

# Chapter 20

## Board of Health

**State law reference** - Town Boards of Health, G.L. c. 111, Sec. 26 et al.

**Cross reference** – Select Board-Administrator Act, Sec. 14.

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**State law references**—Public Health, generally, G.L. c. 111. State Sanitary Code: adoption, enforcement and jurisdiction, G.L. c 111, Sec. 127A; State Sanitary Code, 105 CMR 410, et seq. Crimes against public health, G.L. c. 270. Solid waste disposal, G.L. c. 16, Sec. 18.

**Cross references**—Health and Sanitation, Ch. 6. Duties of town clerk with respect to vital statistics reports, Sec. 2-54. Animals and Fowl, generally, Ch. 3. Non-criminal disposition, Sec. 1-4A.

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**ARTICLE I. IN GENERAL****Sec. 20-1. Authority of Board of Health.**

The Board of Health acts under the authority of the following General Laws of the Commonwealth of Massachusetts:

- (a) Chapter 94, inspection and sale of food, drugs and various articles.
- (b) Chapter 111, general public health laws.
- (c) Chapter 114, burial and removal permits.
- (d) Chapter 129, livestock—appointment of animal inspector.
- (e) Chapter 140, licenses and miscellaneous provisions.
- (f) Chapter 143, inspection, regulation and licensing of buildings.
- (g) Chapter 145, tenement houses in town.
- (h) Chapter 252, improvement of low lands and swamps.
- (i) Chapter 270, crimes against public health.

**Sec. 20-2. Code of Massachusetts Regulations (Sanitary Code, etc.), Adopted.**

The Sanitary Code of the Commonwealth is hereby adopted in its entirety with additions as adopted by the Board of Health.

- (a) Sanitary Code: General Application and Administration.
  - 105 CMR 410 Minimum Standards of Fitness for Human Habitation.
  - 105 CMR 420 Housing and Sanitation Standards for Farm Labor Camps.
  - 105 CMR 430 Minimum Sanitation Standards for Recreational Camps for Children.
  - 105 CMR 435 Minimum Standards for Swimming Pools.
  - 105 CMR 440 Minimum Standards for Developed Family Type Camp Grounds.
  - 105 CMR 445 Minimum Standards for Bathing Beaches.
  - 105 CMR 450 Minimum Health and Sanitation Standards and Inspection Procedures for Detention Centers.

- 105 CMR 460 Lead Poisoning Prevention and Control.
- 105 CMR 470 Maintenance and Construction of Lockup Facilities.
- 105 CMR 480 Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste State Sanitary Code Chapter III.
- 105 CMR 520 Labeling.
- 105 CMR 590 Minimum Sanitation Standards for Food Service Establishments.
- (b) 105 CMR 123 Tanning Facilities.
- (c) 310 CMR 15 Title 5 - Standard Requirements for Siting, Construction, Inspection, Upgrade, and Expansion of Sewage Treatment and Disposal Systems and for the Transportation and Disposal of Septage.

### Sec. 20-3. Violation - Penalty.

Whoever himself or by his servant or agent, or as the servant or agent of any other person or any firm or any corporation violates any of the following Board of Health regulations shall be punished by a fine as follows:

First offense within a twelve month period	\$ 300
Second offense within a twelve month period	\$ 500
Third and subsequent offenses within a twelve month period	\$ 1,000

Each day any violation continues shall constitute a separate offense.

**State law reference**—G.L. c. 111, sec. 31.

### Sec. 20-4. Non-Criminal Disposition.

Violation of any of the following regulations of the Board of Health may be enforced by non-criminal disposition in the manner provided by General Laws, Chapter 40, Section 21D and Section 1-4A ("Non-Criminal Disposition") of the Town of Stoneham Bylaws. The specific non-criminal disposition penalty which shall apply to a violation of these Board of Health regulations shall, unless specifically provided otherwise in these regulations, be as follows:

First offense within a twelve-month period	\$ 25.00
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Second offense within a twelve-month period	\$ 50.00
Third and subsequent offenses within a twelve-month period	\$100.00

Each day any violation shall continue shall constitute a separate offense.

**State law reference** - G.L. c. 40, sec 21D.

**Cross reference** - 1-4A.

**Sec. 20-4.1 Non-Criminal Disposition Penalty for Violation of Sanitary Code.**

The non-criminal disposition penalty which shall apply to a violation of these Board of Health regulations shall be twenty-five (\$25) dollars, except that any violation defined as a “critical violation” in Chapter 10 of the State Sanitary Code “Minimum Sanitation Standards for Food Establishments,” as adopted by Board of Health pursuant to this Section, shall be as follows:

First offense within a twelve month period	\$ 50
Second offense within a twelve month period	\$ 100
Third and subsequent offenses within a twelve month period	\$ 300

Each day any violation shall continue shall constitute a separate offense.

**State law reference** - G.L. c. 40, sec. 21D.

**Cross reference** - 1-4A.

**Sec. 20-5. Director of Public Health.**

*Definition:* Coordinator of town public health programs, inspections, and other related activities as required. When necessary, he shall report to the Board for its findings.

*Independent action:* Works under the general direction of the Board of Health. Meets with the Board of Health members frequently, recommending policies and procedures and is responsible for implementing the decisions of the Board.

Performs varied and responsible duties requiring considerable judgment in applying state laws and local regulations to frequently changing conditions and problems. Researches and analyzes a broad spectrum of data necessary to protect health and well-being of the Town. He shall be qualified to evaluate conditions and problems and make changes whenever necessary and report such changes to the Board.

Makes frequent contacts with State and local health officials, trained medical personnel, operators and managers of various plants and establishments handling food products and the general public.

Is available to assist with problems that arise in the department.

Is familiar with the methods and procedures of budget preparation and carrying out the fiscal responsibilities of the department.

He has the ability to draft related health and sanitary regulations and the ability to foresee need for new regulations before the fact.

*Examples of work:* Administers and coordinates public health programs and services in accordance with established policies.

Enforces state health laws and rules and regulations of the local Board of Health. Inspects riding stables, stores, bakeries and restaurants. Processes applications, issues certain permits and licenses, handles complaints and investigates alleged nuisances. Inspects new sewage disposal systems and new homes before signing occupancy permits. Coordinates with other town building and safety inspectors and civil defense coordinator. Inspects nursing homes, recreation camps, food handling establishments, semi-public swimming pools, schools, hospitals, service station restrooms and condemns all buildings determined unfit for human habitation. Personally files complaints in District Court against violators.

*Desirable Qualifications:* High school graduation supplemented by formal training in public health administration; five years' experience in conducting inspections in the field of food service operations; qualifications as licensed Sanitarian or certified Health Officer or any equivalent combination of education and experience.

Thorough knowledge of the laws, rules and regulations pertaining to public health sanitation and of the approved methods and equipment used in handling food products. Ability to enforce and interpret regulations firmly, tactfully and impartially. Be qualified to evaluate soil and percolation tests in preparing a sanitary system, inspect all sewer connections, work with exterminators on mosquito and rodent control and shall be qualified to inspect for lead paint.

#### **Sec. 20-6. Review Fees For Outside Consultants**

- (a) When reviewing an application for an approval, license, permit or regarding an appeal, or any modification thereof (hereinafter also referred to as a "application"), the Board of Health may determine that the assistance of an outside consultant(s) is warranted due to the size, scale or complexity of the proposal or because of its potential impact on health or safety. The Board of Health may require that an applicant pay a review fee consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board of Health to assist in the review of an application.

- (b) In hiring outside consultants, the Board of Health may engage any qualified consultant(s) and/or professional(s), including legal counsel, who can assist the Board in: (i) analyzing and/or reviewing an application (including said application's compliance with applicable laws, bylaws and regulations, potential impact on public health and/or safety, and the need for, and specifics of, potential limitations, restrictions, safeguards, inspections, and/or monitoring in the event of an approval of the application; and/or (in the event of approval by the Board of Health); (ii) subsequent monitoring and/or inspecting a project or site for compliance with applicable law or regulations during construction impact on public health or safety, and/or implementation of the subject matter of said application.
- (c) The minimum qualifications of an outside consultant(s) shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.
- (d) Any applicant may, within fourteen (14) days of the selection of a consultant(s) by the Board of Health, take an administrative appeal from the selection of the outside consultant(s) by filing a written letter of appeal to the Select Board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.
- (e) In the event that no decision is made by Select Board within one month following the filing of the appeal, the selection of the consultant(s) made by the Board of Health shall stand.
- (f) The required time limits for action upon an application by the Board of Health shall be extended by the duration of the administrative appeal.
- (g) The review fee shall be submitted by the applicant to the Board of Health within seven (7) days of the receipt of written notice from the Board of the estimated consultant cost as described above.
- (h) Funds received by the Board of Health pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose which shall be kept separate and apart from other monies. Expenditures from this special account may be made at the direction of the Board of Health without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been collected from the applicant.

- (i) Failure of an applicant to pay a review fee shall be grounds for denial of the site plan approval or modification.
- (j) The Board of Health may determine that an additional review fee(s) is required for the assistance of an outside consultant(s), including the completion of work by a current consultant(s) or as a result of needing an additional consultant(s). In such instance(s) the same provisions and requirements of paragraphs (a) through (i) above shall apply.
- (k) At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
- (l) The Town Accountant shall submit annually a report of said special account to the Select Board and the Town Administrator for their review. Said report shall be published in the Town's annual report. The Town Accountant shall submit annually a copy of said report to the Director of the Bureau of Accounts of the Massachusetts Department of Revenue.

**Sec. 20-7. Reserved.**

**Sec. 20-8. Reserved.**

## ARTICLE II. NUISANCES

### **Sec. 20-9. Waste Water; Accumulations of Stagnant Water.**

No person shall allow any sink or waste water to be turned into or upon any street, lane, gutter or sidewalk of the town. Brooks, drains and sluice ways upon premises within certain defined limits of the town shall be kept free from such obstructions as permit the accumulation of stagnant water. No person shall suffer any waste or stagnant water which is likely to become a nuisance or offensive to remain in any cellar or on any lot of land owned by him.

**Sec. 20-10. Depositing of Offensive Substances on Ground.**

No person shall deposit filth, flesh or fish, slops, offal or the contents of any cesspool or privy vault upon the surface of the ground unless the same is plowed under or otherwise covered within twenty-four hours.

**Sec. 20-11. Establishment of Wells.**

No person shall establish a well for drinking or domestic purposes without the written consent of the Board of Health.

**Sec. 20-12. Transportation of Noxious Substances.**

No stable manure, swill or other noxious substances shall be transported through the streets of the town except in covered containers and in such manner as to prevent a nuisance.

**ARTICLE III. ANIMALS AND FOWL**

STATUTORY AUTHORITY: The Stoneham Board of Health, acting under the authority of Section 31 of Chapter 111 of the General Laws and amendments and additions thereto, and by any other power thereto enabling and acting thereunder and in accordance therewith, have in the interest of and for the preservation of public health duly made and adopted the following Rules and Regulations on this Twenty fifth (25) day of June, 2002.

**Sec. 20-13. Purpose.**

The Stoneham Board of Health or its authorized agent finds it necessary to license the keeping of certain animals, in order to protect and preserve the health and safety of the general public.

**Sec. 20-14. Definitions.**

*Abutter:* a) owners of the abutting land, b) land opposite any public or private street or way, and c) Abutters to Abutters within three hundred (300) feet of a property line of the applicant. Note: \*These Abutters must be the owners as they appear on the most recent tax lists (even if in another town). \*Applicants for permit must, at their own cost, obtain a list of Abutters, certified by the Town Assessor, and said list must be provided with the application to the Board of Health.

*Accessory Structure:* a structure subordinate to the principal building on the same lot and serving an animal related use customarily incidental to the use of the principal building.

*Animal:* all animals, including fowl, which are kept or harbored as domesticated animals or pot-bellied pigs used as family pets or for hobbies, and/or breeding except cats, dogs, or hamsters.

*Board of Health or Board:* the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within The Commonwealth of Massachusetts having the usual powers and duties of the Board of Health of a city or town or its authorized agent or representative.

*Corral:* any pen, loft, or enclosure for confining animals.

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

*Facility:* the total accommodations to be used for the keeping and care of animals, including but not limited to stable, pen, loft, or corral

*Fowl:* any bird used for food, hunted as game or used for racing.

*Impervious Material:* soils having a percolation rate greater than twenty (20) minutes per inch drop.

*Loft:* a structure for the keeping or housing of pigeons or other types of fowl.

*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."

*Noise:* sound of sufficient intensity and/or duration as to cause a disturbance or nuisance or contribute to an unhealthy condition.

*Owner:* every person who alone or jointly with one or more other persons (a) has legal title to any building, structure, dwelling or dwelling unit, or (b) each person who has care, charge, or control of any building, structure dwelling unit or as agent, executor, executrix, administrator, administratrix, trustee, lessee or guardian of the estate of the holder of legal title. Each such person with such care or charge or control is bound to comply with the provisions of these regulations as if he/she is deemed to represent the holder of legal title.

*Pen:* a structure for the keeping of animals.

*Person:* every individual, partnership, corporation, firm, association, or any other group acting as a unit, as well as a natural person.

*Unsanitary Conditions:* the state of being of a facility which, in the judgment of the Board of Health, including but not limited to such conditions which are conducive to or results in, breeding of flies, creation of offensive odors, rodent infestation, liquid effluent, runoff, and/or noise, in such concentrations and of such duration as to (a) causes a nuisance (b) be injurious or,

on the basis of current information, potentially injurious to human health, or (c) unreasonably interfere with the healthy and safe enjoyment of life and property.

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

*Stable:* an accessory building or structure in which animals are sheltered and/or fed.

*Stable-Commercial:* a stable that is involved with financial transactions related to animal use, including but not limited to horse rentals and boarding of horses or other animals, for a fee.

*Stall:* a compartment in a stable used for the keeping of animal(s).

*Vermin:* any of various insects, bugs, rodents, or small animals regarded as objectionable because of their destructive or disease-carrying nature including, but not limited to, flies, mosquitoes, lice and rats.

*Watercourse:* any stream, drain, pond, lake, or other body of water drained by a strewn, dry ditch, or other depression that will permit drainage water to empty into any open 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, 33 U.S.C.1341.

*Wild Animal:* any animal not normally found or kept as a domesticated animal, including but not limited to snakes, poisonous reptiles, lions and tigers.

### **Sec. 20-15. General Requirements.**

1. No person shall keep or allow to be kept within the limits of the town, on any lot any animals without a written permit from the Board of Health or its authorized agent, which shall be renewed annually.
2. The keeping of said animals shall meet all local zoning requirements.
3. The construction and location of the accessory structure used for keeping animals, shall meet all zoning requirements and building code requirements of the Commonwealth of Massachusetts.
4. The accessory structure for the keeping of said animals shall be located on a lot, at the following minimal distances;
  - (a) 50 feet from any abutting property line
  - (b) 100 feet from any wetlands or watercourse, unless otherwise authorized by the Conservation Committee, but in no event less than fifty (50) feet.

- (c) 100 feet from any abutting dwelling
- (d) 100 feet from any well used as a supply of drinking water
- (e) 10 feet from any part of any individual sewage disposal area
- (f) stable shall be 35 feet from any public way and the corral shall be 15 feet from any public way

The above minimum requirements may be enlarged or increased in any particular case at the discretion of the Board of Health or its authorized agent.

5. No person shall erect or use as a facility for animals requiring a permit of any structure in the Town of Stoneham unless such use is approved by the Board of Health or its authorized agent and meets all other applicable Federal, State, or Local Regulations.
6. The owner of the facility for the keeping of animal(s) shall keep said facility in a clean, sanitary, and attractive condition, free from decaying food, filth, feces, and stagnant water. The facility shall be periodically disinfected and shall be kept in such condition as may be ordered by the Board of Health or its authorized agent.
7. All facilities for the keeping of animal(s) shall be securely fenced to prevent the escape of animals therefrom. At no time will animals be allowed to roam unattended.
8. Property barriers such as fencing or other appropriate measures shall be taken, on areas of lots where it is necessary to discourage neighborhood children from wandering into the facility, or on areas of lots where the location of the facility will ordinarily interfere with the health and safe enjoyment of an abutter's property.
9. Each facility shall have a supply of potable water available at the structure for feeding and cleaning purposes.
10. Wild animals, but not limited to poisonous reptiles and snakes, lions and tigers shall not be kept within the town limits without expressed written approval of the Board of Health or its authorized agent.
11. Roosters shall be prohibited within Town limits.

#### **Sec. 20-16. Sanitary Requirements.**

1. No owner of a facility for the keeping of animal(s) shall cause, suffer, allow or permit:
  - (a) The floor and/or the ground of the facility for the keeping of animal(s) to be designed, constructed, and/or maintained so as to cause or contribute to unsanitary conditions at said facility

- (b) Drainage or liquid effluent containing urine and/or fecal matter from any animal(s) kept at said facility to be discharged in runoff, or to flow over the surface of the ground onto a neighboring property, public way or watercourse.
2. Management and disposal of manure and soiled bedding shall be such as to minimize odors, breeding of flies, and the attraction of vermin. Manure shall be collected and kept in suitable pit or receptacle and at a distance of one hundred (100) feet from any dwelling. This location shall also be carefully chosen to maximize the distance from abutting properties and watercourses and with due consideration of the prevailing winds.
3. The following requirements shall apply to the use, accumulation and/or disposal of manure.
  - (a) The accumulation, stock piling, and storage of manure outside of such pit or receptacle is prohibited.
  - (b) If manure is disposed of by burying, the manure pit shall be no less than:
    - twenty-five (25) feet from any lot line;
    - one-hundred (100) feet from any abutting dwelling; and
    - one-hundred (100) feet from any surface or sub-surface watercourses, and in well-drained soil with the bottom of the pit at least three (3) feet above maximum ground water elevation.
  - (c) During warm weather, manure shall be treated with lime or superphosphate to minimize odors and treated with legally approved insecticides for fly control.
  - (d) The dimensions and/or drainage conditions of any particular lot may, in the opinion of the Board of Health or its authorized agent, require off-property disposal of manure. In such cases, the manure shall not be put out for general town trash collection. It shall be the responsibility of the owner to dispose of manure in a safe and sanitary manner.
  - (e) The Board of Health or its authorized agent will allow the composting of manure generated at permitted facilities here upon specific Board of Health approval.
4. Animal(s) shall be maintained in a clean and healthy condition.
5. Animal feed or other food when stored shall be in sealed, moisture-proof and vermin-proof containers. No animal feed or other food fed to animal(s) shall remain overnight, and outside of a structure, in an open feeding container.
6. No owner keeping an animal(s) shall cause, suffer, allow, or permit an infestation of vermin at said facility. The continuance of an infestation of vermin at or near the

facility beyond a date specified by the Board of Health, when the owner of the facility has been ordered by an agent of the Board of Health to abate any such infestation in a safe and sanitary manner, shall be cause for revocation of permit and/or initiation of legal proceedings to eliminate said conditions.

7. Dead animals shall be disposed of or incinerated, at a State approved facility, in such a way as to prevent the attraction of flies and prevent odors, within a reasonable time but in no event no more than seventy-two (72) hours after death.
8. All fecal matter and manure shall be cleaned so as not to accumulate an amount that interferes with the comfort of neighborhood or create offensive odors or a public health nuisance.

### **Sec. 20-17. Keeping of Horses.**

1. No person shall keep a horse on a lot of land containing less than one (1) acre. Additional and maximum of three (3) horses shall be permitted to be kept on a lot that contains an additional acre for each additional horse provided that such permit will not adversely affect the public health, safety, and welfare and is acceptable within the Town of Stoneham zoning requirements.
2. Facilities for the keeping of horses shall be located on well-drained land not susceptible to flooding. In no case shall a facility be located on impervious soil, or on ground on which stagnant water can collect. The Board of Health shall inspect locations requiring removal of impervious material after excavation and before filling. Fill shall be of porous material such as gravel, coarse sand, or crushed rock, to a depth of at least twelve (12) inches, extend at least five (5) feet beyond the boundaries of the facility and such that the finish grade within all parts of the facility are higher than the surrounding ground, and subject to Town of Stoneham zoning requirements.
3. The corral fencing shall be constructed of sturdy material, visible to the horses, of at least six (6) feet in height, so as to adequately contain the horses and protect persons and contiguous property. The corral area shall be a minimum of one thousand (1,000) square feet, including the stable site for the keeping of one horse. An additional corral area of three hundred (300) square feet for each additional horse shall be required.
4. Each stable shall comply with Town of Stoneham zoning by-laws, and State Building Codes 780 CMR , and provide an adequate, healthy and safe environment for horses. The stable shall contain a minimum of one hundred (100) square feet for the first horse and an additional sixty (60) square feet for each additional horse. Each stable shall provide food and equipment storage with potable water.

- (a) Doors shall be of sufficient height and width to allow safe ingress and egress for horses. The ceiling and/or roof of the stable shall be of sufficient height to provide adequate ventilation.
  - (b) At least one window with screening shall be provided for ventilation and light with appropriate safeguards against drafts and the breaking of glass. Construction shall be such as to prevent the accumulation of moisture within the stable with louvers of sufficient size located at opposite sides of the stable.
  - (c) The floor shall be constructed so as to provide adequate drainage in order to prevent urine from accumulating and to allow easy removal of manure and soiled bedding.
5. Under no circumstances shall a horse be allowed to roam free or to be left tethered and unattended.

**Sec. 20-18. Keeping of Pigeons.**

1. Lofts for the keeping of pigeons shall be of such sufficient size and design, and constructed of such material to accommodate the pigeons in a safe and health manner and be maintained in a clean and sanitary condition.
2. Lofts shall be cleaned of droppings no less than once a week between April 15 to October 15 of a given year and once every two (2) weeks during the remaining period. Every means should be taken to minimize the dust created from dried feces.
  - (a) Lofts shall be disinfected at least four times a year or as deemed necessary for clean and sanitary conditions by the Board of Health.
  - (b) There shall be at least one (1) square foot of floor space for each mature pigeon kept within.
  - (c) Every effort and precaution shall be taken to minimize flying or roosting on, above, or within abutting properties. It shall be adequate cause for refusing or revoking a permit for the keeping of pigeons if the flying of said pigeons unseasonably interferes with the health, and safety, or enjoyment of abutting properties.
  - (d) Training or exercising of the pigeons shall be not undertaken during the hours of 10:00 am. to 3:00 p.m. from June to September so as not to disturb yard use and enjoyment of abutting neighbors.
  - (e) Exercise shall be allowed only under the direct supervision of the owner or his designee. No one shall release pigeons to fly for exercise, training, or

competition when said pigeons have been fed within the previous four (4) hours.

### **Sec. 20-19. Vermin Control.**

The permit holder is responsible to implement a vermin control program for the facility. This plan requires approval by the Board of Health or its authorized agent and will be performed by a licensed pest control operator. Extermination shall be performed as deemed necessary by the Board of Health or its authorized agent.

### **Sec. 20-20. Applications, Permits, Fees.**

1. In order to protect the public health, all new applications for a permit to keep animals shall be submitted on a form supplied by the Board of Health. Such application shall be accompanied by a plan showing the property to be used, the names and addresses of all abutters, the proposed location of the accessory structure, principal structure, abutting structures and the location of any streams, drains, or known sources of water supply within one hundred (100) feet of the accessory structure. The application shall also be accompanied with a proposal or plan to indicate how the property shall be maintained so that it will be kept clean and free of filth and stagnant water, and the method to be used to control flies and vermin. Such plan shall show the construction details of the facility with necessary drainage details and shall also show compliance with all required set-back distances. The application plan shall also show the type, location and dimension of fencing.
2. Any person who proposes to remodel an existing accessory structure or a portion thereof, or to construct a new building which is to be used in whole or in part as a facility for the keeping of animals shall, prior to such construction or remodeling, submit plans to the Board of Health for approval as well as to the town building inspector if necessary.
  - (a) The permit to keep animals shall be issued after construction of the facility is completed and approved by the Board of Health and the building inspector.
  - (b) In cases where a building permit is required, preliminary Board of Health approval shall be forwarded by the Board of Health or its authorized agent, the Building Department or the signee.
3. All permits shall specify the exact number and type of animals or fowl to be kept within the property. No animals in excess of the specified number shall be kept therein without written permission from the Board of Health or its authorized agent.

4. The licensing fee shall be that specified by the existing schedule of fees at the time of application or renewal.
5. Permits shall expire on December 31 of each year, unless sooner revoked by the Board of Health upon violation of any of the provisions of these regulations.
6. The person(s) who have had a permit denied or revoked shall be ordered to remove all unlicensed animals from the property occupied by said animals.
7. Permit to keep animals on property within the Town of Stoneham is not transferable.
8. All permits issued for the keeping of animals prior to the adoption of these regulations shall be valid, and may be renewed subject to the regulations in effect prior to the adoption of these new regulations providing conditions and agreements contained in the original applications have not changed, and that no conditions exist that would be injurious to public health, or restrict the normal use and enjoyment of contiguous property. All renewal of permits subsequent to the adoption of these regulations shall be subject to the adopted schedule of fees.
9. All new applications for a permit to keep animals and all variance requests submitted will be considered by the Board of Health only after the Board conducts a public hearing. Notice of public hearing shall be provided, at the applicant's expense, by registered return receipt mail to all abutters (see definition of abutter) and by legal notice in a local newspaper of general circulation. Both methods of notice shall provide at least fourteen (14) days notice prior to the public hearing. The applicant shall submit a list of abutters, certified by the Town Assessor, with the application.

**Sec. 20-21. Variance.**

The Board of Health may vary the application of any provision of these regulations with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, provided, that the decision of the Board of Health shall not conflict with the spirit of these minimum standards. Any variance granted by the Board of Health shall be in writing. A copy of any variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the Town Clerk or in the office of the Board of Health. The Board may impose such conditions, safeguards and limitations, both of time and of use, as it deems appropriate upon the grant of any variance.

**Sec. 20-22. Right of Entry.**

The Animal Inspector or Board of Health Agent may enter and inspect any property and accessory structure that houses animals at any reasonable time for the purpose of investigating either an actual or suspected violation or to ascertain compliance with these regulations.

**Sec. 20-23. Adoption and Effect.**

These rules and regulations were adopted by an unanimous vote of the Board of Health, Town of Stoneham, Stoneham, Massachusetts on June 25, 2002 and are to be in full force and effect on August 1, 2002. A summarized explanation of the regulations shall be published in a newspaper circulated in the Town of Stoneham and a copy thereof shall be deposited in the office of the Town Clerk.

Published summary on July 3, 2002

Effective on August 1, 2002

**ARTICLE IV. DISEASE DANGEROUS TO PUBLIC HEALTH****Sec. 20-24. Reporting.**

(a) Physicians shall report diseases which are deemed “dangerous to the public health.” The list of such reportable diseases shall be as defined by the Department of Public Health of the Commonwealth according to Chapter 111, Section 6, of the General Laws.

Physicians shall report such diseases to the Board of Health of the town where the patient is being attended by him. The Board of Health receiving such report shall send a copy to the Board of Health

1. Of the town where patient resides;
2. Of the town in which patient is known to have contracted the disease;
3. Of the town in which patient is known to have exposed any person to the disease.

(b) The Board of Health receiving notice of any case “dangerous to the public health” shall, within twenty-four hours, notify the Massachusetts Department of Public Health.

(c) Every Board of Health shall keep a record of all reports of diseases “dangerous to the public health,” including:

1. Name and location (of infected persons);
2. Disease;

3. Name of person reporting;
4. Date of report;
5. Other information required by the Massachusetts Department of Health.

Every Board of Health shall promptly give information to the School Committee regarding “diseases dangerous to the public health.”

Every Board of Health shall appoint some person who shall be responsible for sending notices to the Massachusetts Department of Health regarding diseases dangerous to the public health. To assure continuity of such reporting, an alternate person shall be appointed to make reports during disability or absence of primary appointee.

### **Sec. 20-25. Definitions and Notes.**

*Adult.* Any person who has reached his eighteenth birthday.

*Carrier.* A carrier is an infected person who harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source of infection for man. The carrier state may occur with infections inapparent throughout their course, commonly known as healthy carriers, and also as a feature of incubation period, convalescence and post-convalescence of a clinically recognizable disease, commonly known as incubatory and convalescent carriers. Under either circumstance the carrier state may be short or long, temporary or chronic carriers. The same applies to vertebrate animals.

*Cleaning.* The removal from surfaces, by scrubbing and washing, as with hot water, soap or suitable detergent, of infectious agents and of organic matter on which and in which infectious agents may find favorable conditions for prolonging life virulence.

*Communicable disease.* An illness due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from a reservoir to a susceptible host, either directly as from an infected person or animal, or indirectly through the agency of an intermediate plant or animal host, a vector or the inanimate environment.

*Communicable period.* The time or times during which the infectious agent may be transferred directly or indirectly from an infected person to another person, from an infected animal to man or from an infected man to animal. In diseases such as diphtheria and scarlet fever, in which mucous membranes are involved from the first entry of the pathogen, the period of communicability is from the date of first exposure to a source of infection, until the infecting microorganism is no longer disseminated from the involved mucous membranes. In diseases such as tuberculosis, syphilis and gonorrhea, the communicable state may be at any time over a long and sometimes intermittent period when unhealed lesions of the disease permit the discharge of infectious agents from the surface of the skin or through any of the body orifices. In certain diseases, communicability does not occur during the early incubation period or after full recovery; e.g., measles and chicken pox. In diseases transmitted by arthropods, such as malaria

and yellow fever, the periods of communicability are those during which the infectious agent occurs in the blood or other tissues of the infected person in infective form and in sufficient numbers for vector infection. A period of communicability is also to be distinguished for the arthropod vector, namely that time during which the agent is present in the tissues of the arthropod in such form as to be capable of transmitting infection.

*Contamination.* The presence of an infectious agent on a body surface, also on or in clothes, bedding, toys, surgical instruments or dressings or other inanimate articles or substances including water, milk, and food. Contamination is distinct from pollution which implies the presence of offensive but noninfectious matter in the environment.

*Contact.* A contact is a person or animal that has been in such association with an infected person or animal or with a contaminated environment as to have had opportunity to acquire the infection. Exposure may be direct and involve physical touching as in kissing, shaking hands, or in sexual intercourse. Persons thus exposed are variously characterized as direct, immediate or intimate contacts. Exposure may be indirect, with no established physical touching, through living in the same household, being in the same room or through remote or close association at school, work, or play. Exposure may be long or short; single, continued or repetitive; and either casual or close. Such indirectly exposed persons are often denoted as either familial, school, or work contacts; or as close, casual or remote contacts, in expression of varying degrees of risk or a developing infection.

*Disinfection.* Killing of infectious agents outside the body by chemical or physical means directly applied. Concurrent disinfection is the application of a disinfectant as soon as possible after the discharge of infectious material from the body of an infected person, or after the soiling of articles with such infectious discharges, all personal contact with such discharges or articles being prevented prior to such disinfection.

*Disinfestation.* Any physical or chemical process serving to destroy undesired small animal forms, particularly arthropods or rodents, present upon the person, the clothing, or in the environment of an individual, or on domestic animals. This includes delousing as applied to infestation with *pediculus humanus*, the body louse.

*Food service establishment.*

(a) Food. All articles, whether simple, mixed or compound, used or intended to be used for food, drink, confectionery or condiment, by human beings.

(b) Food service establishment. Any fixed or mobile place, structure, or vehicle whether permanent, transient or temporary, including any restaurant, coffee shop, cafeteria, luncheonette, short-order café, grille, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial feeding establishment, private, public or nonprofit organization or institution routinely serving the public, catering kitchen, commissary or any other similar eating and drinking establishment or place in which food or drink is prepared

for sale or for service on the premises or elsewhere or where food is served or provided for the public with or without charge.

(c) Employee of food service establishment. Any person working in a food service establishment who transports food or food containers, who engages in food preparation or service or who comes in contact with any utensils or equipment used in the preparation, storage and serving of food.

*Fumigation.* Any process by which the killing of animal forms, especially arthropods and rodents, is accomplished by the employment of gaseous agents.

*Health education.* Health education is the process by which individuals and groups learn to promote, maintain or restore health. It aims at developing in them a sense of responsibility for health conditions as they affect them as individuals, and as members of families and communities. In communicable disease control, it commonly requires assessment of existing habits, attitudes and knowledge of a disease in a population as they relate to spread and frequency of the disease, with implementation of specific means to remedy observed deficiencies.

*Infected person.* Infected persons include both individuals with manifest disease and those with inapparent infection.

*Infection.* The entry and development or multiplication of an infectious agent in the body of man or animal. Infection is not synonymous with infectious disease; the result may be inapparent. The presence of living infectious agents on exterior surfaces of the body or upon articles of apparel or soiled articles is not infection but contamination of such articles and surfaces. The term “infection” should not be used to describe conditions of inanimate matter such as soil, water, sewage, milk or food; the term “contamination” applies.

*Infectious agent.* An organism, mainly microorganisms (bacterium, protozoan, spirochete, fungus, virus, rickettsia, bedsonia or other) but including helminths, capable of producing infection and under favorable circumstances of host and environment having the capacity to produce infectious disease.

*Infectious disease.* A disease of man or animal resulting from an infection.

*Infestation.* By infestation of persons and animals is meant the lodgment, development and reproduction of arthropods on the surface of the body or in the clothing. Infested articles or premises are such as harbor or give shelter to animal forms, especially arthropods and rodents.

*Insecticide.* Any chemical substance used for the destruction of arthropods, whether applied as powder, liquid, atomized liquid, aerosol, or as a paint spray; residual action is usual. The term larvicide is generally used to designate insecticides applied specifically for destruction of immature stages of arthropods; imagocide and adulticide, to designate those applied to destroy mature and adult forms.

*Isolation.* The separation for the period of communicability of infected persons from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to persons who are susceptible or who may spread the agent to others. This applies also to animals.

*Patient or sick person.* A person who is ill; here limited to a person suffering from a recognizable attack of a communicable disease.

*Personal hygiene.* Those protective measures primarily within the responsibility of the individual, by which to promote health and to limit the spread of infections, mainly those transmitted by direct contact. They include (a) keeping the body clean by sufficiently frequent soap and water baths; (b) washing hands in soap and water immediately after voiding bowels or bladder and always before eating; (c) keeping hands and unclean articles, or articles that have been used for toilet purposes by others, away from the mouth, nose, eyes, ears, genitalia, and wounds; (d) avoiding the use of common or unclean eating, drinking, or toilet articles of any kind, such as cutlery and crockery, drinking cups, towels, handkerchiefs, combs, hairbrushes, and pipes; (e) avoiding exposure of other persons to spray from the nose and mouth as in coughing, sneezing, laughing or talking; (f) washing hands thoroughly after handling the patient or his belongings and wearing a protective overall apron while in the sickroom.

*Quarantine.*

(a) Complete quarantine. The limitation of freedom of movement of such well persons or domestic animals as have been exposed to a communicable disease, for a period of time equal to the longest usual incubation period of the disease, in such manner as to prevent effective contact with those not so exposed.

(b) Modified quarantine. A selective, partial limitation of freedom of movement of persons or domestic animals, commonly on the basis of known or presumed differences in susceptibility, but sometimes because of danger of disease transmission. It may be designed to meet particular situations; examples are exclusion of children from school or exemption of immune persons from provisions required of susceptible persons, such as contacts acting as employees of food serving establishments, or restriction of military populations to the post or to quarters.

*Report of disease.* Official report is notification to appropriate authority of the occurrence of specified communicable or other disease in man or animals. Diseases in man, except sexually transmitted diseases, are reported to the local Health Department; those in animals to the Division of Livestock Disease Control of the Massachusetts Department of Agriculture. Some few diseases in animals, also transmittable to man, are reportable to both authorities. The sexually transmitted diseases, gonorrhea, syphilis, chancroid, pympogranuloma venereum, AIDS and granuloma inguinale, should be reported directly to the Massachusetts Department of Public Health on special forms provided on request.

*Reservoir of infectious agents.* Reservoirs are man, animals, plants, soil or inanimate organic matter, in which an infectious agent lives and multiplies and depends primarily for survival, reproducing itself in such manner that it can be transmitted to a susceptible host. Man himself is the most frequent reservoir of infectious agents pathogenic for man.

*School.* The Board of Health or school physician may delegate to the school nurse, principal, and/or teacher the responsibility for readmission to school of a child who has been ill with a communicable disease after the designated period of isolation. (Based on Chapter 7, Section 55, of the General Laws of the Commonwealth of Massachusetts.)

*Source of infection.* The thing, person, object or substance from which an infectious agent passes immediately to a host. Transfer is often direct from reservoir to host in which case the reservoir is also the source of infection (measles). The source may be at any point in the chain of transmission as a vehicle, vector, intermediate animal host, or contaminated article; thus contaminated water (typhoid), an infective mosquito (yellow fever), beef (tapeworm infection) or a toy (diphtheria). In each instance cited, the reservoir is an infected person. Source of infection should be clearly distinguished from source of contamination such as overflow of a septic tank contaminating a water supply or an infected cook contaminating a salad.

*Transmission of infectious agents.* Modes of transmission of infection are the mechanisms by which an infectious agent is transported from reservoir to susceptible human host. They are:

(a) *Contact:*

- (1) Direct contact. Actual touching of the infected person or animal or other reservoir of infection.
- (2) Indirect contact. Touching of contaminated objects such as toys, handkerchiefs, soiled clothing, bedding, etc.
- (3) Droplet spread. The projection onto the eyes and the face or into the nose or mouth of the spray emanating from an infected person during sneezing, coughing, singing or talking. Such droplets usually travel no more than three feet from the source.

(b) *Vehicle.* Water, food, milk or any substance serving as an intermediate means by which an infectious agent is transported from a reservoir and introduced into a susceptible host through ingestion, through inoculation or by deposit on skin or mucous membrane.

(c) *Vector.* Arthropods or other invertebrates which transmit infection by inoculation into or through the skin or mucous membrane by biting, or by deposit of infective materials on the skin or on food or other objects.

**MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH  
LIST OF REPORTABLE DISEASES\*(105 CMR 300)**

**1994**

**I. DISEASES REPORTABLE TO  
LOCAL BOARDS OF  
HEALTH**

Amebiasis  
Anthrax  
Babesiosis  
Brucellosis  
Campylobacter Enteritis  
Chickenpox (varicella)  
Cholera  
Cryptosporidiosis  
Diphtheria  
E. Coli 0157:H7  
Encephalitis (specify type if known)  
Foodborne Poisonings  
(a) Botulism  
(b) Paralytic shellfish poisoning  
(c) Other foodborne poisonings as defined in 105.CMR 300.020  
Giardiasis  
Haemophilis influenzae systemic infection (without meningitis)  
Hansen=s disease  
Hemolytic Uremic Syndrome (HUS)  
Hepatitis, Viral  
(a) Type A  
(b) Type B (infection, acute disease or carriage)  
(c) Type C  
(d) Type D  
(e) Unspecified  
Kawasaki Disease  
Legionellosis  
Leptospirosis  
Listeriosis  
Lyme Disease  
Malaria  
Measles  
Meningitis:  
(a) bacterial  
(b) viral

(c) other  
.Meningococcal Infection (without meningitis)  
Mumps  
Pertussis (Whooping Cough)  
Poliomyelitis  
Psittacosis  
Rabies (Human or Animal)  
Reye Syndrome  
Rheumatic Fever  
Rocky Mountain Spotted Fever  
Rubella  
(a) Congenital  
(b) Non-congenital  
Salmonellosis (including Typhoid and Paratyphoid Fevers)  
Shigellosis  
Tetanus  
Toxic Shock Syndrome  
Toxoplasmosis  
Trichinosis  
Tuberculosis  
Tularemia  
Yersiniosis

**II. DISEASES REPORTABLE  
DIRECTLY TO THE  
DEPARTMENT  
ACQUIRED IMMUNE  
DEFICIENCY SYNDROME  
(AIDS)  
SEXUALLY TRANSMITTED  
DISEASES  
Chancroid  
Chlamydial Infections (Genital)  
Genital Warts  
Gonorrhea  
Granuloma Inguinale  
Herpes, Neonatal (onset within 30 days after birth)  
Lymphogranuloma Venereum  
Ophthalmia Neonatorum**

(a) Gonococcal  
(b) Other Agents  
Pelvic Inflammatory Disease  
(a) Gonococcal  
(b) Other agents  
Rabies postexposure prophylaxis  
Syphilis  
Tuberculosis

**III. WORK-RELATED  
DISEASES AND INJURIES  
REPORTABLE DIRECTLY  
TO THE DEPARTMENT**

Occupational Lung Disease  
(a) Asbestosis  
(b) Silicosis  
(c) Beryllium Disease  
(d) Chemical Pneumonitis  
(e) Asthma caused by or aggravated by workplace exposures  
Work-related Heavy Metal Absorption  
(a) Mercury (blood >15ug/1:urine>35 ug/grams creatinine)  
(b) cadmium (blood .5 ug/1:urine >5 ug/grams creatinine)  
(c) Other  
Work-related acute Chemical Poisoning  
(a) Carbon Monoxide Poisoning  
(b) Pesticide Poisoning  
(c) Other  
Work-related Carpal Tunnel Syndrome  
Work-related Traumatic Injury to a Person less than 18 years of Age

**Sec. 20-26. Isolation Regulations.**

The Department of Public Health of Massachusetts, acting under the authority of Section 6, Chapter 111 of the General Laws, prescribes and establishes isolation requirements of diseases declared to be dangerous to public health as set out in Appendix A at the end of these Board of Health Regulations.

Any Cases of Illness believed to be due to food consumption shall be immediately reported by telephone to the local Board of Health (105 CMR 300.120).

Any instance of a food handling facility employee who has contracted or become a carrier of a disease transmissible through food shall be immediately reported by telephone to the local Board of Health (105 CMR 300.121).

Any cluster or outbreak of illness shall be reported immediately by telephone to the local Board of Health (105 CMR 300.122). The local Board of Health shall report any cluster or outbreak of illness to the Massachusetts Department of Public Health (105 CMR 300.130).

Any Cluster of Work-related conditions, regardless of whether or not they are on the reportable list, shall be immediately reported by telephone or other electronic means to the MDPH, Occupational Health Surveillance Program (105 CMR 300.141).

\*Diseases declared by the Department of Public Health to be dangerous to the Public Health and reportable under authority of G.L. c. 111, sec. 6.

**Article V. Massage Therapy; Body Works; Movement Education Deleted January 10, 2010, Now Regulated by the Commonwealth of Massachusetts.**

**ARTICLE V. DUMPSTER REGULATIONS****Sec. 20-27. Definitions.**

*Board.* The Board of Health or its agent or designee

*Compactor.* Container used to create less volume than its original state of packaging. This container is also used for external storage and collection of solid waste, refuse, garbage, rubbish, offal or other offensive substance for municipal, residential, industrial or commercial.

*Container.* Will represent a compactor, dumpster, and grease dumpster for the purposes of this regulation.

*Dumpster.* Any rubbish container (other than a conventional trash can with tight lid) for the external storage and collection of solid waste, refuse, rubbish, offal, or other offensive substance for municipal, residential, industrial, or commercial refuse.

*Grease Dumpster.* Also know as “bulk grease tank” used for external storage and collection of liquid waste matter.

**Sec. 20-28. Location.**

Container’s location must be located at a distance from the lot line so as not to interfere with the safety, convenience, or health of the abutters or residents. This location must be approved by the Board, Fire, Building and Conservation Department.

- (a) A plan on 8 1/2 x 11 paper prepared by the applicant shall be submitted to keep on file with the Board showing approved location of the dumpster in relation to business serviced. This plan is to be drawn to scale.

**Sec. 20-29. Enclosure.**

All containers shall be enclosed on all four sides with a fence and a door for servicing the container. The enclosure shall be a minimum of six (6) feet in height.

- (a) This section does not apply to short-term permits in its duration.

**Sec. 20-30. Filling Time Limits.**

Containers and short term permits are not to be filled between the hours of ten (10) p.m. and seven (7) a.m. at which times the lids are to be closed and locked.

The lids must be closed when dumpster is not in use, during all times.

**Sec. 20-31. Size.**

Container and short term permits shall be serviced at intervals to eliminate overflowing and be sufficient size and capacity to fulfill the requirements of the business being serviced. The property owner or authorized agent for the premises utilizing service must immediately empty contents when full.

**Sec. 20-32. Situation.**

All containers and short term permits must be situated so as not to obstruct view or interfere with the flow of traffic.

**Sec. 20-33. Maintenance.**

It shall be the responsibility of the property owner or agent being serviced to maintain the container and short term permit area free of odors, rodents, flies, insects, scattered debris, overflowing, and all other nuisances.

**Sec. 20-34. Permit - Compliance.**

- (a) The property owner or authorized agent responsible for maintaining a dumpster service is required to have a permit from the Board by making application at the Board's office, on application supplied by the Board, and shall include the owner's name, address and telephone number.
- (b) Fee for permit, will be Thirty (\$30.00) dollars for the first container and Twenty (20.00) dollars for each additional container.
- (c) Permits shall not be transferable.
- (d) Municipal authorized agents must comply with regulation Sections 20-41 through 20-48. When application is submitted, a permit will be granted with no charge.

**Sec. 20-35. Short Term Permit - Compliance.**

- (a) Fee for short-term permits will be Fifteen (\$15.00) dollars and shall have duration from one (1) day up to ninety (90) days.
- (b) An extension of time can be requested in writing prior to the expiration date. An extension can be requested for up to Forty-five (45) days for an additional fee of Ten (\$10.00) dollars. A second extension may be requested for Forty five (45) days to a maximum of One hundred and eighty (180) days for an additional fee of Ten (\$10.00) dollars.
- (c) Permits shall not be transferable.

**Sec. 20-36. Application.**

The contractor, firm or person supplying the container in the Town of Stoneham for the service will make application for a permit to remove, transport, or dispose of solid waste, garbage, offal, rubbish or other offensive substances, as well as debris, and other materials including scrap.

- (a) Such permit shall expire at the end of the calendar year in which they are issued, renewable annually on application as herein provided.

**Sec. 20-37. Application Requirements.**

The contractor shall state on the application: home address, business address, the telephone number under which the business is operated, as well as the telephone number and name of owner/agent of property being serviced. He shall sign the application.

Contractor shall supply a list of customers' names and locations of containers.

**Sec. 20-38. Name Display.**

The contractor shall have the name and telephone number conspicuously displayed on the container.

**Sec. 20-39. Emptying Time Limit.**

The emptying of the container contents by the contractor shall not commence before 7 a.m. and shall cease by 8 p.m.

No pick-ups allowed on Sundays.

**Sec. 20-40. Fee.**

The fee for each permit for the contractor to transport for compensation shall be One hundred (\$100.00) dollars for the first (vehicle) permit, and Fifty (\$50.00) dollars for each additional vehicle.

The current vehicle registration number shall be affixed to said permit.

**Sec. 20-41. Sanitation.**

The contractor shall remove the contents so as not to cause spillage during removal and transportation.

**Sec. 20-42. Spillage.**

The contractor shall remove the contents so as not to cause spillage during removal and transportation.

**Sec. 20-43. Revocation-Removal.**

The Board may suspend or revoke a contractor or container permit for unsatisfactory service of a property at any time.

The Board may order the contractor in person, by telephone or letter to immediately remove the container and contents from the premises being serviced whenever a container remains overflowing or an overflowing condition is continuously being repeated.

The Board shall order a container removed from the Town of Stoneham if the property owner or authorized agent has been notified to secure a permit and has not done so.

All permits expire on December 31 in the year issued.

If a contractor and or container permit is not renewed within fifteen days of expiration (Saturdays, Sundays and Holidays included), there will be an additional charge of fifty (50%) percent of the original fee.

**Sec. 20-44. Application of Regulations.**

These regulations apply to all contractors; dumpsters, grease traps, compactors, and similar units within the Town of Stoneham, used for residential, commercial, industrial or municipal use.

**Sec. 20-45. Variance Request.**

The Board will, on an individual basis, determine extenuating circumstance. Any exceptions will be made in the best interest for the public health of the community. The business filing for an exemption must do so in writing, stating all hardships and reasons. The request letter must be received in the office of the Board prior to any permits being issued.

**Sec. 20-46. Penalties.**

Any person who violates the terms of these regulations shall be subject to a fine of \$25.00 for the first offense, \$50.00 for each subsequent offense under the non-criminal disposition.

**These regulations shall take effect on January 1, 1999.**

**ARTICLE VI. SANDBLASTING****Sec. 20-47. Authority.**

By virtue of the authority granted to the Board of Health of the Town of Stoneham under the provisions of the General Laws, Chapter 111, Section 31C, the following regulations pertaining to the abrasive blasting of paint from any interior or exterior surfaces of any structures within the Town of Stoneham are hereby promulgated:

**Sec. 20-48. Permit Required.**

A permit is required for removal of paint by abrasive blasting from any interior or exterior surface of any structure within the Town of Stoneham. Such permits shall be granted in writing to the owner of the structure by the Board of Health only upon the following General Terms and Conditions, and subject to such other special terms and conditions as the Board of Health shall find necessary to protect the health and welfare.

**Sec. 20-49. Application Requirements.**

Application for permit shall be in writing, on a form provided or specified by the Board of Health. Such application shall indicate test results for lead content done by a laboratory approved by the Board of Health.

In no case will permits be issued for wet or dry abrasive blasting of the interior or exterior surfaces of structures if the test results for lead indicate the presence of lead based paint.

**Sec. 20-50. Exterior Blasting.**

Exterior blasting in the absence of lead paint is allowed only under the following conditions:

- (a) Such blasting operations shall be sufficiently shrouded and ground covered with tarpaulin to contain particulate matter from entering the ambient air space, to

prevent visible emissions beyond the vertically extended property line, to prevent public exposure to particulate, and to prevent deposition of particulate matter upon public and other private property.

- (b) There shall be no abrasive blasting whatsoever if the wind velocity exceeds ten (10) miles per hour.
- (c) Enclosure(s) shall not be removed until all external surfaces, including the ground in the vicinity, are thoroughly cleaned by an industrial vacuum cleaner of all loose material attributable to the abrasive blasting operation. Recycling of abrasive material is prohibited and disposal should be in accordance with 310 CMR 19.000.

### **Sec. 20-51. Interior Blasting.**

Interior blasting in the absence of lead paint is allowed only under the following conditions:

- (a) All doors, windows, or any openings to the ambient air space must be sealed and/or shrouded to prevent particulate from entering the ambient air space, to prevent visible emissions beyond the vertically extended property line, to prevent public exposure to particulate, and to prevent deposition of particulate matter upon public and other private property.
- (b) All doors, joints, cracks and other openings adjacent to occupied offices or apartments shall be caulked or otherwise sealed to prevent dust from entering said areas.
- (c) All openings to the ambient air space must remain sealed and/or shrouded during clean-up of abrasive and abraded materials and use of a covered chute with water spray must be used if said materials are deposited from the building to a receptacle below to prevent particulate from entering the ambient air space.
- (d) The permit shall be displayed in a conspicuous location during the abrasive blasting operation.
- (e) The permitted shall notify the Board of Health of the starting date of abrasive blasting operation and immediately notify the Board of Health in the event of a break in technique or site accident.
- (f) There shall be a complete clean up of all removed paint, dust particles and/or abrasive materials within two hours of operation shut down every day.

- (g) The Board of Health, upon its own initiative or upon application to it by any person, after due notice and public hearing, may vary any provision of these regulations as it may deem necessary with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustices or cause undue hardships, provided that the decision of the Board shall not conflict with the spirit of these regulations. The burden of proof of the manifest injustice or causes of hardship shall be the responsibility of the applicant.
- (h) The permitted is responsible for compliance with all conditions and terms stated herein. Whoever violates this regulation shall be punished, for the first offense, by a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100), and for a subsequent offense, by a fine of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500). For the purpose of this paragraph each day or part thereof of violation of this regulation, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense.

Any of the following conditions shall be prima facie evidence of violation of this regulation:

- (a) Visible emission of particulate matter, beyond the vertically extended property line of the owner of the property on which abrasive blasting is permitted.
- (b) Deposition of visible amounts of particulate matter upon public or other private property.
- (c) Failure to obtain permit from the Board of Health to engage in an abrasive blasting operation.
- (d) The fee for each permit shall be fifty dollars (\$50). This ordinance is in effect as of June 10, 1985.

## ARTICLE VII. DNA ORDINANCE

### Sec. 20-52. DNA Ordinance.

Any individual, institution, corporation, partnership, trust, sole proprietorship, association, or any other entity, whether public or private, for profit or not for profit, shall not conduct recombinant DNA technology unless such person or the person operating the facility in which such technology is conducted, has obtained a permit from the Board of Health. This permit may contain such reasonable restrictions as the Board of Health deems necessary.

The fee for this permit is Twenty-five Dollars (\$25).

**ARTICLE VIII. LANDFILL REGULATIONS****Sec. 20-53. Disposal Site, etc.**

No place shall be established, maintained, or operated by any person (including a state agency or municipality) as a disposal site, landfill, dump, residual waste treatment plant, refuse transfer station, or recycling facility unless it has been assigned as such by the Board of Health, in accordance with Massachusetts General Laws Chapter 111, Section 150A.

**Sec. 20-54. Reserved.****ARTICLE IX. TOBACCO CONTROL REGULATIONS****Sec. 20-55. 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 ;

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

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 to encourage young people to try and then continue purchasing their cigarette products to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers ;

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

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives.

Whereas cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth;

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

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

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

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely to have tried these products than older smokers, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

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

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;

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them;

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

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one ;

Whereas according to the CDC’s youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;

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

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

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

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”.

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

**Sec. 20-56. Authority.**

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

**Sec. 20-57. Definitions.**

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

*Adult-only 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 or services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Stoneham Board of Health.

*Blunt Wrap:* Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed to be filled by the consumer with loose tobacco or other fillers regardless of any content. A blunt wrap is not designed as to be used by the consumer as a final product.

*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, menthol, mint or wintergreen, 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, 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.

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

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

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

*Coupon:* Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer 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.

*Employee:* Any individual who performs services for an employer.

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

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

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

*Liquid Nicotine Container:* A bottle or other vessel which contains nicotine in liquid or gel form, whether combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

*Listed or non-discounted price:* The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place

where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

*Minimum Legal Sales Age (MLSA):* The age an individual must be before that individual can be sold a tobacco product in the municipality.

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

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

*Schools:* Public or private elementary or secondary schools.

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

*Smoking Bar:* An establishment that 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".

*Tobacco Product:* Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products,

regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

### **Sec. 20-58. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited.**

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Stoneham is 21.

#### 2. Required Signage:

a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Stoneham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.06 (2) (e).

b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Stoneham Board of Health that discloses current referral information about smoking cessation.

c. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as “tobacco products”, at retail shall conspicuously post a sign stating that “The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and 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 (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

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

#### **Sec. 20-59. Tobacco Product Sales Permit.**

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

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Stoneham 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 regarding the sale of tobacco and this regulation.

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

4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Stoneham Board of Health annually.

5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

6. 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.

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

8. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.

9. Maximum Number of Tobacco Product Sales Permits.

a. At any given time, there shall be no more than twenty (20) Tobacco Product Sales Permits issued in the Town of Stoneham. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-serve" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.

b. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

c. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

d. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the applicant intends to sell tobacco products, as defined herein.

#### **Sec. 20-60. 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 fifty cents (\$2.50) 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 (\$5.00) 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 Stoneham.

4. The Stoneham 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.

#### **Sec. 20-61. Sale of Flavored Tobacco Products Prohibited.**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in adult-only retail tobacco stores.

#### **Sec. 20-62. Prohibition of the Sale of Blunt Wraps.**

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

#### **Sec. 20-63. 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, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

**Sec. 20-64. 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 may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of liquid nicotine containers must comply with the provisions of 310 CMR 30.000, and must provide the Stoneham Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or Expiration of the product.
3. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C.§1471 through 1476 and 16 CFR §1700 et. Seq."

**Sec. 20-65. Self-Service Displays.**

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.

**Sec. 20-66. Vending Machines.**

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

**Sec. 20-67. Non-Residential Roll-Your-Own Machines.**

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

**Sec. 20-68. Prohibition of the Sale of Tobacco Products by Health Care Institutions.**

No health care institution located in Stoneham 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.

**Sec. 20-69. Prohibition of the Sale of Tobacco Products by Educational Institutions.**

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

**Sec. 20-70. Incorporation of Attorney General Regulation 940 CMR 21.00.**

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”).

**Sec. 20-71. Prohibition of Smoking in Parks, Playgrounds, Athletic Fields and Swimming Areas.**

In addition to the requirements of the Massachusetts Smoke-Free Workplace Law at M.G.L. Ch. 270, §22, no person shall smoke in any public park, playground, athletic field or swimming area under the control of the Town of Stoneham. Any person found to be in violation of this section shall be fined pursuant to Section R of this regulation. Enforcement of this section shall be by noncriminal disposition as provided in M.G.L. Ch. 40, §21D.

**Sec. 20-72. Violations.**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
- b. In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- c. In the case of three or more violations within a 36-month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- d. In the case of four violations or repeated, egregious violations of this regulation within a 36-month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.

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

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

4. The Stoneham 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 Stoneham 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.

**Sec. 20-73. Non-Criminal Disposition.**

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

**Sec. 20-74. Separate Violations.**

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

**Sec. 20-75. Enforcement.**

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

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

**Sec. 20-76. 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.

**Sec. 20-77. Effective Date.**

This regulation shall take effect on March 1, 2018.

**Note** – Voted 4/15/2014; Amendment voted on 5/20/2014; Voted on 12/19/2017. Effective: March 1, 2018.

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**ARTICLE X. SMOKE-FREE RESTAURANT REGULATIONS****Sec. 20-78. Statement of Purpose.**

Whereas conclusive evidence exists that tobacco smoke causes cancer (U.S. Surgeon General, 1986), respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke (ETS), which included both exhaled smoke and the side stream smoke from burning cigarettes, causes the death, by lung cancer alone, of 3,000 Americans each year (EPA, 1993); and whereas environmental tobacco smoke is a Class A carcinogen (U.S. EPA 1993) that is similar to radon and asbestos with no known safe levels of exposure; now, therefore the Town of Stoneham, recognizes the right of those who wish to breathe smoke-free air and recognizes that the need to breathe smoke-free air shall have priority over the desire to smoke and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in certain public places.

**Sec. 20-79. Authority.**

This regulation is promulgated under the authority granted to the Stoneham Board of Health under Massachusetts General Laws Chapter 111, Section 31 that “Boards of Health may make reasonable health regulations.”

**Sec. 20-80. Definitions.**

For the purpose of this regulation, the following definitions shall apply:

*Restaurant:* Any eating establishment with one or more seats which gives or offers food for sale to the public, guest or employees, included but not limited to any coffee shop, cafeteria, sandwich stand, private and public school cafeteria but not including private clubs.

*Bar area of a restaurant:* An area of a restaurant that is devoted to the serving of alcoholic beverage for consumption by guests or restaurant patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

*Bar:* A Counter at which food or especially alcoholic beverages are served.

*Seating capacity:* The capacity designated on the occupancy permit of a food service establishment.

*Smoking:* Inhaling, exhaling, burning or carrying any lighted tobacco product.

**Sec. 20-81. Smoking Prohibited.**

No person shall smoke nor shall any person be permitted to smoke in any of the following places as defined herein: restaurants, bar area of a restaurant or bar.

**Sec. 20-82. Posting Notice of Prohibition.**

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section 5 of this regulation shall conspicuously display upon the premises “No Smoking” signs or the international “No Smoking” symbol (Consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.)

**Sec. 20-83. Smoking Where Notice of Prohibition Posted.**

No person shall smoke in any place in which a sign conforming to the requirements of Section 5 of this regulation is posted. No person shall remove a sign posted under the authority of section 5 of this regulation.

**Sec. 20-84. Penalties.**

Any person who violates this regulation shall be subject to a fine as provided in Sec. 20-3 of these Board of Health regulations. It is the legal obligation of the owner/manager of a restaurant to not permit smoking in their establishment. Each day on which any violation exist shall be deemed to be a separate offense.

**Sec. 20-85. Non-Criminal Disposition.**

Whoever violates any provision of these regulations contained herein shall be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, section 21D and Section 1-4A (non-criminal disposition) of the Town of Stoneham Bylaws or by filing a criminal complaint at the appropriate venue.

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

Penalty:                      For the first offense      \$ 50.00

For second offense     \$100.00  
For third offense        \$200.00

Enforcing Persons:        Board of Health and its designees.

**Sec. 20-86. Conflict with Other Laws or Regulations.**

Notwithstanding the provisions of the foregoing, Sec. 20-77 of this regulation shall be deemed to neither amend nor 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.

**Sec. 20-87. Severability.**

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

**Sec. 20-88. Effective Date.**

The regulations shall be incorporated into and shall amend existing tobacco regulations as applicable. These regulations shall be effective as of September 30, 1998.

**Section 20-89. Hotel/Motel Regulations.**

All hotels and motels greater than 15 units, are required to have a minimum of 90 percent (90%) of their rooms/suites designated “No Smoking.” Smoking rooms/suites shall not abut non-smoking rooms/suites on the same floor. All common areas are to be 100 percent smoke-free. Signs are to be clearly posted within the facility.

**Note** – Adopted: July 18, 2000, and Effective: August 16, 2000.

**Sections 90-97. Reserved.**

## ARTICLE XI. RULES AND REGULATIONS FOR BODY ART ESTABLISHMENTS AND PRACTITIONERS

**Rationale:** The Stoneham Board of Health is promulgating rules and regulations, which provide minimum requirements to be met by any person performing body art upon any individual and for any establishment where body art is performed. These requirements shall include, but not limited to general sanitation of premises wherein body art is to be performed and sterilization of instruments.

These rules and regulations are necessary to protect the public's health by preventing diseases, specifically including, but not limited to transmission of Hepatitis B, Hepatitis C and/or human immunodeficiency virus (aids).

In addition, these rules and regulations shall establish procedures for registration with the Stoneham Board of Health of all persons performing body art, for the requirement of minimal training standards for the prevention of diseases transmission and for the knowledge of anatomy and physiology, for regular inspection of premises wherein body art is performed, and for revocation of the registration of any person or establishment deemed in violation of the rules and regulations promulgated under this section. An annual, non-transferable registration fee set by the Town of Stoneham shall be paid by any person or establishment registered under this section.

### **Sec. 20-98. Purpose.**

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

### **Sec. 20-99. Authority.**

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

### **Sec. 20-100. 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.

*Antiseptic* means an agent that destroys disease-causing micro-organisms on human skin and mucosa.

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

*Apprentice* means one who is learning a form of body art by practical experience under a skilled practitioner.

*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 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 that has jurisdiction in the community in which a body art establishment is located including the Board or officer having like powers and duties in towns where there is no Board of Health.

*Body Art* means the practice of physical body adornment by permitted establishments, practitioners and apprentices using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, braiding, 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). (2/18/2020)

*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 presterilized single-use needles and the insertion of presterilized jewelry or other adornment into the opening. This definition excludes piercing of the earlobe with a presterilized single-use stud-and-clasp system manufactured exclusively for ear-piercing.

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

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

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

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

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

*Cosmetic Tattooing* also known as permanent cosmetics, micro pigment implantation or dermal pigmentation, means the implantation of permanent pigment around the eyes, lips and cheeks of the face and hair imitation. (2/18/2020)

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

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

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

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

*Exposure* means an event whereby there is an eye, mouth or other 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°-130°F.

*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.

*Liquid Chemical Germicide* means a disinfectant or sanitizer registered with the US. Environmental Protection Agency or an approximately 1:100 dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle (500 PPM, ¼ cup per gallon or 2 tablespoons per quart).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 20-101. Exemptions.**

- (a) Physicians licensed in accordance with M.G.L. c. 112 § 2 who perform body art procedures as part of patient treatment are exempt from these regulations.
- (b) Individuals who pierce only the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system are exempt from these regulations.

**Sec. 20-102. Restrictions.**

- (a) 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 piercing, 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 transpenis 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.
- (b) The following practices hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; branding, scarifications, threedimensional/beading/implementation; toothfiling/fracturing/removal/tattooing cartilage modification; amputation; genital modification; introduction of saline or other liquids.

- (c) No body art shall be performed on a person under the age of 18, except as follows:
  - 1. Body Piercing, except as prohibited in Section 104(A) and piercing of the genitalia, may be performed on a minor between the ages of 16 and 18 provide that:
    - (a) said minor is accompanied by a properly identified legal custodial parent or legal guardian who signs, at the establishment, a consent form for the specific body piercing procedure. Proper identification of the parent or guardian shall mean a valid photo identification of the adult;
    - (b) The minor signs a consent form as required by Section 106(D)(2);
    - (c) a valid birth certificate is provided by or for the minor proving that they are over the age of 16; and
    - (d) the legal custodial parent must be present throughout the entire procedure.
  - (d) No body art shall be performed upon an animal.

### **Sec. 20-103. 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 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 practitioner's area shall be a minimum of 45 square feet of floor space. Each establishment shall have an area that may be screened from public view

for clients requesting privacy. Multiple body art stations shall be separated by a dividers or partition at a minimum.

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's area and each cleaning area.
9. There shall be a minimum of one toilet room containing a toilet and sink. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A body art establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such body art establishment if 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.
10. The public water supply entering a body art establishment shall be protected by a testable, reduced pressure back flow preventor installed in accordance with 142 Code of Massachusetts Regulation 248, Board of State Examiners of Plumbers and Gas Fitters as amended from time to time.
11. 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, leak proof, rodent-resistant containers and shall be removed from the premises at least weekly.
12. At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-

contaminated liquid wastes in accordance with all applicable Federal, State and Local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.

13. 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.
  14. 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.
  15. 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.
  16. 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.
  17. Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of non-alcoholic fluids being offered to a client during or after a body art procedure.
- (b) Requirements for Single Use Items Including Inks, Dyes and Pigments:
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 water from an approved potable source. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded.

(c) Sanitation and Sterilization Measures and Procedures:

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 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 is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three (3) years and made available to the Board upon request.
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 instruments may not be used if the package has been breached or after the expiration date without first repackaging and re-sterilizing.
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 aseptic techniques to ensure that the instruments and gloves are not 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 Stoneham 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 at or adjacent to the telephone indicating the correct emergency telephone numbers.
4. An occupancy and use permit as issued by the local building official.
5. A current establishment permit.
6. Each practitioner's permit.

(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 any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;
  - (f) Material 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 Report (kept permanently) and
  - (j) a copy of these regulations.
- (2) Employee information, which shall include:
- (a) full legal names and exact duties;
  - (b) date of birth;
  - (c) home address;
  - (d) home /work phone numbers;
  - (e) identification photograph;
  - (f) dates of employment;
  - (g) Hepatitis B vaccination status or declination notification; and
  - (h) 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 106(D)(2); and,
- (h) with respect to body piercing of minors between the ages of 16 and 18, as provided in Section 104(5)(C): proper identification of the legal custodial parent or legal guardian (proper identification of the parent or guardian shall mean a valid photo identification of the adult); a consent form for the specific body piercing procedure; and a valid birth certificate of the minor.
- (i) client information shall be kept confidential at all times.

(4) Exposure Control Plan

- (a) Each establishment shall create, update, and comply with an Exposure Control Plan. The Plan shall be submitted to the Board for review so as to meet all of the requirements of OSHA regulations, to include, but not limited to, 29 Code of Federal Regulation 1910.1030 OSHA Bloodborne Pathogens Standards et seq, as amended from time to time. A copy of the Plan shall be maintained at the Body Art Establishment at all times and shall be made available to the Board upon request.
- (f) No person shall establish or operate a Mobile or Temporary Body Art Establishment.
- (g) The establishment shall require all body art practitioners have either completed, or were offered and declined, in writing, the hepatitis B vaccination series. Records documenting compliance with this requirement shall be provided to the Board upon request.

**Sec. 20-104. 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 manufacturers directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear piercing system on any part of the client's body other than the lobe of the ear.
- (d) Health History and Client Informed Consent. Prior to performing a body art procedure on a client, the practitioner shall:
  - (1) Inform the client, verbally 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.
  - (2) Require that the client sign a form confirming that:
    - (a) the information specified in paragraph D(1) was provided by the practitioner;
    - (b) that a client does not, to the best of their knowledge, have a condition that prevents them from receiving body art;
    - (c) that the client consents to the performance of body art procedure; and
    - (d) that the client has been given the aftercare instructions as required by section 106(K).

Nothing in this section 106.D.2, shall diminish the responsibility of the Practitioner pursuant to these regulations or applicable law.

- (e) A practitioner shall maintain a high 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 a good personal hygiene program.
- (g) The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that 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.

- (k) The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:
  - (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 at time of body art procedure. A model set of aftercare instructions shall be made available by the Board.

- (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) Nothing in this section shall be construed to require the practitioner to perform a body art procedure upon a client.

#### **Sec. 20-105. Exposure Incident Report.**

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

Each Exposure Incident Report shall contain:

1. A copy of the application and consent form for body art activity completed by any client or minor client involved in the exposure incident;
2. A full description of the exposure incident, including the portion of the body involved therein;
3. Instrument(s) or other equipment implicated;

4. A copy of body art practitioner license of the involved body art practitioner;
5. Date and time of exposure;
6. A copy of any medical history released to the body art establishment or body art practitioner; and
7. Information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

**Sec. 20-106. Injury Reports.**

A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded by the operator to the Board, 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; and
- (e) any other information considered relevant to the situation.

**Sec. 20-107. Complaints**

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

**Sec. 20-108. Application and Renewal for Body Art Establishment Permit.**

- (a) No person may operate a body art establishment except with a valid permit from the Board.
- (b) Applications for a permit shall be made on forms prescribed by and available from the Board. An applicant shall submit all information required by the form and accompanying instructions. The term “application” as used herein shall include the original and renewal applications.
- (c) An establishment permit shall be valid from the date of issuance and for no longer than one year unless revoked sooner by the Board.
- (d) The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:
  - 1. Name, address, and telephone number of:
    - (a) the body art establishment;
    - (b) the operator of the establishment; and
    - (c) the body art practitioner(s) working at the establishment;
  - 2. The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;
  - 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 Incident Report Plan
  - 6. Such additional information as the Board may reasonably require.
- (e) The annual fee for the Body Art Establishment Permit shall be \$250.00.
- (f) A permit for a body art establishment shall not be transferable from one place or person to another.

**Sec. 20-109. Application and Renewal for Body Art Practitioner and Apprentice Permit.**

- (a) No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board. The Board shall set a reasonable fee for such permits.
- (b) A practitioner and apprentice shall be a minimum of 18 years of age.
- (c) A practitioner permit shall be valid from the date of issuance and shall expire no later than one year from the date of issuance unless revoked sooner by the Board.
- (d) Submit proof of a skin test for tuberculosis at time of application and upon renewal. A new skin test for tuberculosis shall be required every year thereafter.
- (e) The annual fee for Practitioner Permit shall be \$100.00.
- (f) The fee for Apprentice Permit is as follows:
  1. first six (6) months shall be \$25.00;
  2. second six months shall be \$25.00; and
  3. second and final term under apprentice shall be \$50.00 for one year.
- (g) 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 section 111.F.
- (h) 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; hand washing techniques;

sterilization equipment operation and methods; and sanitation, 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 piercing practitioner permit shall provide documentation, acceptable to the Board, that he or she has completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin).
4. The applicant for a tattoo, branding or scarification practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin). Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the anatomy course.
5. The applicant for all practitioners shall submit evidence satisfactory to the Board of at least two years actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner permit to perform, whether such experience was obtained within or outside of the Commonwealth.
  - (i) A practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations.
  - (j) Tattoo Apprentice Training
    1. The prospective apprentice will complete his/her formal education (A&P, First Aid, CPR, Blood borne pathogens & OSHA ) within the first six-months of their training. During this initial six-month period, the apprentice shall OBSERVE tattooing procedures ONLY. (Number of hours, number of each tattooing procedure observed).

2. After he/she has successfully completed the courses and the 6-month time period has lapsed, the apprentice will be allowed to tattoo under the strict supervision of a licensed Tattoo artist.
3. Training will begin with simple tattoos on legs, arms and upper backs. The area to be tattooed will be determined by the licensed tattoo artist in attendance at that time. The licensed tattoo artist will grade each tattoo procedure. The artist will grade the apprentice on their outlying and shading ability, client preparation, workstation set-up, cleanup and sterile techniques. The findings will be kept in the apprentice's file for evaluation by the Board of Health at a later date.
4. Once the ability to perform simple tattoos is established to the satisfaction of the instructor, the apprentice may proceed on to more complex tattoos.
5. The instructor will monitor all apprentices tattooing for the first six months of the apprenticeship.
6. The apprentice MUST be allowed to learn EVERY aspect of the tattooing procedure including but not limited to sterile techniques, implement cleaning, autoclave & ultrasonic use. Proper techniques to bag and handle implements, identification procedures, cleaning and sterilization of the procedure room, workstation and general cleaning of the establishment, and also learning proper skin preparation techniques and the set up for specific tattoos.
7. Following the satisfactory completion of a six-month supervised apprenticeship, the apprentice will be issued an apprenticeship license that is only good for ONE year from its date of issue.
8. If the apprentice does not complete the program to the satisfaction of the licensed professional tattooing instructor, the apprenticeship license will not be issued.
9. A special consent form shall be used and must be signed by the person being tattooed stating that they are allowing the apprentice to pierce them.
10. The licensed tattoo instructor must submit a quarterly progress report to the Board of Health pertaining to the progress of the apprentice in question.
11. These reports should be kept in the apprentice's records and once the program is completed, these can be used as a tool to decide if the apprentice is to be granted a license.
12. After the apprentice has successfully completed the courses and the 6-month time period has elapsed, the apprentice should be allowed to tattoo under the strict supervision of a licensed tattoo artist.

(k) Apprentice Body Piercing Training

1. The prospective apprentice will complete his/her formal education (A & P, First Aid, CPR, Blood borne pathogens and OSHA standards) within the first 6 months of their training. During this initial six-month period, the apprentice shall OBSERVE body-piercing procedures ONLY. (number of hours, number of each piercing techniques)
2. After they have successfully completed the courses and the 6-month time period has lapsed, the apprentice will be allowed to pierce under the strict supervision of a licensed Body Piercer.
3. Training will begin with simple piercings such as navels, cartilage and nipples. Training on these areas will be not less than 1 month.
4. Once the ability to perform simple piercings is established to the satisfaction of the instructor, the apprentice may proceed on to the tongue, nose, septum, lip and eyebrow piercing.
5. The instructor will monitor all apprentice piercings for the first six months of the apprenticeship.
6. The apprentice MUST be allowed to learn EVERY aspect of the piercing procedures including but not limited to sterile technique, implement cleaning, autoclave and ultrasonic use. Proper techniques to bag and handle implements, identification procedures, cleaning and sterilization of the procedure room, workstation, and general cleaning of the establishment, learning skin preparation techniques, and the set up.
7. Following the satisfactory completion of six months supervised apprenticeship; the apprentice will be issued an apprenticeship license that is only good for ONE year from its date of issue.
8. If the apprentice does not complete the program to the satisfaction of the licensed professional piercing instructor, the apprenticeship license will not be issued.
9. A special consent form shall be used must be signed by the person being pierced stating that they are allowing the apprentice to pierce them.
10. The licensed piercer must submit a quarterly progress report to the Board of Health pertaining to the progress of the apprentice in question.

11. These reports should be kept in the apprentice's records and once the program is completed used as a tool to decide if the apprentice is to be granted a license.

**Sec. 20-110. Denial, Suspension, Revocation, or Refusal to Renew Permit.**

The Board may, subject to the procedures outlined in Section 114, deny a permit, suspend a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for suspension, denial, revocation or refusal to renew:

- (a) any action(s) which would indicate that the health or safety of the public would be at risk;
- (b) fraud, deceit or misrepresentation in obtaining a permit, or its renewal;
- (c) criminal conduct which the Board determines to be of such a nature as to render the establishment, practitioner or applicant unfit to practice body art as evidenced by criminal proceedings resulting in a conviction, guilty plea, or plea of nolo contendere or an admission of sufficient facts;
- (d) any present or past violation of the Board's regulations governing the practice of body art;
- (e) practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
- (f) being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
- (g) knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;
- (h) continuing to practice while his/her permit is lapsed, suspended, or revoked;
- (i) having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in the Board's regulations;
- (j) violation of the Board's Regulations as provided in Section 112 (B) below; and
- (k) other just and sufficient cause, which the Board may determine, would render the establishment, practitioner or applicant unfit to practice body art.

The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations. The applicant, establishment and/or practitioner shall have

seven (7) days after receipt of such written notice in which to comply with the Board's Regulations, unless the Board provides for further time in its written notice or in subsequent written notice or communication. The Board may deny, revoke, suspend, or refuse to renew a permit, if the applicant, establishment or practitioner fails to comply after the required time to comply with regulations(s), subject to the procedures outlined in Section 114 below.

An Applicant denied a permit may reapply at any time after denial. If upon reapplication within one year of the denial, the reapplication is denied, the applicant may not further reapply within said one (1) year period from the initial application without the written permission of the Board.

#### **Sec. 20-111. Suspension of Permit without a Hearing.**

The Board may summarily suspend a permit without a hearing, pending a hearing on the merits on the question of a suspension or revocation of the permit 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 written notice of such suspension by the Board. A hearing on the merits of a suspension or revocation of the permit shall be scheduled no later than 14 days from the date of the suspension.

- (a) Suspension order shall be posted at a public entrance to the Body Art Establishment and a copy provided to permit holder. The order summarily suspending the permit or specific operation of permit holder shall be immediately effective upon posting of order at the Body Art Establishment by an authorized agent of Board of Health.
- (b) The closure shall remain in effect and posting shall not be removed until conditions cited in the order of closure are corrected and the corrections confirmed by than authorized agent of the Board of Health.

#### **Sec. 20-112. Procedure for Hearings.**

The applicant, 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, (other than as provided in Section 113 above), revocation, denial or refusal to renew a permit. This written notice shall be served through a certified letter sent return receipt requested, overnight express mail delivery, or by constable. The notice shall include the date, time and place of the hearing and the applicant's, owner of the establishment or practitioner's right to be heard. The Board shall hold the hearing no earlier than 7 days, nor later than 21 days from the date of the written notice, unless otherwise

agreed to in writing by the parties. If the permit holder is under suspension pursuant to Section 113 above, the hearing may not be held later than 14 days from the date of suspension.

**Sec. 20-113. Effective Date.**

These rules and regulations shall be effective as of May 28, 2001. These regulations were adopted on March 27, 2001.

**Sections 114 – 119 Reserved.**

**ARTICLE XIV. HOUSING FITNESS CERTIFICATE**

**Section 20-120. Housing Fitness Certificate.**

Whenever a dwelling unit is to be rented, regardless of whether or not it was vacated by a previous tenant(s) or was previously occupied, a Housing Fitness Certificate evidencing compliance with the standards set forth in the State Sanitary Code, Article II, Minimum Standards of Fitness for Human Habitation (105 CMR 410.000 et. seq., as amended, adopted by the Massachusetts Department of Public Health), shall be obtained by the owner of the dwelling unit (or the owner's authorized agent) from the Board of Health and or its Agent, prior to occupancy by the new tenant(s).

**Section 20-121. Violation(s) and Re-Inspection.**

- a. If upon an inspection pursuant to Section 20-130, above, a violation(s) of the State Sanitary Code, Article II, Minimum Standards of Fitness for Human Habitation (105 CMR 410.000 et. seq.) is found to exist by the Board of Health or its Agent, each violation shall be corrected by the owner of the respective dwelling unit (or by the owner's authorized agent) and re-inspected prior to the issuance of the Housing Fitness Certificate. All corrections of violations shall be completed within fourteen (14) days or such other time period as deemed reasonable under the circumstances by the Board of Health or its Agent. All corrective work shall be in accordance with applicable federal, state and town laws and regulations, including any permit and/or license requirements.
- b. If after the first re-inspection of the dwelling unit, a violation of the State Sanitary Code, Article II, Minimum Standards of Fitness for Human Habitation (105 CMR 410.000 et. seq.) still exists, the owner of the dwelling unit shall be subject to a

penalty pursuant to Section 20-3 of these Board of Health Regulations and/or a non-criminal disposition penalty pursuant to Section 20-4.1 of these Board of Health Regulations.

- c Any owner and/or the owner's authorized agent for management of the subject dwelling unit, who allows any person or persons to live, occupy, or inhabit a dwelling unit subject to this Regulation without having received a certificate of fitness for human habitation from the Board of Health or its Agent, shall be subject to a penalty pursuant to Section 20.3 of these Board of Health Regulations and/or a non-criminal disposition penalty, pursuant to Section 20-4.

### **Section 20-122. Right to a Hearing.**

The following persons may request a hearing before the Board of Health by filing a written petition to the Board:

- i. Any person who receives notice or an order from the Board of Health or its Agent, stating that a Housing Fitness Certificate is required, provided a written appeal is filed with the Board of Health within five (5) business days of receipt of said notice or order.
- ii. Any person aggrieved by the failure of the Board of Health or its Agent to provide a notice or order to an owner of a dwelling unit that a Housing Fitness Certificate is required, provided a written appeal is filed with the Board of Health within thirty (30) days of the early of the following: (a) a written refusal of the Board of Health or its Agent to send as such notice or order to the owner of said dwelling unit, or (b) thirty (30) days after receipt by the Director of Public Health of a written request to provide a notice or order to the owner of said dwelling unit.

### **Section 20-123. Fee For Dwelling Unit Inspection Certificate.**

The fee for the Dwelling Unit Inspection Certificate, including one re-inspection, shall be Fifty Dollars (\$50) per unit. Any re-inspection after the first re-inspection, necessary to inspect whether a violation has been corrected, shall be Twenty-Five Dollars (\$25) per re-inspection.

### **Section 20-124. Exemptions.**

The following dwelling units shall be exempt from these Regulations:

- a. Dwelling units owned or managed by the Stoneham Housing Authority.
- b. Any dwelling unit in a two or three family dwelling where the specific dwelling unit is occupied by the owner of the property or an immediate family member of the owner of the property. An “immediate family member” shall be limited to the spouse of the owner or the parents, children, brothers or sisters of the owner or the owner’s spouse.

Effective July, 2005.

## **ARTICLE XV. MARIJUANA NOT MEDICALLY PRESCRIBED**

### **Section 20-125. Definitions**

**Non-Medical Marijuana Establishment:** A non-medical marijuana establishment shall include all types of marijuana establishments as defined in Mass. Gen. L. c. 94G , exclusive of facilities that are licensed for medically prescribed purposes, to include marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses.

### **Section 20-126. Marijuana Not Medically Prescribed.**

Consistent with Mass. Gen. L. c. 94G, §3(a)(2), all types of non-medical marijuana establishments as defined in Mass. Gen. L. c. 94G §1(j), to include marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses shall be prohibited within the Town of Stoneham. (Art. 1, 01-29-18) (Art. 12 5-7-18)

## **ARTICLE XV: REGULATIONS GOVERNING THE OPERATION OF BODYWORK ESTABLISHMENTS**

### **20-127: Statement of Purpose**

Whereas persons working in this particular service industry have often been found to identify themselves as bodyworkers in order to gain exemption from the Massachusetts Rules and Regulations Governing Massage Therapists, it is necessary to enact these Regulations Governing the Practice of Bodywork to protect the public health and safety of the community. The scope of these Regulations is broad and includes many aspects, which if not adequately regulated could endanger the community with the risk of prostitution, human trafficking and disease

transmission. It is the Board's intent that only individuals who meet and maintain a minimum standard of competence and conduct within their scope of practice as a professional may provide services to the public. These Regulations designate the requirements for obtaining a permit to operate a bodywork establishment and permit to practice bodywork, as well as grounds for suspension, revocation or denial of such a permit.

### **20-128: Definitions**

*Administrative Revocation:* shall mean an administrative action with immediate effect taken by the Department for cause when a permit holder fails to renew a permit, or denies entry to an agent of the Department during the conduct of an inspection. A permit holder whose permit has been administratively revoked cannot lawfully continue to practice as a bodywork therapist or to operate a bodywork establishment in the Town of Stoneham. Permits that have been administratively revoked may be reinstated upon meeting the conditions contained in these Regulations.

*Agent:* shall mean a person who has received delegation of authority from the Public Health Director to perform functions subject to these Regulations.

*Applicant:* shall mean a person seeking a permit that has submitted an application and the applicable application fee for a permit to the Board of Health.

*Application:* shall mean the application approved by the Public Health Director and provided by the Department.

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

*Bodywork:* shall refer to the practice of a person representing themselves as a bodyworker or bodywork therapist, or the practice of a person using primarily touch to manipulate tissue, which does not constitute Massage as defined in M.G.L., c. 135, in the course of a treatment or therapy provided to another person. Bodywork may include the affectation of the human energy system or acupoints or QI meridians of the human body. The Board, in conjunction with the Department, will maintain a list of treatment and therapy modalities considered Bodywork for the purposes of these Regulations.

*Client:* shall mean a person with whom the bodywork therapist has an agreement to provide bodywork therapy services.

*Certification:* shall mean successful completion of the most current requirements of the American Organization for Bodywork Therapies of Asia (AOBTA®), National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), American Reflexology Certification Board, or other national professional membership organization recognized by the Institute for Credentialing Excellence, or its accrediting body, that provides a certification or credential for bodywork. Any such national professional membership organization or national certification commission must include an established set of educational standards, require compliance with a specific code of ethics, and offer a grievance process. All certifications and/or credentials must be approved by the Public Health Director or the Board of Health.

*Department:* shall mean the Office of Public Health.

*Director:* shall mean the Public Health Director/Health Agent.

*Establishment:* shall mean any location, or portion thereof, as listed on the permit and under the control of an individual operator, which advertises and/or provides bodywork therapy services on the premises. Any health care facility licensed by an agency of the Commonwealth of Massachusetts, or the office of any health care professional licensed by the Commonwealth of Massachusetts wherein bodywork therapy services are not advertised or provided except on an occasional outcall basis is not an establishment for the purposes of these Regulations. Any location within a licensed health care facility or health care professional's office which is dedicated to and maintained for the use of a therapist who performs occasional therapy services to the patients of the facility is a bodywork establishment for the purposes of permitting under these Regulations and the portions of the facility or office wherein bodywork therapy services are provided must be in compliance with these Regulations.

*Operation:* shall mean the times when the establishment is open to the public for the practice of bodywork.

*Operator:* shall mean the person possessing the permit to operate a bodywork establishment issued by the Department.

*Permit:* shall mean either a document issued by the Department allowing a specific person to operate a bodywork establishment in the Town of Stoneham, or a document issued by the Department allowing a specific person to practice bodywork in the Town of Stoneham.

*Permit holder:* shall mean a person holding a permit, which is in his or her name, issued by the Department.

*Person:* shall mean any individual, firm, corporation, partnership, organization, or body politic.

*Person in charge:* shall mean the permit holder present at the bodywork establishment who is responsible for the operation at the time of inspection, and who is authorized to sign Department inspection forms and communicate with the Department or its authorized agent(s).

*Retired permit:* shall mean a permit that has not been renewed for more than twelve (12) consecutive months.

*Therapist:* shall mean a person holding a permit to practice bodywork, which is in his or her name, issued by the Department.

### **20-129: Exemptions**

- (a) Any physician, chiropractor, osteopath, nurse, physical therapist, occupational therapist, massage therapist or acupuncturist operating within the scope of his/her Commonwealth of Massachusetts license or registration and not representing him/herself as a bodywork therapist shall be exempt from these Regulations.
- (b) Hospitals, long-term care facilities, and home health agencies licensed or certified under the laws of the Commonwealth of Massachusetts shall be exempt from these Regulations.

### **20-130: Requirement for a Permit to Practice Bodywork**

To practice bodywork therapy, or to be employed in a bodywork establishment in the Town of Stoneham, a person must possess a current and valid permit to practice bodywork issued by the Department. The process for obtaining a permit to practice bodywork is as follows:

- (a) An application shall be obtained from the Department.
- (b) The applicant shall answer every question truthfully and completely and supply all information requested in the application. The applicant shall submit the completed application to the Department. False statements shall constitute grounds for denial.
- (c) Applications shall be accepted throughout the year. The Department shall make reasonable efforts act on completed permit applications within thirty (30) days of receipt.
- (d) The applicant shall submit a certified copy of his/her birth certificate or its equivalent to establish that the applicant is at least eighteen (18) years of age at the time of application. The applicant shall submit a high school diploma or its verifiable equivalent.
- (e) The applicant shall be able to communicate effectively in English.
- (f) The applicant shall attach to his/her application a signed passport-type photograph taken within the preceding 12 months.

- (g) The applicant shall provide satisfactory evidence of being appropriately certified in accordance with Sec. 20-125 - 'Certification.'
- (h) The applicant shall provide proof of coverage by an individual professional liability insurance policy of at least one million dollars (\$1,000,000) per occurrence and at least one million dollars (\$1,000,000) aggregate.
- (i) The applicant shall complete a release of Criminal Offender Record Information (CORI) and a release of Sexual Offender Registry Information (SORI) to the Department. (j) The applicant shall disclose the circumstances surrounding any of the following:
- i. Any conviction for any sexual related crime occurring within the past ten (10) years.
  - ii. Revocation or denial of a permit or license to practice bodywork issued by any state or municipality.
  - iii. Loss or restriction of a permit

### **20-131: Requirement for a Permit to Operate a Bodywork Establishment**

To operate a bodywork establishment in the Town of Stoneham, a person must possess a current and valid permit to operate a bodywork establishment issued by the Department. The process for obtaining a permit to operate a bodywork establishment is as follows:

- (a) An application shall be obtained from the Department.
- (b) The applicant shall answer every question truthfully and completely and supply all information requested in the application. The applicant shall submit the completed application to the Department. False statements shall constitute grounds for denial.
- (c) Applications shall be accepted throughout the year. The Department shall make reasonable efforts to act on completed applications within thirty (30) days of receipt.
- (d) The applicant shall include in the application copies of the permits to practice bodywork of all therapists performing bodywork at the establishment. To obtain a permit, an establishment shall have at least one (1) duly permitted body worker employed at all times.
- (e) The applicant is responsible for ensuring all persons performing bodywork in his/her establishment are permitted by the Department.
- (f) The applicant shall submit a non-refundable application fee with the application. The fee will be determined by the Board of Health. An application is not considered complete unless accompanied by the applicable fee.
- (g) The application shall be sworn to and signed by the applicant under the pains and penalties of perjury as set forth by the Commonwealth of Massachusetts.
- (h) All documents submitted for the purpose of obtaining a permit become the property of the Department and will not be returned.

(i) The applicant shall provide the name or names of individuals that are currently certified in basic cardiopulmonary resuscitation (CPR) and a copy of their valid certification form. One individual trained in CPR shall be on-site at all times during operating hours.

### **20-132: Permits**

- (a) All permits expire on the thirty-first (31st) day of December each year.
- (b) Permit holders intending to renew a current permit shall submit the appropriate renewal application(s) provided by the Department along with the applicable fee, as determined by the Board of Health, before the thirty-first (31st) day of December.
- (c) Any permits not renewed by the thirty-first (31st) day of December shall be administratively revoked.
- (d) Administratively revoked permits may be subject to a reinstatement fee, as determined by the Board of Health.
- (e) Administratively revoked permits may be reinstated upon meeting all renewal requirements.
- (f) A permit shall be considered retired if not renewed for more than twelve (12) months. A retired permit may not be renewed; an initial permit application must be submitted to the Department.
- (g) Permits are non-transferable.
- (h) No replacement permits will be issued.
- (i) All permit holders shall notify the Department of a change of name and/or address within (30) days of such change.
- (j) All permits shall be displayed on the premises in a location that is conspicuous, open, and obvious to all people entering the establishment.

### **20-133: Requirements and Standards for Body Work Establishments and Therapists**

#### *(a) Bodywork Establishment*

- i. All new establishments initially permitted after the effective date of these Regulations must contain a waiting area for clients within the establishment.
- ii. All establishments shall have a sink for hand washing immediately available at all times. Such sink shall be supplied with hot water between 110-130°F, hand soap, and hand drying provisions.
- iii. All establishments shall comply with the zoning requirements and bylaws of the Town of Stoneham.

iv. The establishment, and any facilities or equipment contained therein, including any showers, table showers and sinks, shall at all times meet the requirements of the Stoneham Fire Department and the Stoneham Building Inspector.

v. Bodywork may be conducted only in adequately lighted, heated and ventilated rooms, which are so constructed that they can be kept clean.

Floors, walls, ceilings and windows must be kept free of dust, soil, and other unclean substances.

vi. All equipment, furniture, linens and supplies used in the performance of bodywork shall be maintained in a safe and sanitary manner.

vii. A written plan describing sanitation measures must be submitted by the applicant to the Department for any bodywork that entails disrobing and/or draping, use of oils or lotions, and/or use of a massage-type of table.

viii. If any latex-containing products are used, a sign shall be conspicuously posted alerting all clients that latex-containing products are in use.

ix. All establishments shall be responsible for the acts of all therapists and other employees working at that establishment.

*(b) Bodywork Therapist*

i. A therapist may only perform bodywork at the permitted establishment listed on his/her permit to practice bodywork. Therapists may provide services off-site for single events, such as health fairs and demonstrations, or in the homes of clients who are medically homebound, as documented by a health care professional.

ii. All therapists shall maintain a sufficient level of personal cleanliness and wear clothing that is clean, as determined by the Department.

iii. All therapists shall be properly clothed, within the bounds of decency and propriety.

**20-134: General Requirements**

(a) Hours of operation for any establishment shall be limited to 7:00 AM to 10:00 PM, both inclusive.

(b) There shall be a person in charge who must be present in the establishment at all times, who shall be so designated by the operator.

(c) Not including clients and exempt professionals, only permit holders may be present or employed in an establishment during operation.

(d) There shall be at least one (1) bodywork therapist present in the establishment at all times of operation.

(e) All permit holders shall notify the Department of any criminal complaint brought against him/her within seven (7) days.

(f) No false statements or information shall be presented to the Department, or any agent thereof.

(g) No alcoholic beverages may be served in any bodywork establishment.

- (h) No therapist in a bodywork establishment may be unclothed.
- (i) No therapist shall provide bodywork therapy services on a client when a communicable disease will be spread through the bodywork process. All therapists must practice safe work-related procedures in accordance with universal precautions, Occupational Safety and Health Administration (OSHA) standards, and the established guidelines of their profession.
- (j) No room or section of a bodywork establishment shall be used as a bedroom or for sleeping or domicile.
- (k) No room or section of a bodywork establishment shall be used as a kitchen, aside from the use of small appliances (small refrigerators, microwaves, coffee machines) commonly used in break rooms, etc. No refrigerator shall be used for food storage in large quantity. Hot plates/stoves are prohibited.

### **20-135: Sexual Activity Prohibited**

- (a) Sexual activity by any person or persons in any establishment is prohibited.
- (b) As used in these regulations, “sexual activity” means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or which is likely to cause such stimulation and includes: sexual intercourse, fellatio, cunnilingus, masturbation (or “hand release”), or anal intercourse. For the purpose of these regulations, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used herein, sexual activity may involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation occurs.

### **20-136: Advertising**

- (a) Establishments and therapists shall be mindful of professional ethics when placing advertisements. As used in this section, advertisements shall include, but not be limited to, service offerings or promotions in or on newspapers, periodicals, television, radio, any form of print media, or any form of internet or web-based marketing.
- (b) Any person who is not permitted in the manner described herein may not represent him/herself as being a permitted or licensed bodywork therapist or to hold him/herself out to the public as being permitted or licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification or advertisements of any sort.
- (c) Unless all bodywork therapists within the establishment possess individual permits to practice bodywork in the Town of Stoneham, any person operating a bodywork establishment may not present his/her establishment as a permitted or licensed bodywork establishment or to hold his/her establishment out to the public as being permitted or licensed by using a title on signs,

mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional or advertisements of any sort.

(d) The use of aliases is prohibited. If the therapist or establishment operator wishes to use a name other than that which appears on a permit, both names must be used together in all advertising and representations.

### **20-137: Inspections**

(a) Establishments and therapists are subject to inspections by the Department or its authorized agent(s) during all times of operation.

(b) The purpose of inspections is to verify compliance with these Regulations.

(c) Denial of access to an agent of the Department shall result in the immediate administrative revocation of the permit to operate a bodywork establishment.

(d) If, upon inspection, conditions are found that do not comply with the provisions set forth in these Regulations, both the operator and any bodywork therapist responsible for violating these Regulations may be subject to enforcement proceedings and penalties pursuant to Section 13 and Section 14 below.

(e) If, upon inspection, conditions are found that do not comply with the standards and requirements set forth in these Regulations, a re-inspection may be necessary to ensure corrective action was taken to achieve compliance with these Regulations. A re-inspection fee, as determined by the Board of Health, shall be issued to

### **20-138: Enforcement**

(a) Orders.

i. Upon a finding by the Director or the Department that a permit holder has violated any provision of these Regulations, the Director or the

Department may order both the operator and any bodywork therapist responsible for violating these Regulations to correct any violation of the provision of these Regulations.

ii. Orders shall be in writing and served on the permit holder(s) as follows:

1. By sending a copy of the order by certified mail, return receipt requested, or
2. Personally, by any person authorized to serve civil process, or
3. By posting a copy in a conspicuous place on or about the establishment.

(b) Hearings.

i. Upon a finding by the Director or the Department that a permit holder has violated any provision of these Regulations, the Director or the Department may order both the operator and any bodywork therapist responsible for violating these Regulations to attend a hearing with the Board of Health.

ii. The Board of Health may take any of the following actions, separately or in any combination, which is deemed appropriate for the offense:

1. Suspension of a permit for a fixed period of time, or
2. Revocation of a permit. Any person who has had a permit revoked may not apply for another permit in the Town of Stoneham.

iii. The person to whom any order or notice has been issued pursuant to violations of any provision of these regulations may request a hearing before the Board of Health. Such request shall be in writing and shall be filed with the Department within five (5) working days of receipt of the order or notice. Upon receipt of such request, the Department shall inform the petitioner thereof in writing of the time and place of said hearing, which shall be commenced within a reasonable time.

iv. At the hearing, the petitioner shall be given an opportunity to be heard, to challenge the inspection findings, and/or to show why the order should be modified or rescinded, or why the permit should not be suspended or revoked. Any oral testimony given at a hearing shall be recorded electronically and shall be part of the permit holder's file.

v. After the hearing, the Board of Health shall make a final decision based upon the complete hearing record and shall inform the petitioner in writing of the decision. If the Board sustains or modifies an order, it shall be carried out within the time period allotted in the original order or in the modification.

vii. Every notice, order, decision or other record prepared by the Department or Director in connection with the hearing shall be entered as a matter of public record in the Department.

viii. Any person aggrieved by the final decision of the Board of Health may seek relief in a court of competent jurisdiction.

### **20-139: Penalties**

(a) Criminal penalties. Under Massachusetts General Laws (M.G.L.), Chapter 111, Section 31, any person who violates any provision of these Regulations shall, upon conviction, be fined not more than one thousand dollars (\$1,000.00) for violation of these regulations. Each day's failure to comply with an order of the Department shall constitute a separate offense.

(b) Non-criminal penalties. Under Massachusetts General Laws (M.G.L.), Chapter 21D, Section 40, a civil penalty of fifty dollars (\$50.00) may be assessed at the discretion of the Director, the Department or the Board of Health for violation(s) of these Regulations.

### **20-140: Variance**

(a) The Board of Health may vary the application of any provision of these

Regulations with respect to any particular case, when, in the Board's opinion, the enforcement thereof would do manifest injustice; provided that the decision shall not conflict with the intent and spirit of these Regulations.

(b) A request for a variance shall be submitted in writing. The Board of Health may ask for supporting evidence in order to consider the variance request. The request shall not be deemed complete until all such requested evidence has been received by the Department.

(c) Any variance granted under this section may be subject to qualification, revocation, suspension, or expiration. A variance granted may 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 accordance with these Regulations.

(d) Any variance granted by the Board of Health shall be in writing. A copy of any such variance, while it is in effect, shall be available to the public at all reasonable hours at the Department. A copy of the variance shall also be on file in the usual place of practice of the applicant.

#### **20-141: 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.

Note: These regulations were voted on by the Board of Health at a public hearing held on August 20, 2019.