement, or rental unit that is being vacated that does not meet the

Minimum Standards of Human Habitability (105 CMR 410.000), either by inspection or by occupant complaint, the agent may:

1. Order the property owner to allow a pre-occupancy inspection prior to the dwelling being occupied, as to meet the standards set forth in “The Sanitary Code, Article II, Minimum Standards of Fitness for Human Habitation”, as promulgated by the Department of Public Health of the Commonwealth of Massachusetts under the authority of General Laws, Chapter 111, Section 127 A.
- B. Whenever, the Board of Health or agent has taken enforcement action against a property, dwelling unit(s), apartment, or tenement owner to correct violations of the Minimum Standards of Human Habitability the Board of Health or agent may:
1. Order the property Owner to allow pre-occupancy inspections for any dwelling unit, property, apartment, or other tenement under their control. The request to inspect before occupancy shall remain in effect until such time the Board of Health or agent confirms compliance with the Minimum Standard for Human Habitability.

Section 5 Violations

Whoever, fails to comply with an order to obtain a pre-occupancy inspection from the Board of Health or agent, shall be in violation of this regulation for each day the occupant resides at the property without having a valid Certificate of Fitness.

Any person who violates this provision by failing to have their rental unit inspected or who fails to comply with an order to inspect, pursuant to the provisions of this code, shall be subject to a non-criminal penalty of not less than twenty-five dollars nor more than fifty dollars, pursuant to MGL Ch 40 Sec. 21D. Each day’s failure to comply shall constitute a separate violation.

Section 6 Severability

If any provision of this regulation is declared invalid or otherwise unenforceable, the other provisions shall not be affected and shall continue in full force and effect.

Section 7 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

PRIVATE WELLS

Private Well Regulations

Section 1 Purpose

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

Section 2 Authority

These regulations are adopted by the Foxborough Board of Health, pursuant to its authority under Massachusetts General Laws, Chapter 111, section 31. These regulations supersede all previous Regulations for Private Wells adopted by the Foxborough Board of Health.

Section 3 Definitions

Abandoned Water Well: a well that meets any of the following criteria; (1) construction was terminated prior to completion of the well, (2) the well owner has notified the local Board of Health that use of the well has been permanently discontinued, (3) the well has been out of service for at least three 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 (6) 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.

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.

Alter a Well or Well Alteration: Change the structural or hydraulic characteristics of a well including but not limited to deepening, decommissioning, performing Well Yield Enhancement, or performing casing extension, replacement, perforation, or repair.

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

Aquifer: a 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.

Artesian Aquifer: an aquifer that is bound above and below by impermeable material or materials or distinctly lower permeability than the aquifer itself. The water in an aquifer

confined in this manner will rise in a drilled hole or well casing above the point of initial penetration (above the bottom of the confining, or impermeable, layer overlying the aquifer).

Bentonite: a mixture of swelling clay minerals containing at least eighty-five percent of mineral montmorillonite (predominantly sodium montmorillonite) which meets the specifications of the most recent revision of API Standard 13A.

Bentonite Grout: 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 Foxborough, Massachusetts or its authorized agents.

Business of Well Drilling: performing for commercial purposes, the activity of Drilling or Altering a Well.

Casing: impervious durable pipe placed in a boring to prevent the walls from caving and to serve as a vertical conduit for water, other fluids, or gases in a well.

Certified Laboratory: a laboratory certified by the Department for the analysis of drinking water and required water quality analytes. Provisional certification is acceptable.

Certified Company: a person authorized by nontransferable Certification with the Department, under 310 CMR 46.00, to engage in the business of Well Drilling and Alteration, determining Well Yield and Pump Installation.

Certified Individual: an individual authorized by nontransferable Certification with the Department to Drill or Alter Wells, as specified in 310 CMR 46.03(3).

Concrete: 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.

Department: Massachusetts Department of Environmental Protection.

Install a Pump or Pump Installation: Install, replace, or alter a pump or any component thereof for a well.

Irrigation well: a 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 it meets the requirements of a Private Drinking Water Well and have the Board's written approval.

Neat Cement Grout: 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.

Person: any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

Private Well: any hole or shaft drilled into the ground to inject or withdraw water, other fluids, or gasses, monitor soil gasses, monitor groundwater levels, or water quality, transfer heat, or provide cathodic protection that is not regulated as a public water supply under 310 CMR 22.00.

Private Well Yield: the gallons per minute (gpm) of water that can flow or be withdrawn from a well, at a sustained rate after a minimum of 2 hours if the water level has stabilized (water level does not fluctuate more than 3 inches) for the last 30 minutes of the test.

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

Pump or Pump System: the mechanical equipment or devices used to remove water from a well. For a well with a pitless adapter, the pump system includes all piping and the pitless adapter. For a well with a submersible pump and without a pitless adapter, the pump system includes all piping up to the metering device, or if none, then up to the main control valve inside the foundation of the structure served by the well. For a well without a submersible pump and without a pitless adapter, the pump system includes all piping up to and including the wellhead. For installation or repair purposes, the pump or pump system includes all piping up to the metering device or, if none, then up to the main control valve inside the foundation of the structure served by the well.

Replace a Pump or Pump Replacement: Install a Pump of the same horsepower as the Pump that was last removed, install any component of a Pump with a component of the same size and capacity as the one that was last removed. Also, removal and replacement of a pump or any component thereof.

Sand Cement Grout: 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 distance from established ground surface to the stabilized water level in a well which is neither being pumped nor under the influence of pumping.

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

Water Quality Testing: the process of properly collecting a water sample from a private well and submitting it under proper temperatures and chain of custody to a certified Massachusetts Department of Environmental Protection laboratory.

Well: any hole or shaft drilled into the ground to inject or withdraw water, other fluids, or gases, monitor soil gasses, monitor groundwater levels or water quality, transfer heat, or provide cathodic protection.

Wellhead: the above ground component or structure built over a well.

Well Yield Enhancement: a process to increase the production of water and yield by using water under pressure, or another substance the Department has approved for use in the process, to clean our existing fractures in order to allow water to flow into the well from other areas.

Section 4 Well Construction Permit

(1) A Massachusetts Certified Well Driller shall obtain a permit from the Foxborough Health Department prior to the commencement of construction of a private well.

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

(a) the property owner's name and address

(b) the well driller's name and proof of valid Massachusetts certification

(c) a plan prepared by a Massachusetts Engineer or Surveyor with a specified scale, showing the location of the proposed well in relation to existing or proposed above or below ground structures.

(d) 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:

1. existing and proposed structures
2. subsurface sewage disposal systems
3. subsurface fuel storage tanks
4. public and private ways
5. utility rights-of-way
6. any other potential sources of pollution.

(e) a permit fee as observed in the most up to date Health Department fee schedule.

(3) The permit shall be always on site when work is taking place. Each permit shall expire one (1) year from the date of issuance unless revoked for cause or extended.

(4) The Health Department may forward well construction applications to the Water Department, Conservation Agent, Building Department, or other authority for comment, if warranted.

Section 5 Water Supply Certificates

(1) The issuance of a Potable Water Supply Certificate by the Health Department shall certify that the private well may be used as a drinking water supply. Potable 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 Health Department to obtain a Water Supply Certificate:

- (a) a well construction permits.
- (b) a copy of the Well Completion Report as required by MassDEP Well Driller Program regulations (310 CMR 46.00).
- (c) a copy of the Pumping Test Report required pursuant to Section VII of these regulations; and,
- (d) a copy of the Water Quality Report required pursuant to Section VIII of these regulations.

(2) The issuance of an Irrigation Water Supply Certificate by the Health Department shall certify that the private well may be used as an irrigation water supply. The following shall be submitted to the Health Department to obtain a Water Supply Certificate:

- (a) a well construction permit.
- (b) a copy of the Well Completion Report as required by MassDEP Well Driller Program regulations (310 CMR 46.00).
- (c) a copy of the Water Quality Report, if required pursuant to Section VIII of these regulations.

(3) The issuance of a Geothermal Well Certificate by the Health Department shall certify that the Geothermal well may be used for its intended purpose. The following shall be submitted to the Health Department to obtain a Geothermal Well Certificate:

- (a) a completed well construction permit application.
- (b) a copy of the Well Completion Report as required by MassDEP Well Driller Program regulations (310 CMR 46.00).

(4) Upon the receipt and review of the above documents, the Health Department shall decide on the application for a Water Supply Certificate. A final decision shall be in writing and shall comprise one of the following actions:

- (a) issue a Water Supply Certificate.

(b) deny the applicant a Water Supply Certificate and specify the reasons for the denial.

(c) Issue a conditional Water Supply Certificate with those conditions, which the Health Department 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.

Section 6 Well Location and Use Requirements

(1) 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. 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.

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

(a) 10 feet from the property line.

(b) 25 feet from public or private roadway.

(c) 15 feet from right of way.

(d) 50 feet from building sewer line or septic tank.

(e) 100 feet from leaching field or drywell.

(f) 100 feet from stable, barnyard, manure storage.

(g) 250 feet from an underground fuel storage or pesticide tank.

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

(3) The Health Department 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.

(4) 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.

(5) 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 water tightness.

(6) 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.

(7) In the event, a shared-use well system is established by multiple parties. A shared use agreement must be developed. This agreement should cover permitting responsibilities, maintenance and repair responsibilities, sampling, etc. and should include who will be responsible for paying which costs. You may add other items to the water users' agreement such as, but not limited to, the covenant's purpose, the easement's purpose, etc. if applicable. The developed agreement shall be provided to the Health Department and must be submitted at time of permitting.

Section 7 Water Quantity Requirements

The applicant shall submit a Pumping Test Report to the Health Department for review and approval. The Pumping Test Report shall include the name and address of the well owner, well location, date the pumping test was performed, depth at which the pump was set for the test, 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.

To demonstrate the capacity of the well to provide the Required Volume of water, a pumping test shall be conducted in the following manner:

(1) the volume of water necessary to support the household's daily needs shall be determined using the following equation: $(\text{Number of Bedrooms} + 1) \times 110 \text{ gallons per bedroom} \times \text{a safety factor of } 2 + \text{the well's storage capacity} = \text{number of gallons needed daily}$

(2) the storage capacity of the well shall be determined using the measured static water level and the depth and radius of the drill hole or casing.

Estimate the water storage using information obtained from the Well Completion Report and the following Table:

Diameter of Well in Inches	Gallons of Water		Diameter of Well in Feet	Gallons of Water Per Foot of Water Depth
	Per Foot of Water Depth	Per 100 Feet of Water Depth		
1.5	0.092	9.2	2	23.5
2	0.163	16.3	3	52.9
3	0.367	36.7	4	94.0
4	0.653	65.3	5	146.9
5	1.020	102.0	6	211.5
6	1.469	146.9	7	287.9
8	2.611	261.1	8	376.0
10	4.080	408.0	9	475.9
12	5.876	587.6	10	587.6

To determine the available water in feet, subtract the static water level from the well depth or the pump intake. Multiply the available water in feet times the gallons of water per foot for the well diameter to calculate the number of available gallons held in storage in the borehole (see above Table.)

(3) the Required Volume shall be calculated by adding the volumes of water in (1) and (2). It is this volume of water that must be pumped from the well within a 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 with eighty-five (85) percent of the pre-pumped static water level within a twenty-four (24) hour period.

Section 8 Water Quality Testing Requirements

(1) 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.

(2) 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.

(3) For all drinking water and irrigation wells, water quality testing utilizing the applicable US EPA approved method for drinking water testing, shall be conducted by a Massachusetts or EPA certified laboratory and shall include analysis for the following parameters:

- Arsenic
- Chloride
- Fluoride
- Iron
- pH
- Total Coliform bacteria

- Copper
- Lead
- Nitrate/Nitrite
- Hardness
- Manganese
- E. coli bacteria
- Sodium

(4) In drinking water wells drilled more than 100 feet into bedrock the Board 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 Uranium concentrations. If the Gross Alpha screen detects radiation of 5 pCi/L or more, then the water must be analyzed for Radium and Uranium concentrations.

(5) In drinking water or irrigation wells drilled downgradient from a hazardous material storage site, known area of a hazardous material release, or other source of contamination the Health Department may require testing for water quality parameters not listed in VIII (3) and (4) for which there is a US EPA or MassDEP approved method for public drinking water testing, shall be conducted by a MassDEP or EPA certified laboratory or any other certification authority approved by MassDEP. This testing may include but is not limited to:

- Inorganic Compounds
- Volatile Organic Compounds
- Synthetic Organic Compounds

(6) In drinking water and irrigation wells drilled less than 100 feet from a surface water body, septic tank, cesspool, leaching field, or is prone to flooding the Health Department or Board shall require more frequent testing for:

- Bacteria
- Turbidity

(7) The owner of a rental property with a drinking water well shall make results of all water quality tests available to all tenants of the property and the Health Department. In cases where the well water does not meet the water quality standards outlined above, the Health Department or Board will require the property owner to provide an alternative approved source of drinking water for the tenants, require water treatment, or other suitable remedy.

(8) Before the transfer of title on a property, the property owner which is served by a private well will provide the perspective buyer the most recent water quality report.

(9) The Health Department reserves the right to require retesting of the above parameters, or testing for additional parameters when, in the opinion of the Health Department, 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.

(10) In any case where the Health Department finds that the water quality of a private well does not meet Massachusetts Department of Environmental Protection (MA DEP)

Drinking Water Standards, it may require additional actions as it deems necessary for the protection of public health, safety or welfare, such as, but not limited to; requiring the property owner to provide an alternative source of drinking water, well alterations, well abandonments, filtration, or other remedy.

(11) Private wells shall meet the following water quality standards, unless otherwise updated within the MA DEP Drinking Water Standards:

Arsenic <0.010 mg/l; Chloride <250 mg/l; Copper <1.3 mg/l; Sodium <20mg/l; Fluoride < 4mg/l; Iron <0.3 mg/l; Lead < 0.015 mg/l; Manganese < .05 mg/l; pH between 6.5 and 8.5, Total Coliform 0 per 100mL; Combined Nitrate/Nitrite <10 mg/l; E. Coli not present; All other Inorganic Compounds, Volatile Organic Compounds, Synthetic Organic Compounds, or Radioactive Compounds shall meet the limits set forth by the MA DEP Drinking Water Standards.

Section 9 Well Construction Requirements

(1) 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.

(2) 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.

(3) A physical connection is not permitted between a private well water supply a public water system.

(4) General Well Design and Construction

(a) 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 being 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.

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

(c) Well construction design shall ensure that surface water does not enter the well through the opening or by seepage through the ground surface.

(d) All water used for drilling, well development, or to mix a drilling fluid shall be obtained from a potable water source, which will not result in contamination of the well or the water bearing zones penetrated by the well.

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

(f) 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.

(g) All wells, including those that have been hydro-fractured, shall be developed 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: over-pumping, backwashing, surging, jetting, air-lift pumping.

(5) Well Casing Construction

(a) 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.

(b) All casing used in the construction of private wells shall be in good repair and free from pits, breaks, gouges, deep scratches, and other defects.

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

(d) 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 in a floodplain. When a well is 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.

(6) Well Screen

(a) 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.

(7) Grouting and Sealing of Wells

(a) 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.

(8) Wellhead Completion

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

(b) 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."

(c) 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.

(d) 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.

(9) Disinfection Methods

(a) Upon completion of well construction or upon installation of a well pump, the well driller or pump installer shall disinfect the well.

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

(c) 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 may be collected and submitted to a Massachusetts certified laboratory.

(10) Only certified well drillers are authorized to physically alter or repair a well.

Section 10 Water Supply Certificate

(1) All Potable Water Supply Certificates shall be renewed every 3 years. Expired Potable Water Supply Certificates shall be renewed within 6 months of the expiration date by providing the following:

(a) Renewal application and appropriate fee.

(b) Water quality testing results pursuant to section VIII of these regulations.

(2) All Irrigation Water Supply Certificates shall be renewed every 5 years. Expired Irrigation Water Supply Certificates shall be renewed within 6 months of the expiration date by providing the following:

(a) Renewal application and appropriate fee.

(b) Water quality testing results pursuant to section VIII of these regulations.

(3) Failure to renew a Potable or Irrigation Water Supply Certificate may result in penalties pursuant to section XIV of this regulation.

(4) Upon transfer of property title with an active Water Supply Certificate, it shall be the owner's responsibility to renew the Water Supply Certificate with the Health Department or decommission the well pursuant to section XI of these regulations.

Section 11 Decommissioning Requirements

(1) Abandoned wells, test holes, and borings shall be decommissioned to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.

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

(a) Construction of the well is terminated prior to completion of the well. (b) The well owner notifies the Health Department that the use of the well is to be permanently discontinued.

(c) The well has been out of service for three (3) years or more.

(d) The well is a potential hazard to public health or safety and the situation cannot be corrected due to a lack of water quality or source of contamination, or a lack of water quantity produced by the well, or the well is in a state of disrepair, or other condition.

(3) Only certified well drillers may abandon wells.

(4) Wells shall be plugged with neat cement grout, sand cement grout, concrete, or bentonite grout.

(5) 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.

(6) 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.

Section 12 Enforcement

(1) The Health Department has the authority to investigate suspected or known violations of these regulations and/or violations of any Water Supply Certificate conditions. The Health Department 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.

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

(3) Any Order the Health Department or Board issues shall be in writing and served via certified mail to the owner of record.

(4) Any property owner that failed to install a private well pursuant to the Towns' previous Board of Health Private Well Regulation is in violation these regulations herein.

Section 13 Hearing

(1) Any person to whom the Health Department issues an Order may request a hearing before the Board of Health by filing with the Health Department within seven (7) days after the day the Order was served a written request for a hearing. Upon receipt of a hearing request, the Health Department 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 upon to. 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, to the person who requested the hearing. If the Board sustains or modifies the Order, it shall be carried out within the time allotted in the original order or in the modification.

(2) 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 was issued or sustained shall constitute a separate violation.

Section 14 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.

Section 15 Penalties

Any person who violates any provision of these regulations, or who fails to comply with any order of the Board of Health or its Agent, shall be fined not less than ten (10) dollars nor more than two hundred (200) dollars, pursuant to MGL Ch 40 Sec. 21D. Each day's failure to comply with a final Order or any provision of this regulation shall constitute a separate violation.

Section 16 Variance

(1) The Board of Health 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.

(2) 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. 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.

(3) 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.

Section 17 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.

Section 18 Disclaimer

The issuance of a well permit shall not be construed as a guarantee or certification by the Health Department, Board of Health, 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 19 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: December 6, 2021

Revision Date: April 8, 2024.

PROHIBITING SMOKING IN WORKPLACE

REGULATION PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES

Section 1 Purpose

The purpose of this regulation is to protect the health of the general public and employees in the Town of Foxborough from the dangers of secondhand smoke inhalation.

Section 2 Authority

This regulation is promulgated under the authority granted to the Foxborough Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “boards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “nothing 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 limitations 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:

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

E-Cigarette: 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 anyone (1) time, including the Town of Foxborough.

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.

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

Smoking (or smoke): the 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.

Smoking bar: 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".

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

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

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 as well as those workplaces listed in subsection (c) below.
- b) Smoking is hereby prohibited in workplaces in Foxborough in accordance with M.G.L. Ch.270, §22 (commonly known as the "Smoke-free Workplace Law).
- c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is hereby prohibited in smoking bars.
- d) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

Section 5 Enforcement

- (1) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
 - a. \$100 for the first violation
 - b. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
 - c. \$300 for a third or subsequent violation occurring within two (2) 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.
- (4) Violations of Sections 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 240 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
- (5) Violations of Sections 4(a), 4(c), 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.
- (6) If an owner, manager, or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- (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 affect 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 the 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

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: August 1, 2013

SWIMMING POOLS

Regulations Pertaining to Public, Semi-Public, and Residential Swimming Pools

Section 1 Statement of Purpose

Whereas it is the role of the Foxborough Board of Health is to safeguard the public's health from accidental drownings, as well as, to provide bathers of public and semi-public pools with safe swimming conditions.

Section 2 Authority

This regulation is promulgated pursuant to the authority granted to the Foxborough Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "the Boards of Health may make reasonable health regulations." In addition, it is also promulgated as an addendum to the State Sanitary Code (105 CMR 435.000) or the minimum requirements for semi-public and public swimming pools.

Section 3 Residential Swimming Pools

Every outdoor inground residential swimming pool, whirlpool, hot tub, jacuzzi, or spa containing water 24 inches or more in depth shall be surrounded by a fence or barrier not less than four feet in height. The barrier shall be located to surround the entire pool, contiguous walks, and any diving platforms, slides, or other associated structures. A building structure or natural topography, such as rock outcrops, lakes, or ponds may be used as part of such enclosure at the discretion of the Board of Health or Agent. Each barrier wall shall be constructed as not to have openings, holes, or gaps more than 4 inches in diameter. All fences constructed for this purpose shall be kept in good repair and shall be kept adequately anchored to the ground. A fence that surrounds an entire property shall meet the intent of this section.

Residential property owners may petition the Board of Health for a variance from this provision. The Board of Health may grant a variance to this provision when, in its opinion, the applicant has demonstrated that the equivalent degree of protection will be provided. The Board shall take the following into consideration when determining the variance request:

- A. If the swimming pool shall be equipped with a powered safety cover and a whirlpool, hot tub, jacuzzi, or spa shall be fitted with a lockable safety cover. All powered and lockable safety covers shall conform to ASTM F1346.

- B. The ability of the applicant to secure powered safety covers during power outage.
- C. The presence of small children on or surrounding the property.
- D. Physical screening.
- E. Other safety features, such as door alarms, lockable cover controls, etc.
- F. Feedback from property abutters and citizens regarding the variance request.

If the Board of Health or its agents finds that a pool equipped with a powered safety cover is not being covered, which has made a pool accessible to the public, the Board or agent may rescind the variance and order the pool closed, fenced, or otherwise secured to abate the nuisance condition.

A powered safety cover shall not be an acceptable means of making a pool inaccessible if the pool area is directly abutting a daycare, school, recreational playground, or any other area frequented by young children.

The initial variance request shall be approved or denied by the Board of Health and be valid for 1 year. All additional renewals of the variance may be approved by the Director of Public Health, if it is in good standing. The Director of Public Health may choose to deny or revoke a variance request if in their opinion the pool is causing a nuisance condition. Any person denied a variance may appeal this decision to the Board of Health.

Section 4 Public and Semi-Public Swimming Pools

Public and semi-public pools shall not be open if the main drain is not visible from the pool deck.

Emergency Communication systems, as required in 105 CMR 435.25, that are built or installed after the passing of this regulation shall be required to be within the interior of a pool fence or enclosure and must be hardwired and/or permanently affixed. All public and semi-public pools built after the date of this regulation shall not use cellular phones or other cordless technology for emergency communication systems that does not have a hardwired power and communication cable.

All Emergency Communication Systems shall have direct access to a dial tone or 911 and shall not be transferred to a 3rd party, such as a hotel lobby.

The following information shall be displayed conspicuously above all Emergency Communication System locations:

- A. The phrase "In the event of an emergency dial 911".
- B. The physical address and location of the call box.

In accordance with 105 CMR 435.28: Bacterial Quality, the Foxborough Board of Health requires that all public and semi-public swimming pools to conduct a bacteriological

water analysis before opening for the season. The bacteriological water quality analysis shall be conducted by an approved laboratory and shall meet the following requirements:

- A. Shall be absent of coliform bacteria.
- B. Shall be absent for pseudomonas bacteria.

The Board of Health or its agents may require further bacteriological testing throughout the season, if warranted. Further bacteriological testing is required upon the following circumstances:

- A. A known or suspected fecal incident.
- B. A known or suspected case of skin rash or irritation.
- C. A previously elevated sampling result.
- D. Failure of the pool operator to drain, clean, and refill a special purpose pool every 14 days.
- E. Failure of the pool operator to test for residual disinfectants and pH four times a day.
- F. At any other time, the Health Department or Board of Health deems necessary due to possible contamination of said pool water.

Public or semi-public pools shall close when so requested by Board of Health or agent, and shall not re-open until water quality tests, or other factors relating to the closure, indicate that there are no imminent risks to public health or safety. Immediate closure shall occur when any of the following occurs, and notification shall be given to the department:

- A. Immediately following a fecal incident.
- B. Failure to meet the minimum bacterial quality standards pursuant to these regulations.
- C. Failure to supply a working emergency communication system.
- D. Or otherwise, failure of the pool filters, pumps, or chemical agents to adequately filter and sanitize the pool properly.

In accordance with 105 CMR 435.23: Lifeguards, the Foxborough Board of Health requires all public and semi-public swimming or wading pool to provide one or more lifeguards 16 years of age or older and meet the standards set forth by 105 CMR 435.23. One lifeguard shall be provided for each 25 bathers and the pool operator shall provide adequate number of lifeguards to meet bather load capacity. If a public or semi-public swimming or wading pool has a bather load capacity of 50, then at least 2 lifeguards are required. If a public or semi-public swimming or wading pool has a bather load capacity of 60, then at least 3 lifeguards are required. Lifeguards for public or semi-public swimming or wading pools shall be in constant attendance during bathing hours,

located at lifeguard stations within the pool fence or enclosure, and no bather shall be admitted to the pool unless a lifeguard(s) is on duty.

Upon the enactment of the Swimming Pool regulation, all pools that have been permitted in the Town of Foxborough within the last two years shall be considered to have an approved variance from 105 CMR 435.23 for Lifeguards provided they are compliant with the other minimum sanitary standards for swimming pools pursuant to 105 CMR 435.000 and these local regulations. Any new pool constructed after the date of these regulations shall be required to come before the Board of Health to request a variance to operate without a Lifeguard.

In accordance with 105 CMR 435.02: Plan Review, no new public or semi-public pool shall be constructed, installed, or remodeled within the Town of Foxborough, without first submitting an Engineer or Architect's stamped plans, that are approved in writing by the Board of Health or Agent. Upon the Health Department's written approval of said plans, the public or semi-public pool may be constructed. However, the pool may not operate until a final inspection is performed and a permit to operate the swimming pool has been granted by the department.

Section 5 Enforcement

This regulation is adopted and enforced by the Board of Health or its agents, in accordance with Massachusetts General Law Chapter 111, Section 31, as well as the Minimum Standards for Swimming Pools (105 CMR 435.000). Violation of any standard within may be enforced through a non-criminal proceeding pursuant to M.G.L. Ch. 40 Sec. 21D. Each day in violation shall be considered a separate offense.

Any person who fails to comply with any provision within shall be fined not less than \$50 or more than \$200. In addition, nothing contained herein shall preclude the Board of Health or Health Department from seeking equitable relief to enforce this regulation.

The Board of Health or Health Department may suspend, revoke, or deny any permit granted if a permit holder is found to be in violation of any provision of this regulation after a hearing.

Section 6 Variances

The Foxborough Board of Health may allow swimming pool operators a variance to have fewer than the minimum number of lifeguards and shall take into consideration the following items when requiring lifeguards at a pool:

- A. The pool's attendance and bather load.
- B. The age of typical bathers.
- C. The depth of the pool.
- D. Known safety incidents at the pool and medical logbooks.
- E. Pool attendants, CPR trained individuals, and other staff.

- F. Additional safety features.
- G. Compliance with these regulations, as well as compliance with the minimum standard for swimming pools (105 CMR 435.000).
- H. Public comments.
- I. Any other variance granted or pool feature, that in the opinion of the Board of Health that requires the presence of a lifeguard.

To request a variance for lifeguards, an owner shall submit the request in writing to the Board of Health or agent with their initial permit to operate a public or semi-public swimming pool. If the variance is granted by the Board, it shall be valid for the calendar year. All variances in good standing may be renewed by the agent upon compliance with the applicable codes and provisions of the variance. The health agent may deny, revoke, or suspend any existing variance of the code, when in their opinion the pool is no longer in good standing or endangers public health. This decision may be appealed to the Board of Health at the next available meeting date.

Upon the enactment of this regulation, all pools currently permitted within the Town of Foxborough shall have an approved variance for the number of lifeguards. Any pool obtaining an initial permit after the date these regulations are enacted shall require a Board of Health variance.

All variance requests shall include, but not be limited to:

- A. The name of the facility and person who has direct oversight over the pool.
- B. A citation of the code section to which the variance is requested.
- C. A statement as to why the applicant is unable to comply with the code section to which the variance is requested.
- D. The nature and duration of the variance request.
- E. A statement of how the intent of the code will be met and the reasons why the public health or safety would not be jeopardized if the variance was granted; and
- F. A full description of any policies, procedures, or equipment that the applicant proposes to use to rectify any potential increase in health or safety risks created by granting the variance.

The Board of Health may impose any conditions, safeguards, and other limitations on a variance when it deems it appropriate to protect public health, safety, or the environment.

A copy of any variance granted by the Board of Health, while it is in effect, shall be available to the public within the Health Department. A copy of the variance shall also be displayed or on file in the usual place of practice of the applicant.

Any variance granted under this section may be subject to approval, denial, suspension, or revocation by the Board of Health or Agent when necessary.

All variances granted by the Board of Health may be renewed by the health agent upon compliance with all applicable codes and regulations. In addition, the health agent may deny, suspend, or revoke a variance when code compliance is not achieved, or the operation of the swimming pool creates a health, safety, or environmental concern or hazard.

Each variance granted by the Board of Health shall expire with the Permit to Operate a Semi-Public or Public Swimming Pool, unless otherwise renewed by the Board of Health or Health Agent.

Section 7 Severability

If any section, subsection, sentence, clause, phrase, heading, or any portion of these Regulations is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such provisions and such holding shall not affect the validity of the remaining portions thereof.

Section 8 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: December 15, 2017

Revision Date: April 8, 2024.

TANNING REGULATIONS

Regulations Pertaining to Tanning Facilities

Section 1 Statement of Purpose

Whereas it is the role of the Foxborough Board of Health is to safeguard the public's health from the dangers associated with tanning facilities.

Section 2 Authority

This regulation is promulgated pursuant to the authority granted to the Foxborough Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "the Boards of Health may make reasonable health regulations.", as well as, under the authority of 105 CMR 123.000.

Section 3 General Requirement

Each applicant or person in direct control of tanning equipment at a tanning facility shall:

- A. Complete the "Tanning Operator" training module offered by the Local Public Health Institute or equivalent found at: <https://sites.bu.edu/masslocalinstitute/training/on-your-time-trainings/> and receive a score of 70% or more.
- B. Print out the Certificate of Completion and submit it with the permit application.
- C. All operators must complete this training prior to operating the tanning equipment.
- D. Any subsequent new hires or persons in charge of tanning equipment shall be certified before they are allowed to operate said tanning equipment.
- E. All persons "Tanning Operator" Certificates shall be located within the facility, in a bound book, which is accessible to inspect by the Health Department.

- F. A licensed operator must be present at the facility at any time tanning equipment is in operation.

Section 5 Enforcement

This regulation is adopted and enforced by the Board of Health or its agents, in accordance with Massachusetts General Law Chapter 111, Section 31, as well as, through 105 CMR 123.000 for Tanning Facilities. Violation of any standard within may be enforced through a non-criminal proceeding pursuant to M.G.L. Ch. 40 Sec. 21D. Each day in violation shall be considered a separate offense.

Any person who fails to comply with any provision within shall be fined not less than \$50 nor more than \$200. In addition, nothing contained herein shall preclude the Board of Health or Health Department from seeking equitable relief to enforce this regulation.

The Board of Health or Health Department may suspend, revoke, or deny any permit granted if a permit holder is found to be in violation of any provision of this regulation after a hearing.

Section 6 Severability

If any section, subsection, sentence, clause, phrase, heading, or any portion of these Regulations is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such provisions and such holding shall not affect the validity of the remaining portions thereof.

Section 7 Effective Date

Approved and in full effect this April 15, 2024.

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Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: December 3, 2012

Revision Date: April 8, 2024.

TITLE 5 REGULATIONS

Septic System Supplementary Rules and Regulations

Section 1 Statement of Purpose

The Board of Health of the Town of Foxborough, Massachusetts acting under the authority of Chapter 111, Section 31, of the Massachusetts General Laws and amendments and additions thereto, enabling and acting thereunder and in accordance therewith have; in the interest of and for the preservation of the public health, duly made and adopted the following additional requirements to the State Environmental Code, Title 5, 310 CMR 15.000:

Section 2 Definition of Bedroom (310 CMR 15.002)

For the purposes of Title 5, 310 CMR 15.002 a bedroom shall be defined pursuant to the State Sanitary Code 105 CMR 410.000, or otherwise a room providing privacy, consisting of the following:

- a) floor space of no less than 70 square feet.
- b) for new construction, a ceiling height of no less than seven feet three inches.
- c) for existing houses and for mobile homes, a ceiling height of no less than seven feet, zero inches.
- d) an electrical service and ventilation; and
- e) at least one window.

Offices, dens, libraries, studies, bonus rooms and other named rooms that meet the above definition and are “labeled” on building plans as non-bedrooms shall be considered a bedroom pursuant to these regulations.

Living rooms, dining rooms, kitchens, halls, bathrooms, unfinished cellars and unheated storage areas over garages are not considered bedrooms. Single family dwellings shall be presumed to have at least three bedrooms, unless a deed restriction is placed on the property which requires less.

The applicant may not design a system using design flows for a smaller number of bedrooms than are presumed in this definition, unless the deed restriction is applied to the property limiting the number of bedrooms to the smaller number.

Section 3 Disposal Works Application Requirements (310 CMR 15.020)

Applications to install, repair, or abandon on-site sewage disposal systems shall be submitted on Massachusetts Department of Environmental Protection (MA DEP) approved forms.

All applications for new on-site sewage disposal systems shall include, 3 construction plans, perc test results on a form approved by the MA DEP, and an interior schematic of the interior of the building that shows all habitable areas. The official interior inspection of the property conducted by a Town of Foxborough Official, may be used as a substitute for this schematic. The Town Official who performs such inspection will document the findings on a Housing Inspection Form pursuant to 105 CMR 410.000. The interior inspection must be performed in conjunction with the inspection of the installation of a system component or backfilling. All inspection performed outside this time, shall result in an inspection which can be found on the most recent Health Department fee schedule.

Disposal Works Plans shall be provided to the Health Department in triplicate. Once approved by the Department, the installers copy of the Disposal Works Plan shall be always on-site while work is being performed on the disposal system.

Section 4 Depth to Groundwater for New Construction (310 CMR 15.212)

Within the Town of Foxborough, the minimum vertical separation distance between the bottom of the stone underlying the soil absorption system above the high ground-water elevation shall be:

- (a) four feet in soils with a recorded percolation rate of more than two minutes per inch.
- (b) five feet in soils with a recorded percolation rate of two minutes or less per inch.

Within Town of Foxborough Zone II areas, the minimum vertical separation distance between the bottom of the stone underlying the soil absorption system above the high ground-water elevation shall be:

- (a) five feet in soils with a recorded percolation rate of more than two minutes per inch.
- (b) six feet in soils with a recorded percolation rate of two minutes or less per inch.

Section 5 New Construction in Nitrogen Sensitive Areas (310 CMR 15.214)

All new construction of on-site subsurface sewage systems within a Zone II shall:

- a) Install a denitrification system when the design flow is 330 gallons or more.

- b) Install a denitrification system when the depth to groundwater is less than what is specified in Section 4 of these regulations.

Section 6 Minimum Setback Distances (310 CMR 15.211)

<u>Component</u>	<u>Septic Tank (Feet)</u>	<u>Leaching Area (Feet)</u>
Wetland Bordering Surface Water Supplies, Surface Waters, Bordering Vegetated Wetlands, and Inland Banks	100	150
Irrigation Well	50	100

Section 4 Systems Failing to Protect Public Health and Safety and the Environment -SYSTEM FAILURE CRITERIA (310 CMR 15.303)

All cesspools shall constitute an automatic failure when found to exist at the time a property is being sold or when there is a transfer of title. All system modifications must be upgraded to current Title 5 system standards.

All cesspools must be abandoned (pumped, crushed and filled or removed) per 310 CMR 15.354, and Foxborough Board of Health abandonment procedures upon system upgrade.

Section 5 Septic Tanks (310 CMR 15.223)

The following conditions require the replacement or repair of a septic tank if inspected or repaired:

If the tank is more than 3 feet below the existing grade, the system shall have a riser.

Septic tanks under 1,500 gallons in size shall either be replaced with a 1,500-gallon septic tank or placed in series with a total size greater than 1,500 gallons.

Existing septic tanks greater than 10 years old must be structurally certified by a Professional Engineer or Registered Sanitarian (PE/RS) in order to be considered for reuse on a repair of a septic system. A letter of certification must be submitted by the PE/RS along with the proposed plans for review by the Health Department.

Emergency component repairs immediately following a discharge to the surface shall require a Disposal Works Permit from the Health Department.

All non-emergency component repairs require a Disposal Works Permit from the Health Department, except for the replacement of sanitary tees and the installation of risers.

A Septic Installer permitted by the Town of Foxborough must perform and/or oversee all work performed. Installing risers or adding an effluent filter to a septic tank will require the septic tank to meet all accessibility requirements under 310 CMR 15.228 Placement and Accessibility of Septic Tank.

Section 6 Certificates of Compliance (310 CMR 15.021)

Upon installation of the septic system a certified “As-Built” plan shall be submitted to the Health Department prior to the issuance of the Certificate of Compliance and the Occupancy permit.

All “As-Built” of newly constructed on-site sewage disposal systems shall be approved by a Professional Engineer, Registered Surveyor, or Registered Sanitarian.

Any septic design that will require either electrical or plumbing must include a copy of the appropriate permit(s) to the Health Department before a certificate of compliance will be issued.

Section 7 Violations of 310 CMR 15.000 (15.024)

It shall be a violation of this regulation for any person to:

- a) Violate any provision of 310 CMR 15.000 or these supplementary requirements. Any person who shall fail to comply with any order issued, pursuant to the provisions of this code, shall be subject to a non-criminal penalty of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), pursuant to M.G.L. Ch. 40 Sec. 21D. Each day’s failure to comply shall constitute a separate violation.

Section 8 Variances Approved by Agent

The following variances can be approved by the Board of Health Agent:

- a) Sieve Analysis in lieu of a Percolation Test
- b) Local Upgrade Approvals
- c) Conventional disposal systems with a depth to groundwater of 4 feet or more.
- d) Disposal systems that incorporate innovative technology, pursuant to Massachusetts Department of Environmental Protection policy, that would otherwise meet the requirements of 310 CMR 15.00.

- e) All conventional subsurface disposal systems with a depth to groundwater less than 4 feet shall be approved by the Board of Health.

Section 9 Severability

If any provisions of these regulations are declared invalid or otherwise unenforceable, the other provisions shall not be affected and shall continue in full force and effect, and to this end the provisions of these Supplementary Rules & Regulations are declared severable.

Section 10 Effective Date

Approved and in full effect this April 15, 2024.

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Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: October 6, 2014

Revision Date: April 8, 2024

Restricting the Sale of Tobacco Products

Section 1 Statement of Purpose

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

Whereas, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence;⁴

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

Whereas the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;⁶

Whereas, cigars and cigarillos, can be sold in a single “dose;” and enjoy a relatively low tax as compared to cigarettes;⁷

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;⁸

¹ U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, (2010), http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

³ U.S. Dep’t of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ *Id.* at 13 (Executive Summary).

⁵ *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).

⁶ Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data/>).

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

⁸ U.S. Dep’t of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) (www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

Whereas, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are “starter” products that help establish smoking habits that can lead to long-term addiction;⁹

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale;¹⁰

Whereas ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021;¹¹

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;¹²

Whereas the New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students,¹³ which is incompatible with the sale of tobacco and nicotine products;

Whereas research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;¹⁴

Whereas the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;¹⁵

⁹ Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Dep’t of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012) www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁰ See fn. 3 at p. 85.

¹¹ MA YRBS 2017

¹² 310 CMR 30.136

¹³ New England Commission on Higher Education, *Standards for Accreditation* at 24 (2021), <https://www.neche.org/resources/standards-for-accreditation>.

¹⁴ Ying-Chih Chuang et al., *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) *J. Epidemiol Cmty Health* 568 (2005) (doi: 10.1136/jech.2004.029041); Shelley D. Golden et al., *County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012*, 17 (101005) *Prev. Med. Rep.* (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Eric C. Leas et al., *Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States*, 179(3) *JAMA Intern Med.*, 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); JG Lee et al., *Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis*. *Tobacco Control*. Published Online First: 03 September 2021; LR Reitzel et al., *The effect of tobacco outlet density and proximity on smoking cessation*. *American Journal of Public Health*. 2011, 101(2):315-320; L Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools?* *Preventive Medicine*. 2008, 47(2): 210-4.

¹⁵ LJ Finan et al., *Tobacco Outlet Density and Adolescents’ Cigarette Smoking: A Meta-Analysis*, 28(1) *Tob Control*. 27 (2019) (doi: 10.1136/tobaccocontrol-2017-054065); Abdel Magid HS et al., *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*, 66(4) *J. Adolescent Health* 423 (2020) (doi: 10.1016/j.jadohealth.2019.09.004).

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;¹⁶

Whereas policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;¹⁷

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

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

Section 2 Authority

This regulation is promulgated pursuant to the authority granted to the Foxborough Board of Health by G.L. c. 111, §31 which states, "Boards of health may make reasonable health regulations".

Section 3 Definitions

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

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

¹⁶ Siahpush M. et al., *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*, 124(9) *Pub. Health* 525 (2010) (doi: 10.1016/j. puhe.2010.04.010); Lee JG, et al., *Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPiRE Study*, 71(5) *J. Epidemiol Cmty Health* 487 (2017) (doi: 10.1136/jech-2016-208475); D.O. Fakunle et al., *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*, *Ethn Health*. 1 (2019) (doi: 10.1080/13557858.2019.1620178).

¹⁷ Ribisl KM, et al., *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*, 19(2) *Nicotine Tobacco Res.* 239 (2017) (doi: 10.1093/ntr/ntw185); HG, Henry et al., *Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019)*, 110 (4) *Am J. Pub. Health* 547 (2020) (doi: 10.2105/AJPH.2019.305512); A.E. Myers et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 *Prev. Med.* 67(2015) (doi: 10.1016/j.ypmed.2015.01.025).

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

Blunt Wrap: Any product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain loose tobacco or other fillers.

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

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

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

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

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

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

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

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

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

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices

that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

Employee: Any individual who performs services for an employer.

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

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

Health Care Institution: An individual, partnership, association, corporation or trust or a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. Health care institutions include but are not limited to hospitals, clinics, health centers, pharmacies, drug stores, doctors’ offices, and dental offices.

Liquid Nicotine Container: A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that “liquid nicotine container” shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.

Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products.

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

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

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

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Foxborough Board of Health.

Retailer: A person that operates a retail establishment.

Retail Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine.

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

Schools: Public or private elementary or secondary schools.

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the

establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Town of Foxborough; and (v) maintains a valid license issued by the department of revenue to operate as a smoking bar. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars”, “hookah bars” and “vape bars.”

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

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

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products available, as defined herein.

Section 4 No Tobacco Sales to Persons Under Twenty-One (21) Years Old

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.
2. Required Signage:
 - a. All retail establishments that hold a tobacco permit shall conspicuously post signage, in the form developed and made available by the Massachusetts Department of Public Health (DPH) and made available from the Foxborough Board of Health. Such signage shall include: (i) a copy of G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) notice to consumers that the sale of flavored tobacco products are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register.

The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

- b. All adult-only retail tobacco stores shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."
- c. No smoking bar, adult-only retail tobacco store, or other workplace shall allow the on-site consumption of tobacco within an interior or exterior confined space. Any adult-only retail tobacco store that has an exterior smoking patio or similar area shall post signage, in the form developed and made available by DPH or the Board, at a height of not less than four feet or greater than nine from the bottom of the door. Such signage shall warn persons entering this area that smoking and vaping may be present on the premises and provide information concerning the health risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

3. Identification:

- a. Each person selling or distributing tobacco products shall first verify the age of every purchaser of tobacco products by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
- b. Each person admitting entrance into a smoking bar or adult-only retail tobacco store shall first verify the age of every person entering by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.

Section 5 Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the Town of Foxborough without first obtaining a Tobacco Product Sales Permit issued annually by the Health Department. Only owners of establishments with a permanent, indoor, non-mobile location in Foxborough are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Foxborough.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Foxborough Board of Health Tobacco 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 all employees who will be responsible for tobacco product sales regarding federal, state and local laws about the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.

4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee shall be determined by the Foxborough Board of Health annually.
5. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.
6. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the age of 21 three times within the previous permit year and the time to appeal has expired. The violator may request a hearing in accordance with subsection 6 of the Violations section.
8. Maximum Number of Tobacco Product Sales Permits.
 - a. At any given time, there shall be no more than 15 Tobacco Product Sales Permits issued in Foxborough. Any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
 - b. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis.
 - c. Applicants on the waiting list shall be responsible for ensuring up to date contact information has been provided to the Foxborough Health Department.
9. Sale of Business.
 - a. Notwithstanding a cap on the total number of permits holders, the seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health, as required herein.
 - b. The purchaser shall apply for the transfer of the permit no later than (30) calendar days after said purchase. The purchase shall not sell tobacco product until the transfer of the permit is approved by the Board of Health; and
 - c. All fines and suspensions of the previous owner must be satisfied prior to the sale.

Section 6 Prohibition of Smoking Bars:

Smoking Bars are prohibited in the Town of Foxborough.

Section 7 Cigar Sales Regulated

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and seventy-five cents (\$2.75) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars unless such package is priced for retail sale at five dollars and eighty cents (\$5.80) or more.
3. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Foxborough.
4. The Foxborough Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

Section 8 Sale of Flavored Tobacco Products Prohibited:

No person, as defined herein, shall possess, hold, keep, sell, or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein,

Retailers must obtain manufacturer documentation certifying that all products possessed, held, kept, sold or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

Section 9 Nicotine Content in Electronic Nicotine Delivery Systems

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores.

Retailers must obtain manufacturer documentation verifying that all electronic nicotine delivery products possessed, held, kept, sold, or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

Section 10 Prohibition of the Sale of Blunt Wraps:

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

Section 11 Free Distribution and Coupon Redemption: No person Shall

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein.

2. Accept or redeem, offer to accept, or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, through any multi-pack discount (e.g., "buy-two-get-one-free") if the sale reduces the price of each back to less than the listed or non-discounted price.

Section 12 Out-of-Package Sales

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging, or dispensing of any tobacco product, as defined herein, for retail sale. No person, as defined herein, shall possess, hold, keep, sell, or distribute or cause to be possessed, held, kept, sold or distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, Massachusetts Hazardous Waste Regulations.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 *et seq.*"
4. No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Section 13 Self-Service Displays and Vending Machines

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

All vending machines containing tobacco products, as defined herein, are prohibited.

Section 14 Non-Residential Roll-Your-Own Machines

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

Section 15 Prohibition of the Sale of Tobacco Products by Health Care Institutions

No health care institution located in Foxborough shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care

institution within it, such as a pharmacy, optician/optometrist, or drug store, shall sell or cause to be sold tobacco products, as defined herein.

Section 16 Prohibition of the Sale of Tobacco Products by Educational Institutions

No educational institution located in Foxborough shall sell or cause to be sold tobacco products, as defined herein, including by any person or retailer on the property of an educational institution.

Section 17 Incorporation of State Laws and State Regulations

1. The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to those provisions found at G.L. c. 270, §§6, 6A, 7, 28, 29 and G.L. c. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 940 CMR 21.00, Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts, 940 CMR 22.00 Sale and Distribution of Cigars in Massachusetts; and 105 CMR 665.00, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

Section 18 Violations: Fining Structure

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation the violator shall receive:
 - a) In the case of a first violation, a fine of one thousand dollars (\$1,000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 665.040(d), for up to 3 consecutive business days.
 - b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for up to 7 consecutive business days.
 - c) In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for 30 days.
2. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this

regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.

3. Failure to cooperate or interfere with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.
5. The Foxborough Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Foxborough Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
6. For purposes of such fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

Section 19 Separate Violations

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

Section 20 Enforcement

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

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

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

Section 21 Severability

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

Section 22 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

Originally Adopted: December 4, 2018

Revision Date: April 8, 2024.

TOILET FACILITIES

Requirement for Toilet Facilities

Section 1 Authority

The Board of Health recognizes that to promote sanitary conditions within the Town during temporary, intermittent, or transient outdoor events, such as sporting, entertainment, or leisure, which occur within the borders of the Town, it is essential to guarantee adequate toilet facilities for the patrons who frequents these events. The Foxborough Board of Health, acting under the authority of Section 31 of M.G.L. Chapter 111, hereby enacts the following regulation for the number and placement of toilet facilities.

Section 2 General Regulation

Whoever sponsors or holds a temporary, intermittent, or transient event (for which a license or permit is required) within the Town of Foxborough, or whoever operates a business directly or indirectly supporting these events, shall provide toilet facilities for the patrons frequenting the event(s). The number and location of these facilities shall be such that they are of sufficient number and so situated that they are convenient for patrons who desire to utilize such facilities. The onus shall be on the event proponent or other owner/operator to demonstrate that the number and location meet the intent of the regulation. The ultimate approval relative to number and location shall rest with the Board of Health or its agent.

Event Category A. Stadium Events – Parking
 B. Other Outdoor Events

A. *Stadium Events – Parking*

Because of the unique nature of the events that are held at the Stadium, which include and commence with the arrival of patrons into the numerous parking lots licensed by the Town, it is required that owners/operators of these parking lots provide as a minimum, portable sanitary toilet facilities for their patrons as follows:

Number of licensed parking spaces	Minimum portable toilets of fixed facility toilets
Each 100 spaces 4-hour event	1

Each parking lot owner/operator shall present a plan detailing the number and location of these facilities, to the Health Department annually with their annual parking or event

permit/license, the approval of which shall be part of the licensing procedure and shall update and amend this plan whenever the parking capacity or lot area is modified during this permit period.

1. Where the bathrooms are provided inside a fixed facility, the owner shall post signs. The signs shall, in effect, state that bathrooms for parking lot patrons are located inside. The signs shall be clearly visible to patrons and shall be posted during the hours that the parking lot is in operation. Septic systems shall not be eligible for this provision.

B. Other Outdoor Events

For other events that are held primarily outside of the stadium, including stadium and non-stadium-controlled parking lots, Town lots, or other local business lots, the number of portable bathroom facilities shall be based on numbers of patrons attending the event, and location(s) of said bathroom facilities shall be located so that they are convenient to patrons attending these events.

Per each 100 persons attending	Maximum Hours of Event	Minimum toilets or portable toilets.
Each 100 persons	4	1
	8	2

In no case shall the number of portable toilets be less than the minimum required for each event. The event proponent must present a plan to the Board of Health at least 30 days prior to the event date for approval. All plans must demonstrate the availability of adequate toilet facilities, and must depict the locations of all toilets, to satisfy the intent of this regulation.

The sponsor of a temporary, intermittent, or transient outdoor events must present a plan to the Health Department, at least 7 days prior to said event, which demonstrates the availability of adequate toilet facilities, depicting the locations of all toilets, to satisfy the intent of this regulation. This shall include the availability of indoor and portable toilet facilities.

Section 3 – Sanitation Requirements

The sponsor of a stadium or other outdoor event shall be responsible for maintaining the toilets facilities in a clean and sanitary manner and adequately stocked with toilet paper. If in the opinion of the Board of Health or agent, toilet facilities that create objectional odors, nuisance conditions, or spill or leak shall be ordered to be moved, removed, cleaned and sanitized, or other appropriate action to remedy the condition.

Failure of any event holder to comply with these regulations, may result in the revocation, suspension, or denial of a Town permit/license.

Section 4 – Other Requirements

If in the opinion of the Board of Health or agent, the need for toilets is greater than the requirements set forth within, additional toilet facilities may be required whether on a temporary or long-term basis.

Section 5 – Prohibitions and Variances

In no case, shall portable toilets be located within 30 feet of any building used for human habitation, eating, or of any lot line or street, pursuant to 105 CMR 410.152 and these supplemental regulations.

A building used for human habitation shall be defined as any residential home, apartment, condominium, trailer park, camp, cabin, hotel, motel, boarding house, rooming house, or any other property used for living purposes.

Any building used for eating shall be defined as a commercial business operated out of a permanent structure that holds a food permit, common victualer, or alcohol permit with the Town of Foxborough.

The Board of Health or agent may approve the use of portable toilets on the premises used for human habitation or eating on a temporary basis if it does not: (a) endanger the health of any person; or (b) cause objectionable odors or other undue annoyance.

Portable toilet variances granted by the Board of Health or its agent and shall be in writing and valid for 1 year. However, the Board of Health or its agent may rescind the variance if in its judgement the portable toilets endanger health and/or safety of the public, causes objectional odors, or otherwise causes an annoyance or nuisance condition.

Section 6 – Exemptions

This regulation does not apply to portable toilets that are on-site for construction purposes.

Section 7 - Enforcement

Whomever violates these regulations shall be subject to a fine of not less than fifty dollars (\$50) and not more than one hundred dollars (\$100) for each offense, pursuant to M.G.L Ch. 40 Sec. 21D. Each day's failure to comply shall be considered a separate offense.

The Town may suspend, revoke, or deny a permit or license to operate if any event holder is not compliant with these regulations.

Section 5 Severability

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

Section 6 Effective Date

Approved and in full effect this April 15, 2024.

X

Betsy Allo, MPH
Chair

X

Robin Chapell, M.S., R.S.
Vice-Chair

X

Sophia Manos
Clerk

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