

Town of Hopkinton

Board of Health

18 Main St
Hopkinton, Ma 01748
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**Revisions Adopted at the Board of Health
Hearing of May 13, 2019**

Effective June 30, 2019

These Regulations Supersede other versions

Board of Health Code of Regulations

(SECTIONS 1-18)

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SECTION 1 ADMINISTRATIVE

1. ADMINISTRATIVE

1.1. Purpose and Authority and Related Provisions

The Hopkinton Board of Health Code of Regulations is established under M.G.L. c. 111, § 31. The purpose of Section 1 is to set forth administrative procedures to be followed in enforcement and permitting of the Board of Health Code. All regulations previously made by the Board of Health regarding these issues shall no longer be in effect, except as to those matters currently pending. Any condition which existed prior to the effective date of these regulations shall not be grandfathered or regarded as exempt from these regulations. In cases where two or more regulations for an issue are in conflict the Board of Health will enforce the more strict interpretation in accordance with M.G.L. c. 111. These rules and regulations were adopted by unanimous vote of the Board of Health of the Town of Hopkinton, on **June 30, 2019** or otherwise amended as noted in the individual regulation section. These regulations or any portions thereof may be amended, supplemented or repealed from time to time by the Board, with notice as provided by law, on its own motion or by petition.

1.2. Definitions

1.2.1. AGENT

Any person designated and authorized by the Board to execute these regulations under the direction of the Board.

1.2.2. APPLICANT

Any individual or corporation that has a vested interest, or ownership in property in regards to a submitted application or a required application or report to the Board of Health

1.2.3. BOARD OF HEALTH OR BOARD

The legally constituted Board of Health of the Town of Hopkinton, Massachusetts, or its designated agent

1.2.4. BUILDING

The definition includes residential, commercial, industrial or recreational buildings or facilities

1.2.5. BUSINESS

Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where services are delivered

1.2.6. ESTABLISHMENT

Any location or business within the Town of Hopkinton that may provide a service to the public

1.2.7. FACILITY

Any establishment, real property and any buildings thereon

1.2.8. FINANCIAL ASSURANCE MECHANISM

The permittee shall establish, fund and maintain a Financial Assurance Mechanism that provides for the continued availability of an immediate repair and replacement account to be used by the permittee solely for the immediate repair and replacement of any failing components of the PWTF in accordance with 314 CMR 5.10 Division of Water Pollution Control regulations.

1.2.9. LICENSE or PERMIT

Authority granted by the Board of Health to an individual or business to perform work that is regulated under applicable codes the Board of Health enforces

1.2.10. LIFE SCIENCE FACILITY

A facility where research, manufacturing or modification of any life science activity including genetic research, modification or creation of human tissue and or modification including investigation of the human genome may take place.

1.2.11. LOCAL UPGRADE APPROVAL

Approval granted by the Board of Health allowing the owner or operator of a failed or non-conforming septic system to perform an upgrade to the maximum feasible extent in accordance with the provisions of Title 5 310 CMR 15.401 through 15.405

1.2.12. MINOR

A person less than eighteen (18) years of age

1.2.13. NEW CONSTRUCTION

Any facility when construction will increase design or actual wastewater flow in accordance with 310 CMR 15.002 compared to what was pre-existing or **approved By the Board of Health. New construction shall mean the complete demolition and replacement of a building or dwelling or the expansion of greater than 50% of the building or dwelling footprint.**

1.2.14. OPERATOR

Person in control of a particular establishment or facility

1.2.15. PERSON

Any individual person, company, corporation, trust, or any other entity

1.2.16. REGULATIONS

All regulations under the Board of Health's "Code of Regulations" and applicable State or Federal regulations enforced by the Board of Health

1.2.17. REPEAT VIOLATIONS

Any violation of these regulations that recur within one year following an inspection shall be considered a repeat violation

1.2.18. WILLFUL VIOLATIONS

To act intentionally or to cause or allow action that results in violations of the regulations, as determined by the Board of Health

1.3. Procedures

1.3.1. All applications shall be made on a form approved by the Board of Health and accompanied by all necessary plans or other written materials. The fee is considered part of the application. Application for a permit does not guarantee that the required permit will be granted.

1.3.2. All plans, application, and reports that are part of the Board of Health submittal requirement must be submitted in paper format and/or as directed by the Department.

1.3.3. The Board of Health shall follow applicable state, local, and federal statutes in the timeliness application review. Applicants shall have 180 days, to re-submit corrections to all deficiencies noted during the review unless an extension is approved by the Board of Health. If the applicant fails to resubmit in the said time frame, a new application will be required to proceed including all applicable fees.

1.3.4. Failure to obtain applicable permits or licenses prior to the start of construction, business opening, an activity is subject to a "cease and desist" Order, reimbursement of any Board of Health expenses, and other fines or applicable penalties pursuant to the Town by-laws, Section 1.5 of these regulations, and Massachusetts General Laws.

1.3.5. Renewal of a permit is the sole responsibility of the permit holder. Any applicant of a valid permit who fails to file for renewal of a permit at least fifteen (15) days before its expiration, and continues to operate after

expiration of a permit, shall be responsible for payment of all costs of the Board of Health relative to obtaining compliance. **In addition to the cost associated above, the permit renewal fee shall be two times the current fee for the application submitted.**

1.4. Consultant Fees [MGL Chapter 44 Sec. 53G]

1.4.1. When reviewing an application or plan the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts. The proponent shall bear the costs incurred by the Board.

1.4.2. The Board may engage in but not limited to: consultants, engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with relevant laws, ordinances/bylaws and regulations.

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

1.4.4. Any applicant may file an administrative appeal from the selection of the outside consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an appropriate educational degree, professional registration with the Commonwealth, or equivalent work experience. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

1.5. Orders, Enforcement and Penalties

1.5.1. Non Criminal Disposition (Alternative Disposition)

Whoever violates any provision of these rules and regulations may be

penalized by a noncriminal complaint in the District Court pursuant to the provisions of Massachusetts General Laws, Chapter 40, Section 21D. Each day on which a violation exists shall be deemed to be a separate offense. Under the provisions of Chapter 40, Section 21D the violation of any portion of these regulations is punishable by a fine of \$50.00 unless otherwise provided in any respective Section of these regulations.

1.5.2. Criminal Complaint

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

1.5.3. Denial, Revocation or Suspension of a Permit or License

The Board of Health may choose to deny, revoke or suspend a permit prior to the expiration date provided in this code. Permit fees are not refundable in these cases except under the Board of Health's discretion and depending upon the circumstances of the matter.

1.5.3.1. The Board may summarily suspend a permit or license pending a final hearing per Section 1.7 on the merits on the question of revocation if, based on the evidence before it, the Board determines that an establishment and/or a licensed individual is an immediate and serious threat to the public health, safety or welfare. The suspension of a permit or license shall take effect immediately upon written notice of such suspension by the Board.

1.5.3.1.1. The Board of Health shall give notice in writing and opportunity to be heard to an applicant, establishment, or practitioner of any violation of the Board's Regulations for which the Board intends to suspend or revoke a permit or license.

1.5.3.2. The Board may act on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for revocation or refusal to renew a permit including but not limited to:

- Fraud, deceit or misrepresentation in obtaining a permit, or its renewal;
- Any present or past violation of the Board's regulations;
- The Board of Health has been notified by local or state police that an individual was found performing licensed duties while impaired by alcohol, drugs, or other physical disability or mental instability that puts the public health or safety at risk;
- Knowingly allowing, aiding or abetting an unauthorized person to perform activities requiring a permit;

- Continuing to practice while his/her permit is lapsed, suspended, or revoked;
- 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; and
- The Board of Health determines the health or safety of the public is at imminent or significant risk;
- Other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice with the license granted by the Board of Health.

1.5.4. The Board may seek additional enforcement strategy in order to bring a violator into compliance.

1.6. Variances

1.6.1. Full Compliance of the Board of Health Regulations is presumed to be necessary for the protection of public health, welfare, safety, and the environment.

1.6.2. Every variance request shall be made in writing and signed by the applicant on a Board of Health approved form.

1.6.3. The applicant has the burden to provide information to the Board of Health assuring the Board that the public health, safety, and the environment will be adequately protected.

1.6.4. The applicant shall pay for any required legal advertising and/or mailings for notification, as well as the consulting fees for processing the request for variance.

1.6.4.1. Requests for a variance shall clearly state how “maximum feasible compliance” of the varied regulation will be provided.

1.6.5. Any variance allowed by the Board of Health shall be in writing. Any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial. A copy of the variance shall be conspicuously posted for 30 days following its issuance; and shall be available to the public at all reasonable hours in the office of the city or town clerk or the office of the Board of Health while it is in effect.

1.7. Appeals and Hearings

1.7.1. Any person aggrieved by the final decision of an agent of the Board of Health may seek relief from the Board at a regularly scheduled

meeting. Such request must be made in writing from the aggrieved party and submitted to the Board of Health within 7 days of the agent's decision. Such appeal shall not provide relief from correcting or acting in good faith for situations that are reported as "imminent health risk" or "conditions deemed to endanger or impair public health and safety".

1.7.2. Board of Health's "Notice of Non-Compliance" is not appealable.

1.7.3. A Board of Health hearing shall be initiated no later than twenty-one (21) calendar days after the effective date of a suspension or revocation of a permit.

1.7.3.1. Upon written request to the Board of Health, the establishment or permit holder shall be afforded an opportunity to be heard by the Board concerning the suspension or revocation of the permit.

1.7.3.2. The Board of Health Chair shall determine whether the Board has proved by a preponderance of the evidence that there existed immediately prior to or at the time of the suspension or revocation an immediate and serious threat to the public health, safety or welfare. The Board of Health Chair shall issue a written decision, which contains a summary of the testimony and evidence considered and the reasons for the decision.

1.7.4. Every notice, order, or other record prepared by the Board of Health in connection with the hearing shall be entered as a matter of public record in the Office of the Hopkinton Town Clerk, or in the Office of the Board of Health.

1.7.5. Any person aggrieved by the final decision of the Board, within thirty (30) days, may seek relief from any court of competent jurisdiction as provided by the laws of this Commonwealth.

1.8. Severability

1.8.1. If any section, paragraph, sentence, clause, phrase, or word of these regulations shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of these regulations, which shall remain in full force and effect, and to this end the provisions of this Code are hereby declared separable.

1.9. Effective Date of Regulations:

1.9.1. This regulation and the succeeding regulations Sections 1-18 become effective on **June 30, 2019** or otherwise immediately upon advertisement.

Hopkinton Board of Health
Date: May 13, 2019

Elizabeth (Lisa) Whittemore, (Chairman)

Michael King, (Vice Chairman)

Jennifer Flanagan, (Member)

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2. FEE SCHEDULE

On this date, **June 30, 2019**, relating to fees acting under the authority of Chapter 111 of the Massachusetts General Laws, the Board of Health of the Town of Hopkinton hereby amends the following regulations. All fees previously made by the Board of Health regarding these permits shall no longer be in effect, except as to those matters currently pending. Any condition that existed prior to the effective date of these regulations shall not be grandfathered or regarded as exempt from these fees. These revised fees are to be inserted into the Code of Regulations of the Board of Health.

The following shall be the Fee Schedule for permit applications, services and expenses of the Board of Health.

<u>CATEGORY</u>	<u>FEE</u>	<u>EXPIRATION DATE</u>
16.) Body Art		
16.3.2. Practitioner	\$ 75.00	06/30 at Fiscal Year End
16.3.1. Establishment ¹	\$ 150.00	06/30 at Fiscal Year End
Re-inspections	\$ 50.00 each	

Camps for Children MGL c140, s 32B		
Recreational Camp ¹	\$ 100.00	Date on Permit
Re-inspections	\$ 00.00 each	

3.) Food 105 CMR 590.012		
3.3.1.1. Establishment / Food Prep. ²	\$ 250.00	06/30 at Fiscal Year End
Establishment / Pre-Packaged ²	\$ 125.00	06/30 at Fiscal Year End
3.3.1.2. Seasonal Estab. ¹ or Mobile	\$ 50.00	Date on Permit
3.3.1.3. Seasonal Estab. / Non-Profit ¹	\$ 25.00	Date on Permit
Annual Food Permit/Non-Profit¹	\$ 100.00	Date on Permit
3.3.1.4. Temporary Food Permits ¹	\$ 50.00	Day of Event(s)
Temp. Food Permit / Non-Profit ¹	\$ 25.00	Day of Event(s)
Re-Inspections	\$ 0.00	
3.3.2. Kitchen Plan Review (New)*	\$ 200.00	
Marathon Day ¹	\$ 100.00	
Marathon Additional Day(s)	\$ 50.00	
Marathon Day / Non Profit ¹	\$ 50.00	
Addt'l Day(s) / Non-Profit	\$ 25.00	

10.) Funeral Directors MGL c 114, s 49		
4.1. Annual License	\$ 50.00	04/30 of the Calendar Year

17.) Portable Toilet Regulations		
Portable Toilet Units	\$ 5.00 Per Unit	\$ 75.00 Per Event Date on Permit

4.) Sewage Disposal		
4.1.1 Soil Testing (4 deeps / 2 percs)	\$ 250.00	per site/lot
Design Review and Permit (New Construction) (<2000 gpd)* ₃	\$400.00	Date on Approval Letter
Design Review and Permit (Replacement Const) (<2000 gpd)**	\$150.00	Date on Approval Letter
Design Review and permit (2000-5000 gpd)* [^]	\$ 2,500.00	Date on Approval Letter
Design Review (>5,000 gpd)* [^]	\$ 3,500.00	Date on Approval Letter
Additional Revisions	\$ 100.00	each
Subdivision Plan Review**	\$ 150.00	minimum
Permit to Repair¹(d-box,tank,sewer/header pipes)	\$ 50.00	One Year from Approval Date
Permit to Abandon ¹	\$ 50.00	One Year from Approval Date
Job Card Re-Issuance	\$ 50.00	
Additional Inspections	\$ 50.00	each
4.4.2. Installer's License	\$ 100.00	12/31 of the Calendar Year
Installer's Exam	\$ 50.00	
Septage Hauler Permit ¹	\$ 75.00	per truck 12/31 of the Calendar Year

6.) Transport and Disposal of Garbage and Rubbish MGL c 111, s 31A		
6.2.1. Trash Hauler Permit	\$ 100.00	12/31 of the Calendar Year

9.) Swimming Pools (Public & Semi-Public) 105 CMR 435.215		
9.2.1 Permit / Each pool	\$ 150.00	06/30 at Fiscal Year
End		
Re-Inspections	\$ 50.00	each

12.) Tanning 105 CMR 123.005		
12.2.1. Tanning Facility ²	\$ 200.00	12/31 of the Calendar
Year		
Re-inspections	\$ 50.00	each

8.) Smoking and Tobacco Products		
8.3.1. Tobacco Sales Permit	\$ 100.00	06/30 at Fiscal Year End

5.) Private Wells		
5.3.1. Well Construction/modification Permit*	\$ 300.00	Three years from Approval
Well Abandonment Permit	\$ 50.00	One Year from Approval Date
Pump Replacement,Deepening,Hydrofac,Sealing	\$ 50.00	
Additional Quantity Pump Test	\$ 100.00	

¹ Includes one (1) inspection per year/permit

² Includes two (2) inspections per year/permit

³ Includes three (3) inspections per permit

* Includes one (1) plan revision

[^] Includes five (5) site visits / inspections

** When reviewing an application or plan the

Board may determine the assistance of an

outside consultant is warranted. Regulation 1.4.1., 1.4.2

Reminder:

When reviewing an application or plan the Board may determine that the assistance of outside consultants is warranted due to size, scale or complexity of a proposed project or because of a project's potential impacts. The proponent shall bear the cost incurred by the Board. The Board may engage in but not limited too: consultants, engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with relevant laws, ordinances/bylaws and regulations. Any activity found to be in

operation without the appropriate permit or license for said activity shall be charged double the listed amount for the permit or license if subsequently issued. Other penalties may also apply in accordance with the General Provisions of the Town of Hopkinton By-laws, Article II, or in accordance with applicable regulations.

3. FOOD REGULATIONS

3.1. Purpose, Authority and Related Provisions

The purpose of Section 3 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by requiring sanitary conditions of Food Establishments. Section 3 is promulgated pursuant to the authority of M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health; and 105 CMR 590.000, Chapter X of the State Sanitary Code, Food Establishment Regulations, as most recently amended on **June 30, 2019** is hereby adopted as a local regulation for the Town of Hopkinton.

3.2. Definitions

3.2.1. Food Establishment

3.2.1.1. Food establishment means an operation that: (a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people not including farm trucks; market; vending location; conveyance used to transport people; institution; food bank; residential kitchen in a bed-and-breakfast operation; residential kitchen for a cottage food operation; and (b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

3.2.1.2. Food establishment includes: (a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and (b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

3.2.1.3. Food establishment does NOT include:

3.2.1.3.1. An establishment that offers only prepackaged foods that are not dairy or time/temperature control for safety foods;

3.2.1.3.2. An operation stand that only offers whole, uncut fresh fruits and vegetables, unprocessed honey, pure maple products, or farm fresh eggs which are stored and maintained at 45°F (7.2°C) or below;

- 3.2.1.3.3. A food processing plant; including those that are located on the premises of a food establishment;
- 3.2.1.3.4. A residential kitchen if only food that is not time/temperature control for safety food, is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;
- 3.2.1.3.5. A residential kitchen that prepares food for distribution to a charitable facility in accordance with M.G.L c. 94, § 328;
- 3.2.1.3.6. An area where food that is prepared as specified in 105 CMR 590.001(C)(1): Food Establishment(3)(d) is sold or offered for human consumption;
- 3.2.1.3.7. A residential kitchen, such as a family daycare provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the FC-regulatory authority;
- 3.2.1.3.8. A private home that receives catered or home-delivered food; and
- 3.2.1.3.9. Cooking classes that are held for educational purposes only.

3.3. Applicability of Permits

- 3.3.1. No Food Establishment in the Town of Hopkinton may serve or prepare food for the general public without first obtaining a permit from the Board of Health. An application on a Hopkinton Board of Health approved form shall be submitted and signed by the Operator and/or Owner of the facility.

3.3.1.1. Annual Food Establishment Permits

A permit for a food establishment may be issued for a period not to exceed one year. All annual food permits shall expire on June 30th.

3.3.1.2. Mobile Food Operation Permits

A permit for a mobile food or pushcart operation may be issued for a period of time which shall be determined by the Board of Health, and the permit shall state the inclusive dates, location(s), and any restrictions in the operation allowed.

3.3.1.3. Seasonal Food Establishment Permits

A permit for a seasonal food establishment may be issued for a period of time not to exceed 180 days, and the permit shall state the inclusive dates, location and any restrictions in the operations allowed.

3.3.1.4. Temporary Food Establishment Permits

A permit for a temporary food establishment may be issued for a period of time, which shall not exceed 14 consecutive days, and the permit shall state the inclusive dates, location, and any restrictions in the operations allowed.

3.3.2. All proposed establishments and all existing establishments that intend on changing or modifying their kitchen must file an application for a kitchen plan review with the Board of Health.

3.3.2.1. Kitchen plans shall be submitted to the Board of Health a minimum of 60 days prior to the planned opening of the facility.

3.3.3. No food establishment shall add a form of food service without the written approval of the Board of Health. Application for the approval of any such additional service must be done in writing to the Board of Health.

3.3.4. Any application for a food permit shall be submitted to the Board of Health no less than fifteen (15) days or specified by the Department before the event.

3.3.5. Applications for transfer to new owner of existing establishments where there will be no modification of the type of product offered or modification of the facility shall be submitted 15 days prior to the transfer date.

3.4. Food Establishment Kitchen Design Criteria

3.4.1. Scaled plans and specifications of all proposed and/or fixed equipment, walls, floors, ceilings, shelving, etc. are considered a part of the application.

3.4.2. Hand wash sinks shall be limited in size to a maximum width of 20 inches and depth of 8 inches and shall not be installed with drain boards. Food preparation, serving, or storage areas shall be protected from contamination from the hand wash sink.

3.5. Food Establishment Operation Criteria

3.5.1. Every permit holder must have access to current copies of the Hopkinton Food Regulations, 105 CMR 590.000, and any other regulations or guidelines the Board of Health may reasonably require.

3.5.2. Every permit holder shall have emergency procedures as distributed by the Board of Health and/or the Department of Public Health posted in the facility for managers to see.

3.5.3. Annual Food Establishments shall be inspected by the Board of Health a minimum of 2 times per year, and in response to any complaints by the

general public to ensure compliance with 105 CMR 590.000 and the Hopkinton Board of Health Regulations.

- 3.5.4. All caterers licensed by the Hopkinton Board of Health must maintain a record of catered functions which include at least the following: date, person (name, address, and telephone number) contracting services, menu, food preparation location, food service location, food preparation staff, wait staff, and approximate number of persons served.
- 3.5.5. All establishments which accommodate catered functions must retain for a minimum of 90 days a record of name and address of the caterer, date of event, person in charge of the function, and number of people attending.
- 3.5.6. No vehicle used to transport trash, rubbish, garbage or other wastes shall be allowed to transport food intended for human consumption.

3.6. Violations, Orders and Enforcement

- 3.6.1. Violators of this code at a minimum shall receive a written warning from the Board of Health. Such warning shall be deemed to be, "Order to Correct". The intention is to bring operations with minimal infractions into compliance. A re-inspection fee may be charged for each follow-up inspection necessitated by the failure of a food establishment to comply with an order to correct.
- 3.6.2. Willful and repeat violators may also be subject to additional enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

3.7. Variances

- 3.7.1. The Board of Health agent may vary the timeline requirements as specified in 3.3.1, 3.3.4 and 3.3.5 if reasonable time is given to allow for an inspection by the Board of Health and the issuance of such permit is in the public interest.
- 3.7.2. The Board of Health may act on a variance request in accordance with Section 1.6 of the Board of Health's Code of Regulations.

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4. SEWAGE DISPOSAL REGULATIONS: Hopkinton Sewage Disposal Regulations

The Hopkinton Board of Health, in accordance with Chapter 111, Section 31 of the Massachusetts General Laws, hereby adopts the following rules and regulations to supplement the State Environmental Code Title 5, 310 CMR 15.000. The effective date for these regulations is **June 30, 2019**. These regulations are to be inserted into the Code of Regulations of the Board of Health as Section 4 Sewage Disposal:

4.1. Lot Testing:

4.1.1. Witnessing of Soil Testing

The Board of Health **through their agent** must witness all soil testing to be used in the design of septic systems. A “Request for Witnessing” **application** shall be submitted by the soil evaluator to schedule the board’s agent to witness testing. **Incomplete applications will not be processed and returned to the applicant. Dig safe application numbers and Hopkinton DPW issued trench permit numbers must be provided before the test dates are assigned.**

4.1.2. Record of Soil Testing

The results of all soil testing (passed and failed) shall be provided to the Board of Health within sixty (**60**) days after testing, but in all cases prior to submitting the design plans. Soil testing information shall be submitted on DEP Form **11 and 12** as approved by the Department of Environmental Protection. In addition, the location and elevation of all deep holes and percolation areas shall be provided with survey or sketch with established benchmarks and ties. Failure to submit to the Board of Health the soil testing information within **60** days, **Shall be** grounds for invalidating testing for the lot.

4.2. Design and Construction Requirements for a Subsurface Disposal System

Subsurface Sewage Disposal Systems subject to 310 CMR 15.000, the State Environmental Code, Title 5, Section 214 - Nitrogen Loading Limitations or Section 15.290 - Shared Systems are Not subject to Section 4.2.1.1.

4.2.1. Facility Design Flows

Floor plans of each level of the facility that is being served by the proposed septic system must be submitted to the Board of Health prior to the issuance of a Disposal Works Construction Permit.

4.2.1.1. Single Family Residential Design Flows.

The floor plan may be in the form of a sketch and shall include the description of rooms, the total number of rooms and use areas. The floor plan will be used to ensure design flows are consistent with the requirements of Title 5, 310

CMR 15.203. The Board of Health shall determine the number of rooms based upon the following:

Open-type floor plan: Adjacent use areas separated by a common wall with an opening having a width not less than 8 feet nor less than 40% of the common wall length, shall be considered a single room. The 8 foot opening may include a single support column where basement finish is requested.

Basement: For new construction, the basement shall be presumed to be finished and will be counted as a minimum of one room. For system repairs and upgrades, unfinished basements will not be counted as a room.

Attic: For new construction, attics that are accessible by a permanent staircase shall be presumed to be finished and will be counted as a minimum of one room. For system repairs and upgrades, unfinished attics will not be counted as a room provided the space is unconditioned and provides no potential sleeping areas.

4.2.1.2. All Other Facility Design Flows

The floor plans submitted must be to scale and shall include the description of all spaces and uses, the total floor area for each use, the total area per floor, and the total square footage of the building. The floor plans will be used to ensure design flows are consistent with the requirements of Title 5, 310 CMR 15.203.

4.2.2. System Location

Systems may be located on separate lots from the facility it serves provided the design is approved through the shared system approval process specified in CMR 15.290 through 15.292(3). **Prior to installation all system components must be located on the lot and a benchmark provided by the design engineer**

4.2.3. Effluent Filter Tees

The outlet tee of the septic tank shall be equipped with an effluent tee filter approved by the Department of Environmental Protection for all soil absorption areas. All covers over the outlet filter shall be brought to finish grade with a tamper resistant cover to secure against unauthorized access.

4.2.4. System Identification Card

A copy of the completed job card shall be placed in a conspicuous location inside the facility (i.e. on or near outlet pipe, under the kitchen sink, etc.) accessible to the owner/operator to indicate that the septic tank is equipped with an effluent tee filter, the location with ties to two permanent markers and general maintenance recommendations.

4.2.5. Septic Tanks

All tanks shall be two compartment **monolithic design** and in conformance with 310 CMR 15.224. A minimum of **three** access ports **one directly over the compartment separation** of a least 20” in diameter **and all shall be brought to final grade secured against unauthorized entry and designed to support any expected wheel loading.**

4.2.6. Pump Chambers

The chamber opening over the pump equipment shall be provided with a riser and covers to final grade. The riser and cover shall be a minimum of 24 inches in diameter and secured against unauthorized entry. **Pump chambers and pump vaults must meet the same design standards (H20 where required and Monolithic in design) as septic tanks**

4.2.7. Garbage Grinders

Installation of garbage grinders or disposal units except in commercial applications are prohibited

4.2.8. Distribution Box

All distribution boxes shall be H-20 rated **with cover brought to finish grade.** Cover shall be designed to secure against unauthorized entry by lock or specialised fasteners

4.2.9. System Venting

All soil absorption systems shall be vented to the atmosphere from two locations (plumbing vent of the building an additional vent at the end of the SAS). All pump chambers if included in the design shall be vented through the septic tank and distribution box. The venting pipe shall be the same diameter as used in the soil absorption system distribution piping. **Other venting methods may be employed with the approval of the Health Agent. A Pressure distributed SAS will be vented using best engineering practice or current DEP guidance directives**

4.3. Certificate of Compliance:

4.3.1. General

Before issuance of a certificate of compliance the following information shall be submitted to the Board of Health. **(It is the responsibility of the owner to provide all required, complete information from all contractors.)**

4.3.1.1. An as-built **superimposed on the approved design plan** prepared by the design engineer at the same scale and size as the approved design plan **containing all design information and** showing the following:

- Location of the facility and subsurface disposal system's components with testing data and design information;
- Location ties to a minimum of two permanent markers for all septic system components (i.e. center of grease trap covers, center of septic tank covers, center of pump chamber cover, center of d-box cover, corners of leach system, etc.);
- Grading as-built showing actual topography in the location of the subsurface disposal system;
- Certification that the system was constructed in conformance with the **approved design plan and all state and Hopkinton codes and regulations 3.10 CMR. 15.000**
- **Copy of soil absorption system Maintenance Contract (If applicable).**
- **Documentation of Financial Assurance Mechanism for systems serving condominiums, multi-unit commercial or residential properties and/or any system design with flow over 2,000 gallons per day indicating sufficient money to maintain, repair or replace the entire soil absorption system or a portion thereof. (If applicable).**
- **Identify, and certify all well locations within 200 feet of the design location and provide a plan note if none exist.**

4.3.1.2. Upon completion of the Final As-built drawings by the design engineer; a completed Job Card signed by the licensed installer with a sketch of the system and component location ties.

4.3.1.3. Copy of recorded deed restrictions **and any necessary deed recording information required for the use of Alt technology and notice to future buyers/owners (if applicable).**

4.4. Installation Requirements

4.4.1. General

Work related to the construction, repair, modification or replacement of an on-site sewage disposal system must be performed overseen or supervised by an installer licensed by the Hopkinton Board of Health. **This installation will not be allowed in the months of January, February and March and at any period of snow and/or freezing temperatures. In the case of a repair or replacement of a failing sewage disposal system during this period construction in accordance with 3.10 CMR 15.000 may be permitted by the Agent of the Board of Health. The license holder must agree that should conditions change all work must stop until suitable installation conditions return.** The license holder is required to **obtain a copy of the Disposal Works Construction Permit and Job Card from the Hopkinton Board of Health, pay any fees and provide any additional documentation as necessary from the Hopkinton Board of Health.**

4.4.2. Installers License

Disposal works installer's licenses shall be issued only after successful completion of an examination to demonstrate their knowledge of Title 5 (3.10 CMR 15.000) and Town of Hopkinton Sewage Disposal Regulations Section 4. Applicants in good standing with the Hopkinton Board of Health or currently licensed in three other towns or can provide three professional references, and have a grade of 100% after research and correction by the applicant using provided texts and regulations on the examination will be issued a license. All such licenses shall expire December 31st of the calendar year in which they were issued.

4.4.3. Inspections

During construction, the installer must have a copy of the Board of Health approved design plans and Job Card. The installer is responsible for ensuring all required pre-construction conferences and construction inspections are performed and obtaining the appropriate sign offs on the Job Card. Upon completion of the work, the job card will be signed by the contractor to serve as his construction certification and a sketch provided on the back of the card **prepared by the installer of the septic system should show system layout and ties. The job card sketch shall provide location points independent of the Designer as-built ties.**

4.4.4. Emergency Repairs

Installers may perform "emergency repairs" as defined by 310 CMR 15.353 (1) in conformance with 310 CMR 15.353 (2) and (3) and the following requirements:

- 4.4.4.1. The installer must contact the Hopkinton Board of Health at time of knowledge that emergency repair is required.

4.4.4.2. If an emergency repair is required after Board of Health office hours the installer must leave a detailed message on the Board of Health's answering service indicating who is conducting the repair, what address the repair is required, and what constituted the "emergency". The Board of Health reserves the right to determine whether an emergency existed and to inspect all work performed. Emergency repairs shall be permitted by application and fee as soon as the Board of Health is available following the emergency.

4.5. Disposal System Pumping

4.5.1. Pumping Record

A copy of the Hopkinton Board of Health Disposal System Pumping Record must be submitted to the Board of Health on MADEP System Pumping Record Form 4 within **14 days** after the pumping job.

4.6. Enforcement:

4.6.1. Enforcement and Penalties

Violations of this sewage disposal regulation will be enforced as described under Section 1 of the Board of Health Regulations. The Board of Health may also seek other enforcement strategies in order to bring the violator into compliance.

4.7. Pre-Existing Nonconforming Systems

4.7.1. General

Except as explicitly set forth in Section 4.7.3, all provisions of this code shall apply to all systems, regardless of the date of construction.

4.7.2. Definition of Pre-existing Nonconforming Systems. Exemptions as hereinafter provided in 4.7.3 shall apply to the following existing/filed designs as of 2014.

4.7.2.1. Systems physically constructed/installed or in the process of being installed with a valid disposal works construction permit;

4.7.2.2. Systems contemplated under applications for a Chapter 40B comprehensive permit that have been filed with the Hopkinton Board of Appeals;

4.7.2.3. Systems contemplated under Septic System design plans that have been filed with the Board of Health, so long as such plans that are deemed administratively complete by the Board of Health and require no revision for approval.

4.7.2.4. The permit shall be on-site at all times that work is taking place. In accordance with 310 CMR 15.020(3), **each permit shall expire three (3) years from the date of issuance unless revoked for cause or site conditions change. After written request, permits may be extended for 1 additional year but not be extended beyond a total of four years from the original date of issuance without re-application, meeting current Board of Health Regulations including submission of a new fee.**

4.7.3. Exemptions for Pre-Existing Nonconforming Systems
Notwithstanding anything herein to the contrary, Pre-existing Nonconforming Systems shall not have to be brought into full compliance with the more stringent Regulations of the Board of Health effective **2014**, unless otherwise required under federal or state statute or regulation. **Repairs to existing components requiring replacement must meet current Hopkinton regulations and Title 5.**

4.7.4. Reserved:

5. REGULATIONS FOR PRIVATE WELLS

5.1. Purpose, Authority and Related Provisions

The purpose of Section 5 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by ensuring adequate construction of private wells, and requiring adequate testing for quality and quantity conditions of the well. Section 5 is promulgated pursuant to the authority of M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health; and the Standards and Guidance for Contaminants in Massachusetts Drinking Waters, as most recently amended, and are hereby adopted as a local regulation for the Town of Hopkinton.

5.2. Definitions

- 5.2.1. AQUIFER a water bearing, geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells and springs.
- 5.2.2. BENTONITE GROUT a mixture of bentonite (API Standard 13A) and water in a ratio of not less than one pound of bentonite per gallon of water.
- 5.2.3. BUSINESS of DIGGING or DRILLING a person who charges a fee for digging or drilling a well, or a person who advertises for hire the availability to dig or drill wells within the Commonwealth of Massachusetts.
- 5.2.4. CASING impervious durable pipe placed in a boring to prevent the walls from caving and to serve as a vertical conduit for water in a well.
- 5.2.5. CERTIFIED LABORATORY any laboratory currently certified by the Massachusetts Department of Environmental Protection for drinking water. Provisional certification shall also qualify.
- 5.2.6. CONCRETE a mixture consisting of Portland cement (ASTM Standard C150, type I or API Standard 10, Class A), sand, gravel, and water in a proportion of not more than five parts of sand plus gravel to one part cement, by volume, and not more than six gallons of water. One part cement, two parts sand, and three parts gravel are commonly used with up to six gallons of water.

- 5.2.7. DRY WELL a pit with open-jointed lining or holes through which backwash from water purification systems, storm-water drainage from roofs, basement floors, foundations or other areas seeps into the surrounding soil.
- 5.2.8. MCL Maximum Contaminant Level. This is a value, established by the EPA, DEP and Hopkinton Board of Health which represents the acceptable level of a contaminant in drinking water under specified conditions.
- 5.2.9. NEAT CEMENT GROUT a mixture consisting of one bag (94 pounds) of Portland cement (ASTM Standard C150, Type I or API Standard 10, Class A) to not more than six gallons of clean water. Bentonite (API Standard 13A), up to two percent by weight of cement, shall be added to reduce shrinkage. Other additives, as described in ASTM Standard C494, may be used to increase fluidity and/or control setting time.
- 5.2.10. PRIVATE WELL any dug, driven, or drilled hole, with a depth greater than its largest surface diameter developed to supply water intended and/or used for human consumption, irrigation, process water, and cooling water and not subject to regulation by 310 CMR 22.00 or by other regulations, policy or guidelines of the Massachusetts Department of Environmental Protection.
- 5.2.11. PUMPING TEST a procedure used to determine the characteristics of a well and adjacent aquifer by installing and operating a pump.
- 5.2.12. REGISTERED WELL DRILLER any person registered with the Department of Environmental Protection to dig or drill wells in the Commonwealth of Massachusetts.
- 5.2.13. SAND CEMENT GROUT a mixture consisting of Portland cement (ASTM Standard C150, Type I or API Standard 10, Class A), sand, and water in the proportion of one part cement to three or four parts sand, by volume, and not more than six gallons of water per bag (94 pounds) of cement. Up to five percent, by weight of bentonite (API Standard 13A) shall be added to reduce shrinkage.
- 5.2.14. SOIL ABSORPTION SYSTEM for the purpose of this regulation, any subsurface disposal system where sanitary waste is discharged into the ground. Including non-conforming septic systems.
- 5.2.15. STATIC WATER LEVEL the level of water in a well under non-pumping conditions.
- 5.2.16. STRUCTURE a combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, or any Building Department permitted assembled materials.

5.2.17. WASTE DISPOSAL SITE a facility or part of a facility established in accordance with a valid site assignment or for the disposal of solid waste into or on land or established as a known disposal site in the Board of Health records.

5.3. Applicability of Well Construction Permits

5.3.1. The property owner or his designated representative shall obtain a permit from the Board of Health prior to the commencement of construction, repairing, modification, or decommissioning of a private well on an application approved by the Hopkinton Board of Health. Well Construction Permits are not transferable without the consent of the Hopkinton Board of Health or the Health Agent and application for change of owner must be submitted.

5.3.1.1 A plan with a specified scale, signed by a registered surveyor, engineer, sanitarian, or other registered professional person authorized by the Commonwealth of Massachusetts and/or the Board of Health to prepare such plan showing the location of the proposed well in relation to existing or proposed above or below ground structures, the bounds of the lot, proposed waterline. Plan must reference clearly in the title block that the plan is for proposed private well location. **The information necessary may be included on the septic system design plan for the property provided a separate well permit fee and application are submitted.**

5.3.1.2. Pursuant to 313 CMR 3.00, no person in the business of digging or drilling shall construct a well unless registered with the Massachusetts Department of Environmental Protection).

5.3.2. The permit shall be on-site at all times that work is taking place. **For new construction, each permit shall expire three (3) years from the date of issuance unless revoked for cause or site conditions change. For new construction only, permits may be extended for six (6) additional months, provided that a written request is received by the Board prior to the three (3) year expiration date. No additional fee shall be charged for a new construction permit extension, provided there is no change in the plans for the proposed well.**

For Pump Replacement, Deepening, Hydrofac and Sealing each permit shall expire one (1) year from the date of issuance, unless revoked for cause.

5.4. Drinking Water Supply Certificates

- 5.4.1. The issuance of a Water Supply Certificate by the Board shall certify that the private well may be used as a drinking water supply. A Water Supply Certificate must be issued for the use of a private well prior to the issuance of an occupancy permit for an existing structure or prior to the issuance of a building permit for new construction which is to be served by the well.
- 5.4.2. A well which is not intended to provide water for human or animal consumption or for the irrigation of foods or food ingredients must meet the same requirements as a drinking water well.
- 5.4.3. The following shall be submitted to the Board of Health to obtain a Drinking Water Supply Certificate:
 - 5.4.3.1. a well construction permit;
 - 5.4.3.2. a copy of the Water Well Completion Report as required by the Department of Environmental Protection (313 CMR 3.00);
 - 5.4.3.3. a copy of the Pumping Test Report required pursuant to Section 5.7 of these regulations;
 - 5.4.3.4. a copy of the Water Quality Report required pursuant to Section 5.8 of these regulations;
 - 5.4.3.5. a copy of a plan with a specified scale, signed by a registered surveyor, engineer, sanitarian, or other registered professional person authorized by the Commonwealth of Massachusetts and/or the Board of Health to prepare such plan showing the location of the installed well in relation to existing or proposed above or below ground structures, the bounds of the lot, proposed waterline.
- 5.4.4. Upon the receipt and review of the above documents, the Board shall make a final decision on the application for a Water Supply Certificate. A final decision shall be in writing and shall comprise one of the following actions:
 - 5.4.4.1. issue a Water Supply Certificate;
 - 5.4.4.2. deny the applicant a Water Supply Certificate and specify the reasons for the denial;
 - 5.4.4.3. issue a conditional Water Supply Certificate with those conditions which the Board deems necessary to ensure fitness, purity and quantity of the water derived from that private well. Said conditions may include but not be limited to requiring treatment or additional testing of the water.

5.5. Water Quality Testing prior to Transfer of Property

5.5.1. The owner/operator shall submit to the Board of Health office all available results of private well quality testing if not in Board of Health possession prior to transfer of property. A private drinking well that serves a property shall have an initial water quality analysis in accordance with section 5.8.4 and must be filed with the Board of Health or within 5 years prior to the date of transfer of property. Such analysis shall be submitted to the Board of Health prior to the date of closing. Sample results must note if taken before or after water treatment device and method of water treatment.

5.6. Well Design Location and Water Purification Requirements

5.6.1. In locating a well, the applicant shall diligently identify all potential sources of contamination which exist or are proposed within two hundred (200) feet of the site. When possible, the well shall be located upgradient of all potential sources of contamination and shall be as far removed from potential sources of contamination as possible, given the layout of the premises.

5.6.1.1. Due Diligence: The applicant shall provide a description of visible prior and current land uses within two-hundred (200) feet of the proposed well location which represent a potential source of contamination, including but not limited to the following items listed in 5.7.3 (The Board may choose to require additional information pertaining to the location of waste sites, underground storage tanks, agricultural land uses, and/or utility rights-of-way that are within 1,000 feet of the well site.)

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

5.6.3. Each private water supply system shall be on the same lot as the facility that it serves (MGL ch. 40 sec. 54) and conform to the minimum setback distances for wellhead center line and water supply lines, measured in linear feet as described set forth below.

(Separation distance in linear feet)

	<u>Well Head</u>	<u>Supply line</u>
Property line	10	10
Any structure or dwelling	20	10

Stable/manure storage	100	10
Public roadways/driveways	20	10
Right of way	20	10
Surface waters	50	* see note 1
Bordering Vegetated Wetlands (BVW) Detention ponds/infiltration basins or Trenches for roof drainage	50	* see note 1
Building sewer	10	10 ** see note 2
Septic tank	50	10
Soil Absorption Systems & reserve area	100	10
Other private wells	20	* see note 1
Waste disposal sites	1000	* see note 1
Dry wells or surface discharge of water purification system waste	100	10
Other infiltration basin or trench For other than roof or foundation drainage	100	* see note 1

When possible, private water systems shall be located in areas above the 100-year floodplain.

*(1) Current Best Management Practices must be used to ensure structural stability of the system and prevent contamination of water supply or resource areas.

** (2) Water supply lines shall be installed at least 10 feet from and 18 inches above any sewer line. Whenever water supply lines must cross sewer lines, the waterline must be installed 18 inches above the crown of the sewer line. Both pipes shall be constructed of class 150 pressure pipe and provide protection by sleeving 10 feet laterally from the sewer in both directions with 150 class pressure pipe if necessary using solvent welded joints and shall be pressure tested to ensure water tightness.

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

- 5.6.4. No private well, or its associated distribution system, shall be connected to the distribution system of a public water supply system
- 5.6.5. No water purification device shall backflush to a subsurface sewage disposal system. **No condensation from heating systems or A/C device shall be connected to a septic system.**

5.7. Water Quantity Requirements

- 5.7.1. Water quantity tests must be conducted in the presence of a representative of the Board of Health. The results of the pump test shall be recorded and certified by the well driller on an approved Pumping Test Report Form provided by the Board of Health and on the **Department of Environmental Protection’s** well completion report. Both reports shall be submitted to the Board of Health within 30 days after the test.
- 5.7.2. Water quantity pumping test shall be conducted in the following manner in the presence of the Board of Health Agent or representative:
 - 5.7.2.1. The well will be pumped using a pump capable of producing ten (10) gallons per minute or more at the static water level. The pump test shall be open flow (without obstruction) for a continuous four (4) hour period or until the well is exhausted using a flow meter with totalizer, whichever occurs first with the pump installed at the proposed installation depth.
 - 5.7.2.1.1. Well tests must be conducted from the well head, not from a fixture.
 - 5.7.2.1.2. The static water level shall be determined initially. The water level shall be measured at thirty (30) minute intervals throughout the duration of this phase of the pump test. **At the end of the 4-hour pump test after a 30 minute rest interval, the static water level shall be measured to an 85% recovery level. If the water level does not recover within 30 minutes, within 24 hours the static level shall be measured again. The well must recover to at least 85 % within the 24 hours to pass.**

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

the respective times after cessation of pumping, and reference point for all measurements. Meter readings at start and finish with total amount discharged. In order to demonstrate the capacity of the well to provide the Required Volume of water, a pumping test shall be conducted in the following manner:

1. The volume of water necessary to support the household's daily need shall be determined using the following equation: (number of bedrooms plus one bedroom)X(110 gallons per bedroom)X(a safety factor of 2)= number of gallons needed daily
2. The storage capacity of the well shall be determined using the measured static water level and the depth and the radius of the drill hole or casing.
3. The Required volume shall be calculated by adding the volumes of water in (1) and (2) above. It is this volume of water that must be pumped from the well within a 4 Hour period.

5.8. Water Quality Testing Requirements

- 5.8.1. A water quality test shall be conducted after the well has been completed and disinfected prior to using it as a drinking water supply, or irrigation.
- 5.8.2. A water sample shall be collected by a person qualified by training and/or experience. The sample shall be collected either after purging three well volumes or following the stabilization of the pH, temperature and specific conductance in the pumped well. The water sample to be tested shall be collected at the pump discharge or from a disinfected tap in the pump discharge line prior to any water treatment device.
- 5.8.3. The water quality test, utilizing an applicable US EPA approved method for drinking water testing shall be conducted by an EPA or Massachusetts certified laboratory and shall include analysis for the minimum parameters as listed in section 5.8.4. The results shall not exceed Primary Massachusetts' drinking water standards for public water supplies:
- 5.8.4. Water quality testing shall consist of the minimum initial analysis:
 - a bacteriological test to indicate 0 per 100 ml coliform density
 - Volatile Organic Compounds (VOC's) EPA method 524 with MTBE
 - Lead, Arsenic, Cadmium, Mercury (*see note)
 - Iron, Manganese,
 - Ammonia, Nitrite, Nitrate,
 - alkalinity, total hardness, sodium, chlorides, pH, color, odor, and turbidity.
 - Volatile Organic Compounds (VOC's) EPA method 524 with MBTE, Cadmium, Mercury, and Alkalinity. Well water testing for real estate

transfers do not require these tests if the initial water analysis that includes these parameters is on file with the Board of Health office.

- 5.8.5. The Board reserves the right to require retesting of the above parameters, or testing for additional parameters when, in the opinion of the Board, it is necessary due to local conditions or for the protection of the public health, safety, and environment. All costs and laboratory arrangements for the water testing are the responsibility of the applicant. The Board may choose to collect the water sample or may require that the water sample be collected by the Board's agent or by an employee of the certified lab performing the analyses.
- 5.8.6. All private drinking supplies must meet EPA and Massachusetts MCL primary drinking standards. The owner operator may choose to re-sample the well if the well fails. The installation of a water treatment unit that will purify a drinking water supply is an acceptable measure to meet drinking water standards provided the following:
 - 5.8.6.1. Private drinking water supplies that exceed Primary MCL standards require water purification and re-sampling of the water supply to ensure operation. Prior to a Certificate of Compliance for the well, a notification on the property deed demonstrating the facility has a water purification device designed to purify the on-site private well may be required.
- 5.9. Well Construction Requirements
 - 5.9.1. Any work involving the connection of the private well to the distribution system of the residence must conform to the local plumbing code. All electrical connections between the well and the pump controls and all piping between the well and the storage and/or pressure tank in the house must be made by a pump installer or registered well driller, including the installation of the pump and appurtenance in the well or house.
 - 5.9.2. A physical connection is not permitted between a water supply which satisfies the requirements of these regulations and another water supply that does not meet the requirements of these regulations or a public or municipal water supply.
 - 5.9.3. Construction of dug wells is prohibited.
 - 5.9.4. General Well Design and Construction
 - 5.9.4.1. All private water supply wells shall be designed such that:

- 5.9.4.1.1. The materials used for the permanent construction are durable in the specific hydrogeologic environment that occurs at the well site.
- 5.9.4.1.2. No unsealed opening will be left around the well that could conduct surface water or contaminated groundwater vertically to the intake portion of the well or transfer water from one formation to another.
- 5.9.4.1.3. Permanent construction materials shall not impart toxic substances, taste, odors, or bacterial contamination to the water in the well.
- 5.9.5. The driller shall operate all equipment according to generally accepted standards in the industry and shall take appropriate precautions to prevent damage, injury or other loss to persons and property at the drilling site.
- 5.9.6. Well construction design shall ensure that surface water does not enter the well through the opening or by seepage through the ground surface. Construction site waste and materials shall be disposed of in such a way as to avoid contamination of the well and the aquifer. During any time that the well is unattended, the contractor shall secure the well in a way as to prevent either tampering with the well or the introduction of foreign material into the well.
- 5.9.7. Well yield shall be measured and recorded at least every fifty (50) feet during drilling.
- 5.9.8. All water used for drilling, well development, or to mix a drilling fluid shall be obtained from a source that will not result in contamination of the well or the water bearing zones penetrated by the well. Water shall be conveyed in clear sanitary containers or water lines and shall be chlorinated to an initial concentration between 50 mg/l and 100 mg/l.
- 5.9.9. A free-chlorine residual of 10 mg/l shall be maintained in any water used at the drill site. Water from wetlands, swamps, ponds and other similar surface features shall not be used.
- 5.9.10. All drilling equipment, including pumps and down hole tools, shall be cleaned and disinfected prior to drilling each new well or test hole.
- 5.9.11. All drilling fluids shall be nontoxic. Drilling fluid additives shall be stored in clean containers, and shall be free of material that may adversely affect the well, the aquifer, or the quality of the water to be pumped from the well. Surfactants should be biodegradable. The use of biodegradable organic polymers shall, when possible, be avoided.

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

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

5.10. Well casing

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

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

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

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

5.10.5. For all wells, the casing shall extend at least 12 inches above the finished ground surface unless the well is located in a floodplain. For wells constructed in a floodplain, the casing shall extend at least two feet above the level of the highest recorded flood. The top of the casing shall be reasonably smooth and level.

5.10.6. Steel casing

5.10.6.1. Steel casing shall be used with cable tool drilling or when the casing is installed in an open drill hole in which formation materials may suddenly collapse against the casing.

5.10.6.2. Steel casing shall consist of schedule 40 pipe that complies with materials standards approved by the American Water Works Association.

5.10.6.3. Segments of steel casing shall be coupled by using threaded casing, coupling, or by welding the joint. Recessed or reamed and drifted couplings shall be used on threaded casing and no threads shall be left exposed once the joint is completed. When welded casing joints are used, they shall conform to the most recent revision of AWWA C206, "Standard for Field Welding of Steel Water Pipe." The weld shall be at least as thick as the wall thickness of the well casing and shall be fully penetrating. When completed, a welded casing joint shall have a tensile strength equal to or greater than that of the casing.

5.10.7. Thermoplastic casing

5.10.7.1. Thermoplastic casing used in the construction of private water supply wells shall be capable of withstanding pressures equal to or greater than 200 pounds per square inch and shall conform to the most recent revision of ASTM Standard F480, "Specification for Thermoplastic Water Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR)." In addition, the casing and couplings shall meet the requirements of the most recent revision of National Sanitation Foundation Standard Number 14, entitled "Plastics Piping System Components and Related Materials." Materials complying with Standard Number 14 can be recognized by the marking "NSF-WC."

5.10.7.2. Thermoplastic casing shall be stored in such a manner as to prevent deformation, sagging, or bending. Storage of thermoplastic casing and couplings in direct sunlight shall be avoided. Thermoplastic casing shall be installed only in an oversized drill hole and shall not be driven, pushed, or forced into a formation. Thermoplastic casing shall be joined by mechanical means only. When pulling back thermoplastic well casing to expose a well screen, the force applied shall not exceed the casing weight.

5.10.8. Well screen

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

5.10.9. Grouting and Sealing

- 5.10.9.1. Private wells drilled in bedrock shall be grouted from the top of the weathered rock interface to fifteen (15) feet into competent bedrock. Either neat cement grout or sand cement grout shall be used and it shall be emplaced using standard grouting techniques as described in the DEP Private Well Guidelines.
- 5.10.9.2. All wells shall have a surface seal designed to eliminate the possibility of surface water flowing down the annular space between the well casing and the surrounding materials. The surface seal shall extend to a depth below the local frost line.
- 5.10.10. Pumps and pumping equipment
- 5.10.10.1. Pressure tanks for individual home installation shall have a capacity of 30 gallons per bedroom served with a minimum size of 42 gallons when well pumps not considered as variable speed are installed.
- 5.10.10.2. Pressure tanks for individual home installation shall have a capacity of 20 gallons when well pumps considered as “variable speed” are installed.
- 5.10.10.3. All pumps shall be installed either below the frost line with a pitless adapter or in some other heated and protected sanitary location. Above ground pumps shall be installed in sheltered, dry, accessible locations and shall be protected from freezing.
- 5.10.10.4. Deep-well reciprocating pumps shall be installed directly over the well. Submersible and helical rotor pumps must be installed in the well. A deep-well jet pump may be offset from the well.
- 5.10.11. Wellhead completion
- 5.10.11.1. Well casing shall not be cut off below the land surface unless an abandoned well is being permanently plugged.
- 5.10.11.2. Any well that does not terminate at the ground surface in the base of a pump shall be equipped with a sanitary seal or watertight cap designed to prevent surface water and foreign matter from entering the well. A flowing artesian well shall be equipped with a shut-off valve and backflow preventer so that the flow of water can be stopped completely when the well is not in use.
- 5.10.11.3. All wells except flowing artesian wells shall be vented. The opening of the vent pipe shall be covered with a 24 mesh corrosion resistant screen and shall be large enough to prevent water from being drawn into the well through electrical conduits or leaks in the seal around the pump when the

pump is turned on. The vent pipe shall terminate in a downward position at or above the top of the casing.

- 5.10.11.4. All connections to a well casing made below ground shall be protected by either a pitless adapter or a pitless unit that complies with the most recent revision of National Sanitation Foundation Standard Number 56, entitled "Pitless Well Adapters".
 - 5.10.11.5. Above-grade connections into the top or side of a well casing shall be at least 12 inches above the established ground surface or two feet above the level of the highest known flood, whichever is higher. Above-grade connections shall be sealed so that they are watertight.
 - 5.10.11.6. The ground immediately surrounding the well casing shall be sloped downward and away from the well in all directions to eliminate the possibility of surface water ponding.
- 5.10.12. Disinfection
- 5.10.12.1. Upon completion of well construction, the well contractor shall disinfect the well. If a pump is to be installed by the well contractor immediately upon completion of the well, the contractor shall disinfect the well and the pumping equipment after the pump has been installed.
 - 5.10.12.2. If the pump is not installed upon completion of the well, the pump contractor shall, upon installation, disinfect the well and the pumping equipment. The pump contractor shall also disinfect the entire water supply system after any maintenance or repair work is done on the pump.
 - 5.10.12.3. When a well is disinfected, the initial chlorine concentration shall be 100 mg/1 throughout the entire water column.
 - 5.10.12.4. For newly constructed or altered wells in which the pump is not immediately installed, the chlorine concentration used to disinfect the well shall be 100 mg/1. Upon installation of the pump, disinfection of the well, the pumping equipment, and the distribution system, if connected, shall be accomplished with a chlorine concentration of 100 mg/1.
 - 5.10.12.5. The disinfectant solution shall remain, undisturbed, in the well for a minimum of two (2) hours. After all the chlorine has been flushed from the water supply system, a water sample shall be collected and submitted to a state certified laboratory. For all wells, the sample shall be tested pursuant to Section 5.9.4. of these regulations.

5.11. Decommissioning Requirements

- 5.11.1. Abandoned wells, test holes, and borings shall be decommissioned so as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.
- 5.11.2. The owner of the private well shall decommission the well if the well meets any of the following criteria:
 - 5.11.2.1. Construction of the well is terminated prior to completion of the well.
 - 5.11.2.2. The well owner notifies the Board that the use of the well is to be permanently discontinued.
 - 5.11.2.3. The well has been out of service for at least three years.
 - 5.11.2.4. The well is a potential hazard to public health or safety and the situation cannot be corrected.
 - 5.11.2.5. The well is in such a state of disrepair that its continued use is impractical.
 - 5.11.2.6. The well has the potential for transmitting contaminants from the land surface into an aquifer or from one aquifer to another and the situation cannot be corrected.
- 5.11.3. The property owner shall be responsible for ensuring that all abandoned wells and test holes or borings associated with private well installation are properly plugged. A licensed well driller must certify the sealing of the well in writing to the Board of Health.
- 5.11.4. In the case of new well construction, all test holes and borings shall be plugged before the well driller completes work at the site.
- 5.11.5. Abandoned wells or borings shall be completely filled with a grout which cures with a final permeability of less than 1×10^{-7} cm/sec. Wells shall be plugged with neat cement grout, sand cement grout, concrete, bentonite grout, or other material approved by the Department of Environmental Protection.
 - 5.11.4.1. Regardless of the type used, the grout:
 - shall be sufficiently fluid so that it can be applied through a tremie pipe from the bottom of the well upward;
 - shall remain as a homogeneous fluid when applied to the subsurface rather than disaggregating by gravity into a two phase substance;
 - shall be resistant to chemical or physical deterioration;

- shall not leach chemicals, either organic or inorganic, that will adversely affect the quality of the groundwater where grout is applied.

5.11.4.2. The plugging materials shall be introduced at the bottom of the well or boring and placed progressively upward to a level approximately four (4) feet below the ground surface. Sealing materials shall never be poured from the land surface into the well, borehole, or annular space being sealed.

5.11.4.3. The contractor shall emplace the surface seal no sooner than 24 hours after the well or boring has been plugged. Before the surface seal is placed, casing remaining in the hole shall be cut off. The remaining four feet at the top of the well or boring shall then be filled with concrete. The top of the seal shall comprise a concrete slab above the top of the plugged well or boring. This concrete slab shall be at least six inches thick and shall be at least two feet greater in diameter than the well casing or borehole wall.

5.12. Violations, Orders and Enforcement

5.12.1. The Board may investigate violations of these regulations and/or violations of any Water Supply Certificate conditions and may take such actions as the Board deems necessary for the protection of the public health, safety, and environment and the enforcement of these regulations.

5.12.2. Violators of this code may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

5.13. Variances

5.13.1. The Board of Health may act on a variance request in accordance with section 1.6 of the Board of Health Regulations.

5.13.2. The owner of any property abutting the applicant's property shall be notified of the applicant's intention to install a well if a variance is requested from the Board. The applicant shall submit proof to the Board of Health that the owners of any abutting property have been notified of the application prior to acting on the approval of a variance.

5.14. Disclaimer

5.14.1. The issuance of a well permit shall not be construed as a guarantee by the Board or its agents that the water system will function satisfactorily nor that the water supply will be of sufficient quality or quantity for its intended use.

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6.0 TRANSPORTATION AND DISPOSAL OF GARBAGE & RUBBISH:

[MGL Chapter 111 Section 31A]

6.1 Purpose, Authority and Related Provisions

The purpose of Section 6 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare, and the environment in the Town of Hopkinton by requiring sanitary operations in the transfer of garbage, prevention of pollution of property, and regulating the storage and transfer of waste and recyclables within the Town of Hopkinton. Section 6 is promulgated pursuant to the authority of M.G.L. c. 111, § 31, 31A, and 31B. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health.

6.2 Applicability of Permits

6.2.1 All persons collecting rubbish, garbage, trash, and recyclables in the Town of Hopkinton shall obtain a permit from the Board of Health. Trash hauling permits shall expire at the end of the calendar year in which they are issued. No permit shall be transferable except with the approval of the Board of Health.

6.2.2 The application shall include a process in which the licensed establishment or individual will resolve complaints.

6.3 Operation Requirements

6.3.1 Each trash container and its contents shall be the responsibility of the container owner.

6.3.2 All permitted trash haulers are required to keep copies of weight slips or vendor receipts to document tonnage of material collected. Copies of documents shall be provided to the Board of Health or other municipal department upon request.

6.3.3 All trash containers including dumpsters belonging to a trash hauler shall be clearly labeled with the name and telephone number of the trash hauler. In addition each shall be labeled with a unique identifier. The trash hauler shall keep a log of each container showing the location of the container, the size of the container, the type of material (mixed waste, mixed recyclables, sorted recyclables) and type (plastic, paper etc.) collected, the user, date emptied, date of any service/sanitation.

- 6.3.4** Trash haulers with municipal contracts for the Town of Hopkinton shall submit reports, at a minimum every quarter, showing the tonnage of solid waste and recyclable waste collected from residential sites and industrial/commercial sites each month. Such reports should be submitted to the Town Department in charge of the contract or furnished to the Board of Health upon request.
- 6.3.5** Trash containers except construction dumpsters shall be covered at all times and the area maintained in a clean and sanitary manner. Construction dumpsters shall not be used for household waste or food waste.
- 6.3.6** Trash haulers with contracts with E.L. Harvey shall operate in compliance with Condition #4 Site Assignment Agreement, restricting the use of Town of Hopkinton roadways at specified times of the day and the use of “Jacob/Jake brakes”.

6.4 Violations, Orders and Enforcement

- 6.4.1** Any member of the Board of Health or its agents, or other person designated by the Board of Health may enforce this section. Any violation or failure to provide information as required by this regulation, the Department of Environmental Protection regulations, or the Mass General Laws by the permitted trash hauler shall be grounds for suspension, modification, or revocation of the permit.
- 6.4.2** Violators of this code at a minimum shall receive a warning from the Board of Health. Such warning shall be deemed an “Order to Correct”. The intention is to bring operations with minimal infractions into compliance.
- 6.4.3** Willful and repeat violators may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

6.5 Variances

- 6.5.1** The Board of Health may act on a variance request in accordance with Section 1.6 of the Board of Health Regulations.

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HUMAN HABITATION

7.1 Purpose, Authority and Related Provisions

The purpose of Section 7 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare, and the environment in the Town of Hopkinton by enforcement of sanitary conditions of dwellings, rental units, and real property. Section 7 is promulgated pursuant to the authority of M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health, and 105 CMR 400.000 and 105 CMR 410.000 Chapter II of the State Sanitary Code, Minimum Standards for Fitness of Human Habitation, as most recently amended on 4/8/2005 are hereby adopted as a local regulation for the Town of Hopkinton.

7.2 Complaints

7.2.1 Complaints may be made to the Board of Health Office in person, through phone, fax, email, or postal delivery.

7.2.1.1 The Board of Health personnel who receives such complaint shall record:

- the name and telephone number of individual filing the complaint;
- the name of the individual will be kept anonymous if requested;
- the nature of the complaint, location, and any particular important matters

7.2.2 The Board of Health will retain a hard copy and maintain an electronic database of complaints and investigations per statutory requirements.

7.3 Investigations

7.3.1 Complaints investigated by the Board of Health will be copied onto a form listing the following minimum information:

- the name of the Inspector
- the date and time of inspection
- the location information or applicable street address and unit number
- the description of conditions constituting violations
- a list of specific By-Law, rules and regulations in violation
- a determination by the inspector if violations or conditions may endanger or materially impair the health or safety, and well-being of any person occupying the premises
- action to be taken in order to correct violations
- a date and time for a follow up inspection.

7.4 Violations, Orders and Enforcement

7.4.1 Violations discovered during an inspection will be reported to the violator and any individual with a vested interest in the outcome. Such report shall be an “Order to Correct Violations” with appropriate timeline for coming into compliance.

7.4.2 Repeated Violations

Violations of these regulations that recur or is not corrected within one year following an Order or within the timelines specified in the Order for imminent health concerns shall be considered a repeat violation. Consideration of cooperation and good faith effort will be taken into account.

7.4.2.1. Repeat violators will be scheduled to appear at a hearing before the Board of Health. Such hearing will be to hear cause and determine further actions necessary to bring the violator into compliance.

7.4.2.2. Repeat or willful violators may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

7.5 Other Inspections Required for State Programs

7.5.1 Per request, the Board of Health will conduct inspections as required for programs under the jurisdiction of the Department of Early Education and Care, and the Office of Child Care Services. Such inspection is intended to notify applicable parties on a State approved form if the facility meets “minimum standards for fitness” as specified in 105 CMR 410.000. Violations found will be reported to the facility’s representative and the applicable State Departments. Violations that pose an imminent risk to the health and welfare of residents will require immediate correction.

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8.0 Regulation of the Hopkinton Board of Health Restricting the Sale of Tobacco Products

8.1 Statement of Purpose

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is an addiction to nicotine that keeps youth smoking past adolescence⁴;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁵;

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 smoke⁶;

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent⁷;

¹ The Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from:

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

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

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

⁴ *Id.* at Executive Summary p. 13. Retrieved from:

<http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

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

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and the U. S. Department of Health and Human services (HHA).

⁷ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

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 lives⁸;

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 youth⁹;

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%¹⁰;

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored¹¹;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking¹²;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹³ largely because these flavored products were marketed to youth and young adults,¹⁴ and younger smokers were

⁸ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

¹⁰ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

¹¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ 21 U.S.C. § 387g.

¹⁴ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

more likely to have tried these products than older smokers¹⁵, 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 considered to be “starter” products that help establish smoking habits that can lead to long-term addiction¹⁶;

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 sale¹⁷;

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 2014¹⁸;

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them¹⁹;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”²⁰;

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 one²¹;

¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁷ See fn. 3 at p. 85.

¹⁸ Centers for Disease Control & Prevention. 2015. “Tobacco Use Among Middle and High School Students — United States, 2011–2014,” *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

¹⁹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

²⁰ 310 CMR 30.136

²¹ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

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 was 10.8% in 2013²²;

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 cigarettes²³;

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; and

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”²⁴.

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

8.2. Authority:

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

8.3. 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 offer of services is merely incidental, and in which the entry of persons under the minimum

²² See fn. 7.

²³ King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

²⁴ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Hopkinton 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 or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

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 communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

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

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

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 or not 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 pre filled 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 is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

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

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

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 components 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.

8.4. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

8.4.1. No person shall sell or provide a tobacco product, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Hopkinton is 21.

8.4.2. Required Signage:

8.4.2.1 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 Hopkinton 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 22.05 (2) (e).

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 Hopkinton Board of Health that discloses current referral information about smoking cessation.

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.

8.4.3. 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.

8.4.4. 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.

8.5. Tobacco Product Sales Permit:

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

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

8.5.3. 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.

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

8.5.5. 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.

8.5.6. 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.

8.5.7. 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.

8.5.8. 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) four times within the previous twenty-four (24) months and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.

8.5.9. Maximum Number of Tobacco Product Sales Permits.

8.5.9.1 At any given time, there shall be no more than 9 Tobacco Product Sales Permits issued in Hopkinton. 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.

8.5.9.2 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.

8.5.9.3. 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.

8.5.9.4. 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.

8.6. Cigar Sales Regulated:

8.6.1. 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.

8.6.2. 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.

8.6.3. 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 Hopkinton.

8.6.4. The Hopkinton 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.

8.7. 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 smoking bars and adult-only retail tobacco stores.

8.8. Prohibition of the Sale of Blunt Wraps:

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

8.9. Free Distribution and Coupon Redemption: No person shall:

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

8.9.2. 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

8.9.3. 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.

8.9.4. 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.

8.10. Out-of-Package Sales:

8.10.1. 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.

8.10.2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Hopkinton Board of Health

with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

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

8.10.3.1. No permit holder shall refill a cartridge that is pre-filled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

8.11. Self-Service Displays:

The only self-service displays that are permissible pursuant to U.S. FDA and Massachusetts Attorney General regulations are displays that are located in Retail Tobacco Stores that ensure that no person younger than the MLSA is present, or permitted to enter, at any time.

8.12. Vending Machines:

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

8.13. Non-Residential Roll-Your-Own Machines:

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

8.14. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Hopkinton 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.

8.15. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Hopkinton 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.

8.16. Incorporation of State Laws and State Regulations:

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

8.16.2. 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”) and 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”).

8.17. Violations:

8.17.1. 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:

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

8.17.1.2. In the case of a second violation within 24 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.

8.17.1.3. In the case of three or more violations within a 24 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.

8.17.1.4. In the case of four violations or repeated, egregious violations of this regulation, as determined by the Board of Health, within a 24 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.

8.17.2. 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.

8.17.3. 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.

8.17.4. The Hopkinton Board of Health shall provide notice of 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 Hopkinton 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.

8.18. 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.

8.19. Separate Violations: Each day any violation exists shall be deemed to be a separate offense.

8.20. Prohibition of Smoking in the Workplace

8.20.1. Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premises as part of a business required to collect state meals tax

on the purchase; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in M.G.L. chapter 112 section 9C, group child care center, school age child care centers, family child care center, school age day or overnight camp building, or on premises where activities are licensed under M.G.L. chapter 10 section 38 of or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

8.20.1.1. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

8.21. Prohibition of Smoking in Public Places

8.21.1. Smoking or the use of any tobacco product is prohibited in all public places as defined in this regulation within the Town of Hopkinton except as otherwise provided under “Exceptions” in Section 8.9.

8.21.1.1. The owner, manager, or other person in charge of a public place shall be responsible for the following:

8.21.1.1.1. Conspicuous posting of “No Smoking” signs in order to clearly designate which buildings or areas are smoke free.

8.21.1.1.2. Removing smokers from areas where smoking is prohibited. Owners may use any appropriate and reasonable legal means to enforce this regulation.

8.22. Exceptions from Public Places (Section 8.22)

8.22.1. Hotel and motel rooms that are rented to guests and are designated as smoking rooms and are conspicuously posted as such.

8.22.2. Private clubs when only open to members. If non-member guests are permitted, the exception does not apply.

8.22.3. Other places identified in MGL chapter 270 section 22.

8.23. Violations of Smoke and Tobacco Regulations

8.23.1. It shall be unlawful for any owner, manager, person in charge, agent, or designee of a public place as defined herein to permit any violation of this regulation, or fail to act within the timelines specified in a Board of Health Order to Correct.

8.24. Enforcement and Penalties

8.24.1. Smoking in the Workplace and Public Places:

8.24.1.1. In the case of the first violation within a twenty-four (24) month period, the owner, manager, or person in charge shall be fined one hundred dollars (\$100).

8.24.1.2. In the case of the second violation within a twenty-four (24) month period, the owner, manager, or person in charge shall be fined two hundred dollars (\$200).

8.24.1.3. In the case of three or more violations within a twenty-four (24) month period, the owner, manager, or person in charge shall be fined three hundred dollars (\$300) for each violation.

8.24.1.4. In the case of three or more violations within a twenty-four (24) month period, and where the public place also holds a Food Establishment license from the Town of Hopkinton Board of Health, in accordance with the Massachusetts Department of Public Health Regulations for Minimum Standards for Food Establishments, 105 CMR 590.000, the owner, manager, or person in charge shall be fined three hundred dollars (\$300) for each violation and the food establishment permit shall be revoked.

8.24.1.5. At the discretion of the Board, violators may also be subject to additional enforcement under section 1.5 of these regulations.

8.25. Other Applicable Laws

8.25.1 This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety, or fire codes, regulations, or other statutes. In addition, please refer to the Town of Hopkinton General Bylaws Chapter 58 regarding the use or possession of tobacco by Minors in public outdoor places.

8.26. Enforcement:

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

8.27. 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.

8.28. Effective Date:

This regulation shall take effect on **June 30, 2019**.

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SWIMMING POOLS

9.1 Purpose, Authority and Related Provisions

The purpose of Section 9 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by requiring sanitary conditions in Public or Semi-Public Swimming Facilities. Section 9 is promulgated pursuant to the authority of Massachusetts General M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health; and 105 CMR 435.000, Chapter V of the State Sanitary Code, Minimum Standards For Swimming Pools, as most recently amended on 2/20/1998 is hereby adopted as a local regulation for the Town of Hopkinton.

9.2 Applicability of Permits

9.2.1 No person, facility or establishment in the Town of Hopkinton may construct a swimming, wading or special purpose pool, or expand, remodel or otherwise make changes that will affect the compliance of an existing swimming, wading or special purpose pool for general public use without first obtaining a permit to construct from the Board of Health.

9.2.1.1 A Permit for Pool Construction may be issued for a period not to exceed 2 years from the date of Board of Health approval.

9.2.2 No person, facility or establishment in the Town of Hopkinton may operate a swimming, wading or special purpose pool for the general public without first obtaining a permit to operate from the Board of Health.

9.2.2.1 An application to operate a pool on a form approved by the Hopkinton Board of Health shall be submitted and signed by the operator and/or owner of the facility.

9.2.2.2 A permit for Pool Operation may be issued for a period not to exceed one year. All Pool Operation permits shall expire on June 30th, or a date determined by the Board of Health to be the end of the season.

9.2.2.3 All permits to operate must be submitted to the Board of Health at least 15 days prior to expiration of an existing permit, or (re)opening of a swimming, wading or special purpose pool.

9.3 Pool Construction Design Criteria

- 9.3.1** Scaled plans of the site property and specifications of all proposed and/or fixed equipment, facility layout, and design/construction requirements specified in 105 CMR 435.000 are considered to be a part of the application.

9.4 Pool Operation Criteria

- 9.4.1** All persons in charge or in control of Operation and Maintenance of swimming facilities shall hold a valid Certified Pool Operator's (CPO) license from the National Swimming Pool Institute (NSPI). Each establishment shall forward copies of licenses for individuals employed for the Pool's Operation to the Board of Health.
- 9.4.2** Public and semi-public pools will be inspected by the Board of Health a minimum of 1 time per year, and in response to any complaints by the general public to ensure compliance with 105 CMR 435.000 and the Hopkinton Board of Health Regulations.

9.5 Violations, Orders and Enforcement

- 9.5.1** Violators of this code at minimum shall receive a written warning from the Board of Health. Such warning shall be deemed to be an "Order to Correct". The intention is to bring operations with minimal infractions into compliance.
- 9.5.2** A re-inspection fee may be charged for each follow-up inspection caused by an establishment failing to comply with an order to correct a violation.
- 9.5.3** Willful and repeat violators may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health regulations.

9.6 Variances

- 9.6.1** The Board of Health may act on a variance request in accordance with Section 1.6 of the Board of Health's Code of Regulations.

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FUNERAL DIRECTORS [MGL Chapter 114 Sec. 49]

10.1 Purpose, Authority and Related Provisions

The purpose of Section 10 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by requiring licenses of Funeral Directors. Section 10 is promulgated pursuant to the authority of Massachusetts General M.G.L. c. 111, § 31 and M.G.L. c. 114, § 49. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health.

10.2 Applicability of Permits

10.2.1 A person registered and licensed as a funeral director by the State may act as a funeral director in an establishment of business or office or agency or display in Hopkinton so long as a valid license is issued by the Commonwealth of Massachusetts Board of Registration for Funeral Directors.

10.2.1.1 Funeral Directors shall annually, on or before April 30th, provide copies of the License from the Commonwealth of Massachusetts to act as funeral directors pursuant to the terms and conditions issued by the State Board of Registration for embalming and funeral directing, established by MGL chapter 13 section 13, shall prescribe to the Hopkinton Board of Health.

MASSAGE ESTABLISHMENTS
[MGL Chapter 140 Sec. 51] Regulation revoked April 2012 and Superseded by Board of Registration Massage Therapists Requirements on January 2008

TANNING ESTABLISHMENTS

12.1 Purpose, Authority and Related Provisions

The purpose of Section 12 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by requiring sanitary and protective conditions in Tanning Establishments. Section 12 is promulgated pursuant to the authority of Massachusetts General M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health; and 105 CMR 123.000 “Tanning Facilities” as most recently amended on 4/1/94 is hereby adopted as a local regulation for the Town of Hopkinton.

12.2 Applicability of Permits

12.2.1 No person, facility or establishment in the Town of Hopkinton may construct a tanning facility, or expand, remodel or otherwise make changes that will affect the compliance of an existing tanning facility for the general public use without first obtaining a permit to construct from the Board of Health.

12.2.1.1 A permit to construct or modify a Tanning Facility may be issued for a period not to exceed 2 years from the date of Board of Health approval.

12.2.2 No Tanning Establishment or any other establishment in the Town of Hopkinton may provide Tanning services for the general public without first obtaining a permit from the Board of Health. An application on a form approved by the Hopkinton Board of Health shall be submitted and signed by the operator and/or owner of the facility.

12.2.2.1 A permit to operate a Tanning Establishment may be issued for a period not to exceed one year. All permits shall expire on June 30th and are not transferable.

12.2.3 Exemptions to Board of Health Permits: Facilities having a phototherapy device used by or under the supervision of a licensed physician who is trained in the use of such phototherapy device in which patients are intentionally exposed to ultraviolet radiation for the purpose of treatment of disease by licensed health care professionals.

12.3 Tanning Establishment Design Criteria

12.3.1 Scaled plans of the site property and specifications of all proposed and/or fixed equipment, facility layout, required signage, and design/construction requirements specified in 105 CMR 123.000 are considered to be a part of the application.

12.4 Tanning Establishment Operation Criteria

12.4.1 Each establishment shall forward to the Board of Health a list of all individuals employed that are trained for operation of tanning devices in accordance with 105 CMR 123.003 (C) 1.

12.4.2 Records as specified in 105 CMR 123.000 shall be furnished to the Board of Health upon request.

12.4.3 All instruments and devices used by any person for direct application to the bodies of patrons, or for holding materials to be applied to the body, shall be kept clean and sanitized. Adequate provisions shall be made for cleaning and sanitizing same.

12.4.4 Tanning Establishments will be inspected by the Board of Health a minimum of 2 times per year, and in response to any complaints by the general public to ensure compliance with the Hopkinton Board of Health regulations.

12.5 Orders, Violations and Enforcement

12.5.1 Violators of this code at minimum shall receive a written warning from the Board of Health. Such warning shall be deemed, “Order to Correct”. The intention is to bring operations with minimal infractions into compliance.

12.5.2 A re-inspection fee may be charged for each follow-up inspection caused by an establishment failing to comply with an order to correct a violation.

12.5.3 Willful and repeat violators may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

12.6 Variances

12.6.1 The Board of Health may act on a variance request in accordance with Section 1.6 of the Board of Health’s Code of Regulations.

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FLOOR DRAINS

13.1 Purpose, Authority and Related Provisions

The purpose of Section 13 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public a preventative measure for the purposes of preserving and protecting the Town of Hopkinton's drinking water resources from discharges of pollutants to the ground via floor drains, and minimizing the threat of economic losses to the town due to such discharges. Section 13 is promulgated pursuant to the authority of M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 "Administrative" and Section 2 "Fee Schedule" regulations of the Hopkinton Board of Health.

13.2 Definitions

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

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

13.2.3 FLOOR DRAIN- an intended drainage point on a floor constructed to be otherwise impervious which serves as the point of entry into any subsurface drainage structure, treatment, disposal, containment, or other plumbing system.

13.3 Prohibitions

13.3.1 With the exception of discharges that have received (or have been applied for and will receive) a Department of Environmental Protection issued permit prior to the effective date of this regulation, no floor drain(s) shall be allowed to discharge, with or

without pretreatment (such as an oil/water separator), to the ground, a leaching structure, or septic system in any industrial or commercial facility if such floor drain is located in either:

- 13.3.1.1** an industrial or commercial process area;
- 13.3.1.2** a petroleum, toxic, or hazardous materials, and/or waste storage area; or
- 13.3.1.3** a leased facility without either 13.3.1.1 or 13.3.1.2 of this section, but in which the potential for a change of use of the property to a use which does have either 13.3.1.1 or 13.3.1.2 is, in the opinion of the Board of Health or its agent, sufficient to warrant the elimination of the ground discharge at the present.

13.3.2 With the exception of discharges that have received (or have been applied for and will receive) a Department of Environmental Protection issued permit prior to the effective date of this regulation, no floor drain(s) shall be allowed to discharge to a septic system.

13.4 Requirements for Existing Facilities

13.4.1 The owner of a facility in operation prior to the effective date of this regulation with a prohibited (as defined above) floor drain system shall:

- 13.4.1.1** disconnect and plug all applicable inlets to and outlets from (where possible) applicable leaching structures, oil/water separators, and/or septic systems;
- 13.4.1.2** remove all existing sludge in oil/water separators, septic systems, and where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations (310 CMR 30.000). Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate DEP policies;
- 13.4.1.3** Alter the floor drain system so that the floor drain shall be either:
 - 13.4.1.3.1** connected to a holding tank that meets all applicable requirements of Department policies

and regulations, with hauling records submitted to the Hopkinton Board of Health at the time of hauling.

13.4.1.3.2 connected to a municipal sanitary sewer line, if available, with all applicable DEP and local permits; or

13.4.1.3.3 permanently sealed. Any facility sealing a drain shall be required to submit for approval to the Board of Health a hazardous waste management plan detailing the means of collecting, storing, and disposing any hazardous waste generated by the facility, including any spill or other discharge of hazardous materials or wastes.

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

13.4.1.5 Compliance with all provisions of the regulation must be accomplished in a manner consistent with Massachusetts Plumbing, Building, and Fire code requirements.

13.4.1.6 Upon complying with one of the options listed under 13.4.1.3., the owner/operator of the facility shall notify the Department of the closure of said system by filing the DEP Underground Injection Control (UIC) Notification Form and sending a copy to the Hopkinton Board of Health.

13.5 Effective Dates for Compliance

13.5.1 Existing Facilities: Owners/operators of a facility affected by this regulation shall comply with all of its provisions. All applicable discharges to the leaching structures and septic systems shall be discontinued immediately through temporary isolation of sealing of the floor drain.

13.5.2 New Facilities, Expansion of Existing Facilities, Change or Addition of Use: As of the effective date of the regulation, all new construction and/or applicable change of use within the Town of Hopkinton shall comply with the provisions of this regulation.

13.5.2.1 Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits.

13.5.2.2 The use of any new oil/water separators shall comply with the same requirements as for existing systems, as specified above in 13.4.1.4.

13.6 Violations, Orders and Enforcement

13.6.1 Any violation discovered during a facility inspection will be reported to the owner/operator of the facility and any individual with a vested interest in the outcome. Such report shall be an “Order to Correct Violations” with appropriate timeline for coming into compliance.

13.6.2 Violations not corrected in the timeline specified in a Board of Health Order to Correct or a Willful Violation may be grounds for further enforcement action in accordance with Section 1.5.

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MERCURY DISPOSAL

14.1 Purpose, Authority and Related Provisions

The purpose of Section 14 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by implementing strict and enforceable system in preventing disposal of Mercury containing products into the waste stream resulting in discharge into the environment. Section 14 is promulgated pursuant to the authority of Massachusetts General M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” regulations of the Hopkinton Board of Health.

14.2 Definitions

14.2.1 MERCURY CONTAINING PRODUCTS shall mean any product that contains the element mercury. These common products include but are not limited to; thermometers, thermostats, fluorescent bulbs and switches, barometers, blood pressure cuffs and button cell batteries.

14.3 Prohibitions

14.3.1 Mercury Containing Products shall not be disposed of through any waste stream that results in their incineration, land filling, discharge into the environment or any other method of disposal not approved by the Department of Environmental Protection and the Hopkinton Board of Health.

14.3.2 It shall be the responsibility of the individual(s) removing or replacing such mercury containing products to properly dispose of this product in accordance with these regulations and any state regulation regarding proper mercury disposal.

14.3.3 Mercury Containing Products must be disposed of through an approved Board of Health or State recycling program. Approved programs shall at a minimum document how they will accept, store, recycle and transfer each product.

14.4 Violations, Orders and Enforcement

14.4.1 Any member of the Board of Health or its agents, or any other person designated by the Board of Health that may oversee the removal, replacement, or disposal of mercury containing products may enforce the provisions of this regulation.

14.4.2 Violators of this Section may be subject to the enforcement provisions specified in Section 1.5 of the Hopkinton Board of Health Code

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OUTDOOR WOOD BURNING BOILERS

15.1 Purpose, Authority and Related Provisions

The purpose of Section 15 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by requiring minimum standards for the use of outdoor wood burning boilers. Section 15 is promulgated pursuant to the authority of Massachusetts General M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health and 310 CMR 7.26(50 - 54).

15.2 Definitions

15.2.1 CLEAN WOOD- wood that is not treated coated, or had any adhesives or chemicals applied to it, spilled on it, or otherwise attached to it.

15.2.2 EMISSION ANY- discharge or release of an air contaminant to the ambient air space.

15.2.3 EMISSION POINT ANY- place (including but not limited to a stack or vent) at or from which any air contaminant is emitted to the ambient air space.

15.2.4 INCINERATOR an appliance used to burn trash, rubbish, and other wastes.

15.2.5 OUTDOOR WOOD BOILER- a free standing wood fired boiler, surrounded by a water jacket with a smoke vent that is used to heat water that is carried by pipe to provide heat to a building or other destination. Outdoor wood boilers does not include fire pits, chimineas, wood fired barbeques, or equipment for the melting, reclaiming, or refining of metals or maple syrup.

15.2.6 ODOR- any property of gaseous, liquid, or solid materials that elicits a physiologic response by the human sense of smell.

15.2.7 SEASONED WOOD - any wood, used for fuel that has been air dried so that it contains less than 20 percent moisture content.

15.3 Applicability of Permits

15.3.1 No person or establishment may install or cause to have installed an outdoor wood burning boiler that is not in compliance with the Massachusetts Department of Environmental Protection Regulations and Requirements.

15.3.2 No person or establishment may operate a wood burning boiler that has existed prior to these regulations must comply with the Massachusetts Department of Environmental Protection Regulations.

15.4 Outdoor Wood Boiler Construction Criteria

15.4.1 A clear radius of 20 feet must be maintained between any outdoor wood boiler and any trees or vegetation of height greater than the height of the top of the fuel feed door.

15.4.2 Tops of chimneys or other points of emission from outdoor wood boilers must be two feet higher than the eaves of any structure on the property being served and in no case less than 25 feet above the ground immediately surrounding the outdoor wood boiler.

15.4.3 Tops of chimneys or other points of emission from outdoor wood boilers must be equipped with a properly operating spark arrester system.

15.5 Outdoor Wood Boiler Operation Criteria

15.5.1 Persons operating an outdoor wood boiler will allow agents access to the outdoor wood boiler for purposes of conducting inspections to ensure compliance with this code.

15.5.2 Only properly seasoned clean wood shall be used to fuel outdoor wood boilers.

15.5.3 Outdoor wood boilers shall only be operated from September 30 through May 16 inclusive.

15.6 Outdoor Wood Boiler Operation Prohibitions

15.6.1 No person shall cause, suffer, allow, or permit the operation of an existing outdoor wood boiler in any manner contrary to the manufacturers operating procedures.

15.6.2 No person shall cause, suffer, allow, or permit the operation of an existing outdoor wood boiler in any manner that causes a public nuisance or a public health risk.

15.6.3 No person shall cause, suffer, allow, or permit the burning of treated woods, trash, garbage, biological waste, or any other waste or otherwise use an outdoor wood boiler as an incinerator.

15.7 Orders, Violations and Enforcement

15.7.1 Violators of this code at minimum shall receive a written warning from the Board of Health. Such warning shall be deemed, “Order to Correct”. The intention is to bring operations with minimal infractions into compliance.

15.7.2 A re-inspection fee may be charged for each followup inspection caused by an establishment failing to comply with an order to correct a violation.

15.7.3 Willful and repeat violators may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

15.8 Variances

15.8.1 The Board of Health may act on a variance request in accordance with Section 1.6 of the Board of Health’s Code of Regulations and 310 CMR 7.26 (50-54).

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BODY ART

16.1 Purpose, Authority and Related Provisions

The purpose of Section 16 of the Hopkinton Board of Health Code is to provide for the protection of public health, safety, welfare of the general public by requiring sanitary conditions in Body Art Establishments. Section 16 is promulgated pursuant to the authority of Massachusetts General M.G.L. c. 111, § 31. This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health.

16.2 Definitions

- 16.2.1 AFTERCARE**- any 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.
- 16.2.2 AUTOCLAVE**- an apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.
- 16.2.3 AUTOCLAVING**- 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.
- 16.2.4 BLOOD BORNE PATHOGENS STANDARD OSHA**- Guidelines contained in 29 CFR 1910.1030 entitled "Occupational Exposure to Bloodborne Pathogens."
- 16.2.5 BODY ART**- the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which are prohibited.
- 16.2.6 BODY ART PRACTITIONER OR PRACTITIONER**- 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.

- 16.2.7 BODY PIERCING**- puncturing or penetrating the skin of a client with pre-sterilized single-use needles and the insertion of pre-sterilized jewelry or other adornment into the opening. This definition excludes piercing of the earlobe with a pre-sterilized single-use stud-and-clasp system manufactured exclusively for ear-piercing.
- 16.2.8 BRANDING**- 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.
- 16.2.9 CLIENT**- a member of the public who requests a body art procedure at a body art establishment.
- 16.2.10 CONTAMINATED WASTE**- any 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.
- 16.2.11 DISINFECTION**- the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.
- 16.2.12 EAR PIERCING**- the puncturing of the lobe of the ear with a pre-sterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.
- 16.2.13 INSTRUMENTS USED FOR BODY ART**- 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.
- 16.2.14 INVASIVE**- 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.
- 16.2.15 JEWELRY**- 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.
- 16.2.16 PROCEDURE SURFACE**- 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.

16.2.17SCARIFICATION- 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.

16.2.18SHARPS- 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.

16.2.19SHARPS CONTAINER- 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.

16.2.20SINGLE USE ITEMS- 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.

16.2.21STERILIZE-the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

16.2.22TATTOOING- 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.

16.2.23ULTRASONIC CLEANING UNIT- a unit approved by the Board, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high frequency oscillations transmitted through the contained liquid.

16.2.24UNIVERSAL PRECAUTIONS- 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.

16.3 Applicability of Permits

16.3.1 No Body Art Establishment or any other Establishment in the Town of Hopkinton may provide Body Art services for the general public without first obtaining a permit from the Board of Health. An application on a Hopkinton Board of Health approved form shall be submitted and signed by the operator and/or owner of the facility.

16.3.1.1 A permit to operate a Body Art Establishment may be issued for a period not to exceed one year and are not transferable. All permits shall expire on December 31st.

16.3.2 No Body Art practitioner may perform body art service within the Town of Hopkinton without first obtaining a license from the Board of Health to practice. An application on a Hopkinton Board of Health approved form shall be submitted and signed by the applicant.

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

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

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

16.3.2.3.1 blood borne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; hand washing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques; and

16.3.2.3.2 first aid and cardiopulmonary resuscitation (CPR). Examples of courses approved by the Board include "Preventing Disease Transmission" (American Red Cross) and "Blood borne 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.

16.3.2.4 The applicant for a body piercing practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy, completed an examination on anatomy, or possesses an equivalent combination of training and experience deemed acceptable to the Board.

16.3.2.5 The applicant for a tattoo practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on skin diseases, disorders and conditions, including diabetes, or completed an examination on skin diseases, disorders and conditions, including diabetes, or possesses a combination of training and experience deemed acceptable to the Board.

16.3.2.6 A Body Art Practitioner permit may be issued for a period not to exceed one year. All permits shall expire on December 31st.

16.3.3 Exemptions to Board of Health Permits 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; and 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.

16.4 Body Art Establishment Criteria

- 16.4.1** Unless otherwise ordered or approved by the Board, each body art establishment shall be constructed, operated and maintained to meet the minimum requirements set forth in this section.
- 16.4.2** Walls, floors, ceilings, and procedure surfaces shall be smooth, 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.
- 16.4.3** 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.
- 16.4.4** Each body art station shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a divider or partition at a minimum.
- 16.4.5** 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, and where instruments and sharps are assembled.
- 16.4.6** 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.
- 16.4.7** 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 and as needed. Solid waste shall be stored in covered, leak proof, rodent-resistant containers and shall be removed from the premises at least weekly.
- 16.4.8** 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.

- 16.4.9** 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.
- 16.4.10** The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit.
- 16.4.11** 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.
- 16.4.12** 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.
- 16.4.13** Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of fluids being offered to a client during or after a body art procedure.

16.5 Operation of Body Art Establishments

- 16.5.1** The establishment shall require that 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.
- 16.5.2** 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 Waste, State Sanitary Code, Chapter VIII.
- 16.5.3** Requirements for Single Use Items Including Inks, Dyes and Pigments

- 16.5.3.1** 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.
- 16.5.3.2** 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.
- 16.5.3.3** Hollow bore needles or needles with a cannula shall not be reused.
- 16.5.3.4** 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.
- 16.5.3.5** 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 caps. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded.

16.5.4 Sanitation and Sterilization Measures and Procedures

- 16.5.4.1** 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 operated in accordance with manufacturer's instructions.
- 16.5.4.2** 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. 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.
- 16.5.4.3** The autoclave shall be used, cleaned, and maintained according to manufacturer's instructions. 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.

16.5.4.4 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.

16.5.4.5 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.

16.5.4.6 Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and re-sterilizing.

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

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

16.5.4.9 Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

16.5.5 Posting Requirements

16.5.5.1 The following shall be prominently displayed:

16.5.5.1.1 Disclosure Statement, a model of which shall be available from the Department of Public Health. A Disclosure Statement shall also be

given to each client, advising him/her of the risks and possible consequences of body art procedures.

16.5.5.1.2 The name, address and phone number of the local Board of Health that has jurisdiction and the procedure for filing a complaint.

16.5.5.1.3 An Emergency Plan, consisting of:

- a plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency;
- a telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and
- a sign at or adjacent to the telephone indicating the correct emergency telephone numbers

16.5.5.1.4 An occupancy and use permit issued by the local building official.

16.5.5.1.5 A current establishment permit

16.5.5.1.6 Each practitioner's permit

16.5.6 Establishment Recordkeeping

16.5.6.1 The establishment shall maintain records set forth in this section in a secure place for a minimum of three (3) years, and such records shall be made available to the Board upon request.

16.5.6.2 Establishment information shall include:

- establishment name
- hours of operation
- owner's name and address
- a complete description of all body art procedures performed
- an inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement
- a Material Safety Data Sheet, when available, for each ink and dye used by the establishment

- a copy of these regulations

16.5.6.3 Employee information shall include:

- full names and exact duties
- date of birth
- home address
- home /work phone numbers

16.5.6.4 Client information shall be kept confidential and include the following:

- name
- date of birth
- address of the client
- date of the procedure
- name of the practitioner who performed the procedure(s)
- description of procedure(s) performed and the location on the body
- a signed consent form as specified by 6(D) (2)
- if the client is a person under the age of 18, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian

16.6 Body Art Practitioner Criteria

16.6.1 Practitioners are required to comply with the following minimum health standards set forth in this section.

16.6.2 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.

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

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

16.6.5 Health History and Client Informed Consent. Prior to performing a body art procedure on a client, the practitioner shall Inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art

procedure and require that the client sign a form confirming that the below listed information was provided, that the client does not have a condition that prevents him/her from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by section 16.6.12.

- history of diabetes
- history of hemophilia (bleeding)
- history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants, etc.
- history of allergies or adverse reactions to pigments, dyes, or other sensitivities
- history of epilepsy, seizures, fainting, or narcolepsy
- use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting
- any other conditions such as hepatitis or HIV

16.6.6 A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash his/her 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.

16.6.7 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 16.6.6 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 hand washing procedures as part of a good personal hygiene program.

16.6.8 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 of contamination of body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

16.6.9 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.

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

- Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
- Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding the location where body art procedure is to be performed 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.
- 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.

16.6.11 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.

16.6.12 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 on the proper cleansing of the area which received the body art; and to consult a health care provider for:

- unexpected redness, tenderness or swelling at the site of the body art procedure
- any rash
- unexpected drainage at or from the site of the body art procedure
- a fever within 24 hours of the body art procedure

16.6.13 Name, address, and phone number of the establishment. A copy of this information shall be provided to the client. A model set of

aftercare instructions shall be made available to the Board of Health.

16.7 Injury Reports:

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

- the name of the affected client
- the name and location of the body art establishment involved
- the nature of the injury, infection complication or disease
- the name and address of the affected client's health care provider, if any
- any other information considered relevant to the situation

16.8 Prohibitions of Body Art

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

16.8.2 Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18 provided that the person is accompanied by a properly identified parent, legal custodial parent or legal guardian who has signed a form consenting to such procedure.

16.9 Complaints, Investigations and Enforcement:

16.9.1 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.

16.9.2 Violators of this code at minimum shall receive a written warning from the Board of Health. Such warning shall be deemed to be an "Order to Correct". The intention is to bring operations with minimal infractions into compliance.

16.9.3 Repeated Violations. Any violations of these regulations that recur within one year following an inspection shall be considered repeat violations. Such violations shall be sufficient cause for revocation or suspension of a permit. A re-inspection fee may be charged for

each follow up inspection caused by an establishment failing to comply with an order to correct a violation.

16.9.4 Willful and repeat violators may be subject to enforcement and penalties in accordance with Town by-laws and Section 1.5 of the Board of Health Regulations.

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17.0 Portable Toilet Regulations

17.1 Purpose, Authority and Related Provisions

The purpose of Section 11.0 of the Hopkinton Board of Health Code is to promote sanitary conditions at temporary job sites, exterior venues or events, including but not limited to building sites, field sites, sporting, entertainment or leisure events. Section 17.0 is promulgated pursuant to the authority of M.G.L c. 111, s 31 and consistent with the requirements of 521 CMR 30.00 for Public Toilet Rooms and the International Plumbing Code (IPC) 311.1.

17.2 Definitions

Accessible Toilet: accessible to persons in wheelchairs or other mobility assistance equipment. Accessible units shall be identified by the International Symbol of Accessibility. * Portable units at construction sites used exclusively by construction personnel are not required to be accessible.

Effluent/Solids: involves pre-treatment via septic and/or secondary treatment process comprising aerobic biological processes and solids control followed by land application of the resulting secondary effluent via subsurface irrigation.

Portable Toilet: an outdoor toilet, usually referring to temporary facilities which are installed as additional restrooms at construction sites, special events, parks, etc.

Sanitizer: a substance or preparation for killing germs.

Plot Plan/As-built: a measured piece or parcel of land; a plan, map, diagram, or other graphic representation, as of land, a building, etc.

Septage Hauler: a hauler of effluent/solids licensed by the Town of Hopkinton.

17.3 General Requirements

Where working bathrooms or sanitary facilities are not readily accessible and/or available inside a fixed facility, job or work site, event location, park, etc., where workers, visitors or attendees will be present for a period of 8-hours or more, the owner, employer or sponsor is required to provide portable toilets, regularly maintained in a clean and sanitary manner, for the duration of the job or event, in accordance with the conditions referenced below.

Number of Persons Served	Minimum Number of Facilities	Minimum # of Accessible Facilities
20 or less	1	1*
20 or more	1 toilet seat and 1 urinal	5%

	per 40 persons	
200 or more	1 toilet seat and 1 urinal per 50 persons	5%

* Accessible toilets are not required on construction jobs with restricted public. In no case shall the number of portable toilets be less than the minimum required for each case.

Plans and application for the job or event must be submitted to the Board of Health 14 days prior to the start of the job or event.

Upon review of the plan and application, the Board of Health will issue a Permit for the portable toilets to be utilized. The permit process shall include submission of a written application form and payment of the permit fee established by the Board. In addition, permit applications must demonstrate to the satisfaction of the Board of Health that the applicant understands the requirements for proper installation, operation and maintenance of a Portable Toilet in relation to the buildings and minimum setback distances detailed below. Additional documentation to be provided to the Board of Health along with the permit application includes:

- Copy of maintenance agreement between vendor and supplier.
- Chemicals used within the portable toilet.
- Location where effluent/solids will be disposed.
- Plan, Plot Plan or As-built drawing representing the location of the portable toilets and their relation to all buildings, septic, well, property lines and roads adjacent to the site.

The effluent/solids must be hauled by a Town of Hopkinton licensed septage hauler to a licensed disposal facility.

Minimum Setback Distances	
Property Line	10 feet
Swimming Pool	10 feet
Water Supply Line	10 feet
Neighboring Homes or Structures	50 feet

Surface Waters	25 feet
Bordering Vegetated Wetlands	25 feet
Surface Water Supplies	400 feet
Tributaries to Surface Water Supplies	200 feet
Certified Vernal Pools	50 feet
Private Water Supply Well	50 feet
Public Water Supply Well	50 feet
Irrigation Well	10 feet
Open, Surface or Subsurface Drains Which Discharge to Surface Water Supplies	50 feet
Other Open, Surface or Subsurface Drains Which Discharge	25 feet
Leaching Catch Basins and Dry-Wells	10 feet

Large local or state events will be handled on a case by case basis.

17.4 Variances

The Board of Health agent may vary the timeline requirements as specified in 17.3 and if reasonable time is given to allow for an inspection by the Board of Health and the issuance of such permit is in the public interest.

The Board of Health may act on a variance request in accordance with Section 1.6 of the Board of Health's Code of Regulations.

17.5 Enforcement and Penalties

Violations of these Portable Toilet Regulations will be enforced as described under Section 1 of the Board of Health Regulations. Violation of any portion of this regulation is punishable by a fine of \$50.00. The Board of Health may also seek other enforcement strategies in order to bring the violator into compliance.

17.6 Annual Review of Policy and Permit Fees

An initial fee of \$5.00 per permitted portable toilet, not to exceed \$75.00, will be assigned by the Department. The Board and Department have the right to waive the fee requirement for non-profit or municipal permits. Additional accommodations may be considered by the Board and Department on a case by case basis.

The Board and Department will complete an annual review of the policy and fee schedule and make amendments to the regulation as warranted, in accordance with applicable regulatory and public meeting requirements.

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Regulation for Reduction in Single-Use Plastic Check-Out Bags

18.0 Reduction in Single-Use Plastic Check-Out Bags

18.1 Purpose and Authority

The purpose of Section 18.0 of the Hopkinton Board of Health Regulations is to provide for the protection of the Town's aquatic and terrestrial environments, advances solid waste reduction and reduces nuisance litter by implementing strict and enforceable system that reduces the distribution of single-use plastic check-out bags within the Town of Hopkinton. The regulation seeks to promote the use of reusable check-out bags and readily degradable, non-toxic alternatives. Section 18.0 is promulgated pursuant to the authority of Massachusetts General Law (M.G.L.) Chapter 111, section 31, whereby "Boards of Health may make reasonable health regulations." This section shall be read and combined with Section 1 "Administrative" and Section 2 "Fee Schedule" regulations of the Hopkinton Board of Health and is hereby adopted as a local regulation for the Town of Hopkinton.

18.2 Definitions

18.2.1. Checkout bag: A carry-out bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or checkout area of the store.

18.2.2 Enforcing Authority: The Board of Health.

18.2.3. Grocery Store: A retail establishment where more than fifty percent (50 %) of the gross floor area is devoted to the sale of food products for home preparation and consumption, which typically also offers home care and personal care products.

18.2.4. Retail Store: An establishment that offers the sale and display of merchandise within a building.

18.2.5. Reusable checkout bag: A bag, with handles, that is specifically designed for multiple use and is made of thick plastic, cloth, fabric or other durable materials.

18.2.6 Recyclable Paper Bag: A paper bag that is 100% recyclable and contains at least 40% post-consumer recycled content and displays the words "recyclable" and "made from 40% post-consumer recycled content" in a visible manner on the outside of the bag.

18.2.7 Thin -film single -use plastic bags: Typically with plastic handles, these are bags with a thickness of 2.5 mils or less and are intended for single-use transport of purchased products such as dry cleaning, newspapers, baked goods, bulk goods, meats, seafood, produce, wet items and other similar merchandise.

18.3 Use Regulations

18.3.1 Single-use plastic check-out bags shall not be distributed, used or sold for checkout or other purposes at any retail or grocery store within the Town of Hopkinton.

18.3.2 Customers are encouraged to utilize reusable or biodegradable bags when shopping grocery or retail stores within the Town of Hopkinton. Retail or grocery stores are strongly encouraged to make reusable checkout bags available for sale to customers at a reasonable price.

18.3.3 Thin-film plastic bags used to contain dry cleaning, newspapers, baked goods, bulk goods, meats, seafood, produce, wet items and other similar merchandise, typically without handles, are still permissible.

8.11 Enforcement and Penalties

18.4.1 Enforcement of this regulation shall be the responsibility of the Board of Health or his/her designee. The Board of Health shall determine the inspection process to be followed, incorporating the process into other Town duties as appropriate. Any retail or grocery store distributing plastic grocery bags in violation of the regulation shall be subject to a non-criminal disposition fine as specified in Section 1 of the Board of Health Regulations. Any such fines shall be paid to the Town of Hopkinton.

18.4.2 In the case of the first violation, the retail or grocery establishment shall be fined one hundred dollars (\$100).

18.4.3 In the case of the second violation, the retail or grocery establishment shall be fined two hundred dollars (\$200).

18.4.4 In the case of three or more violations, the retail or grocery establishment shall be fined three hundred dollars (\$300).

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

18.5 Non-Criminal Disposition:

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

18.6 Effective Date:

18.6.1 All of the requirements of this Regulation shall take effect on January 1, 2019.

18.6.2 The Board of Health may grant a waiver of the effective date of enactment providing this Regulation would cause an undue hardship to the Retail or Grocery Establishment due to one or more of the following.

18.6.2.1 Circumstances or situations unique to the Retail or Grocery Establishment where alternatives to approved Recyclable Paper or Reusable Checkout Bags are unavailable.

18.6.2.2 Circumstances where a Retail or Grocery Establishment would require additional time in order to draw down existing inventory of single-use plastic checkout bags providing the Retail or Grocery Establishment does not stock additional single-use plastic bags preceding the effective date of enactment of this Regulation and upon receiving an exemption shall file a monthly report with the Board of Health on inventory reduction of the remaining stock.

18.6.2.3 Circumstances or situations unique to the Retail or Grocery Establishment would cause an economic hardship.

18.6.2.4 Any Retail or Grocery Establishment requesting to apply to the Board of Health for a waiver shall apply using forms provided by the Board of Health. The Board of Health shall be allowed access to all information supporting the application.

18.6.2.5 The Board of Health may approve the exemption request, in whole or part, with or without conditions.

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