

Town of Wilmington
Massachusetts
Board of Health



CODE OF REGULATIONS

The Town of Wilmington Board of Health, in order to adequately protect the public health, and acting under the authority of Chapter 111 of the Massachusetts General Laws, hereby makes the following health regulations to become effective on September 1, 1989 at which time all regulations previously made by the Board of Health shall no longer be in effect, except as to those matters currently pending.

Section 1	Administrative
Section 2	Human Habitation
Section 3	Mercury
Section 4	Hazardous Chemicals
Section 5	Sewage Disposal Systems
Section 6	Wells
Section 7	Animals
Section 8	Smoking and Tobacco Products
Section 9	Massage Therapy [deleted 2/19/08]
Section 10	Food Regulations
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Section 14	Enforcement and Penalties
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Section 17	Body Art
Section 18	Fees
Section 19	Ice Rinks
Section 20	Contaminated Soil
Section 21	Toilet Facilities in Restaurants

Revised: 2/1/90, 5/16/90, 2/14/91, 3/18/91, 6/8/91, 1/1/93, 3/8/93, 5/25/93, 5/16/94, 3/31/95, 1/1/97, 12/3/97, 4/1/99, 10/3/00, 2/1/01, 5/1/01, 10/2/01, 11/20/01, 3/5/02, 12/4/02, 9/16/03, 4/6/04, 7/19/05, 8/15/06, 4/3/07, 6/5/07, 8/21/07, 11/6/07, 12/4/07, 2/19/08, 10/7/08, 9/1/09, 7/20/10, 7/17/12, 9/3/13, 11/5/13, 5/6/14, 7/23/15, 11/1/15, 10/4/16, 2/7/17, 3/22/17, 12/5/17, 8/7/18

Fees approved 10/23/06 by the Board of Selectmen

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Section 1 Administrative

1.1 Definitions:

BOARD OF HEALTH: means the legally constituted Board of Health of the Town of Wilmington, Massachusetts, or its agents.

OPERATOR: means the person in control of a particular establishment.

PERSON: means any person, company, corporation, trust, or any other entity.

SMOKING: means the lighting or having the possession of any lighted cigarette, e- cigarette, cigar, pipe or other tobacco product.

1.2 105 CMR 400, Chapter I of the State Sanitary Code, except 400.700 (Penalties), which outlines administrative procedures relative to the Sanitary Code is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the provisions of same shall be in violation of this Section.

1.3 310 CMR 11.00, Title I of the State Environmental Code, except 11.10 (Penalties), which outlines administrative procedures relative to the Environmental Code is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the provisions of same shall be in violation of this Section.

Section 2 Human Habitation

2.1 105 CMR 410.000, Chapter II of the State Sanitary Code, with the exception of Section 410.900 and 410.910 (Penalties), is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the provisions of same shall be in violation of this Section.

2.2 The cellar floor, basement floor, or other lowest accessible floor of any proposed building shall be a minimum of two (2) feet above the adjusted springtime high water table as determined by Section 5

Section 3 Mercury Regulations

Purpose and Authority

The Board of Health finds that mercury in the environment poses a severe health risk. This regulation is made pursuant to Chapter 111 of the Massachusetts General Laws, Section 31, to prevent mercury from used thermostats, thermometers, and other devices from entering the environment.

Disposal Prohibition

Thermostats, thermometers and other devices which contain liquid mercury shall not be disposed of through any waste stream that results in their incineration, landfilling or discharge into the general environment. Recycling of mercury shall be considered the only proper disposal of such devices.

Mercury Recycling

Used thermostats, thermometers, and other devices containing liquid mercury recycled within the town borders shall only be done through a Board of Health approved recycling program. Approved programs shall at a minimum document how they will accept, store, recycle and/or transfer each device. The program's approval will be contingent on providing such documentation upon request of the Board.

Penalties:

Any violation of this regulation shall be punishable by a fine of \$100.00. Each device containing mercury improperly disposed of shall constitute a separate violation.

Section 4 Hazardous Chemicals

4.1 The Superfund Amendments and Reauthorization Act of 1986, SARA, Title III, is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the requirements of the Act shall be in violation of this Section.

4.2 310 CMR 30.000, the Commonwealth of Massachusetts Hazardous Waste Regulations, is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the requirements of these regulations shall be in violation of this Section.

4.3 310 CMR 40.000 Massachusetts Contingency Plan is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the requirements of these regulations shall be in violation of this Section.

4.4 No person shall use or store toxic or hazardous materials in quantities greater than those associated with normal household use without first obtaining a permit from the Board of Health. In addition to the Board of Health, the Head of the Wilmington Fire Department or a designee shall be authorized to issue such permits.

4.5 The penalty for violation under this Section shall be \$300.00 per day. Each day of violation shall be considered a separate offense and the penalty shall apply to each day of violation.

Section 5 Subsurface Sewage Disposal Systems

5.1 310 CMR 15.00, Title 5 of the State Environmental Code, as amended on and after September 23, 1994 is hereby adopted as a local regulation for the Town of Wilmington with the following superseding additions.

5.2 Minimum requirements for design criteria:

- 800 square feet minimum in a leach bed.
- 4 Bedroom minimum flow per unit.
- 5 ft minimum from water line to property line.
- 1 ft. depth of leaching stone in a leach bed or trench except in soils of 2 minutes/inch or less.
- Except for pump systems, distribution box outlets must be equipped with flow equalizer devices.
- Distribution boxes shall have a riser to grade for easy access for maintenance and inspections.
- Septic tank outlet tees shall be able to accept an optional outlet tee filter and shall have a riser to grade for easy access.
- Float switches which activate pumps and alarms shall have permanent durable test wires or lines secured at the access hole of the tank such that the switches can be easily activated from above the tank.

5.3 These regulations are meant only to protect the public health and are in no way intended to restrict the construction of homes or other authorized uses. In the event that a disposal system cannot be designed according to the above criteria, the number of bedrooms may be reduced, provided that a notice of the actual number of bedrooms shall be recorded in the registry of deeds and a copy of said notice shall be presented to the Board of Health before the issuance of any certificate of compliance for that system or occupancy permit for that dwelling.

5.3.1 A letter explaining the applicant's intention to restrict the number of bedrooms to a number less than four and promising to record the restriction with the registry of deeds shall be submitted with the application for the disposal system construction permit.

5.4 The minimum size of a leaching bed for a dwelling in which the number of bedrooms has been reduced to a number less than four according to the above procedure shall be:

Bedrooms	Minimum sq. ft.	GPD (per bedroom)
3	600	110 gpd
2 or 1	400	110 gpd

- 5.4.1 The minimum size of any leaching chamber system shall be a minimum of 600 square feet.
- 5.5 A Bench mark must be located on, or very near the lot being served and must be easily accessible to the installer and to the inspector, and must be clearly identified on the plan.
- 5.6 Applications for Disposal System Construction Permits must be accompanied by three sets of the design plan.
- 5.7 The minimum elevation of the cellar, basement, or lowest floor of the proposed building must be shown on the plan and must be a minimum of two feet above the adjusted springtime water level.
- 5.8 The minimum sill elevation must be shown on the plan.
- 5.9.9 Water and percolation testing shall not continue beyond November 30 except for the repair, replacement, or upgrade of existing systems found to be in failure unless otherwise authorized by the Board of Health.
- 5.9.10 The expected springtime high water elevation as determined by Title 5 shall be used to determine the required elevation of proposed leaching facilities in Section 5 and minimum cellar floor elevations in Section 2. We now use the new Title 5 method instead of the adjusted well readings
- 5.9.11 No subsurface sewage disposal systems may be installed from December 1 to April 1 in any year unless otherwise determined by the Board of Health.
- 5.9.12 An access manhole to within 6 inches to grade for the septic tank, distribution box and any leaching pits, galleys or chambers shall be constructed on new systems and on repairs and upgrades of existing systems.
- 5.10 No person shall install, repair, replace upgrade, or abandon any subsurface sewage disposal system without a permit from the Board of Health for that particular system.
- 5.11 No person shall install, repair, replace, upgrade or abandon any subsurface sewage disposal system without a current installer's license from the Board of Health. Such license shall be granted by the Board of Health upon the completion of the installer's examination with a passing grade of 75% and shall be valid until the end of that calendar year, unless revoked for cause. Upon receiving a failing grade, a waiting period of three months shall be required before a subsequent examination is given. A Registered Professional Civil Engineer or a Registered Sanitarian shall be considered qualified to receive an installer's license without the installer's examination.
- 5.12 No person shall place or cause to be placed for use any chemical toilet, Johnnie, or other outhouse or privy without first obtaining a permit from the Board of Health.
- 5.13 Inspections of the installation of subsurface sewage disposal systems shall be done at these intervals:
1. After the excavation is made for the placement of fill but prior to the placement of the fill.
 2. Before the placement of leaching stone.
 3. Final inspection, which shall require that all of the covers are off of all of the tanks and other parts of the system for the inspection, and that all of the pipes are properly placed on compacted soil and connected and cemented, and uncovered such that the pipes can be inspected at a minimum of every ten feet. The installer shall be present at the inspection and shall supply a transit, or a tripod mounted level, and leveling rod for the inspection. When there is a distribution box, the installer shall supply five gallons of water for the testing of the box.
- 5.14 The installer shall sign the Certificate of Compliance upon completion of the work.
- 5.15 Any changes to the design plan must have prior approval of the Board of Health and must be shown on an "as built" plan submitted by the designing engineer or sanitarian.

5.16 No person shall engage in the pumping of a septic system or the hauling of septic waste without first obtaining a permit from the Board of Health. The equipment used must be sufficient for the safe and sanitary pumping and hauling of septic waste. A permit issued by the Board shall be for the specific vehicle inspected by the Board and is not transferable to any other vehicle nor shall it be transferable to any other person.

5.16.1 No person shall use a septic system cleaner which contains an organic compound (carbon containing), acidic compound, or alkaline compound. The penalty for violation of this subsection shall be \$300.00

5.17 A copy of the dumping ticket or a report of each pumping job must be submitted to the Board of Health within one month after the pumping job.

5.19 A copy of the inspection report for any inspection of a subsurface sewage disposal system must be submitted to the Board of Health within one month after the inspection or certification.

5.20 Any person who fails to comply with the provisions of same shall be in violation of this Section.

5.21 The fee for inspection of an existing sewage disposal system by the Board of Health shall be \$200.00.

5.22 Any installer who requires any additional re-inspection for a septic system due to failure to install any part of the system correctly shall pay a fee of \$25.00 per re-inspection.

5.23 No person shall allow any hole over 4 feet in depth to be left open overnight, or left unattended for any amount of time, unless such holes need to be left open in order to comply with the requirements of these regulations or with Title 5, and in such cases, each hole must be adequately protected from entry by children, persons, or animals and must be made to not pose any accident or public health hazard.

5.24 No person shall dig test holes unless currently licensed as an installer by the Board of Health, or at a minimum, be must be fully qualified to operate the equipment to be used and be knowledgeable in the method of digging test holes for the purpose of soil testing.

5.25 The installer of any system shall contact the Board of Health 24 hours before beginning construction work on a septic system in order to consult with the inspector, to confirm the status of the permit, and to allow for the planning of the inspections.

5.26 No person shall dig test holes without first contacting the Town of Wilmington Water Department to locate water lines, and Dig Safe (1-800-DIG-SAFE) to locate other underground utilities.

5.27 All leaching beds shall have a minimum of one inspection port. When leaching trenches are used, each trench shall have a minimum of one inspection port. An inspection port shall be located at the center of the distal end of the leaching facility, near the end of the center most leach line. An inspection port shall consist of a perforated 4 inch pipe placed vertically in the stone. The bottom end of the perforated pipe shall be at the bottom of the stone and the top of the perforated pipe shall be at the top of the stone. From that point solid four inch pipe shall continue vertically to within 3 inches of finish grade, and capped with a screw type cap. The port must be open at the time of final inspection. Distance ties to the inspection port from two fixed points shall be shown on the "as built" plan of the system and supplied to the Board of Health.

5.28 When effluent is pumped to a distribution box of a leaching facility, the inlet to the distribution box shall be a minimum of 3 inch pipe equipped with a vertical "tee". The increase to a three inch pipe shall be within 5 feet of the distribution box.

5.29 All float switches in pump chambers shall be equipped with a non-corrosive line in order to lift and operate the float switches manually. The line shall be permanently attached at the access hole of the pump

chamber such as to be easily accessible. Any float switch containing elemental mercury which is removed during the repair or upgrade of a system must be recycled at the office of the Board of Health.

5.30 No electrical boxes or wire splices are allowed inside the pump chamber or inside the access hole riser. Electrical boxes shall be outside the chamber and riser, and must be properly protected. All wire conduit exiting the pump chamber must be adequately closed with silicone or similar material as to prevent the passage of sewer gases through the conduit.

5.31 All septic system vents shall be equipped with a charcoal filter.

5.32 For new construction where a raised system is necessary, no wall in excess of four (4) feet in height shall be allowed to replace the required slope setbacks of 310 CMR 15.211, Minimum Setback Distances. The height shall be determined as the distance from the top of the wall vertically to the naturally occurring grade.

5.33 An exterior inground grease trap tank shall be required for any facility connected to municipal sewer or septic system where a food preparation operation exists or is proposed. The grease trap shall meet the requirements of a grease trap as described in 310CMR15.00, Title 5. The owner shall supply pumping slips every three months to the office of the Board of Health.

5.34 **Penalties:** Unless otherwise specified, the penalty for violation under this Section 5 shall be \$50.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.

Section 6 Wells

6.1 No person shall drill, dig, or otherwise develop any new well for water without a permit from the Board of Health. Such a permit shall be in effect for a period of three years from the date of issue.

Penalties: Unless otherwise specified, the penalty for violation under this Section 6.1 shall be \$50.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.

6.2 A plan showing, as a minimum, the lot, the proposed well, proposed water line, and the building to be served and any subsurface sewage disposal systems within 200 feet, must be submitted to the Board of Health with the required fee. The proposed well must be located on the lot which it serves, and must meet these minimum distance requirements:

<u>Distance from:</u>	<u>Feet:</u>
Leaching Facility	100
Designated Leaching Reserve Area	100
Septic Tank	50
Property Line	10

6.3 A well from which the water is not intended for human or animal consumption or for the irrigation of foods or food ingredients may be less than 100 feet from a leaching facility but not less than 25 feet.

6.4 The Board of Health may refuse to issue a permit if it deems that the location of the proposed well will unreasonably interfere with the probable future installation or repair of a septic system on a neighboring lot of land, or for any reason which may be contrary to sound public health policy as determined by the Board of Health.

6.5 Before use, or upon transfer of a property any well intended for use as a potable water supply must be tested for Volatile Organic Compounds (VOC's) in accordance with EPA Method 524.2 and for Total Coliform bacteria, and must meet the minimum standard of 0 Total Coliform bacteria per 100 ml. Such well must also be tested for Arsenic and must meet the current standard (0.01 mg/L). Testing must be done by a laboratory which is certified by the Department of Environment Protection or the Environmental Protection Agency and the report of the testing must be provided to the Board of Health before the well is used as a potable water supply, or in the case of a transfer of property, the report of the testing must be provided to the Board of Health and to the buyer of the property before the transfer of the property.

6.6 All test results of well water submitted to the Board of Health shall remain part of the permanent record of that building.

6.7 Any well which is developed after these regulations take affect without a permit from the Board of Health shall not be afforded the protection of Title 5 of the Environmental Code or Section 5 of these regulations.

6.8 All abandoned wells shall be tightly sealed by filling to a minimum of 25 feet with clay or cement to prevent pollution of the ground water.

6.9 No person shall allow a well to be left uncovered or in an unsafe condition.

6.10 No person shall allow the connection of any building, or other facility, to the municipal water supply and to a private water supply concurrently. Such constitutes a cross connection and is prohibited.

Section 7 Animals

7.1 No person shall keep any animal without first obtaining a permit from the Board of Health (the Board). No person shall keep any animals without an adequate stable, barn, or other shelter approved by the Board of Health. This shall not apply to dogs which need to be licensed by the Town Clerk, and this shall not apply to domestic pets. The Board shall maintain authority to determine what constitutes a domestic pet. An animal raised or kept for consumption or for a commercial purpose will not be considered to be a domestic pet. **Penalties: Unless otherwise specified, the penalty for violation under this Section 7.1 shall be \$50.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.**

7.2 No person shall allow any animal to roam free.

7.3 No person shall keep any swine, or any rooster.

7.4 No person shall keep more than six cats over the age of six (6) months at a residential premises without first obtaining a permit from the Board. No person shall feed any feral cat or contribute in any way to the support of a feral cat population. The penalty for violation of this subsection is \$10.00, each day constituting a separate violation.

7.5 No person shall keep a horse or pony without a stable approved by the Board. A stable shall meet the following minimum criteria:

1. The parcel of land on which the stable is proposed must have a minimum area of 40,000 square feet.
2. Each stable shall contain at least 160 square feet for the first animal and at least 100 square feet for each additional animal.
3. Each stable shall have a plate height of at least ten (10) feet and an effective window area of at least four per cent (4%) of the total floor area.
4. Each stable and adjacent area shall be kept in a sanitary condition.
5. Each stable shall be furnished with an adequate and safe supply of potable water for feeding and cleaning purposes. At least 15 gallons per day shall be provided for each animal to drink. Cisterns or stock-watering troughs or tanks may be substituted for water under pressure provided that sufficient water can be obtained for cleaning.
6. Manure shall be removed frequently from the stables as to not cause offensive odors or a breeding place for insects.
7. Each stable and manure storage area shall be at least fifty feet from any wetland and 100 feet from any well and on land which has good drainage ability and which is not subject to flooding.
8. Storage of animal manures is prohibited, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate. ^{11/6/07}

7.6 Before a new permit is issued, the Board of Health shall conduct a hearing to consider all relevant information and to receive input from abutters. The Board maintains the authority to require a hearing for the renewal of a permit. Animal permits shall be effective until the end of the calendar year. A permit shall be renewed annually.

To obtain an animal permit, a complete application is required and shall include:

1. The name, address, and contact information of the property owner and applicant if different.
2. The types and numbers of animals for which the permit is requested.
3. A plot plan showing the property to be used.
4. The location of any proposed structure, stable, shelter, corral, pen, cage or other animal housing.
5. Any wells, drains, culverts, and wetlands and waterways within 100 feet of the location where animals are proposed to be kept.
6. A plan for feed storage and sanitary maintenance.
7. The fee required in Section 18 of this Code of Regulations.
8. A certified list of direct abutters, including those directly and diagonally across the street.

7.7 Any property used to house animals, livestock or horses pursuant to these regulations shall be subject to inspection by the Animal Control Officer, the Board, or its agent, at any reasonable time. Should access be refused, the Board or its agent may seek a search warrant in a court of competent jurisdiction. Failure to allow an inspection upon request shall be cause for permit revocation. The Board or its agent may revoke a permit for cause without a public hearing if a condition exists which may endanger the health, safety, or welfare of the animals or the general public, or which is a nuisance. The Board maintains the authority to hold a public hearing to consider revocation of a permit. Any person aggrieved shall have the right to appeal such revocation at a public hearing of the Board if no hearing was held prior to the revocation.

7.8 Kennels

DEFINITION: A "kennel" is defined as one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, day care, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection **of more than four** dogs three months old or over owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.

7.8.1 No person firm or corporation shall keep within the limits of the Town of Wilmington, in any building or on any premises on which he may be the owner, lessee, tenant or occupant, shall keep or house any more than four (4) dogs without an appropriate kennel license issued by the Town Clerk of the Town of Wilmington subject to prior written approval of the Board of Health.

The Town Clerk shall provide a kennel license application, in a form prescribed by the Town Clerk, which shall be completed by any person seeking a kennel license or renewal thereof. Before a new kennel license is issued, the Board of Health shall conduct a public hearing to consider all relevant information and to receive input from abutters. The Board also maintains the discretionary authority to require a hearing for the renewal of a kennel license. The following will apply to the application process:

- A) Kennel licenses and renewals shall be the time between April 1st and the following March 31st, both dates inclusive.
- B) Applicants shall file with the Town Clerk. Within 30 days of receipt of a properly completed and approved application, including documentation and fees, the Town Clerk shall issue or deny the kennel license.
- C) Upon issuance of a license or renewal, the Town Clerk shall provide a copy of said license or renewal to the Chief of Police, Board of Health, Assessor, Zoning Officer and Zoning Board of Appeals.
- D) If a kennel license or renewal is rejected, the operation of said kennel shall cease operations within 10 days or until the license is renewed or a new license is issued by the Town.
- E) With regard to rejections of kennel licenses or renewals, applicants may appeal decisions to the Board of Selectmen in the same manner outlined in MGL Chapter 140 §137A-D and Section 141.

7.8.2 All kennel license holders housing dogs are responsible for dogs under their control at all times and shall comply with these regulations and all parts of the Town of Wilmington Animal Control bylaw, Zoning bylaw and Massachusetts General laws relating to dogs. (Including but not limited to MGL Chapter 140 §136A – 175).

7.8.3 The location and operation of the kennel shall be appropriate for housing the number of dogs allowable under the Zoning By-Law (Section 3.5.19 and 3.8.14 as part of a Pet Care Facility allowed by

Special Permit of the Planning Board in the General Business and Industrial Zoning Districts) and will not be detrimental to the health and safety of the dogs or persons.

7.8.4 All dog papers and documentation (including, but not limited to proof of any vaccinations, including at a minimum, rabies, kennel cough, licenses) pertaining to any dogs housed at the kennel and a copy of the kennel license shall be stored on the property and be available for inspection by the police and Animal Control Officer at all times. Kennels must follow best practices as defined by the MA Department of Agricultural Resources, Division of Animal Health.

7.8.5 Any kennel license granted by Town of Wilmington upon prior written approval of the Board of Health or its Director, whenever, in the opinion of said Board or its Director can be suspended or revoked ceased when deemed necessary due to a public nuisance.

PENALTIES

Failure to comply with provisions of this section may result in fines of \$50 for each day of violation under non-criminal disposition, and up to \$1000.00 for each day of violation under criminal disposition. Failure to comply with the provisions of this regulation may also cause Section 7.8.5 to be enforced.

Section 8 Smoking and Tobacco Products

8.0 Definitions: Smoking shall mean the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco product designed to be combusted and inhaled, or relies on vaporization or aerosolization, including marijuana. (as defined herein).

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.

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

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

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

Marijuana or “Marihuana” includes all parts of the any plant of the genus Cannabis.

Health Care Institution: Any entity, person, or group of persons that provides health care services and employs health care providers subject to licensing under G.L. c. 112, §§ 1, et seq., or a retail establishment or business that provides pharmaceutical goods and services and is subject to 247 CMR 6.00. Such persons and entities shall include, but not be limited to, hospitals, clinics, urgent care facilities, health centers, drug stores, pharmacies, physician’s offices, optician’s or optometrist’s offices, and dental offices.

Nicotine Delivery Product: Any article, item or product made wholly or in part of a tobacco substitute or containing nicotine. This definition shall not apply to any product which is approved or certified by a regulatory agency as a tobacco use cessation or other medical purpose product and which is marketed and sold exclusively for such purpose.

Retail Tobacco Store: As defined in G.L. c. 270, §22. and An establishment whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Wilmington Board of Health.

Flavored Tobacco and Nicotine 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.

Flavored Nicotine Delivery Product: Any nicotine delivery product, as defined herein, including e-cigarettes, as defined herein 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 nicotine delivery product, including e-cigarettes as defined herein, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product, that the product has or produces a characterizing flavor shall constitute presumptive evidence that the product is a flavored nicotine delivery product, including e-cigarettes, as defined herein.

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 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.

Tobacco Product: Any product which contains tobacco or nicotine in any form, including but not limited to cigarettes, e-cigarettes, cigars, pipe tobacco, chewing tobacco, and snuff.

Self Service Display: A Self-Service Display is any display from which customers may select or make a tobacco product without access from an employee or store personnel.

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.

Schools: Public or private elementary or secondary schools.

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.

8.0.1 The use of e-cigarettes is prohibited wherever smoking is prohibited per section 8 of the Wilmington Board of Health regulations.

8.1 Recreational marijuana use is prohibited wherever smoking is prohibited per section 8 of the Wilmington Board of Health Regulations.

8.2 No person shall smoke in any public elevator, supermarket, retail store, retail tobacco store, retail food store, restroom, or at any open meeting of a governmental body in the Town of Wilmington. No person shall smoke in any interior common area of any multiple dwelling unit.

8.3 No person shall smoke in any public building, museum, library, taxi, train, public transportation including platforms, public areas of all buildings which includes but is not limited to banks, financial institutions, commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity, group child care center, day care center, or waiting area of a health care facility, except in any private area which has been specifically designated as a smoking area for employees at the discretion of the manager of the building. No person shall smoke within a school building, within a school facility, on a school bus or on school grounds.

8.4 Smoking is prohibited in any restaurant or other such establishment open to the general public that sells food products. The operator of any food establishment shall conspicuously post such notice or signs indicating that smoking is prohibited therein. Any person who smokes in a food establishment shall be subject to a fine of \$50.00. Any operator of any food establishment who does not comply with this provision shall be subject to a fine of \$50.00.

8.5 In the case of hotels, motels and inns, a minimum of 75% of the total number of guestrooms shall be designated as non-smoking. The rooms so designated will have signs posted indicating the smoking is prohibited therein. Room designations shall be made and provided to the Board of Health at the time permits are issued. No changes in room designation can take place without prior approval of the Board of Health.

8.6 No person shall sell or offer for sale any tobacco product that has been removed from its original package or offer for sale any cigarette package that contains fewer than twenty (20) cigarettes.

8.7 No person shall sell any tobacco products, or nicotine delivery products, or give any such products, to any person under the age of 21 years. The minimum legal sales age in the Town of Wilmington is 21. The fine for the sale or gift of a tobacco product or nicotine delivery product to a person under the age of 21 shall be \$300.00 (see Section 8.22). Each retailer shall verify by means of valid government-issued photographic identification that each person purchasing tobacco is 21 years of age or older. No such verification is required for any person who reasonably appears to be 30 years of age or older. (*effective November 1, 2015*)

8.8 Existing vending machines dispensing tobacco products shall be located in plain view and control of a responsible employee, and all such vending machines must be equipped with a lock-out device approved by the Board of Health. Sale of a tobacco product to a minor by means of a vending machine is punishable by a fine of \$300.00. A second offense within a two year period shall be punishable by removal of the tobacco vending machine(s) for a period of one (1) year. A third offense within the same two-year period shall be punishable by permanent removal of the tobacco vending machine. After the effective date of this regulation, any new installation of a vending machine dispensing tobacco products shall be prohibited.

8.9 In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously in any place which sells tobacco products by the operator thereof.

8.10 A separate notice shall be posted at all of the cash registers and on any vending machine such that it may be readily seen by a person standing at or approaching the cash register or vending machine. Such notice shall directly face the patrons and shall not be obstructed from view, and shall be in two contrasting colors, at least 48 square inches in area, and able to be read at a distance of five (5) feet. Such notice shall state that the sale of any tobacco product to persons under age 21 is illegal. The owner or other person in

charge of a shop or other place used to sell nicotine delivery products shall also conspicuously post a sign stating that "The sale of nicotine delivery products to persons under 21 years of age is prohibited." **All vending machines containing tobacco products, as defined herein, are prohibited**

8.11 Self-service displays of tobacco products are prohibited. Displays of tobacco products, including humidors, must be under the direct supervision of an employee and may be located only in an area behind or above the sales counter or courtesy desk counter area. Walk-in humidors must be located immediately adjacent to the cash register so as to prevent access without age verification. A Commercial Roll-Your-Own (RYO) machine is a mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

The following shall apply to Commercial Roll-Your-Own ("RYO") machines:

8.11.1 A Commercial RYO machine must be operated from within a locked area or have a lockout device on the machine to be unlocked by a store employee. Commercial RYO machines can only be operated by a customer after they have been granted access (unlocking) by an employee or store personnel, otherwise they would be considered self-service and prohibited. Customers must be 21 years of age or older to use the machine. Customer access to the RYO area can only be made by providing a store employee with proper identification showing that the consumer is 21 years of age or older.

A store employee shall provide access to the locked RYO area or to the lockout device and provide instruction to the customer. The RYO area must be cleaned by store personnel only after every use and prior to use for the next customer. Cigarette product contact surfaces shall be cleaned with a disinfectant cleaner. Disposable clean collection boxes or bags must be used to collect product.

The fine for the violation of any of the above shall be \$100.00 for each violation, each day constituting a separate violation.

8.12 No person shall distribute tobacco products or other products containing tobacco free of charge.

8.13 No person shall sell, offer for sale, or display tobacco or **nicotine delivery products** within the Town of Wilmington, including sales by vending machine, without a valid tobacco sales permit issued by the Board of Health. This shall not apply to wholesale sales to retail establishments. (1/1/97) **Penalties: Unless otherwise specified, the penalty for violation under this Section 8.13 shall be \$50.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.**

8.13.1 No health care institution located in Wilmington shall sell or cause to be sold tobacco products or nicotine delivery products. *(effective November 1, 2015)*

8.14 The fee for a tobacco sales permit shall be \$ 200.00. (1/23/06)

8.15 A tobacco sales permit shall not be transferable. (1/1/97)

8.16 Any tobacco sales permit shall expire at the end of the calendar year in which it was issued. (1/1/97)

8.17 Each retail location shall be required to obtain a separate tobacco sales permit. (1/1/97)

8.18 The tobacco sales permit shall be posted in a conspicuous place at the point of sale. (1/1/97)

8.19 A tobacco sales permit shall not be issued to persons under the age of eighteen. (1/1/97)

8.20 The fine for the sale of tobacco products without a tobacco sales permit shall be \$ 50.00. (1/1/97)

8.21 The Board of Health may revoke any tobacco sales permit for violation of these regulations. (1/1/97)

8.22 The penalties for violation of these tobacco regulations by a holder of a tobacco sales permit shall be according to the following table: (1/1/97)

First Violation:

Sale of tobacco to a person under 21 years of age	\$300.00
Other violation	50.00

Second Violation (within 12 months of the first violation):

Sale of tobacco to a person under 21 years	\$300.00
Other violation	50.00
Suspension of the tobacco sales permit for a period not to exceed 7 days	

Third and Subsequent Violation (within 12 months of any prior violation):

Sale of tobacco to a person under 21 years	\$300.00
Other violation	50.00

Suspension of a tobacco sales permit for a period of not less than 7 days and not to exceed one year.

8.23 Smoking and the use of any tobacco product(s) and marijuana is hereby prohibited in Wilmington at town-owned playgrounds, parks, beaches, beach areas, recreational areas and facilities. The penalties for violation shall be \$50.00 for each violation. The Police Department, Board of Health Agent or it's designee shall enforce the regulation.

8.24 **Sale of Flavored Tobacco Products Prohibited:** No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product or nicotine delivery device, flavored or otherwise, except in retail tobacco stores. (*effective date*)

8.25 **Limiting the Number of Tobacco Product Sales Permits Issued in the Town of Wilmington.** As of (*date tbd*) the Wilmington Board of Health shall not issue a Tobacco Product Sales Permit to a first-time permit applicant with a new business. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his/her permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 60 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and failure to meet this deadline will result in the Buyer being treated as a first-time permit applicant.

Section 10 Food Regulations

10.1 105 CMR 590.000, Food Establishment Regulations, is hereby adopted as most recently amended as a local regulation for the Town of Wilmington with the exception of 595.035 (Penalties). Any person who fails to comply with the provisions of same shall be in violation of this Section.

10.1A 105 CMR 561.000, Frozen Dessert Regulations, is hereby adopted as most recently amended as a local regulation for the Town of Wilmington. Any person who fails to comply with the provisions of same shall be in violation of this Section. (3/31/95)

10.2 & 10.3 removed per Board of Health 10/4/16

10.4 No operator of a Food Service Establishment or Retail Food Establishment shall allow any person to prepare food without the use of proper hair restraints consisting of a hair net or hat or cap which prevents the hanging of hair.

10.5 Any application for a temporary food permit shall be submitted to the Board of Health no less than fourteen (14) days before the event.

10.6 All Mobile Food operations shall comply with the rules and regulations of the Wilmington Recreation Department when operating in areas owned or controlled by the Town of Wilmington.

10.7 No person shall sell or offer for sale any substance which is harmful if ingested where the label and/or packaging of that product depicts food or suggests that the product can be ingested.

10.8 Critical Violations as defined by 105CMR 590.001B and adopted by the Board of Health are considered to be those hazardous to the public health and shall be cause for the immediate issuance of a citation with a fine for \$100.00 or other action as authorized by state or local regulations. (2/7/17)

10.9 Failure to comply with a correction order issued by the Board of Health or it's agent shall be cause for the issuance of a citation for \$100.00 or other action as authorized by state or local regulations for each violation, each day constituting a separate offense. (2/7/17)

10.9A In addition to and without limitation of any enforcement actions that may be taken or rights or remedies that the Board of Health or Town may have under any applicable laws, codes, regulations, bylaws, any repeat or subsequent violations and/or critical code violations that occur within 1 year of any previous violations or offense shall be subject to payment of civil fines and penalties of \$200.00 per violation. Each calendar day on which a violation occurs constitutes a separate violation. (2/7/17)

10.10 Trans Fat Regulations

The Wilmington Board of Health acknowledges that consumption of trans fatty acids ("trans fats") poses a risk to public health by increasing the risk of cardiovascular disease. By informing consumers about trans fat content in the food they purchase in Wilmington for consumption, the Board of Health believes consumers will be better able to avoid consumption of trans fats resulting in improved public health.

10.10.1 Definitions

Trans Fatty Acid - Artificially heating vegetable oil in the presence of hydrogen and a metal catalyst creates trans unsaturated fatty acids, also known as trans fats. This process makes a naturally occurring liquid oil turn solid, making it useful for the preparation of baked food items. The process also rids some fats that cause oils to turn rancid over time, thereby creating a longer shelf life for those food products which are prepared with trans fats.

Cardiovascular Disease - Any process which affects the normal functioning of the heart and its components (including the coronary arteries) and the arteries and veins of the body. Scientific studies have proven the direct link between increased levels of LDL "bad" cholesterol and decreased HDL "good" cholesterol causing cardiovascular disease. A critical link between the use of trans fats and increasing the risk of cardiovascular disease has been established and it is now known that trans fats raise LDL cholesterol and lower HDL cholesterol in the blood.

10.10.2 **Regulation:** Any food establishment which offers for sale or consumption food items which contain Trans fatty acids shall inform consumers on all brochures, menu advisories, label statements, placards or other written materials listing the specific food item that contains the trans fatty acid. The following statement shall also be included, "Trans fatty acids have been associated with an increased risk of heart disease." Food establishments shall provide for inspection by the Board of Health all original labeling for all food items used in the preparation of foods. (9/1/09)

Section 11 Environmental

11.1 Any person who places, throws, deposits, discharges or causes to be placed, thrown, deposited or discharged, any trash, refuse, rubbish, garbage, debris, scrap, waste, demolition materials, oil, chemicals, or any other material of any kind which may be harmful to the environment or to the public health, on any land public or private, or into any drain or drainage system, regardless of ownership, in such a manner which is not approved by these or other governmental regulations, shall be in violation of this Section. The penalty for a violation of this Section is \$300.00 for each violation, each day constituting a separate violation.

11.2 No person shall release an *Illicit Discharge* into the Town Storm Drainage System, also known as the Municipal Separate Storm Sewer System (MS4), being defined as a conveyance or system of conveyances for carrying storm water, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches manmade channels, or storm drains. An *Illicit Discharge* is defined as any release of contaminated water, or any discharge that is not an Exempted Discharge, into the Town Storm Drainage System. The penalty for a violation of this Section is \$300.00 for each offense, each day constituting a separate violation. The following are considered Exempted Discharges unless such discharge

would result in a substantial increase in pollutant levels in receiving waters, as determined by the Board of Health:

1. Water line and hydrant flushing
2. Landscape irrigation
3. Legally diverted stream flows
4. Rising ground water
5. Pumped ground water
6. Discharges from potable water sources
7. Foundation drains
8. Air conditioning condensation
9. Springs
10. Water from crawl space pumps (sump pumps)
11. Footing drains
12. Individual residential car washing
13. Legal flows from riparian habitats and wetlands
14. De-chlorinated swimming pool discharges (less than 1 ppm of chlorine)
15. Street, sidewalk, and yard runoff
16. Roof Runoff

11.3 Prohibited Uses - Within a Groundwater Protection District, the following uses are specifically prohibited: landfills receiving only wastewater residuals and/or septage (wastewater residuals "monofills") approved by the Department pursuant to M.G.L. c. 21, § 26 through 53; M.G.L. c. 111, § 17; M.G.L. c. 83, §§ 6 and 7, and any regulations promulgated thereunder.^{12/4/07}

11.4 Conditional Prohibited Uses and Activities – The following land uses and activities are prohibited unless designed in accordance with the specified performance standards: storage of sludge and septage, as defined in 310 CMR 32.05, unless such storage is in compliance with 310 CMR 32.30 and 310CMR 32.31^{12/4/07}

Section 12 Nuisances

12.1 Any person who does not comply with a Board of Health order to abate a nuisance shall be in violation of this Section. The penalty for such failure to comply shall be \$50.00 per day when non-criminal disposition is utilized. Each day of such failure to comply shall constitute a separate violation. Nothing in this section shall prohibit the Board of Health or its agents from taking civil or criminal action and seeking penalties as provided by law, in which case the \$50.00 limitation for non-criminal disposition shall not apply, and penalties shall be determined by the court of jurisdiction.

12.2 No person shall store, place or allow the storage or placement of junk or a junk vehicle or junk equipment of any kind. A junk vehicle is any vehicle which is no longer in operating condition, regardless of the status of the insurance or registration of the vehicle, and includes but is not limited to cars, trucks, trailers, boats and motorcycles.

12.3 No person shall allow a sound alarm device to sound a false alarm for a period of time exceeding five (5) minutes. False alarms for fire, police, and burglar alarms shall be included in this section.

12.4 No person shall allow any dumpster or disposal container to be left open or to overflow. ^(3/31/95)

12.5 No person shall allow any hole over 4 feet in depth to be left open overnight, or left unattended for any amount of time, unless such holes need to be left open in order to comply with the requirements of these regulations or with Title 5, and in such cases, each hole must be adequately protected from entry by children, persons, or animals and must be made not to pose any risk of accident.

12.6 No person shall pump or drain water such that it flows onto the land of another without their permission.

12.7 No person shall allow a dog or other animal which is under their control or ownership to defecate on any public property or property of another without immediately picking up after said animal and properly dispose of feces.

12.8 No person shall feed any water fowl on public land in the Town of Wilmington. No person shall distribute any food or scatter any foodstuffs upon or around any park, recreation area, playing field, beach, or any public land. The fine for any violation of this section shall be \$10.00. (This regulation is also an Inhabitation Bylaw, Section 42)

12.9 No person who has use of any property shall store or allow the storage of any flammable or combustible material in any manner which may be a fire hazard or danger to any persons.

Section 13 Variances

13.1 The Board of Health may vary the application of any provision of these regulations to any particular case when in its opinion the enforcement thereof would manifest an injustice, provided that the decision of the Board of Health shall not conflict with the spirit of these regulations. The applicant for any variance shall pay for any advertising and/or mailings required for processing the variance.

Section 14 Enforcement and Penalties

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

14.2 Non Criminal Disposition (Alternative Disposition) - Whoever violates any provision of these rules and regulations may be penalized by a non-criminal complaint in the District Court pursuant to the provisions of 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 21-D the penalties for violations of any portion of these regulations is punishable by a fine of \$50.00 unless otherwise provided in any respective Section of these regulations.

Section 15 Severability

15.1 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.

Section 16: Floor Drain Regulations (effective 4/1/99)

Section I. PURPOSE OF REGULATION

Whereas:

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

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

- preserving and protecting the Town of Wilmington'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 II. SCOPE OF AUTHORITY

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

Section III. DEFINITIONS

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

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

Department: The Massachusetts Department of Environmental Protection.

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

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

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

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

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

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

Section IV. PROHIBITIONS

With the exception of discharges that have received (or have applied and will receive) a Department issued permit prior to the effective date of this regulation, no 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 an industrial or commercial process area using or storing petroleum, toxic, or hazardous materials and/or a waste storage area, or a facility where, in the opinion of the Board of Health or its agent, there is sufficient conditions to warrant the elimination of the ground discharge at the present.

Section V. REQUIREMENTS FOR EXISTING FACILITIES

A. The owner of a facility in operation prior to the effective date of this regulation with a prohibited (as defined under Section IV) floor drain system shall:

1. disconnect and plug all applicable inlets to and outlets from (where possible) applicable leaching structures, oil/water separators, and/or septic systems
2. remove all existing sludge in oil/water separators, septic systems, and where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations (310 CMR 30.000). Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate Department policies
3. Alter the floor drain system so that the floor drain shall be either:
 - a. connected to a holding tank that meets all applicable requirements of Department policies and regulations, with hauling records submitted to the Wilmington Board of Health at the time of hauling
 - b. connected to a municipal sanitary sewer line, if available, with all applicable Department and local permits or
 - c. permanently sealed.

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

C. Upon complying with one of the options listed under Section V.A.3., the owner/operator of the facility shall notify the Department of the closure of said system by filing the Department's UIC Notification Form {which may be obtained by calling 617/292-5770} with the Department, and sending a copy to the Wilmington Board of Health.

Section VI. EFFECTIVE DATES FOR ALL FACILITIES

The effective date of this regulation is April 1, 1999.

A. Existing Facilities:

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

B. New Facilities:

1. As of the effective date of the regulation, all new construction and/or applicable change of use within the Town of Wilmington shall comply with the provisions of this regulation.
2. Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits.

Section VII. PENALTIES

Failure to comply with provisions of this regulation will result in fines of \$50 for each day of violation under non-criminal disposition, and \$1000.00 for each day of violation under criminal disposition.

Section VIII. SEVERABILITY

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

Section 17 Regulations for Body Art Establishments and Practitioners

Section:

1. Purpose
2. Authority
3. Definitions
4. Exemptions
5. Restrictions
6. Operation of Body Art Establishments
7. Standards of Practice
8. Exposure Incident Report
9. Injury and/or Complication Reports
10. Complaints
11. Application for Body Art Establishment Permit
12. Application for Body Art Practitioner Permit
13. Grounds for Suspension, Denial, Revocation, or Refusal to Renew Permit
14. Procedure for Hearings and Suspension of Permit
15. Inspections
16. Severability
17. Fine for Violation
18. Non-criminal Disposition
19. Criminal Disposition
20. Effective Date

1. Purpose

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

1. Authority

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

3. Definitions

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

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

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

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

Bloodborne Pathogens Standard means OSHA Guidelines contained in 29 CFR 1910.1030, entitled "Occupational Exposure to Bloodborne Pathogens."

Board of Health or Board means the Board of Health of the Town of Wilmington and its agents and directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hot water means water that attains and maintains a temperature 110°-130°F.

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

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

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

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

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

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

Operator means any person who individually, or jointly or severally with others, owns, or controls an establishment at which body art is practiced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Exemptions

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

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

5. Restrictions

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

6. Operation of Body Art Establishments

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

- (A) Physical Plant
 - (1) Walls, floors, ceilings, and procedure surfaces shall be smooth, durable, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.
 - (2) Solid partitions or walls extending from floor to ceiling shall separate the establishment’s space from any other room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.

- (3) The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.
- (4) Each operator area shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a dividers or partition at a minimum.
- (5) The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 foot candles 3 feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, ~~and~~ where instruments and sharps are assembled and all cleaning areas.
- (6) All electrical outlets in operator areas and cleaning areas shall be equipped with approved ground fault (GFCI) protected receptacles.
- (7) A separate, readily accessible hand sink with hot and cold running water under pressure, preferably equipped with wrist- or foot-operated controls and supplied with liquid soap, and disposable paper towels stored in fixed dispensers shall be readily accessible within the establishment. Each operator area shall have a hand sink.
- (8) There shall be a sharps container in each operator area and each cleaning area.
- (9) There shall be a minimum of one toilet room containing a toilet and sink. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A body art establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such body art establishment if Board-approved toilet facilities are located in the retail shopping center within 300 feet of the body art establishment so as to be readily accessible to any client or practitioner.
- (10) The public water supply entering a body art establishment shall be protected by a testable, reduced pressure back flow preventor installed in accordance with 142 Code of Massachusetts Regulation 248, as amended from time to time.
- (11) At least one covered, foot operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leakproof, rodent-resistant containers and shall be removed from the premises at least weekly.
- (12) At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-contaminated liquid wastes in accordance with all applicable Federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.
- (13) All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.
- (14) The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit.

- (15) The establishment shall have a customer waiting area, exclusive and separate from any workstation, instrument storage area, cleaning area or any other area in the body art establishment used for body art activity.
- (16) No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., Seeing Eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.
- (17) Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of non-alcoholic fluids being offered to a client during or after a body art procedure.

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

- (1) Single-use items shall not be used on more than one client for any reason. After use, all single-use sharps shall be immediately disposed of in approved sharps containers pursuant to 105 CMR 480.000.
- (2) All products applied to the skin, such as but not limited to body art stencils, applicators, gauze and razors, shall be single use and disposable.
- (3) Hollow bore needles or needles with cannula shall not be reused.
- (4) All inks, dyes, pigments, solid core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.
- (5) Inks, dyes or pigments may be mixed and may only be diluted with water from an approved potable source. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded.

(C) Sanitation and Sterilization Measures and Procedures

- (1) All non-disposable instruments used for body art, including all reusable solid core needles, pins and stylets, shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water, (to remove blood and tissue residue), and shall be placed in an ultrasonic unit sold for cleaning purposes under approval of the U.S. Food and Drug Administration and operated in accordance with manufacturer's instructions.
- (2) After being cleaned, all non-disposable instruments used for body art shall be packed individually in sterilizer packs and subsequently sterilized in a steam autoclave sold for medical sterilization purposes under approval of the U.S. Food and Drug Administration. All sterilizer packs shall contain either a sterilizer indicator or internal temperature indicator. Sterilizer packs must be dated with an expiration date not to exceed six (6) months.
- (3) The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Board. Autoclaves shall be located away from workstations or areas frequented by the public.
- (4) Each holder of a permit to operate a body art establishment shall demonstrate that the autoclave used is capable of attaining sterilization by monthly spore

destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three (3) years and made available to the Board upon request.

- (5) All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. After sterilization, the instruments used in body art procedures shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.
- (6) Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing.
- (7) If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
- (8) When assembling instruments used for body art procedures, the operator shall wear disposable sterile medical gloves and use medically recognized sterile techniques to ensure that the instruments and gloves are not contaminated.
- (9) Reusable cloth items shall be mechanically washed with detergent and mechanically dried after each use. The cloth items shall be stored in a dry, clean environment until used. Should such items become contaminated directly or indirectly with bodily fluids, the items shall be washed in accordance with standards applicable to hospitals and medical care facilities, at a temperature of 160°F or a temperature of 120°F with the use of chlorine disinfectant.

(D) Posting Requirements

The following shall be prominently displayed:

- (1) A Disclosure Statement, a model of which shall be available from the Board. A Disclosure Statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures.
- (2) The name, address and phone number of the Wilmington Board of Health
- (3) An Emergency Plan, including:
 - (a) a plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency;
 - (b) a telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and
 - (c) a sign at or adjacent to the telephone indicating the correct emergency telephone numbers.
- (4) An occupancy and use permit as issued by the local building official.
- (5) A current establishment permit.
- (6) Each practitioner's permit.

(E) Establishment Recordkeeping

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

- (1) Establishment information, which shall include:
 - (a) establishment name;
 - (b) hours of operation;
 - (c) owner's name and address;
 - (d) a complete description of all body art procedures performed;
 - (e) an inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;
 - (f) A Material Safety Data Sheet, when available, for each ink and dye used by the establishment; and
 - (g) copies of waste hauler manifests
 - (h) copies of commercial biological monitoring tests
 - (i) Exposure Incident Report (kept permanently)
 - (j) a copy of these regulations.

- (2) Employee information, which shall include:
 - (a) full legal names and exact duties;
 - (b) date of birth;
 - (c) home address;
 - (d) home /work phone numbers;
 - (e) identification photograph;
 - (f) dates of employment;
 - (g) Proof of a negative test for Tuberculosis, every 5 years;
 - (h) Hepatitis B vaccination status or declination notification; and
 - (i) training records

- (3) Client Information, which shall include:
 - (a) name;
 - (b) age and valid photo identification
 - (c) address of the client;
 - (d) date of the procedure;
 - (e) name of the practitioner who performed the procedure(s);
 - (f) description of procedure(s) performed and the location on the body;
 - (g) a signed consent form as specified by 7(D)(2); and,
 - (h) if the client is a person under the age of 18, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian.

Client information shall be kept confidential at all times.

(4) Exposure Control Plan

Each establishment shall create, update, and comply with an Exposure Control Plan. The Plan shall be submitted to the Board for review so as to meet all of the requirements of OSHA regulations, to include, but not limited to, 29 Code of Federal Regulation 1910.1030 OSHA Bloodborne Pathogens Standards et seq, as amended from time to time. A copy of the Plan shall be maintained at the Body Art Establishment at all times and shall be made available to the Board upon request.

- (F) No person shall establish or operate a Mobile or Temporary Body Art Establishment.

7. Standards of Practice

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

- (A) A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S Centers for Disease Control and Prevention.
- (B) A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.
- (C) Practitioners who use ear-piercing systems must conform to the manufacturers directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear piercing system on any part of the client's body other than the lobe of the ear.
- (D) Health History and Client Informed Consent. Prior to performing a body art procedure on a client, the practitioner shall:
 - (1) Inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:
 - (a) history of diabetes;
 - (b) history of hemophilia (bleeding);
 - (c) history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants etc.;
 - (d) history of allergies or adverse reactions to pigments, dyes, or other sensitivities;
 - (e) history of epilepsy, seizures, fainting, or narcolepsy;
 - (f) use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and
 - (g) any prosthetic joint or device;
 - (h) history of heart murmur;
 - (i) any other conditions such as hepatitis or HIV.
 - (2) Require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents them from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by section 7(K).
- (E) A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.
- (F) In performing body art procedures, a practitioner shall wear sterile disposable single-use gloves. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with section (E) before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of sterile disposable single-use gloves does not preclude or substitute for handwashing procedures as part of a good personal hygiene program.
- (G) The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

- (H) Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.
- (I) Preparation and care of a client's skin area must comply with the following:
 - (1) Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
 - (2) Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where body art procedure is to be placed shall be washed with 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 an approved surgical skin preparation. The washing pad shall be discarded after a single use.
 - (3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.
- (J) Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded.
- (K) The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:
 - (1) on the proper cleansing of the area which received the body art;
 - (2) to consult a health care provider for:
 - (a) unexpected redness, tenderness or swelling at the site of the body art procedure;
 - (b) any rash;
 - (c) unexpected drainage at or from the site of the body art procedure; or
 - (d) a fever within 24 hours of the body art procedure; and
 - (3) of the address, and phone number of the establishment.

A copy shall be provided to the client. A model set of aftercare instructions shall be made available by the Board.
- (L) Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste.

8. Exposure Incident Report

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

Each Exposure Incident Report shall contain:

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

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

9. Injury and/or Complication Reports

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

- (A) the name of the affected client;
- (B) the name and location of the body art establishment involved;
- (C) the nature of the injury, infection complication or disease;
- (D) the name and address of the affected client's health care provider, if any;
- (E) any other information considered relevant to the situation.

10. Complaints

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

11. Application for Body Art Establishment Permit

- (A) No person may operate a body art establishment except with a valid permit from the Board. **Penalties: Unless otherwise specified, the penalty for violation under this Section 11 shall be \$50.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.**
- (B) Applications for a permit shall be made on forms prescribed by and available from the Board. An applicant shall submit all information required by the form and accompanying instructions. The term "application" as used herein shall include the original and renewal applications.
- (C) An establishment permit shall be valid from the date of issuance until the end of the calendar year unless revoked sooner by the Board.
- (D) The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:

- (1) Name, address, and telephone number of:
 - (a) the body art establishment;
 - (b) the operator of the establishment; and
 - (c) the body art practitioner(s) working at the establishment;
 - (2) The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;
 - (3) A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board's body art regulations;
 - (3) A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process; and,
 - (4) Exposure Report Plan
 - (5) Such additional information as the Board may reasonably require.
- (E) The annual fee for the Body Art Establishment Permit shall be \$100.
- (F) A permit for a body art establishment shall not be transferable from one place or person to another.

12. Application for Body Art Practitioner Permit

- (A) No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board.
- (B) A practitioner shall be a minimum of 18 years of age.
- (C) A practitioner permit shall be valid from the date of issuance and shall expire no later than one year from the date of issuance unless revoked sooner by the Board. The fee for such a permit shall be \$50.
- (D) Application for a practitioner permit shall include:
 - (1) name;
 - (2) date of birth;
 - (3) residence address;
 - (4) mailing address;
 - (5) phone number;
 - (6) place(s) of employment as a practitioner;
 - (7) training and/or experience as set out in (E) below, and
 - (8) type of body art to be permitted.
- (E) Practitioner Training and Experience
 - (1) In reviewing an application for a practitioner permit, the Board may consider experience, training and/or certification acquired in other states that regulate body art.
 - (2) Training for all practitioners shall be approved by the Board and, at a minimum, shall include the following:
 - (a) bloodborne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; handwashing techniques;

- sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques; and
- (b) Current certification in First Aid and cardiopulmonary resuscitation (CPR).

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

- (3) The applicant for a body piercing practitioner or branding or scarification practitioner permit, shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the integumentary system (skin).
- (4) The applicant for a body art practitioner permit shall submit evidence satisfactory to the Board the completion of a supervised program of body art of the kind for which the applicant seeks a body art practitioner permit to perform.

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

13. Grounds for Suspension, Denial, Revocation, or Refusal to Renew Permit

- (A) The Board may suspend a permit, deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for suspension, denial, revocation or refusal to renew:
 - (1) any actions which would indicate that the health or safety of the public would be at risk;
 - (2) fraud, deceit or misrepresentation in obtaining a permit, or its renewal;
 - (3) criminal conduct which the Board determines to be of such a nature as to render the establishment, practitioner or applicant unfit to practice body art as evidenced by criminal proceedings resulting in a conviction, guilty plea, or plea of nolo contendere or an admission of sufficient facts;
 - (4) any present or past violation of the Board's regulations governing the practice of body art;
 - (5) practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
 - (6) being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
 - (7) knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;
 - (8) continuing to practice while his/her permit is lapsed, suspended, or revoked; and

- (9) 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.
 - (10) Failing to allow an inspection or preventing an inspection or part of an inspection by an authorized agent of the Board of Health.
 - (11) other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice body art.
- (B) The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board intends to deny, revoke, or refuse to renew a permit.

14. Procedure for Hearings and Suspension of Permit

The owner of the establishment or practitioner shall be given written notice of the Board's intent to hold a hearing for the purpose of suspension, revocation, denial or refusal to renew a permit. This written notice shall be served through a certified letter sent return receipt requested or by constable or other means as provided in Chapter 111, Section 124 of the General Laws of the Commonwealth. The notice shall include the date, time and place of the hearing and the owner of the establishment or practitioner's right to be heard. The Board shall hold the hearing no later than 21 days from the date the written notice is received.

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

15. Inspections

The Board of Health and its agents shall be authorized to conduct inspections of the establishment before initially opening for business, and at any time during the hours of operation.

16. Severability

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

17. Fine for Violation

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

18. Non-criminal Disposition

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

19. Criminal Disposition

Whoever violates any provision of these Regulations may be prosecuted in a court of competent jurisdiction.

18. Effective Date

These regulations governing Body Art shall be effective as of May 1, 2001.

Section 18 Fees:

18.1 The following shall be the fee schedule for permit applications, and services from the Board of Health:

Permit for Collection, Transportation of Garbage.....	200.00
Sewage Hauler Permit per truck.....	200.00
Installers Permit.....	100.00
Food Establishment Permit.....	200.00*
Temporary Food Permit	25.00
Funeral Home Directors Permit.....	100.00
Permit to operate a Public or Semi Public Swimming Pool.....	100.00*
Permit to operate Tanning Facilities.....	100.00
Permit to operate a Recreation Camp	100.00
Permit to practice Massage Therapy	50.00
Permit to operate a Massage Establishment	100.00
Permit to practice Body Art.....	50.00
Permit to operate a Body Art Establishment	100.00
Tobacco Sales Permit.....	200.00*
Milk License.....	2.00
Permit to operate an Ice Rink	100.00
Permit to keep cats (more than six)	10.00
Permit to keep animals, renewal	40.00*
Well Permit	50.00*
Soil Testing (percolation test and/or deep hole witnessing)	200.00*
Disposal System Construction (Commercial).....	500.00
Disposal System Construction (Residential)	250.00*
Disposal System Construction (Upgrade or Repair).....	100.00*
Disposal System Construction (Renew or Resubmit)	50.00
Additional Septic System Re-inspection	25.00
Sub-Division Review.....	100.00
Housing Certificate of Compliance	50.00
Lead Paint Inspection	100.00
Animal Impound Fee	14.00/day
Variance from Regulations by the Board of Health.....	25.00

* Changes approved by the Board of Selectmen on October 23, 2006

Section 19 Ice Rinks:

Any indoor ice skating rink shall not operate without a permit from the Wilmington Board of Health and such permit shall require a fee of \$100.00 per calendar year or portion thereof. **Penalties: Unless otherwise specified, the penalty for violation under this Section 19 shall be \$50.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.**

Section 20: Contaminated Soil

This regulation is promulgated by the Wilmington Board of Health pursuant to the authority granted by M.G.L. Chapter 111, Section 31 and M.G.L. Chapter 111 Section 122 and the Massachusetts Home Rule Amendment.

Section 20.1 Introduction:

The Wilmington Contaminated Soils By-law, (“the by-law”) states,

“CONTAMINATED SOIL SECTION 46:

Section 46.1 Authority

This by-law is adopted by the Town of Wilmington pursuant to its police powers to protect the public health, safety and welfare, and the Home Rule Amendment of the Massachusetts Constitution, Article 89 of the Articles of Amendment, independent of the provisions of Section 150A of Chapter 111 of the General Laws and regulations promulgated thereto.

Section 46.2 Zone II Prohibition

Contaminated soil which results from a release to the environment is prohibited from being brought into the Town of Wilmington to be disposed of, stored, stockpiled, spread onto the ground surface for any purpose, used for shaping grading, or closure of a landfill or former landfill area, or used as fill material for any and all purposes within any Zone II aquifer protection area which has been approved by the Department of Environmental Protection.”

The Board of Selectmen has designated the Board of Health as the enforcer of the by-law pursuant to Section 38 of the By-laws of the Inhabitants of the Town of Wilmington Revised.

Section 20.2 Purpose:

The purpose of the Section 20 is to protect the health, safety and welfare of the citizens of Wilmington including without limitation the protection of the Town’s drinking water supply, by defining and clarifying the process by which the Wilmington Soils Bylaw will be applied and enforced.

Section 20.3 Definitions:

Contaminated soil means, soil or sediment which has been subjected to a release of one or more hazardous materials and contains an amount of hazardous materials which either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, and for which notification is required by the Massachusetts Contingency Plan (MCP) at 310 CMR 40.300 and 40.1600.

Environment means waters, land, surface or subsurface strata, or ambient air.

Release, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, but excludes: (1) emissions from the exhaust of an engine, (2) release of source, by product, or special nuclear material from a nuclear incident, as those terms are defined in 42 USC Sec. 2014, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 USC Sec. 2210, (3) the normal application of fertilizer, and (4) the application of pesticides consistent with their labeling.

Zone II, an area designated and approved by the Massachusetts Department of Environmental Protection to be the zone of contribution for a public water supply well. For the purposes of these regulations, the term shall also include any Interim Wellhead Protection Area (IWPA) for any public water supply well. Both Zone II and IWPA as further defined in 310 CMR: 22.02.

20.4 Contaminated Soil Prohibition:

Contaminated soil which results from a release to the environment is prohibited from being brought into the Town of Wilmington to be disposed of, stored, stockpiled, spread onto the ground surface for any purpose, used for shaping, grading, or closure of a landfill or former landfill area, or used as fill material for any and all purposes within any Zone II aquifer protection area which has been approved by the Massachusetts Department of Environmental Protection or any Interim Wellhead Protection Area.

20.5 Enforcement:

The Wilmington Board of Health has authority to enforce the provisions of the Section 20. Failure to comply with any provision of this Section 20 is a violation and each separate day of failure to comply constitutes a separate violation. Additionally, each individual instance of violation within each day shall constitute a separate violation. Any person who violates any provision of this Section 20 shall be subject to civil or criminal prosecution in a court of competent jurisdiction including without limitation a civil action for injunctive relief to enjoin any such violation. Any violation of this regulation shall be punishable by a fine of \$300.00. The Board of Health may elect in its discretion to use non-criminal disposition for the purposes of enforcing this Section 20.

20.6 Effective Date:

This regulation is promulgated after due consideration of all written and oral comments received at public hearings conducted on November 16, 2005 and November 19, 2005, and shall become effective upon publication in accordance with Chapter 111, Section 31 of the Massachusetts General Laws. ^(7/19/05)

Section 21 Toilet Facilities in Restaurants

21.1 Establishments constructed or undergoing major renovation after the date of adoption of this Section shall comply with these regulations.

21.2 Where the requirements of this section conflict with other regulations, the more stringent standard shall apply.

21.3 Definitions:

Restaurant shall mean any food establishment licensed by the Board of Health to sell food in accordance with 105 CMR 590.000 and provides any amount of seating.

Toilet Facilities shall mean facilities meant for use as restrooms, and shall include, but not be limited to, toilets and lavatories.

21.4 Toilet facilities shall comply with the Americans with Disabilities Act.

21.5 Separate toilet facilities for men and women shall be provided.

21.6 Toilet facilities shall be located within the restaurant in an area that is easily accessible, without having to leave the building or having to walk through food preparation areas.

21.7 The number of toilets and lavatories shall be the number required by the state plumbing code.

21.8 Toilet facilities shall be cleaned and sanitized daily, shall be kept in a clean condition, and shall be kept in proper working order, and appropriately signed.

REGULATIONS FOR USE OF RECOMBINANT DNA MOLECULE
TECHNOLOGY SECTION 22

The Board of Health, Town of Wilmington, Massachusetts, acting under the authority of Section 31, Chapter 111 of the General Laws and amendments and additions thereto, and by any other power thereto enabling, adopt the following rules and regulations in the interest of and for the preservation of the public health.

1. APPLICABILITY

All activities associated with constructing and handling: a) recombinant DNA (RDNA) molecules and b) organisms and viruses containing RDNA molecules and c) infectious biological agent or toxin within the Town of Wilmington shall be performed in strict accordance with these regulations and with the National Institutes of Health Guidelines. These regulations shall govern in addition to the NIH Guidelines

2. DEFINITIONS

For the purpose of these regulations, the following definitions are adopted:

- a) Guidelines mean: National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules published in the Federal Register of November 23, 1984, and any subsequent Federal amendments thereto.

In the event that the National Institutes of Health shall discontinue or abolish their guidelines, those guidelines in effect at the time of such discontinuance shall remain in effect as to all activities within the Town of Wilmington.

- b) Institution means: Any public or private entity including Federal, State, and local governmental agencies.
- c) Institutional Biosafety Committee (IBC) means: A committee that (i) meets the requirements for membership specified in the NIH Guidelines (Section IV- B-2) and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in the Guidelines (Section IV-B-2 and IV-B-3).
- d) Large-scale means: The use of more than ten liters but less than 5000 liters of RDNA culture.

- e) Recombinant DNA Molecules mean: (1) Molecules constructed outside living cells by joining natural or synthetic DNA or RNA segments to DNA or RNA molecules that can replicate in a living cell or (2) Molecules that result from the replication of those described in (1) above. This includes synthetic DNA or RNA segments that are likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent); these are considered as equivalent to their natural DNA or RNA counterparts. (3) Genomic DNA/RNA organisms that have acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, are subject to the NIH and CDC Guidelines and this Regulation only in the case where the transposon itself contains rDNA or rRNA.
- f) Infectious biological agent is defined as any microorganism or infectious substance, or any naturally occurring or bioengineered or synthesized component of any such microorganism or infectious substance capable of causing death, disease or other biological adverse effect in a human, animal, plant or other living organism
- g) A biological toxin is defined as a harmful substance used in research produced by certain bacteria, fungi, protozoa, plants, reptiles, amphibians, fish, echinoderma, mollusks or insects that can disrupt normal cellular functions and cause illness or death.
- h) Four biosafety levels have been defined by NIH which specify administrative procedures, safety equipment, and facilities for work with biological agent or toxins. Research with biological agents and toxins is assigned to a biosafety level based on the pathogenicity and transmission route of the particular agent or toxin used.

*Biosafety Level 1 (BSL-1) is suitable for work involving well-characterized agents not known to consistently cause disease in immunocompetent adult humans, and present minimal potential hazard to laboratory personnel and the environment.

*Biosafety Level 2 (BSL-2) builds upon BSL-1. BSL-2 is suitable for work involving agents that pose moderate hazards to personnel and the environment.

*Biosafety Level 3 (BSL-3) is applicable to clinical, diagnostic, teaching, research, or production facilities where work is performed with indigenous or exotic agents that may cause serious or potentially lethal disease through inhalation route exposure.

*Biosafety Level 4 (BSL-4) is required for work with dangerous and exotic agents that pose a high individual risk of life-threatening disease, aerosol transmission, or related agent with unknown risk of transmission.

- i) Significant deviation means: Any deviation that might have an adverse effect on personal or public health.
- j) Risk Group Agents are classified into four Risk Groups (RGs) according to their relative pathogenicity for healthy adult humans by the following criteria: (1) Risk Group 1 (RG1) agents are not associated with disease in healthy adult humans. (2) Risk Group 2 (RG2) agents are associated with human disease which is rarely serious and for which preventive or therapeutic interventions are often available. (3) Risk Group 3 (RG3) agents are associated with serious or lethal human disease for which preventive or therapeutic interventions may be available. (4) Risk Group 4 (RG4) agents are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available.

3. INSTITUTIONAL BIOSAFETY COMMITTEE (IBC)

- a) The Institutional Biosafety Committee (IBC), established by the NIH Guidelines, if required, shall include as members the Director of Public Health of the Town of Wilmington or his/her designee, plus one additional community representative appointed by the Board of Health.
- b) The IBC shall meet no less than once a year. All minutes of the IBC meetings shall be forwarded to the Board of Health.
- c) The community member of the IBC and the Director of Public Health, or his/her designee, shall have no financial interest in any institution involved in the use of RDNA, or any other institution in competition therewith, and such representatives shall be bound to the same provisions as to non-disclosure and non- use of proprietary information and trade secrets as all other members of IBC, except to the extent necessary to alleviate any public health hazard. As used in these regulations proprietary information and trade secrets shall be defined as set forth under the law of the Commonwealth of Massachusetts.
- d) In accordance with the NIH Guidelines, the IBC, acting on behalf of an institution, reviews all RDNA use for compliance with the NIH Guidelines and approves those projects that conform with the NIH Guidelines
- e) All information sent to the Board of Health shall have any proprietary information and trade secrets removed therefrom. The full text shall remain on file in the records of the institution for inspection at all reasonable times by any member of the IBC.

4. PERMITS

- a) All institutions planning to use RDNA must obtain a permit from the Board of Health before commencing said technology. All permits are issued for one year on January 1st and may be revoked for cause.
- b) Institutions seeking such a permit from the Board of Health shall submit or make available the following:
 - (1) A plot plan showing the proposed location of the facility and a floor plan shown in the internal layout of the facility.
 - (2) A listing of all organisms, containment levels, and decontamination procedures to be employed.
 - (3) A plan for a screening process to insure the purity of the strain of host organisms used in the experiments and to test organisms resulting from such experiments for their resistance to commonly used therapeutic antibiotics. Host organisms obtained from independent laboratories shall undergo the same screening process.
 - (4) A plan for systematic monitoring of waste to assure that surviving RDNA organisms will not be released into the environment.
 - (5) A plan for systematic pest control management in laboratories, contiguous facilities and food service establishments in any and all segregated buildings.
 - (6) A plan for systematic security of the premises.
 - (7) The institution's health monitoring, health surveillance and safety manuals, together with the plan for an appropriate medical surveillance program as determined by the IBC for all persons engaged in the use of RDNA. Such programs shall include, but shall not necessarily be limited to:
 - A pre-employment medical examination for employees.
 - Prompt reporting to the IBC of employee illnesses that are potentially related to RDNA use.
 - Retention of medical and health records for ten years. Medical or employee health records shall be made available for inspection and may be used for public health studies.
 - A training program of safeguards and safety procedures for personnel.

- (8) The name(s) and credentials of the Principal Investigator(s) who shall be responsible for enforcing the guidelines.
- (9) A plan for orienting representatives of the Wilmington Health, Fire and Police Departments to the physical plant and to procedures to be utilized in the event of an emergency.
- (10) Written authorization to allow inspection of facilities and pertinent records by the Board of Health.
- c) The Board of Health shall review the institution's application for a permit and supporting documents within 30 days.
- d) The fee for a permit granted by the Board of Health, or annual renewal thereof, shall be \$500.00

5. INSPECTION AND REVIEW

- a) All institutions involved in the use of RDNA and/or infectious biological agents or toxins shall allow inspection of their facilities, procedures and practices in order to confirm compliance with this ordinance.
- b) The Board of Health, its employees, and any individual or institution employed to perform inspections shall maintain the confidentiality of all proprietary information release to them by reason of these regulations.

6. RESTRICTIONS

- a) RDNA use requiring BL3 and BL4 containment shall not be permitted.
- b) Experiments for which containment levels are not prescribed in the guidelines, shall be approved by the Board of Health before the experiment is initiated.
- c) Large scale RDNA use shall not be permitted.
- d) Precautions shall be adhered to, to preclude release into the environment that is to sewers, drains or the air, of any live organisms containing RDNA or active antibiotics.
- e) The institution shall report within 24 hours to the Director of Health, followed by a written report within 15 days to the Board of Health, any significant accidents or illnesses or releases related to the use of RDNA. An additional inspection of facilities and procedures may be deemed necessary by the Board of Health based upon its judgment of the nature and extent of the problem.

7. PENALTIES

- a) Violation of these regulations shall subject the violator to a fine of Five Hundred Dollars (\$500.00) per day, and in addition, the facility in which the violation occurs may be closed by the Board of Health. Each day of violation shall constitute a separate and distinct offense.
- b) If in the opinion of the Board of Health, the RDNA or infectious biological agent or toxin use causes a nuisance or adversely affects the public health, safety and welfare in Wilmington, the permit may be revoked. Once a permit has been issued it may be revoked by the Board of Health upon determination, after due notice and hearing that the institution involved has materially failed to comply with these regulations, the permit agreements or the guidelines.

8. VARIANCE

Variances from these specific requirements of these Regulations may be authorized by the Board of Health after notice and public hearing if the Board reasonably determines that the relief sought will be detrimental or injurious to the public health.

Effective Date