

**DRAFT**  
**BEDFORD BOARD OF HEALTH**  
**RULES AND REGULATIONS**  
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# ARTICLE 1. MINIMUM STANDARDS FOR THE KEEPING OF ANIMALS

## 1.1. AUTHORITY

- 1.1.1. This regulation is promulgated pursuant to the authority granted to the Bedford Board of Health by Massachusetts General Laws Chapter 111, Section 31, which provides that “Boards of Health may make reasonable health regulations,” and Massachusetts General Laws Chapter 111, Section 155.

## 1.2. PURPOSE

- 1.2.1. This regulation is promulgated to provide minimum standards for the keeping of animals in Bedford. This regulation aligns with the December 2013 Bedford Comprehensive Plan Land Use vision for Residential Neighborhoods, by enabling Bedford residents to have the opportunity to participate in the growing national trend for responsible, small scale agricultural production while protecting public health, safety and welfare in Bedford.
- 1.2.2. This regulation is not intended to regulate the use of land for commercial agriculture. Commercial agriculture may be limited by town zoning bylaw to activities on parcels of five (5) acres or more or on parcels of two (2) acres or more if the sale of products produced from the agricultural use on the parcels annually generates at least \$1,000 per acre based on gross sales dollars in areas not zoned for agriculture accordance with M.G.L. Chapter 40A, Section 3.

## 1.3. DEFINITIONS

Unless otherwise noted below, the following terms shall have the following definitions throughout this regulation.

- 1.3.1. Abutter: Owners of the abutting land or property within three hundred (300) feet of the Applicant’s property line. A person will only qualify as an abutter, for the purpose of this regulation, if he or she possesses an ownership interest in the abutting land or property.
- 1.3.2. Animal: All animals and livestock, which are kept as domesticated animals, but excluding the following: household pets as defined herein; research laboratory animals otherwise regulated ; and non-exempt wild animals as regulated by Massachusetts General Laws Chapter 131, Section 23 and 321 CMR 9.00.
- 1.3.3. Animal structure: Any structure used to house, shelter or contain livestock and animals.
- 1.3.4. Applicant: A person who applies for a permit to keep one or more animals under this regulation.
- 1.3.5. Board of Health or “the Board”: The Bedford Board of Health and/or its designated agents.
- 1.3.6. Cockerel: Young male chicken.
- 1.3.7. Corral: Any pen or enclosure for confining one or more animals.
- 1.3.8. Domesticated animals: Animals of a species of vertebrates that have been domesticated by humans so as to live and breed in a tame condition and depend on humankind for survival. Domesticated animals shall include, but not be limited to, any equine or bovine animal, goat, sheep, swine, dog, cat, poultry or other domesticated beast or bird.
- 1.3.9. Dwelling: Any building, structure or shelter used or intended for human habitation.

- 1.3.10. Facility: The total accommodations to be used for the keeping and care of one or more animals, including but not limited to land and any accessory or animal structure such as, but not limited to, a barn and/or stable.
- 1.3.11. Fencing: Enclosure material installed for the purpose of privacy or livestock and/or animal containment.
- 1.3.12. Generally acceptable agricultural practices: Practices that the applicant can demonstrate are consistent with the Massachusetts Department of Agricultural Resources Division of Animal Health's (MDAR's) Generally Acceptable Agricultural Practices (GAAPs). The following are some potential resources, but are not an exhaustive list, that can be consulted to establish compliance with the MDAR GAAPs: MDAR, <http://www.mass.gov/eea/agencies/agr/>; the USDA Natural Resource Conservation Service, <http://www.nrcs.usda.gov/wps/portal/nrcs/site/ma/home/>; the MA Association of Conservation Districts, <https://massacd.wordpress.com/>; UMASS Extension, <http://ag.umass.edu/resources/agriculture-resources>; UNH Cooperative Extension, <https://extension.unh.edu/>; and UNH Cooperative Extension Housing and Space Guidelines, [https://extension.unh.edu/resources/resource/471/Housing\\_and\\_Space\\_Guidelines\\_for Livestock](https://extension.unh.edu/resources/resource/471/Housing_and_Space_Guidelines_for_Livestock)
- 1.3.13. Household Pets: Animals that are primarily kept indoors for non-agricultural purposes, including but not limited to dogs, cats, ferrets, pot-bellied pigs, fish, domesticated or exotic birds, guinea pigs, hamsters, and mice.
- 1.3.14. Keeping of Animals Permit or "Permit": refers to a permit issued by the Board for the keeping or housing of one or more animals in accordance with the provisions of this regulation. 3.15 Livestock: Animals kept for agricultural purposes, including but not limited to cattle, goats, sheep, swine, equines, camelids, poultry and other fowl. For the purposes of this regulation, the definition of "Livestock" shall not include roosters or cockerels.
- 1.3.15. Manure Management Plan (MMP): A plan for the handling of manure. The MMP shall address cleaning, composting, storage, utilization and removal of manure.
- 1.3.16. Permit holder: Any person who has met the conditions of this regulation and has received a permit issued by the Board of Health to keep animals.
- 1.3.17. Person: Every individual, partnership, corporation, firm, association, group, or other entity including a city, town, county, or other governmental unit, owning property or carrying on an activity regulated by this regulation.
- 1.3.18. Pest Management Plan: is a plan, which adequately defines the measures that shall be taken by the owner to minimize the presence of rodents, insects and pests, and to minimize the creation of odors and other nuisances.
- 1.3.19. Rooster: Adult male chicken.
- 1.3.20. Stable: An accessory building or structure used for the shelter and/or feeding of one or more animals.
- 1.3.21. Stall: A compartment in a stable used for the keeping of one or more animals.
- 1.3.22. Usable Area: Land area suitable for the raising of animals such as pastures, fields and wooded uplands. This area does not include wetlands, dwellings, or any other area(s) as may be restricted by town, state or federal law, regulations or guidelines.
- 1.3.23. Wetlands: Land area or surface area so defined by the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 and regulations promulgated pursuant thereto at 310 CMR 10.00

as defined by the Bedford Wetlands Protection Bylaw or pursuant to Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. 1341.

- 1.3.24. Wild and Exotic Animals: Any animal not normally found or kept as a domesticated animal, and which require a permit to keep issued by either a federal or state wildlife agency, including but not limited to deer, poisonous reptiles, alligators, monkeys, lions and tigers as defined as non-domesticated by Massachusetts General Laws Chapter 131, Section 23 and 321 CMR 9.00.

#### **1.4. GENERAL REQUIREMENTS**

- 1.4.1. All applications must be submitted to the Board of Health for review and approval, and shall meet the criteria set forth in Sections 4 and 5 of this regulation.
- 1.4.2. All structures must comply with the applicable setback requirements for the zoning district in which such structures are located as set forth in the Town of Bedford's Zoning Bylaws, notwithstanding protection accorded by M.G. L. Chapter 40A, Section 3 and the Wetland Protections Act, 310 CMR 10.00.
- 1.4.3. All facilities for the keeping of animals shall be securely fenced so as to prevent the escape of animals therefrom.
- 1.4.4. All permitted animals must be confined to the property for which a permit is granted unless the permit holder has documented in writing to the satisfaction of the Board, including obtaining any necessary permissions, any and all arrangements for such animals to be temporarily kept elsewhere (i.e. for grazing, pest control, etc.).
- 1.4.5. In accordance with M.G.L. Chapter 111, Section 125A, "... the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally accepted farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance."
- 1.4.6. Household pets are exempt from this regulation with the exception that the Board may impose a permit requirement in situations where animals are kept in unreasonable numbers or in conditions that may result in a public nuisance or recognized hazard to the health and welfare of the Town of Bedford.

#### **1.5. PERMIT AND APPLICATION REQUIREMENTS**

- 1.5.1. A permit is required for anyone keeping one or more animals as defined in this regulation, except on commercial farms which meet the requirements of M.G.L. Chapter 40A, Section 3 and/or M.G.L. Chapter 128, Section 1A.
- 1.5.2. The keeping of less than seven (7) chickens shall not require a permit.
- 1.5.3. Application(s) for a permit shall be submitted on a form supplied by the Board of health for each location where animals are kept in Bedford. Such application(s) shall be accompanied by the following information, and will be deemed incomplete if any information, plan or fee is missing:
1. Name, mailing address and telephone number of all owners of the property.
  2. Name, mailing address and telephone number of all occupants of the property.
  3. Location – street address of the premises to be used.

4. Number and species of animals to be kept.
    - a) If the permit holder intends to increase the number and species of animals to be kept prior to the end of the permit year, the permit owner must notify the Board of Health and the Board may require a public hearing if the Board believes that the increase will materially change the application upon which the permit was based.
  5. A plot plan, with dimensions of the area where animals will be kept. Also required on the plot plan are the locations of the primary residence, structure(s) (including fences), abutting structure(s), corrals, septic system, private wells and wetlands. A hand-drawn plot plan is acceptable so long as it is of sufficient detail and quality to allow for Board review.
  6. A written management plan for the following:
    - a) manure management
    - b) storage of feed
    - c) pest management
  7. Application fee as indicated on the current Board of Health schedule of fees.
  8. Said permit shall not be transferable as to other animals, or assignable or transferable for the use of other persons or the use of other premises.
- 1.5.4. Said permit shall expire on December 31st of each year, unless sooner revoked or suspended by the Board for violation of any of the provisions of this regulation. A permit holder must apply for a renewal of the permit at least thirty (30) days prior to the expiration of said permit. If a permit holder (under the prior regulation or this regulation) fails to timely apply for a renewal of the permit, said permit holder's application shall be treated as an application for a new permit. The permit holder shall notify the Board of any changes in the number and type of species authorized by the permit during the permit year.
  - 1.5.5. If the permit holder is not the owner of the property, documentation must be provided indicating that the property owner permits the keeping of animals on the property. The permit holder shall notify the Board of any changes to the occupancy and ownership of the property during the permit year.
  - 1.5.6. All permits issued for the keeping of animals prior to the adoption of this regulation shall be valid, and may be renewed subject to the regulation in effect prior to the adoption of this new regulation providing conditions and agreements contained in the original applications have not changed, and that no conditions exist that would be injurious to public health, safety or welfare, or which restrict the normal use and enjoyment of contiguous property. All renewals of permits subsequent to the adoption of this regulation shall be subject to the current schedule of fees.
  - 1.5.7. All new applications for a permit to keep animals and all variance requests submitted after April 1, 2017 will be considered by the Board only after the Board conducts a public hearing. Notice of public hearing shall be provided, at the applicants' expense, by first class mail to all abutters (see definition of abutter) and by legal notice in a local newspaper of general circulation. Both methods of notice shall provide at least fourteen (14) days' notice prior to the public hearing. The applicant shall submit a list of abutters, certified by the Town Board of Assessors, with the application. Such certification shall be conclusive for all purposes.

- 1.5.8. The burden shall be upon the applicant to establish that the granting of a permit shall not be detrimental in any way to the public welfare and would not endanger the health or safety of the municipality, and that all applicable requirements of this regulation have been satisfied. The Board may deny a permit application if the applicant does not satisfy such burden. The Board may impose conditions, safeguards and other limitations on a permit consistent with the public health, safety and welfare.
- 1.5.9. The following animals are prohibited within the Town of Bedford: 5.9.1 Roosters, cockerels and non-exempt wild animals, in accordance with M.G.L. Chapter 131, Section 23.
- 1.5.10. The permit applicant acknowledges that the MDAR's Division of Animal Health requires that if an animal contracts a disease designated in its reportable disease program, it must be reported to MDAR's reportable disease program.
- 1.5.11. It shall be a condition of any permit issued under this regulation that the permit holder shall comply with all applicable federal, state and local laws, regulations, and other requirements.

## **1.6. CONSTRUCTION AND CONSTRUCTION CHANGES**

- 1.6.1. No person shall erect, occupy, use, rebuild, reconstruct, alter or structurally change a stable, accessory structure or corral intended for the housing or confining of animals without submitting an initial or revised plan to the Board for its review and approval. The plan shall include references to MDAR's GAAPs and best management practices derived from the indicated resources in Section 1.3.12.
- 1.6.2. It is the responsibility of the Applicant to comply with Bedford's Zoning Bylaws and the applicable Building Code when conducting construction or construction changes referenced in Section 1.6.1.

## **1.7. PENALTIES**

- 1.7.1. If there is a violation of this regulation, a representative of the Board of Health or its agent may issue a written order ("Order") to the person or persons having control of the premises and to the permit holder (if different) to correct the offending deficiencies.
- 1.7.2. As an alternative to an Order or in the event that a person does not comply with an Order and such Order is not modified or withdrawn, the Board may commence an enforcement action to correct such violation(s).
- 1.7.3. In accordance with Massachusetts General Laws Chapter 111, Section 31, any violation of this regulation shall be subject to fine. Each day the violation continues shall be considered a separate offense. Nothing contained herein shall preclude the Board from seeking equitable relief to enforce this regulation.
- 1.7.4. The Board may suspend, revoke or deny a permit if a permit holder is found to be in violation of any provision of this regulation by the Board.

## **1.8. HEARINGS**

- 1.8.1. Any person to whom an Order has been served pursuant to Section 7 above, shall have the opportunity to request a hearing before the Board. A request must be made in writing within fourteen (14) days after the Order has been served. For purposes of this section, an Order shall be deemed to have been served on the date of mailing, except as stated otherwise on the Order. At the hearing, the person served with the Order may be given an opportunity to present evidence and to show why an Order should be modified or withdrawn.

**1.9. VARIANCES**

- 1.9.1. Variance to any section of this regulation may be requested in writing to the Board. When such a request is received, a hearing shall be scheduled in accordance with Section 1.5.7 above.
- 1.9.2. Variances shall be granted only under the following conditions:
  - 1.9.2.1. Strict enforcement of this regulation will constitute a manifest injustice AND the granting of the variance shall not in any way impair the public health and safety or the environment.
- 1.9.3. The Board may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

**1.10. SEVERABILITY**

- 1.10.1. If any provision of this regulation is declared by a court of competent jurisdiction to be invalid or not enforceable, the other provisions shall not be affected thereby but shall continue in full force and effect

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## **ARTICLE 2. BATHING BEACHES**

- 2.1 Permitting and enforcement pursuant to 105 CMR 445 State Sanitary Code Chapter VII: Minimum Standards for Bathing Beaches, which are hereby incorporated by reference.

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## **ARTICLE 3. REGULATIONS ON BIOSAFETY AND THE USE OF REGULATED BIOLOGICAL AGENTS**

### **3.1. PURPOSE**

In order to safeguard the health and welfare of the citizens of the Town of Bedford (the “Town”), the Town of Bedford Board of Health hereby promulgates this Regulation governing the use of all Regulated Biological Agents (as defined herein) in the Town. The use of Regulated Biological Agents as defined herein requiring Biosafety Level 3 (“BSL-3”) and Biosafety Level 4 (“BSL-4”) containment shall not be permitted in the Town of Bedford.

All research or manufacturing involving Regulated Biological Agents, as defined below, in the Town of Bedford shall be undertaken only in strict conformity with the most recent edition or version of the “NIH Guidelines”, CDC’s “Biosafety in Microbiological and Biomedical Laboratories (BMBL),” and all other health regulations as the Board of Health may from time to time promulgate. For the purposes of this regulation, research or manufacturing will not include clinical or healthcare services or professional analytical services that directly support clinical or healthcare services.

### **3.2. DEFINITIONS**

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

- 3.2.1. Regulated Biological Agents mean: any microorganisms including, but not limited to, mammals, plants, bacteria, viruses, fungi, rickettsiae or protozoa, or any infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance that is:
1. identified as any “Recombinant and Synthetic Nucleic Acid Molecule” in Section I-B (Definition of Recombinant DNA Molecules) of the most recently adopted revision of the NIH Guidelines, defined below under “Guidelines”;
  2. classified as a Risk Group 3 through 4 Agent by the NIH Guidelines (as defined below); or
  3. identified by the United States Department of Health and Human Services (“DHHS”) or the United States Department of Agriculture (“USDA”) as a “Select Agent” (as defined below).
- 3.2.2. Biosafety Level or BSL means: physical containment as defined in Appendix G-II (Physical Containment Levels) of the latest amendment of the NIH Guidelines and the latest edition of BMBL.
- 3.2.3. Biological Risk Group means: the Risk Group for any biological pathogen as defined in subsection II-A-1 (Risk Groups) of the latest amendment of the NIH Guidelines and as specified in the latest edition of the BMBL. This designation pertains to the natural risk to human health and the likelihood of transmission associated with the unaltered form of that biological agent.
- 3.2.4. Guidelines mean:
1. NIH Guidelines for Research Involving Recombinant DNA Molecules published in the Federal Register of March 5, 2013, and any subsequent Federal amendments thereto; and,
  2. Biosafety in Microbiological and Biomedical Laboratories (BMBL) 5th or most recent edition; and,

3. any amendments, revisions, new editions or substitutions to the NIH Guidelines or the BMBL, unless otherwise noted herein. 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 Bedford.
- 3.2.5. Institution means: Any public or private entity including Federal, State, and local governmental agencies.
- 3.2.6. Institutional Biosafety Committee (IBC) means: A committee that (i) meets the requirements for membership specified in the Guidelines and (ii) reviews, approves, and oversees projects in accordance with the responsibilities as defined in the Guidelines.
- 3.2.7. Principal Investigator means: An individual who has primary responsibility for the design, execution, and management of a research project and who will be involved in the project in a significant manner. The Principal Investigator is responsible for full compliance with the Guidelines and for ensuring that all reporting requirements are fulfilled.
- 3.2.8. Exempt Recombinant DNA Experiments means: As defined in the "NIH Guidelines", Section III-F (Exempt Experiments), those experiments (e.g. research with e. coli K-12) that are not subject to those guidelines, but are subject to the practices and standards provided by the CDC in Biosafety in Microbiological and Biomedical Laboratories. These experiments shall be reviewed by the Institutional Biosafety Committee and shall be reported to the Bedford Board of Health on a form titled "REGISTRATION OF EXEMPT RECOMBINANT DNA EXPERIMENTS" and included on the detailed table required in Section 2.4.2, 4.
- 3.2.9. Select Agents means: Any microbial and toxic agents listed at 42 Code of Federal Regulations (CFR) §73.3, 42 CFR § 73.4, 42 CFR § 73.5, 42 CFR § 73.6, 7 CFR § 331.3 and 9 CFR §121.4, and the rulings made by the CDC and the USDA relative thereto, as such regulations and rulings may be amended from time to time. However, Select Agent shall not include any de minimus amount of agents or toxins which are excluded from 42 CFR 73.00 et seq.
- 3.2.10. Significant deviation means: Any deviation that might have an adverse effect on personal or public health.

### **3.3. INSTITUTIONAL BIOSAFETY COMMITTEE**

- A. This regulation requires that each institution applying for a permit under these Regulations form an Institutional Biosafety Committee (IBC), as defined by the NIH Guidelines and shall include as members representatives of the institution, the Director of Public Health of the Town of Bedford or his/her designee, plus one additional community representative appointed by the Board of Health, who shall be a resident of Bedford.
- 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 substantial undisclosed financial interest in the applying or permitted institution, or any other institution in competition therewith. 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 Guidelines (specifically the NIH Guidelines), the IBC, acting on behalf of a permitted entity, shall review and approve all work involving rDNA for compliance with those

Guidelines. This process shall include completion of a comprehensive risk assessment, as required by the Guidelines. The IBC will additionally be responsible for reviewing all work with other Regulated Biological Agents to assure compliance with the standards set forth in the Guidelines as defined herein. A description of each project or protocol approved by the IBC, indicating the assigned biosafety containment level, and the rationale for designation of that BSL, and a statement certifying that the experiment conforms with the Guidelines shall be filed with the Board of Health.

- E. All information sent to the Board of Health may 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.

### **3.4. PERMITS**

- 3.4.1. All institutions planning to use Regulated Biological Agents must obtain a permit from the Board of Health before commencing said work. All permits are issued for one year and may be revoked for cause.
- 3.4.2. Institutions seeking such a permit from the Board of Health shall submit the following, to the Board of Health in an electronic format (.pdf):
1. A completed Application for Permit or Permit Renewal.
  2. Project Summaries or Registration Forms for all work involving Regulated Biological Agents (both exempt and non-exempt under the NIH Guidelines).
  3. A plan for orienting representatives of the Bedford Health, Fire and Police Departments to the physical plant and to procedures to be utilized in the event of an emergency. This documentation must include a plot plan showing the location of the permitted facility with all points of entry clearly indicated, the location of the facility on a local map, and a floor plan showing the internal layout of the facility with specific biological containment and non-biological laboratory areas, biological waste storage areas, and biological waste removal routes clearly indicated.
  4. A detailed table in a format provided by the Board of Health, including at a minimum: a listing of all organisms, the source or the organism, whether the organism is used in an exempt or non-exempt rDNA experiment, BSL, and standard decontamination procedures to be employed during proper decommissioning of laboratory areas.
  5. A protocol for strain verification of all potentially pathogenic organisms being used within the permitted facility, or sufficient documentation to demonstrate that such a screening process has been completed by another laboratory, in order to insure the proper characterization of the virulence, replication competence, and extent of resistance to therapeutic antibiotics.
  6. Designation of the appropriate BSL by the IBC that is consistent with the Guidelines, inclusive of a comprehensive appropriate risk assessment completed by the IBC.
  7. An updated and complete roster of names, addresses, phone numbers, e-mail addresses, and a recent resume for each IBC member, including the Community Representative.
  8. A plan for treatment or management of all biological waste that is consistent with the requirements of 105 Code of Massachusetts Regulations (CMR) 480, Minimum Requirements for the Management of Medical or Biological Waste.

9. A treatment and/or monitoring plan and signed vendor agreement for systematic pest control management in laboratories, contiguous facilities and food service establishments in any and all segregated buildings.
  10. 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 and consistent with the Guidelines for all persons engaged in the use of Regulated Biological Agents. Such programs shall include, but shall not necessarily be limited to:
    - a) Oversight by an occupational health physician.
    - b) Consideration of work with Regulated Biological Agents and all substances and materials subject to Article 50 of the Town of Bedford by-laws (Control and Management of Hazardous Materials).
    - c) Consideration of workers from susceptible populations (e.g., pregnant or immunocompromised).
    - d) Reporting within 30 days to the IBC and Board of Health of a confirmed or suspect clinical result of any employee illness that is potentially related to Regulated Biological Agents and all substances and materials subject to Article 50 of the Town of Bedford by-laws (Control and Management of Hazardous Materials).
    - e) 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.
  11. A laboratory training program including safeguards and safety procedures for laboratory personnel upon hire and annually thereafter.
  12. The name(s), email address(es) and business and emergency phone numbers of the Principal Investigator(s) who shall be responsible for enforcing the guidelines.
  13. Written authorization to allow inspection of facilities and pertinent records by the Board of Health, its agent(s) and employees, and any independent consultant(s) that may be retained by the Board of Health.
- 3.4.3. The Board of Health shall review the institution's application for a permit and supporting documents. The Board of Health shall take final action on the permit application within 45 days after the application is filed electronically with the Board of Health, provided a date for an Institutional Biosafety Committee meeting, including the Board of Health representative, is scheduled within that timeframe. The period within which final action shall be taken may be extended for a definite period by mutual consent of the Board of Health and the applicant. Should an IBC meeting fail to be held as scheduled, a permit will not be issued or renewed by the Board of Health and a Cease and Desist order for use of regulated biological agents may be issued until such time as the IBC meeting is held.
- 3.4.4. The fee for a permit granted by the Board of Health, or annual renewal thereof, shall be \$500.00.
- 3.4.5. Upon closing an institution that was permitted by the Board of Health under these regulations, the institution must submit a report to the Board of Health indicating that the facility was properly decommissioned; including, but not limited to, cleaning and sanitizing drain lines and tanks, removal of all hazardous materials and wastes and removal of all biological material and wastes.

Upon receipt of this documentation, the Board of Health may conduct a final inspection of the facility.

### **3.5. INSPECTION AND REVIEW**

- 3.5.1. All institutions involved in the use of Regulated Biological Agents shall allow inspection of their facilities, procedures and practices by the Board of Health, its agent(s) and employees, and any independent consultant(s) that may be retained by the Board of Health, in order to confirm compliance with this regulation.
- 3.5.2. The Board of Health shall retain the authority to designate an independent consultant, professionally competent, paid for by the institution, to perform inspections and reviews. Frequency of inspections will be reasonably determined by the Board of Health in accordance with the risk associated with the regulated activity. The results shall be reported to the Board of Health, and the institution involved.
- 3.5.3. The Board of Health, its agent(s) and employees, and any independent consultant(s) retained to perform inspections shall maintain the confidentiality of all proprietary information released to them by reason of these regulations.

### **3.6. RESTRICTIONS**

- 3.6.1. Biological research, manufacturing or processing that has been determined by the IBC to require BL3 and BL4 containment shall not be permitted in the Town of Bedford.
- 3.6.2. Experiments for which containment levels are not prescribed in the Guidelines, must be assigned an appropriate containment level after the completion of a comprehensive risk assessment by the members of the IBC either independently or in consultation with an outside agency or consultant.
- 3.6.3. Use of more than 5,000 liters of live culture of any Regulated Biological Agent(s) shall not be permitted unless a variance has been obtained from the Bedford Board of Health.
- 3.6.4. Precautions shall be followed in order to prevent the release of viable biological organisms into the environment (i.e. sewers, storm drains, or aerosol releases) and to comply with all provisions of 105 CMR 480, Minimum Requirements for the Management of Medical or Biological Waste.
- 3.6.5. 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 accident or risk of illness or major release to the environment related to the use of Regulated Biological Agents if that release constitutes a violation of 105 CMR 480 and/or involves the release of a viable and potentially infectious agent. An additional inspection of facilities and procedures may be deemed necessary by the Board of Health based upon its judgment of the nature and extent of the problem.

### **3.7. PENALTIES**

- 3.7.1. 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.
- 3.7.2. If, in the opinion of the Board of Health, the use Regulated Biological Agents causes a nuisance or adversely affects the public health, safety and welfare in Bedford, 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.

3.7.3. In addition to the foregoing penalties, the Board of Health shall have the right to enforce these Regulations through an equitable action in a court of competent jurisdiction.

**3.8. ASSESSMENTS**

3.8.1. Upon initial application, a fee of \$2,000 shall be supplied to the Town of Bedford to be held in an account for the salaries and expenses paid by the Town for inspections, reviews, staff and consultants for work directly related to carrying out the requirements of these regulations. An accounting of these costs will be furnished annually to each institution if used. At no time shall the balance held in that account fall below \$1,000 at the time of annual permit renewal. The remaining funds held in this account shall be returned upon submission to the Bedford Board of Health of an appropriate decommissioning report.

**3.9. SEVERABILITY**

3.9.1. Each part of these regulations is construed as separate to the end that if any section, item, sentence, clause or phrase is held invalid for any reason, the remainder of these regulations shall continue in full force and effect.

**3.10. VARIANCE**

3.10.1. Variances from these Regulations may be authorized by a two-thirds vote the Board of Health after notice and public hearing if the Board reasonably determines that the relief sought will not be detrimental or injurious to the public health.

## **ARTICLE 4. BODY ART REGULATIONS**

### **4.1. PURPOSE**

- 4.1.1. Whereas body art is 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 Bedford passes these rules and regulations for the practice of body art in the Town of Bedford as part of our mission to protect the health, safety and welfare of the public.

### **4.2. AUTHORITY**

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

### **4.3. DEFINITIONS**

- 4.3.1. 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.
- 4.3.2. Applicant means any person who applies to the Board of Health for either a body art establishment permit or practitioner permit.
- 4.3.3. Autoclave means an apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.
- 4.3.4. Autoclaving means a process which results in the destruction of all forms of microbial life, including highly resistant spores, by the use of an autoclave for a minimum of thirty minutes at 20 pounds of pressure (PSI) at a temperature of 270 degrees Fahrenheit.
- 4.3.5. Blood borne Pathogens Standard means OSHA Guidelines contained in 29 CFR 1910.1030 entitled "Occupational Exposure to Blood borne Pathogens."
- 4.3.6. Board of Health or Board means the Bedford Board of Health including the Board or its assigned agents.
- 4.3.7. Body Art means the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing and tattooing. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which are not covered by these regulations.
- 4.3.8. 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.
- 4.3.9. 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.
- 4.3.10. Body Piercing means puncturing or penetrating the skin of a client with pre-sterilized single-use needles and the insertion of pre-sterilized jewelry or other adornment into the opening. This

definition excludes piercing of the earlobe with a pre-sterilized single-use stud-and-clasp system manufactured exclusively for ear piercing.

- 4.3.11. 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.
- 4.3.12. 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.
- 4.3.13. 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.
- 4.3.14. Client means a member of the public who requests a body art procedure at a body art establishment.
- 4.3.15. 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 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 materials.
- 4.3.16. 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. This term includes microblading.
- 4.3.17. Disinfectant means a product registered as a disinfectant by the U.S. Environmental Protection Agency (EPA).
- 4.3.18. Disinfection means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.
- 4.3.19. Ear Piercing means the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system following manufacturer instructions.
- 4.3.20. 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.
- 4.3.21. Exposure means an event whereby there is an eye, mouth or other mucous membrane, non-intact skin or parenteral 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.
- 4.3.22. Guest Practitioner means a visiting body art practitioner possessing a temporary license issued by the Board to perform Body Art in the Town of Bedford.
- 4.3.23. 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.
- 4.3.24. Hot Water means water that attains and maintains a temperature 110o-130oF.



- 4.3.25. 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.
- 4.3.26. 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.
- 4.3.27. Jewelry means any ornament inserted into a newly pierced area, surgical implant stainless steel of American Society for Testing and Material Standards grade F138, surgical implant solid 14K or 18K white or yellow gold, niobium, surgical implant titanium of Ti6A4V ELI, American Society for Testing and Material Standards F-136-98, platinum or other materials considered by the Board to be equally bio-compatible and capable of adequate cleaning and Sterilization shall be inserted into a Client.
- 4.3.28. Light colored means a light reflectance value of 70 percent or greater.
- 4.3.29. Minor means any person under the age of eighteen (18) years.
- 4.3.30. 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 whereas one desires to or actually does conduct body art procedures.
- 4.3.31. Operator means any person who individually, or jointly or severally with others, owns, or controls and establishment, but is not a body art practitioner.
- 4.3.32. 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.
- 4.3.33. 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-ability companies, associations, trusts or unincorporated organizations.
- 4.3.34. Physician means an individual licensed as a qualified physician by the Board of Registration in Medicine pursuant to M.G.L c. 112 & 2.
- 4.3.35. 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.
- 4.3.36. Sanitary means clean and free of agents of infection or disease.
- 4.3.37. Sanitize means the application of a U.S. EPA registered sanitizer on a cleaned surface in accordance with the label instructions.
- 4.3.38. 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.

- 4.3.39. 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.
- 4.3.40. 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.
- 4.3.41. 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.
- 4.3.42. Sterilize means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.
- 4.3.43. 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.
- 4.3.44. 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 and microblading.
- 4.3.45. Temporary Body Art Establishment means any location, place, facility or business whereby an operator has been granted a permit to operate a body art establishment for no more than a period of seven (7) consecutive days. The term Temporary Body Art Establishment does not include a Mobile Body Art Establishment. An applicant for a Temporary Body Art Establishment permit shall not receive more than two consecutive seven (7) day permits during a 30-day period. Persons practicing Body Art at any Temporary Body Art Establishment must be licensed by the Board.
- 4.3.46. 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.
- 4.3.47. 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.
- 4.3.48. 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.

#### **4.4. EXEMPTIONS**

- 4.4.1. 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.

4.4.2. Individuals who pierce only the exterior anatomy of the ear are exempt from these regulations.

#### **4.5. RESTRICTIONS**

4.5.1. No tattooing, piercing of nipple or genitalia, branding, scarification or micropigmentation shall be performed on an individual under the age of eighteen (18). This rule is absolute and NOT subject to any exceptions. Accordingly, parental consent does NOT constitute an exception.

4.5.2. Body piercing shall not be performed on a minor under the age of fourteen (14). Body piercing, other than piercing of the nipple or genitalia, may be performed on a minor who has obtained the age of fourteen (14) but is under the age of eighteen (18) provided that a properly identified parent or legal guardian who accompanies the Minor signs a form consenting to such procedure. Properly identified shall mean a valid photo identification of the parent or legal guardian and a birth certificate of the minor. A copy of the document indicating the legality of custodial and/or guardian right shall be kept in the client's file within the records of the establishment. This rule is absolute and NOT subject to any exceptions.

4.5.3. Ear piercing may be performed on any person under eighteen (18) provided that person is accompanied by a properly identified 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. A copy of the document indicating the legality of custodial and/or guardian right shall be kept in the client's file within the records of the establishment. This rule applies to piercing of the exterior anatomy of the ear only.

4.5.4. Use of a Piercing Gun is prohibited at all times.

4.5.5. No body art shall be performed upon an animal.

4.5.6. The following body piercings are hereby strictly prohibited on persons of all ages: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercing, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; The form of Body Piercing known as "pocketing;" 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 gland is 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 – including but not limited to so-called "triangles."

4.5.7. The following practices hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; three dimensional body art including beading and implantation; tooth filing/fracturing/removal; cartilage modification; branding; scarification; amputation; genital modification; and, introduction of saline or other liquids.

#### **4.6. OPERATION OF BODY ART ESTABLISHMENTS**

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

##### **4.6.1.1. 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, where instruments and sharps are assembled and all cleaning areas.
6. All electrical outlets in operation 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 preventer 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 after each client. Solid waste shall be stored in covered, leak proof, rodent-resistant containers and shall be removed from the premises at least weekly.
12. At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-contaminated liquid

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

13. All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.
14. The establishment shall have an equipment cleaning area. Every cleaning area shall have an area for the placement of an autoclave located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit. This area shall be exclusive and separate of any procedure area and/or workstation.
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.
18. No operator shall permit the use of a Body Art Establishment for any other use, which in the opinion of the Board may cause the contamination of instruments, equipment, a procedure surface or workstation.

#### 4.6.1.2. Requirements for Single Use Items Including Inks, Dyes, Pigments and Jewelry

1. Single-use items shall not be used on more than one client for any reason. After use, all single-use sharps shall be immediately disposed of in approved sharps containers pursuant to 105 CMR 480.000.
2. All products applied to the skin, such as but not limited to body art stencils, applicators gauze and razors shall be single use and disposable.
3. Hollow bore needles or needles with cannula shall not be reused.
4. All inks, dyes, pigments, solid core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.
5. Inks, dyes or pigments may be mixed and may only be diluted with sterile potable water, unless prohibited or not recommended by the product manufacturer. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic caps. Upon completion of the tattoo, these single -use cups or caps and their contents shall be discarded.
6. Jewelry shall be sterilized, free from polishing compounds, free from nicks, scratches, burrs or irregular surface conditions. Jewelry of 16 Gage girth or thicker shall not have raised external threads or threading. Jewelry shall be in good condition, designed and manufactured for insertion into the intended body part of

the Client. The use of previously worn Jewelry or Jewelry brought into the Body Art Establishment by the Client or another is prohibited. Only Jewelry manufactured of surgical implant stainless steel of American Society for Testing and Material Standards grade F138, surgical implant solid 14K or 18K white or yellow gold, niobium, surgical implant titanium of Ti6A4V ELI, American Society for Testing and Material Standards F-136-98, platinum or other materials considered by the Board to be equally bio-compatible and capable of adequate cleaning and Sterilization shall be inserted into a Client.

#### 4.6.1.3. Sanitation and Sterilization Measures and Procedures

1. All non-disposable instruments used for body art 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. 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 (permitted for the practice of tattoo only) uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
8. When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized sterile techniques to ensure that the instruments and gloves are not contaminated.

#### 4.6.1.4. Posting Requirements

The following shall be prominently displayed within the establishment:

1. A Disclosure Statement, a model of which shall be available from the Board. The Disclosure Statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures. (Exhibit A)
2. The name, address and phone number of the Bedford 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 individual practitioner's permit.

#### 4.6.1.5. Establishment Recordkeeping

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

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 Safety Data Sheet, when available, for each ink and dye used by the establishment;
  - g) Copies of waste hauler manifests;
  - h) Copies of commercial biological monitoring tests;
  - i) Exposure Incident Report (kept permanently); and,

- j) A copy of these regulations.
2. Employee information, which shall include:
- a) Full legal names and exact duties;
  - b) Date of birth;
  - c) Home address;
  - d) Home/work phone numbers;
  - e) Identification photograph;
  - f) Dates of employment;
  - g) Hepatitis B vaccination documentation or proof of immunity; and
  - h) Training records.
3. Client Information, which shall include:
- a) Name;
  - b) Age and documentation that valid photo identification was reviewed;
  - 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(B)(2);
  - h) If the client is a person under eighteen (18) and is at the establishment for the purpose of ear piercing, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian; and,
  - i) If the client has obtained the age of fourteen (14) but is under the age of eighteen (18) and is at the establishment for the purpose of body piercing an area not restricted in Section 5, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian and a birth certificate of the minor.

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.

4.6.1.6. Body Art Establishment name, address or ownership change

Changing of a Body Art Establishment name, address or ownership requires a written request be submitted to the Board.

1. The Board may issue a new permit reflecting the new name or the new address of the establishment. The permit number and its expiration date shall remain the same.
2. A new permit shall be obtained under this regulation prior to an establishment operating after a change of the ownership.
3. A new permit shall be issued for the sole use and benefit of the licensed operator to whom it was issued and shall not be transferrable to another person.
4. The new location of the establishment shall meet all the requirements of this Body Art Regulation.
5. Should an operator of a Body Art Establishment die, the establishment permit shall remain in effect for 120 days following the operator's death to allow for orderly determination of the sale or closure of the establishment.

4.6.1.7. Temporary Body Art Establishments

A Temporary Body Art Establishment permit may only be obtained by the operator of a licensed body art establishment after submitting an application for establishment of a temporary facility. Such application must contain the location, the operating days, hours of operation of the temporary facility and the plans/description of the temporary facility. No permit for a temporary body art establishment may be issued for more than seven (7) consecutive days. An applicant for a Temporary Body Art Establishment permit shall not receive more than two consecutive seven (7) day permits during a 30-day period. All applications for Temporary Body Art Establishment permits will be reviewed by the Board in accordance with their regular monthly meeting schedule. Persons practicing Body Art at any Temporary Body Art Establishment must be licensed by the Board.

**4.7. STANDARDS OF PRACTICE**

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

1. A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S. Center for Disease Control and Prevention.
2. A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash his or her hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.
3. In performing body art procedures, a practitioner shall wear disposable single-use gloves. Gloves shall be changed if they become pierced, torn or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client

and hands shall be washed in accordance with section 7.A.2. before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program.

4. 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 Town in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
5. 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.

4.7.2. 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;
  - d) Sensitivities to soaps, disinfectants etc.;
  - e) History of allergies or adverse reactions to pigments, dyes, or other sensitivities;
  - f) History of epilepsy, fainting, or narcolepsy;
  - g) Use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and
  - h) 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(E).

4.7.3. A practitioner shall be required to comply with the following restrictions:

1. A practitioner shall refuse service to anyone who a reasonable person would consider to be under the influence of alcohol or drugs.
2. Practitioners who use pre-sterilized single use stud and clasp 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.

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

1. Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
  2. Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blade shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
  3. In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.
  4. 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.
- 4.7.5. 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 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 phone number of the establishment.
  3. A copy of aftercare instructions shall be provided to the client. A model set of aftercare instructions shall be made available by the Board (Exhibit B).
- 4.7.6. Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waster, State Sanitary Code, Chapter VIII.

#### **4.8. EXPOSURE INCIDENT REPORT**

- 4.8.1. 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 include, but not be limited to the following information:

- A. A copy of the application and consent from for body art activity completed by any client or minor client involved in the exposure;

- B. A full description of the exposure incident, including the portion of the body involved therein;
- C. Instrument(s) or other equipment implicated;
- D. A copy of body art practitioner license of the involved body art practitioner;
- E. Date and time of exposure;
- F. A copy of any medical history released to the body art establishment or body art practitioner; and,
- G. Information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

**4.9. INJURY AND/OR COMPLICATION REPORTS**

- 4.9.1. A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint or 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 injury/complication report shall include, but not be limited to the following information:

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

**4.10. COMPLAINTS**

- 4.10.1. The Board shall investigate complaints received about an establishment or practitioner’s practices or acts, which may violate any provision of the Board’s regulations.
- 4.10.2. 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 and permit holder in writing of this finding and the reasons on which it is based.
- 4.10.3. 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 act or practice is in violation of the Board’s regulations, the Board pursuant to Section 16, shall apply whatever enforcement action is appropriate to remedy the situation and shall notify the complainant and permit holder in writing of its action in this matter.

**4.11. APPLICATION FOR BODY ART ESTABLISHMENT PERMIT**

- 4.11.1. No person may operate a body art establishment except with a valid Body Art Establishment permit from the Board.
- 4.11.2. Residential Body Art establishments will NOT be permitted in the Town of Bedford.

- 4.11.3. 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.
- 4.11.4. An establishment permit shall be valid from the date of issuance and shall expire no later than one (1) year from the date of issuance unless revoked sooner by the Board. This permit shall be automatically renewed upon the submission of an application and payment of the annual fee, established by the Board and payable to the Town of Bedford, within two (2) weeks prior to the expiration date. Initial permit fee is payable upon issuance of permit.
- 4.11.5. 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;
  2. The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;
  3. A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board’s body art regulations.
  4. A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process;
  5. Exposure Report Plan;
  6. Client Disclosure Statement;
  7. Client Aftercare instructions; and
  8. Such additional information as the Board may reasonably require.
- 4.11.6. A permit for a body art establishment shall not be transferable from one place or person to another. Each body art establishment will comply with all applicable zoning bylaws and regulations, to include site plan review.

**4.12. APPLICATION FOR BODY ART PRACTITIONER PERMIT**

- 4.12.1. All Body Art practitioners, including tattoo artists, piercers, cosmetologists performing microblading/micropigmentation, etc., must hold a valid practitioner permit from the Board. The Board shall set a reasonable fee for such permits.
- 4.12.2. A Body Art practitioner shall be a minimum of 18 years of age.
- 4.12.3. A Body Art practitioner permit shall be valid from the date of issuance and shall expire no later than one (1) year from the date of issuance unless revoked sooner by the Board.
- 4.12.4. Application for a Body Art 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. Hepatitis B vaccination documentation or proof of immunity.

#### 4.12.5. Body Art Practitioner Training and Experience

Training for all Body Art Practitioners shall be approved by the Board and, at a minimum, shall include the following:

1. One of the following blood borne pathogen training programs which includes infectious disease control; waste disposal; hand-washing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques:
  - a) “Preventing Disease Transmission” (American Red Cross)
  - b) “Blood-borne Pathogen Training” (U.S. OSHA).
2. Current certification in First Aid and Cardiopulmonary Resuscitation (CPR).
3. The applicant for a Body Art Practitioner Permit shall provide documentation that she/he completed, a course in Anatomy and Physiology with a grade of C or better from an accredited, post-secondary institution. This course must include instruction on the integumentary system (skin). The applicant shall demonstrate that the course provided a general explanation of symptoms of any skin disease potentially caused through Body Art activity and an opportunity for interactive questions and answers with the instructor of the training session. Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the course in Anatomy and Physiology.
4. Any of the following may be used to document satisfactory evidence of actual experience in the Body Art for which the applicant seeks a license to perform:
  - a) Copies of license(s) issued by another state or city/town in another state showing the applicant has been licensed and practiced in that state for at least two years.
  - b) Copies of license(s) issued by another city/town within the Commonwealth of Massachusetts showing the applicant has been licensed and practiced for at least two years.
  - c) Copies of license(s) issued in another country showing the applicant has been licensed and practiced for at least two years.
  - d) Signed letter from a Bedford-licensed body art practitioner or a practitioner licensed elsewhere in the Commonwealth of Massachusetts (including a copy of that artist’s license) stating that the applicant has satisfactorily completed an

apprenticeship equivalent to at least two years of full time employment (2,400 hours) or longer in a permitted Body Art Establishment including observation of work being performed and supervised practice on at least 100 clients. This letter must be accompanied by a copy of the applicant's previous Bedford body art apprentice license if the apprenticeship was served in Bedford.

- e) Applicants for permanent cosmetics only (microblading, micropigmentation, permanent makeup, etc.) who do not have any of the above documentation (12.E.4.a.-d.) may instead provide all of the following:
  - (1) Certificate of successful completion/passing a training course of at least 100 hours of instruction time and certified/accredited by either the American Academy of Micropigmentation (AAM) or the Society of Permanent Cosmetic Professionals (SPCP). The applicant must also provide documentation of the training course including the training institution contact information, documentation of AAM or SPCP certification/accreditation, and a copy of the course curriculum (schedule or table of contents only, not complete materials) showing that the course content includes, at a minimum:
    - (2) Overview of relevant anatomy and physiology
    - (3) Sanitation, hygiene, and disinfection including infection control and needle stick procedures
    - (4) Taking a client's medical history and contraindications to body art
    - (5) Equipment operation and maintenance
    - (6) Anesthetics
    - (7) Color theory and aesthetics
    - (8) Detailed training on each procedure
    - (9) Hands-on practice of at least 3 complete procedures (two eyebrows is a single procedure) on living clients
- f) Signed letter from a Bedford-licensed body art practitioner or a practitioner licensed elsewhere in the Commonwealth of Massachusetts (including a copy of that artist's license) stating that the applicant has completed at least 200 hours of apprenticeship including 30 hours observing procedures being performed and performing at least 50 complete supervised procedures on clients. If the apprenticeship was done in Bedford, a copy of the applicant's apprentice license must also be submitted.

4.12.6. By signing the Body Art Practitioner Permit Application, the applicant agrees to submit to a Sex Offender Registry Board (SORB) query.

- 1. The Town of Bedford will request Sex Offender Registry Information directly from the SORB.
- 2. SORB results will be submitted directly to the appropriate Town of Bedford official for consideration.

3. The Town of Bedford will use SORB results to determine an applicant's appropriateness for a Body Art Practitioner Permit.
  4. If, based upon SORB results, an applicant is denied a Body Art Practitioner Permit, he or she will be notified in writing.
  5. All SORB results will remain confidential.
  6. Town Bedford Applicants will be required to submit to a SORB check each time they reapply for renewal of Body Art Practitioner Permit. Renewal of a Body Art Practitioner Permit will not be granted until applicant has agreed to submit to a SORB check.
- 4.12.7. A Body Art Practitioner shall only conduct body art activities within a facility with a current Body Art Establishment Permit and which establishment is in compliance with all provisions of the Body Art Regulations set forth by the Town of Bedford Board of Health.
  - 4.12.8. A Body Art Practitioner shall notify the Board of Health in writing prior to starting employment at an establishment other than that listed on initial application. This also applies to any temporary employment.
  - 4.12.9. A Body Art practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations
  - 4.12.10. Applications are considered incomplete if they fail to contain all items referenced in 3.12.4 – 3.12.6.
  - 4.12.11. The Board will not consider an application until it is complete.
  - 4.12.12. The fee for the Body Art Practitioner Permit shall be determined by the Board, payable to the Town of Bedford upon issuance of the permit. This permit is valid for one (1) year and is not transferable.

#### **4.13. APPLICATION FOR GUEST TATTOO PRACTITIONER**

- 4.13.1. The Board of Health may, at their discretion, issue a thirty (30) day temporary permit to an individual holding a license or similar certificate or registration to engage in the practice of tattooing issued under the jurisdiction of another Town, county, or state of the United States. Such a temporary permit will allow a person to practice tattooing in an authorized Body Art Establishment in the Town of Bedford under the direct supervision of a tattoo practitioner holding a valid Tattoo Practitioner permit issued by the Board.

The issuance of a Guest Tattoo Practitioner permit is conditioned upon the applicant demonstrating the following:

- A. The applicant has received training equivalent to the minimum training for tattoo requirement set by this Body Art Regulation;
- B. The applicant shall provide:
  1. A letter of consent signed by a Body Art Practitioner, licensed in Bedford, MA, authorizing the Guest Practitioner to practice under his/her supervision in an authorized Body Art Establishment for Tattoo in the Town of Bedford.
  2. A notarized copy of the Body Art Practitioner permit.
  3. A notarized copy of the Body Art Establishment permit where the applicant will practice any Body Art procedures.



- a) A fee, as determined by the Board of Health upon issuance of permit;
- b) A completed application from the Board of Health.
- c) The applicant will submit to a SORB request under the same terms as a permanent application.
- d) Conditions of section 12.B.-F. must be met and reviewed by the Board of Health at Regularly scheduled meeting thirty (30) days in advance of the proposed effective date of the requested Guest Practitioner permit. It is the responsibility of the applicant to supply all information thirty (30) days prior to the meeting. No visiting Body Art Practitioner shall practice Body Art in the Town of Bedford without a Guest Practitioner permit issued by the Board.
- e) Any Tattoo Practitioner authorized by the Board requesting to have a Guest Tattoo Practitioner perform under his/her supervision shall:
  - (i) Notify the Board in writing at least thirty (30) days in advance of the proposed effective date of the requested Guest Practitioner permit;
  - (ii) Require that the visiting practitioner obtain a Guest Practitioner permit from the Board of Health.

**4.14. BODY ART PRACTITIONER APPRENTICESHIP**

4.14.1. A person may apply for a Body Art practitioner apprenticeship permit in order to complete training required to obtain a Body Art practitioner permit.

4.14.2. An apprentice practitioner shall be a minimum of 18 years of age.

4.14.3. Application for an apprentice practitioner permit shall include:

1. Name;
2. Date of Birth;
3. Residence Address;
4. Mailing Address;
5. Phone Number;
6. Place of Apprenticeship;
7. Hepatitis B vaccination documentation or proof of immunity; and
8. Training and/or experience as set out in (D) below.

4.14.4. Apprentice Practitioner Training and Experience

Training shall include the following:

1. One of the following blood borne pathogen raining programs, which includes infectious disease control, waste disposal, hand-washing techniques, sterilization equipment operation and methods, sanitation, disinfection and sterilization methods and techniques:
  - a) “Preventing Disease Transmission” (American Red Cross)
  - b) Blood borne Pathogen Training” (U.S. OSHA).
2. Current certification in first aid and Cardiopulmonary Resuscitation (CPR).
3. The applicant for apprentice practitioner permit shall provide documentation that she/he completed, a course in Anatomy and Physiology with a grade of C or better from an accredited, post-secondary institution. This course must include instruction on the integumentary system (skin). The applicant shall demonstrate that the course provided a general explanation of symptoms of any skin disease potentially caused through Body Art activity and an opportunity for interactive questions and answers with the instructor of the training session. Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the course in Anatomy and Physiology.
4. A valid permit for an establishment and/or licensed practitioner must be maintained for 1 year in the Town of Bedford prior to a licensed practitioner at the establishment serving as a supervisor to an apprentice. The establishment and the practitioners must have no violations or validated complaints for one (1) year in the Town of Bedford prior to submittal of an apprentice license application from an establishment.
5. Once an apprentice practitioner permit has been obtained, the applicant must complete and document the completion of the apprentices’ requirements, prior to applying for a body art practitioner permit.
6. The apprentice must be sponsored by a licensed practitioner throughout his/her entire training. Each licensed body art practitioner may supervise only one apprentice at a time.
7. Each establishment may have a maximum of two apprentice practitioners.
8. The owner of an establishment must obtain liability insurance that would be inclusive of all apprentices working at the establishment at any given point.
9. The fee for the apprentice practitioner permit shall be established by the Board, payable upon issuance of the permit.
10. All regulations, grounds for suspension, denial, revocation, refusal to renew permit and fines within this Body Art Regulation apply to the apprentice practitioner

#### 4.14.5. Body Art Practitioner Apprenticeship requirements:

1. Apprenticeship must be performed under the supervision of a licensed Body Art practitioner with a valid practitioner permit in the Town of Bedford. Tasks must be considered mastered by the supervising practitioner before any body art procedures may be performed by the apprentice.
2. The Apprentice must provide evidence satisfactory to the Board of at least two years actual experience in the practice of performing Body Art activities of the kind for which the applicant seeks a Body Art Practitioner License to perform, whether such experience was obtained within or outside of the Commonwealth, or evidence of a completed

apprenticeship program as approved by the Board. Two years' experience is defined as 2,400 hours of actual experience.

3. Once the requirements in 14.E.2. are completed, an apprentice practitioner may proceed with body art practice, under the supervision of the body art practitioner who has a valid permit. Written consent must be obtained from the client, acknowledging, understanding that the apprentice practitioner is in an apprentice training program.
  4. Before any person acting under a Body Art Apprentice Permit conducts any form of body art upon a client, such person must obtain the client's written consent. This written consent shall be physically affixed to the application. Such written consent shall be maintained by the supervising practitioner throughout the apprenticeship program.
- 4.14.6. Documentation of the completion of procedures and hours as above must be provided by way of sworn affidavit from the Body Art Establishment permit holder where the apprentice has received his/her training as well as by the license practitioner, if the parties are different. (Exhibit C)

#### **4.15. GROUNDS FOR PERMIT SUSPENSION, DENIAL OR REVOCATION OR REFUSAL TO RENEW PERMIT**

- 4.15.1. The Board may suspend a permit, deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for suspension, denial, revocation or refusal to renew:
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;
  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; or,
  10. Other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice body art.
- 4.15.2. The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board intends to deny, revoke, or refuse to renew a permit. The

applicant, establishment or practitioner shall have seven (7) days after receipt of such written notice in which to comply with the Board's regulations. The Board may deny, revoke or refuse to renew a permit, if the applicant, establishment or practitioner fails to comply after said seven (7) days subject to the procedure outlined herein.

4.15.3. The Board may summarily suspend a permit pending a final hearing on the merits on the question of revocation if, based on the evidence before it, the Board determines that an establishment and /or a practitioner is an immediate and serious threat to the public health, safety or welfare, if the establishment and /or a practitioner is operating in violation of any of the within regulations or any other reason the Board deems worthy of suspension. The suspension of a permit shall take effect immediately upon written notice of such suspension by the Board.

4.15.4. Applicants denied a permit may reapply at any time after denial.

#### **4.16. VIOLATIONS**

4.16.1. It shall be the responsibility of the permit holder to ensure compliance with all sections of this regulation pertaining to performing body art or operating a body art establishment. The violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00).
2. In the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the practitioner and/or establishment permit shall be suspended for seven (7) consecutive business days.
3. In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and the practitioner and/or establishment permit shall be suspended for thirty (30) consecutive business days.

4.16.2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the establishment permit for thirty (30) consecutive business days.

4.16.3. In addition to the monetary fines set above, any permit holder who engages in the practice of body art in the Town of Bedford while his or her permit is suspended shall be subject to the suspension of all permits issued by the Board of Health or its designated agent(s) for thirty (30) consecutive business days.

4.16.4. The Bedford Board of Health shall provide notice of the intent to suspend a Body Art Practitioner and/or Establishment permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. After a hearing, the Bedford Board of Health shall suspend the Body Art Practitioner and/or Establishment permit if the Board finds that this regulation has been violated.

#### **4.17. NON-CRIMINAL DISPOSITION**

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

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

**4.18. ENFORCEMENT**

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

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

**4.19. SEVERABILITY**

4.19.1. IF ANY PROVISION CONTAINED IN THE MODEL REGULATIONS IS DEEMED INVALID FOR ANY REASON, IT SHALL BE SEVERED AND SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PROVISIONS.

**4.20. EFFECTIVE DATE**

4.20.1. These rules and regulations shall be effective as of November 1, 2019.

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**ARTICLE 5. BURIAL**

- 5.1.** Issuance of permits pursuant to M.G.L., Chapter 114, Section 45: Burial permits; permits for removal of bodies; certificates of death; deceased veterans.

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**ARTICLE 6. FOOD**

- 6.1.** Permitting and enforcement pursuant to 105 CMR 590 of the State Sanitary Code and the 2013 Food Code recommended by the United States Public Health Service, which are hereby incorporated by reference.

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**ARTICLE 7. HAULERS**

- 7.1.** Issuance of permits pursuant to M.G.L, Chapter 111, Section 31A: Permit for removal or transportation of garbage; application; exemptions.

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**ARTICLE 8. HAZARDOUS MATERIALS – COMMERCIAL/CONTINGENCY PLAN SUBMITTALS**

8.1 Enforcement pursuant to The General Bylaws of the Town of Bedford, Article 49: Control and Management of Hazardous Materials.

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**ARTICLE 9. HOTEL/MOTEL**

- 9.1 Enforcement and licensure pursuant to M.G.L, Chapter 140, Section 32B: Grant, suspension or revocation of license; expiration; renewal; application fees; inspection; reinstatement; and Section 32C: Examination of licensed camps and cabins; unsanitary conditions.

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## **ARTICLE 10. HOUSING**

- 10.1 Enforcement pursuant to 105 CMR 410 State Sanitary Code Chapter I: General Administrative Procedures and Chapter II: Minimum Standards for Fitness and Human Habitation, which are hereby incorporated by reference.

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## **ARTICLE 11. LEAD PAINT**

- 11.1 Enforcement pursuant to 105 CMR 410.502 and 105 CMR 410.750(J) – MA State Sanitary Code, Mass General Law, Chapter 111, Section 197 and 105 CMR 460.000 – MA DPH Lead Poisoning Prevention and Control Regulation which are hereby incorporated by reference.

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**ARTICLE 12. NUISANCE**

- 12.1.** Enforcement pursuant to 310 CMR 7: Air Pollution Control and The General Bylaws of the Town of Bedford, Article 37: Noise Regulations.

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**ARTICLE 13. POOLS**

- 13.1.** Permitting and enforcement pursuant to 105 CMR 435 of the State Sanitary Code Chapter V, Sanitary Standards for Swimming Pools, which are hereby incorporated by reference.

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## **ARTICLE 14. PRIVATE WELLS**

### **14.1. DEFINITIONS**

Unless otherwise noted below, the following terms shall have the following definitions throughout all of Article 16.

- 14.1.1. Agent: Any person designated and authorized by the Board to execute these regulations. The agent shall have all the authority of the Board and shall be directly responsible to the Board and under its direction and control.
- 14.1.2. Applicant: Any individual, corporation, association, trust, or partnership who intends to have a Private Well constructed.
- 14.1.3. Aquifer: A water bearing geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells and springs.
- 14.1.4. Board: The Board of Health of Bedford, Massachusetts.
- 14.1.5. Business of Digging or Drilling: A person who charges a fee for digging or drilling a well, or a person who advertises for hire the availability to dig or drill wells within the Commonwealth of Massachusetts.
- 14.1.6. Certified Laboratory: Any laboratory currently certified by the Department of Environmental Protection for analysis of drinking water in Massachusetts. Provisional certification shall also qualify.
- 14.1.7. Monitoring Well: A well designated to facilitate down-hole measurement of groundwater and/or gas levels and/or the collection of groundwater and/or gas samples. A Monitoring Well shall not be used to supply water.
- 14.1.8. Private Well: Any dug, driven, or drilled hole, with a depth greater than its largest surface diameter, developed to supply water and not subject to regulation by 310 CMR 22.00.
- 14.1.9. Private Drinking Water Well: A Private Well intended and/or used for human consumption.
- 14.1.10. Private Irrigation Well: A Private Well serving water to irrigate lawns, shrubs, trees, vegetables, ornamental plants and other such items. Irrigation well water shall NOT serve as water intended for human consumption.
- 14.1.11. Pumping Test: A procedure used to determine the characteristics of a well and adjacent aquifer by installing and operating a pump.
- 14.1.12. Registered Well Driller: Any person registered with the Department of Environmental Management/Office of Water Resources to dig or drill wells in the Commonwealth of Massachusetts.
- 14.1.13. Static Water Level: The level of water in a well under non-pumping conditions.
- 14.1.14. Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, fence, or the like.

## 14.2. WELL CONSTRUCTION PERMIT/REGISTRATION

14.2.1. Approval to construct a Private Well from the Board is required as follows.

1. For a Private Drinking Water Well the Applicant shall obtain a permit from the Board. A completed Private Well Application must be filed with and approved by the Board.
2. For a Private Irrigation Well the Applicant must register with the Agent. A completed Private Irrigation Well Application must be filed with and approved by the Agent.
3. Monitoring Wells may be constructed without a permit or registration if constructed in accordance with the Department of Environmental Protection Standard Reference for Monitoring Wells (1992, 1999; et seq.).

14.2.2. Each permit application and each registration application shall include the following:

1. The property owner's name and address
2. The well driller's name and proof of valid state registration
3. A plan with a specified scale showing the location of the proposed well in relation to existing or proposed above or below ground structures.
4. A description of visible prior and current land uses within two-hundred (200) feet of the proposed well location, which represent a potential source of contamination, including but not limited to the following:
  - a) Existing and proposed structures
  - b) Subsurface sewage disposal systems
  - c) Subsurface fuel storage tanks
  - d) Public ways
  - e) Utility rights-of-way
  - f) Any other potential sources of pollution.
5. A permit/registration fee in accordance with Appendix B of the Bedford Board of Health Code of Regulations.

14.2.3. Well Construction Permits and Well Construction Registrations are not transferable.

14.2.4. Private Wells shall not be permitted within the Zone I protection area of any public water supply well in Bedford as defined per 310 CMR 22.00.

14.2.5. The Board/Agent may grant the Applicant's application for permit/registration, when in its opinion the construction of a Private Well will not result in harm to the public health or local environment. The Board may deny the application if it appears the construction will result in harm to the public health or environment. The Board may also request additional information from the Applicant before rendering a decision.

Note: Copies of Private Well applications will be furnished to the Bedford Department of Public Works, Conservation Commission and Building Department. The Applicant shall comply with all



other applicable local, state and federal laws, statutes and regulations. It is the responsibility of the Applicant to consult with the Bedford Department of Public Works, Conservation Commission and Building Department to determine if any other bylaws or regulations mandate additional requirements or conditions.

14.2.6. All Private Wells shall be constructed in accordance with the Massachusetts Department of Environmental Protection Private Well Guidelines (2001; et seq.).

### **14.3. WATER SUPPLY CERTIFICATE**

14.3.1. The issuance of a Water Supply Certificate by the Board shall certify that the Private Drinking Water Well may be used as a drinking water supply. A Water Supply Certificate must be issued for the use of a Private Drinking Water Well prior to the issuance of an occupancy permit for an existing structure or prior to the issuance of a building permit for new construction which is to be served by the well.

14.3.2. The following shall be submitted to the Board to obtain a Water Supply Certificate:

1. A copy of the Water Well Completion Report as required by the DEM Office of Water Resources (313 CMR 3.00)
2. 20.1.1 A copy of the Pumping Test Report required pursuant to Section 8.5 of these regulations
3. 20.1.2 A copy of the Water Quality Report required pursuant to Section 8.6 of these regulations

14.3.3. Upon the receipt and review of the above documents, the Board shall make a final decision on the application for a Water Supply Certificate. A final decision shall be in writing and shall comprise one of the following actions:

1. Issue a Water Supply Certificate. All Water Supply Certificates issued by the Board shall include the following disclaimer: "The issuance of a Water Supply Certificate shall not be construed as a guarantee by the Board or its Agent that the water system will function satisfactorily nor that the water supply will be of sufficient quality or quantity for its intended use."
2. Deny the Applicant a Water Supply Certificate and specify the reasons for the denial.
3. Issue a conditional Water Supply Certificate with those conditions which the Board deems necessary to ensure fitness, purity and quantity of the water derived from that Private Well. Said conditions may include but not be limited to requiring treatment or additional testing of the water.

### **14.4. WELL LOCATION AND USE REQUIREMENTS**

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

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

- 14.4.3. Each Private Well shall be located at least ten (10) feet from any property line. The centerline of a well shall, if extended vertically, clear any projection from an adjacent structure by at least five (5) feet.
- 14.4.4. All Private Wells shall be located a minimum of 25 feet from the normal driving surface of any public roadway or a minimum of 15 feet from the road right-of-way, whichever is greater.
- 14.4.5. Each Private Well shall be located at least 25 feet, laterally, from the normal high water mark of any lake, pond, river, stream, ditch, or slough. When possible, private wells shall be located in areas above the 100-year floodplain.
- 14.4.6. A suction line or well shall be located a minimum of 10 feet from a building sewer constructed of durable corrosion resistant material with watertight joints, or 50 feet from a building sewer constructed of any other type of pipe; 50 feet from a septic tank; 100 feet from a leaching field; and 100 feet from a privy.
- 14.4.7. Water supply lines shall be installed at least 10 feet from and 18 inches above any sewer line. Whenever water supply lines must cross sewer lines, both pipes shall be constructed of class 150 pressure pipe and shall be pressure tested to assure watertightness.
- 14.4.8. The Board reserves the right to impose minimum lateral distance requirements from other potential sources of contamination not listed above. All such special well location requirements shall be listed, in writing, as a condition of the well construction permit.
- 14.4.9. No Private Well, or its associated distribution system, shall be connected to the distribution system of a public water supply system.

#### **14.5. WATER QUANTITY REQUIREMENTS**

- 14.5.1. For a Private Drinking Water Well the Applicant shall submit to the Board for review and approval a Pumping Test Report. The Pumping Test Report shall include the name and address of the well owner, well location referenced to at least two permanent structures or landmarks, date the pumping test was performed, depth at which the pump was set for the test, location for the discharge line, static water level immediately before pumping commenced, discharge rate and, if applicable, the time the discharge rate changed, pumping water levels and respective times after pumping commenced, maximum drawdown during the test, duration of the test, including both the pumping time and the recovery time during which measurements were taken, recovery water levels and respective times after cessation of pumping, and reference point used for all measurements.
- 14.5.2. In order to demonstrate the capacity of the well to provide the Required Volume of water, a pumping test shall be conducted in the following manner:
  - a) The volume of water necessary to support the household's daily need shall be determined using the following equation:  $(\text{number of bedrooms plus one bedroom}) \times (110 \text{ gallons per bedroom}) \times (\text{a safety factor of } 2) = \text{number of gallons needed daily}$ .
  - b) The storage capacity of the well shall be determined using the measured static water level and the depth and radius of the drillhole or casing.
  - c) The Required Volume shall be calculated by adding the volumes of water in (a) and (b) above. It is this volume of water that must be pumped from the well within a 24-hour period.

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

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

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

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

- 1)  $4 \text{ bedroom house} + 1 \text{ bedroom} = (5 \text{ bedrooms}) \times (110 \text{ gallons per bedroom}) \times (\text{safety factor of } 2) = 1,100 \text{ gallons needed daily.}$
- 2)  $\text{the volume of a 6-inch well is } 1.5 \text{ gallons for every foot of water column length. Therefore, } (100 \text{ ft. of standing water}) \times (1.5 \text{ gal/ft.}) = 150 \text{ gallons.}$
- 3)  $1,100 \text{ gallons} + 150 \text{ gallons} = 1,250 \text{ gallons that must be pumped from the well in 24 hours or less to demonstrate suitable capacity. Recovery up to 85\% of the static water level must also occur within 24 hours after cessation of pumping.}$

## **14.6. WATER QUALITY TESTING REQUIREMENTS**

- 14.6.1. Prior to the use of a Private Well the Applicant must conduct water quality testing in compliance with regulations 16.6.2 through 16.6.6. All costs and laboratory arrangements for the water testing are the responsibility of the Applicant.
- 14.6.2. A water sample shall be collected either after purging three well volumes or following the stabilization of the pH, temperature and specific conductance in the pumped well. The water sample to be tested shall be collected at the pump discharge or from a disinfected tap in the pump discharge line. In no event shall a water treatment device be installed prior to sampling.
- 14.6.3. The required water quality test, utilizing an applicable US EPA approved method for drinking water testing shall be conducted by an EPA or Massachusetts certified laboratory and shall include analysis for the parameters specified in 8.6.6 and the results shall not exceed Massachusetts drinking water standards for public water supplies:
- 14.6.4. Following receipt of the water quality test results, the applicant shall submit a Water Quality Report to the Board which includes:
1. A copy of the certified laboratory's test results
  2. 25.1.1 The name of the individual who performed the sampling
  3. 25.1.2 Where in the system the water sample was obtained

14.6.5. The Board reserves the right to require re-testing of the specified parameters, or testing for additional parameters when, in the opinion of the Board, it is necessary due to local conditions or for the protection of the public health, safety and welfare.

14.6.6. Analysis of water from a Private Drinking Water Well shall include all of the parameters listed below. Analysis of water from a Private Irrigation Well shall include the Volatile Organic Compounds and Metals listed below.

**Coliform Bacteria**

- Metals**  
 Antimony  
 Arsenic  
 Barium  
 Beryllium  
 Cadmium  
 Chromium  
 Lead  
 Copper  
 Mercury  
 Selenium  
 Thallium

- Other Inorganic Compounds**  
 Asbestos  
 Cyanide  
 Flouride  
 Nitrate  
 Nitrite  
 Total Nitrate and Nitrite

- Volatile Organic Compounds**  
 Benzene  
 Carbon Tetrachloride  
 Dichloromethane o-  
 Dichlorobenzene para-  
 Dichlorobenzene 1,2-  
 Dichloroethane cis-1,2-  
 Dichloroethylene trans-  
 1,2-Dichloroethylene  
 1,1 Dichloroethylene  
 1,2-Dichloropropane  
 Ethylbenzene  
 Monochlorobenzene  
 Styrene  
 Tetrachloroethylene  
 Toluene  
 Trichloroethylene  
 1,1,1-Trichloroethane  
 1,2,4-Trichlorobenzene  
 1,1,2-Trichloroethane  
 Vinyl Chloride  
 Xylenes (total)

- Radionuclides**  
 Gross Alpha Activity  
 Radium -226 & 228  
 Uranium  
 Radon

- | <b><u>Synthetic Compounds</u></b> | <b><u>Organic</u></b> |
|-----------------------------------|-----------------------|
| Alachlor                          |                       |
| Atrazine                          |                       |
| Benzo(a)pyrene                    |                       |
| Carbofuran                        |                       |
| Chlordane                         |                       |
| Dalapon                           |                       |
| Di(2-ethylhexyl)adipate           |                       |
| Di(2-ethylhexyl)phthalate         |                       |
| Dinoseb                           |                       |
| Diquat                            |                       |
| Dibromochloropropane (DBCP)       |                       |
| 2,4-D                             |                       |
| Endothall                         |                       |
| Endrin                            |                       |
| Ethylene Dibromide (EDB)          |                       |
| Glyphosate                        |                       |
| Heptachlor                        |                       |
| Heptachlor epoxide                |                       |
| Hexachlorobenzene                 |                       |
| Hexachloropentadiene              |                       |
| Lindane                           |                       |
| Methoxychlor                      |                       |
| Oxamyl (Vydate)                   |                       |
| Polychlorinated biphenyls (PCBs)  |                       |
| Pentachlorophenol                 |                       |
| Picloram                          |                       |
| Simazine                          |                       |
| 2,3,7,8-TCDD (Dioxin)             |                       |
| Toxaphene                         |                       |
| 2,4,5-TP (Silvex)                 |                       |
| Total Trihalomethanes             |                       |

## **14.7. DECOMMISSIONING REQUIREMENTS**

- 14.7.1. Abandoned wells, test holes, and borings shall be decommissioned so as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.
- 14.7.2. The owner of the Private Well shall decommission the well if the well meets any of the following criteria:
- a) construction of the well is terminated prior to completion of the well
  - b) the well owner notifies the Board that the use of the well is to be permanently discontinued.
  - c) the well has been out of service for at least three years
  - d) the well is a potential hazard to public health or safety and the situation cannot be corrected
  - e) the well is in such a state of disrepair that its continued use is impractical
  - f) the well has the potential for transmitting contaminants from the land surface into an aquifer or from one aquifer to another and the situation cannot be corrected
- 14.7.3. The owner of the Private Well shall be responsible for ensuring that all abandoned wells and test holes or borings associated with private well installation are properly plugged in accordance with the Massachusetts Department of Environmental Protection Private Well Guidelines (2001; et seq.). Only registered well drillers may plug abandoned wells, test holes, and borings.

## **ARTICLE 15. SEPTIC**

- 15.1.** Permitting and enforcement pursuant to 310 CMR 15: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of on-site sewage treatment and disposal systems and for the transport and disposal of septage, which are hereby incorporated by reference.

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## **ARTICLE 16. PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES**

### **16.1 PURPOSE**

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

### **16.2 AUTHORITY**

16.2.1 This regulation is promulgated under the authority granted to the Bedford Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or health regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or political subdivision of the commonwealth.”

### **16.3 DEFINITIONS**

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

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

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

16.3.3 Employee: an individual or person who performs a service for compensation for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a de minimus amount of time.

16.3.4 Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Bedford

16.3.5 Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

16.3.6 Membership association (also known as a private club): A not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization

incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

- 16.3.7 Mobile Food Unit: a vehicle-mounted food establishment designed to be readily movable.
- 16.3.8 Municipal Building/Vehicle: Any building, facility or vehicle owned, operated, leased or occupied by the Town of Bedford.
- 16.3.9 Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.
- 16.3.10 Retail tobacco store: an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 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 Bedford Board of Health.
- 16.3.11 Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.
- 16.3.12 Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Massachusetts General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".
- 16.3.13 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, 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.
- 16.3.14 Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer; other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.
- 16.3.15 Work Space: An enclosed area occupied by an employee during the course of his/her employment.

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



## 16.4 SMOKING PROHIBITED

- 16.4.1 It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
- 16.4.2 Smoking is hereby prohibited in Bedford in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-Free Workplace Law”).
- 16.4.3 Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
1. Mobile food units
  2. A fifteen foot (15’) buffer zone of an entranceway to an enclosed workplace in a public building, including municipal buildings/vehicles, and/or an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product
  3. Automobile repair and maintenance establishments
  4. Bed and Breakfast, Hotel and Motel Rooms
  5. Membership Associations
  6. Nursing Homes
  7. Free Standing Kiosks
  8. Smoking Bars
  9. Retail Tobacco Stores
  10. Public Transportation, Bus and Taxi Waiting Areas
  11. Clubs or rooms when used for public meetings
  12. Outdoor spaces that have a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed, when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoking into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.
  13. Theatrical performances upon a stage or in the course of a professional film production unless permission has been obtained from the Bedford Board of Health
  14. Town-owned recreation areas/land including swimming areas, Springs Brook Park, recreational playgrounds and athletic fields including the use of all tobacco products
- 16.4.4 The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

## **16.5 ENFORCEMENT**

- 16.5.1 A person who smokes in a location listed in Section 4 shall be subject to a fine of \$100.
- 16.5.2 An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
1. \$100 for the first violation;
  2. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
  3. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- 16.5.3 Each calendar day on which a violation occurs shall be considered a separate offense.
- 16.5.4 This regulation shall be enforced by the Board of Health and its designees.
- 16.5.5 Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- 16.5.6 Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- 16.5.7 If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- 16.5.8 Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

## **16.6 SEVERABILITY**

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

## **16.7 CONFLICT WITH OTHER LAWS OR REGULATIONS**

- 16.7.1 Notwithstanding the provisions of Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

## **16.8 EFFECTIVE DATE**

- 16.8 This regulation shall be effective as of June 1, 2018.

## ARTICLE 17 RESTRICTING THE SALE OF TOBACCO PRODUCTS

### 17.1 STATEMENT OF PURPOSE

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

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence.<sup>4</sup>

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

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;<sup>6</sup>

Whereas 18.1 percent of current smokers aged <18 years reported that they usually directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent;<sup>7</sup>

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives<sup>8</sup>.

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<sup>1</sup> Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

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

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

<sup>4</sup> *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

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

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

<sup>7</sup> CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: [www.cdc.gov](http://www.cdc.gov).

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

Whereas cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth;<sup>9</sup>

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

Whereas 59% of high school smokers in Massachusetts have tried flavor cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored<sup>11</sup>;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;<sup>12</sup>

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,<sup>13</sup> largely because these flavored products were marketed to youth and young adults,<sup>14</sup> and younger smokers were more likely to have tried these products than older smokers<sup>15</sup>, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;<sup>16</sup>

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

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

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

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

<sup>13</sup> 21 U.S.C. § 387g.

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

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

<sup>16</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*,

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;<sup>17</sup>

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;<sup>18</sup>

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them;<sup>19</sup>

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

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one<sup>21</sup>;

Whereas according to the CDC’s youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;<sup>22</sup>

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;<sup>23</sup>

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

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

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[www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf);

U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539,

[www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>17</sup> See fn. 3 at p. 85.

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

<sup>19</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

<sup>20</sup> 310 CMR 30.136

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

<sup>22</sup> See fn. 7.

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

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

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

## **17.2 AUTHORITY**

- 22B.2.1 This regulation is promulgated pursuant to the authority granted to the Bedford Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states “Boards of health may make reasonable health regulations”.

## **17.3 DEFINITIONS**

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

- 17.3.1 Adult-only retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Bedford Board of Health.
- 17.3.2 Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.
- 17.3.3 Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.
- 17.3.4 Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.
- 17.3.5 Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.
- 17.3.6 Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- 17.3.7 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.

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

- 17.3.8 Coupon: Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.
- 17.3.9 Distinguishable: Perceivable by either the sense of smell or taste.
- 17.3.10 Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
- 17.3.11 Employee: Any individual who performs services for an employer.
- 17.3.12 Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.
- 17.3.13 Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.
- 17.3.14 Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.
- 17.3.15 Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.
- 17.3.16 Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.
- 17.3.17 Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.
- 17.3.18 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.

- 17.3.19 Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.
- 17.3.20 Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.
- 17.3.21 Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.
- 17.3.22 Schools: Public or private elementary or secondary schools.
- 17.3.23 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.
- 17.3.24 Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".
- 17.3.25 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.
- 17.3.26 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.

#### **17.4 TOBACCO SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE PROHIBITED**

- 17.4.1 No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Bedford is twenty-one (21).
- 17.4.2 Required Signage:
- a) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available



from the Bedford Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05 (2) (e).

- b) The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Bedford Board of Health that discloses current referral information about smoking cessation.
- c) The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as “tobacco products”, at retail shall conspicuously post a sign stating that “The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

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

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

## **17.5 TOBACCO PRODUCT SALES PERMIT**

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

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

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

- 17.5.4 A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Bedford Board of Health annually.
- 17.5.5 A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- 17.5.6 Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- 17.5.7 A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
- 17.5.8 A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
- 17.5.9 Maximum Number of Tobacco Product Sales Permits.
- a) At any given time, there shall be no more than 8 Tobacco Product Sales Permits issued in Bedford. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.
  - b) A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
  - c) A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.
  - d) Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein.

## **17.6 CIGAR SALES REGULATED**

- 17.6.1 No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.

- 17.6.2 No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.
- 17.6.3 This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Bedford.
- 17.6.4 The Bedford Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

**17.7 SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED**

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

**17.8 PROHIBITION OF THE SALE OF BLUNT WRAPS**

- 17.8.1 No person or entity shall sell or distribute blunt wraps in Bedford.

**17.9 FREE DISTRIBUTION AND COUPON REDEMPTION**

- 17.9.1 No person shall:
1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
  2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
  3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., “buy-two-get-one-free”) or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
  4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

**17.10 OUT-OF-PACKAGE SALES**

- 17.10.1 The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
- 17.10.2 A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Bedford Board of Health with a written plan for disposal of

said product, including disposal plans for any breakage, spillage or expiration of the product.

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

**17.11 SELF-SERVICE DISPLAYS**

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

**17.12 VENDING MACHINES**

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

**17.13 NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES**

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

**17.14 PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY HEALTH CARE INSTITUTIONS**

- 17.14.1 No health care institution located in Bedford shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

**17.15 PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY EDUCATIONAL INSTITUTIONS**

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

**17.16 INCORPORATION OF ATTORNEY GENERAL REGULATION 940 CMR 21.00**

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

**17.17 VIOLATIONS**

- 17.17.1 It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:
- a) In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
  - b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

- c) In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for sixty (60) consecutive business days.
  - d) In the case of four violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.
- 17.17.2 Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
- 17.17.3 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
- 17.17.4 The Bedford Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Bedford Board of Health may suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

**17.18 NON-CRIMINAL DISPOSITION**

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

**17.19 SEPARATE VIOLATIONS**

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

**17.20 ENFORCEMENT**

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

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

**17.21 SEVERABILITY**

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