

REGULATIONS
BOARD OF HEALTH
FAIRHAVEN, MASSACHUSETTS

The Board of Health of the Town of Fairhaven, Massachusetts, under the authority of Chapter III of the General Laws, as amended, hereby adopts the following regulations:

CHAPTER I

Control of Communicable Diseases

Section 1. Control of communicable disease will be effected by strict compliance with Federal and State laws and regulations including, but not limited to, the provisions of Sections 92 through 121A of Chapter III of the Massachusetts General Laws, as amended.

Section 2. A person afflicted with or exposed to a disease dangerous to the public health shall be subject to such restraint as the Board of Health may deem necessary for the protection of the public.

CHAPTER II

Dairy Products

Section 1. Control over the production, transportation, storage and process of dairy products shall be effected through strict compliance with all applicable State and Federal regulations. Such regulations, include, but not limited to Sections 12 through 63 of Chapter 94 of the Massachusetts General Laws, as amended, and the regulations of the Milk Regulations Board.

Section 2. All persons having control over facilities for the production, transportation, storage or processing of dairy products shall notify the Board of Health of any exposure of such facilities or exposure of employees at such facilities to any disease classified as dangerous to the public health under the provisions of Chapter III, Section 6, of the Massachusetts General Laws, as amended. Upon inspection of such facilities, the Board of Health may order the suspension of production or distribution and the sterilization of equipment and facilities.

CHAPTER III

Standards for Food Service Establishments

Section 1. The public health will be protected through the strict enforcement of State and Federal regulations governing Food Service Establishments. Such regulations include, but are not limited to, the provisions of The Federal Food Code and 105 CMR 590.000 of the Massachusetts State Sanitary Code, Chapter X. The Board of Health or its agent may inspect all Food Service Establishments periodically for compliance with applicable regulations.

Section 2. Water used in holding tanks or containers for the keeping of fish, shellfish, lobsters, crabs, or other forms of edible sea life shall be from a source approved by the Board of Health.

Section 3. All persons desiring to conduct catering operations in the Town of Fairhaven shall first obtain a permit for such catering activity from the Board of Health.

Section 4. All Food Service Establishment employees engaged in the preparation or serving of food shall have their hair restrained by a hairnet, a hat or other means acceptable to the Board of Health.

Section 5. Unwrapped food products such as donuts, pastry or loose candy, shall be protected by dust-free containers and shall not be handled by bare hands.

Section 6. All open doors and windows in a Food Service Establishment shall be screened with at least a sixteen-inch mesh screen to prevent and control the breeding and harborage of flies and other insects.

Section 7. All newly constructed, renovated and reoccupied Food Service Establishments shall provide proof of extermination of the premises to the Board of Health prior to the issuance of any permits or licenses.

Section 8. Grease Interceptors.

All existing Food Service Establishments shall have properly sized grease interceptors as required by 248 CMR 2.09(2) Massachusetts Fuel Gas and Plumbing Codes.

All new Food Service Establishments and addition to existing establishments must be connected to Town sewer or onsite sewage system and shall be upgraded to conform to Title V of the State Environmental Code.

In addition to requirements indicated in 248 CMR 2.09(2) Massachusetts Fuel and Plumbing Codes, grease interceptors must be provided at Food Service Establishments as determined by the Board of Health. The capacity of the grease interceptor shall be calculated by the kitchen flow rate of fifteen gallons per seat or chair per day, but in no case shall be less than one thousand gallons. This applies to establishments connecting to Town sewers or establishments with onsite sewage systems.

Section 9. Grease Interceptors and Maintenance

Problems with grease at individual Food Service Establishments constitute a violation of 105 CMR 595.000 State Sanitary Code, Article X, Minimum Sanitation Standards for Food Service Establishments.

All Food Service Establishments must have grease barrels to properly store their grease. All grease must be poured into these barrels, and the grease sold or given to authorize rendering companies or collectors. Employees must be instructed to use the aforementioned containers and not dispose of grease in sinks, toilets, drains, garbage, etc.

All inside grease interceptors must be opened and cleaned on a monthly basis. Management must maintain a maintenance record signed by the food service managers certifying this cleaning has been done.

All outside grease interceptors shall be checked monthly and pumped if required. All grease interceptors must be pumped at an interval not to exceed three months. Maintenance records must be available to the Health Inspector at all times.

CHAPTER IV

Nuisances

Section 1. The owner of any parcel of land, vacant or otherwise, shall be responsible for maintaining such parcel of land in a clean and sanitary condition and free from garbage, rubbish or other refuse. The owner of such parcel of land shall correct any condition caused by or on such parcel or its appurtenance which affects the health and safety or well being of the occupants of any dwelling or of the general public.

Section 2. The occupant of any dwelling unit shall be responsible for maintaining that part of the dwelling, which he exclusively occupies, or controls in a clean and sanitary condition and free of garbage, rubbish, other filth or causes of sickness.

Section 3. Household refuse shall be stored in watertight, rodent proof containers. Such containers shall not be stored in the front yard of any dwelling.

Section 4. No person shall remove or transport garbage, offal, septage or other offensive substances through the streets of Fairhaven without first obtaining a permit from the Board of Health. All such permits shall expire at the end of the calendar year in which they are issued and may be revoked by the Board at any time for cause. All vehicles used to transport offensive materials shall be maintained in a clean and sanitary condition and shall be operated in a manner that prevents the leakage or spillage of offensive materials or odors. Such vehicles shall be subject to periodic inspection by the Board of Health or its agent.

Section 5. Sanitary sewage, grey water, the effluent from any sewage or waste treatment plant, or other polluting water, shall not be discharged into or allowed to flow by means of pipes, drains, etc., into any lake, pond, stream, tidal water, watercourse, or open or covered drain tributary thereto, unless approved by the Massachusetts Department of Environmental Quality Engineering, (or any other state agency) and the Board of Health.

Section 6. The Board of Health shall order the owner or occupant of any private premises at his own expense to remove any nuisance, source of filth or cause of sickness found thereon within twenty-four hours or within such other time as it considered reasonable after notice. If the owner or occupant fails to comply with such order, the Board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall constitute a debt due the Town upon completion of the removal and the rendering of an account therefore to the owner, his authorized agent, or the occupant, and shall be recoverable from such owner or occupant in an action of contract.

Illegal Dumping and/or Littering

No person shall dump, discard, abandon or place: trash, rubbish, debris, scrap, garbage, or offal on any properties in the Town of Fairhaven, except as authorized.

Persons apprehended in committing this act will be considered guilty of littering and/or illegal dumping.

Said person will be punished by a fine of not more than Fifty Dollars (\$50) for each offense.

Commercial Containers for Storing and Handling of Garbage and Rubbish

1. These Regulations govern the use and maintenance of any device used for the storage of garbage or other refuse, which device has a storage capacity of two cubic yards or more. Such device shall be referred to as a dumpster.

2. The sanitary care and sanitary maintenance of the dumpster shall be the responsibility of the user of the dumpster. Sanitary care shall include, but not limited to:

- a. Lid covers shall be kept closed;
- b. Interiors of dumpsters shall be clean and free of encrustation, food bits, scum, debris and the like;
- c. Odors shall be contained and controlled;
- d. No unwrapped food stuffs shall be placed in the dumpster;
- e. Land surrounding the dumpster and in immediate proximity shall be kept clean of any litter.
- f. Any insect and/or rodent infestation resulting from the use of the dumpster shall be properly professionally and immediately eradicated;
- g. Any leakage resulting from the use of the dumpster shall be immediately absorbed by sand, clay, sawdust, or other such material and properly;
- h. Prevention of any other condition dangerous to public health.

3. Placement of the dumpster must not cause any undue harm and not otherwise be likely to be detrimental to public health and must conform to other Town departmental requirements.

4. The owner of a dumpster shall maintain it in good operating condition to void any harm or risk of harm to public health. Good operating condition shall include, but not be limited to:

- A. Operable lid covers;
- B. Smooth, nonporous, easily cleanable interiors and exteriors, free of large rust pockets and holes;
- C. Seams shall be tight so as to not allow leakage;
- D. Dumpsters with drainage holes must have securely fitting caps so as to prevent leakage;
- E. Dumpsters on rollers shall have four operable rollers; and

F. Prevention of any other condition dangerous to public health.

A failure to so maintain any dumpster shall constitute a violation of these Regulations and shall be subject to the provisions of numbers 5 and 9 of these Regulations.

5. A. If the Board of Health determines that a violation of any of these regulations exists, it may so notify the dumpster user and/or dumpster owner or other violator in writing and order that such violation stop or be corrected within a specified amount of time from the date of giving such notice. Failure to stop and/or correct such violations after receipt of notice shall constitute a further violation of the Regulations.

B. The Board of Health acting upon a complaint, or upon its own initiative, may hold a hearing upon notice of the dumpster user and/or dumpster owner to determine whether the size, location, use and physical structure of the dumpster constitutes a harm or risk of harm to public health, or is otherwise in violation of these regulations. Said parties may present evidence at the hearings. The Board shall make its findings in writing. If the Board determines that size, location, use or physical structure of the dumpster constitutes a harm or risk of harm to the public health or is otherwise in violation of these regulations, it may mandate immediate removal of the dumpster by the dumpster owner.

6. All other applicable Rules and Regulations of the Board of Health, Town By-Laws and the State Sanitary Code shall apply to dumpsters.

7. These Regulations do not authorize the disposal of the contents of the dumpster in the Town's sanitary landfill.

8. No person shall transport garbage or other refuse removed from a dumpster in or through the Town of Fairhaven, unless he has first obtained a permit pursuant to the General Laws, Chapter III, Section 31A. The violation of any of these Regulations by the holder of a permit issued pursuant to Massachusetts General Laws, Chapter III, Section 31A, shall be cause for the amendment, revocation or suspension of that permit. Proceedings thereon shall be pursuant to the procedure established by the provisions of number 5(B) of these Regulations.

9. Each violation of these Regulations shall be punished by a fine of Ten Dollars (\$10) for each day such violation exists.

Notice of Rodent Extermination Prior to Demolition

All structures scheduled for demolition and all excavation materials must be certified by a certified pest control operator as rodent free. All contractors' waste, stones, fill, loam, building material scraps, and the like, must be certified free of rodent

infestation before spreading, disturbing or removing. Certification will be made by a licensed pest control operator. This shall apply if materials have been in place over thirty (30) days.

The exterminator shall notify the Board of Health in writing that said structures and excavation materials are free of rodent infestation within a period not to exceed forty-eight (48) hours of demolition.

Prior to any extermination and subsequent demolition, the Board of Health must approve extermination procedures, or any variation hereof.

CHAPTER V

Individual Sewage Disposal Systems

Section 1. Individual sewage disposal systems or other means of sewage disposal shall not be approved where a common sanitary sewer is accessible adjoining the property and where permission to enter such a sewer may be obtained from the authority having jurisdiction over it. The Board of Health may require the owner or occupant of any existing building or buildings, wherever a common sanitary sewer is accessible in an abutting way, to cause such building or buildings to be connected with the common sanitary sewer in a manner and within a period of time satisfactory to the Board of Health.

Section 2. All individual systems for the disposal of sanitary sewage shall be designed, installed and operated in strict compliance with the provisions of Title V of the Massachusetts State Environmental Code, or any other existing applicable codes. Septic tank shall be located not less than ten feet from a building and/or foundation wall, and ten feet from a property line. Leaching area shall be located not less than twenty feet from a building and/or foundation wall and ten feet from a property line.

Section 3. Every owner or agent of premises in which there are any private sewers, individual sewage disposal systems, or other means of sewage disposal shall keep the sewers and disposal systems in proper operational condition and shall have such works cleaned or repaired at such time as ordered by the Board of Health. If the owner or agent of the premises fails to comply with such order, the Board of Health may cause the works to be cleaned or repaired and all expenses incurred to be paid by the owner. Sewage disposal works shall be maintained in a manner that will not create objectionable conditions or cause the works to become a source of pollution to any of the waters of the Commonwealth.

Section 4. A minimum of two deep observation pits and two percolation tests shall be required. The observation pits and percolation tests shall be performed in the area designated as the primary and reserve leaching area. Additional tests will be required. designated as the primary and reserve leaching area. Additional tests will be

required where the soil structure varies or where large disposal areas are required. A mechanical digger shall be utilized.

Section 5. All repairs to existing leaching areas shall require a plan prepared by a professional engineer, or other professionals authorized to prepare septic system plans. All work must be installed in accordance with current state and local regulations. Approved subsurface sewage disposal plans that have not been implemented within two years must be reviewed and updated, if necessary, prior to the issuing of a disposal works construction permit.

Section 6. A permit must be obtained by a licensed disposal works installer before any work on a subsurface sewage disposal system may be executed. Having obtained required permit, the work shall be completed to the satisfaction of the Board of Health within thirty (30) days or the permit shall be automatically canceled. If more time is needed, the installer will be granted a hearing for extension.

Section 7. The contractor shall notify the design engineer at the time of commencement of construction. The engineer will satisfy himself from time to time that work being done is in compliance with engineered plans approved by the Board of Health. Benchmarks and elevations will be checked at this time and so noted.

Section 8. Amend Regulation 15.211(1) Private Water Supply Well on Suction Line” by adding, “The minimum acceptable distance between a well and a leaching facility shall be one hundred and fifty (150) feet.”

The above Section 8 was adopted at a Regular Meeting of the Board of Health held on February 18, 1986, by the unanimous vote of the members of the Board amending the Subsurface Sewage Disposal Regulations to Supplement Title V. The authority to adopt the above is contained in Chapter III, Section 31. These amendments will become effective as of March 1, 1986.

Section 9. **Dewatered/Island Percolation Tests.** Dewatered percolation tests, also known as island percolation tests, whether by the method of pumping or by removing water mechanically with earth-removing equipment, shall not be permitted.

Section 10. No disposal works construction permit for a subsurface sewage disposal system shall be issued until a written certification has been made by the design engineer as to the location and elevation of the foundation as shown on the approved plan. (VOTED April 1, 1986).

Section 11. No building within the Town of Fairhaven shall be converted or altered or repaired so as to enable its use year round, nor shall its use be changed, unless the present existing subsurface sewage disposal system complies with the requirements of Title V, 310 CMR 15.000 and the Fairhaven Board of Health Rules and Regulations, Chapter V, or the system can be brought into such compliance.

In addition, no building shall be reconstructed, replaced, or altered in any manner unless said subsurface sewage disposal system complies with Title V, 310 CMR 15.000, and the Fairhaven Board of Health Rules and Regulations, Chapter V or written approval is obtained from the Board of Health.

Section 12. The owner or occupant of any building upon land served by a private potable well and a subsurface sewage disposal system, which do not meet the minimum separation distance as established under current Board of Health Rules and Regulations, Chapter V, and the Massachusetts Environmental Code, Title V, 310 CMR 15.000 must within six (6) months connect to the municipal water system when said system is adjacent to the parcel of land containing the potable well and subsurface sewage disposal system.

The potable well and all other wells on the property shall be disconnected so as not to create a cross connection between the municipal water system and the well or wells on the property. Said disconnection is to be inspected and approved by the Fairhaven Water Department or its authorized agent.

Section 13. The Board of Health prohibits the use of a septic system chemical additives/cleaners to an on-site subsurface septic system. These products can work their way into the groundwater aquifer and cause contamination.

A list of prohibited chemicals is as follows:

- | | |
|-----------------------------------|-----------------------------|
| 1. Methylene chloride | 8. orthochlorobenzene |
| 2. 1, 1, 1trichloroethane | 9. orthochlorotoluene |
| 3. trichloroethene | 10. dichloromethane |
| 4. tetrachloroethene | 11. petroleum distillates |
| 5. carbon tetrachloride | 12. naphthalene |
| 6. ethylene glycol monophenlether | 13. benzenes |
| 7. acids (ex., H2SO4,A12(SO4)3) | 14. bases (ex., KOH, CuSO4) |

Further, any establishment that sells septic system additives/cleaners must post a notice in the direct vicinity of these products so as to be noticeable to anyone purchasing them. A sample of notice may be obtained at the Board of Health office.

Section 14. Amend Regulation 310 CMR 15.211(l) "Bordering vegetated wetlands (bvww), salt marshes, inland and coastal banks" by adding "The minimum acceptable distance between a wetland, a bvww, salt marsh, inland and coastal bank and a leaching facility shall be one hundred (100) feet.

Wetlands may not be filled to accommodate the setbacks required above. Setbacks are to be measured from the original wetland line and from any proposed replicated wetland area.

(The amendment of this By-Law was VOTED at the Regular Meeting held on November 17, 1997.)

(The adoption of this By-Law) was VOTED at the Regular Meeting of the Board of Health on October 31, 1994.)

CHAPTER VI

WEST ISLAND SEWER ZONE

§ 491-1. Adoption.

This regulation is adopted by the Fairhaven board of Health under M.G.L. c. 111 § 31, to protect the public health, safety and welfare of the residents of West Island in the Town of Fairhaven. This regulation supercedes the regulation adopted by the Board on June 14, 1996.

§ 491-2. Purpose.

A. The purpose of this regulation is to provide for proper drainage and sewerage, to conserve natural resources, and to prevent pollution and degradation of the natural environment.

B. The Town has constructed a sewage treatment system to service portions of West Island. That system was constructed to address a severe threat to human health caused by the failure of numerous septic systems on West Island.

The sewage system outflow is located on land held by the Commonwealth of Massachusetts under conservation restrictions. The Town's use of that land for its sewer system outflow is permitted under a deed of easement granted to the Town on March 18, 1997, and intended (i) to aid the Town in addressing the threat to health caused by the failure of septic systems on West Island, and (ii) to minimize to the greatest extent possible the outflow of effluent from the sewage treatment system onto the Commonwealth's conservation land, so that the land and environment may be preserved to the highest degree possible in its natural and pristine state.

In order to comply with the restrictive easement granted to the Town by the Commonwealth, it is the purpose of these regulations to limit access and use of the West

Island sewer system to only that access and use which is necessary to protect against actual and potential septic system failure for dwellings existing, or permitted but not built, as of January 28, 1996, and to prevent access and use of the West Island sewer system which is unnecessary to that purpose. Therefore, in determining whether access to the sewer system should be allowed to any individual applicant, the capacity of the treatment plant to accommodate increased flow shall not be considered as a factor in support of access to the system.

§ 491-3. Required and Allowed Sewer Connection.

All principal buildings in existence on January 28, 1996 shall be required and allowed to connect to the sewer system if the system abuts the property or lies in the way abutting the property on which the structure was located on January 28, 1996, and if the connection is otherwise within the design limits of the system. The Board of Health shall not approve any upgrade, expansion or replacement of an on-site subsurface sewage disposal system servicing such a principal building if a sanitary sewer abuts the property and approval for connection into the sanitary sewer is granted by the Board of Health and other approving authorities. For the purpose of this regulation a “principal building” is defined as the building in existence and used as a dwelling on a lot, or on adjoining lots in common use or in common ownership, on January 28, 1996, and only one structure on a lot, or on lots in common use or in common ownership, shall be designated the principal building.

§ 491-4. Prohibited Connection, Exception.

- A.** No structure which was not the principal building in existence as defined in §491-3 shall be allowed to connect to the sewer system.
- B.** No accessory structure including, but not limited to, any guest house, in-law apartment, garage, shed or any other structure not sharing a common foundation with the principal building shall be allowed after the effective date of this amended regulation, as set forth in §491-7, to connect to the sewer system, whether by direct connection, or indirectly either through a common (sometimes called a “Y”) connection, or through a connection to the plumbing or wastewater outflow system of any other structure.
- C.** No sewer connection shall be allowed to service a lot, or lots in common ownership or use, unless a principal building existed on that lot or lots on January 28, 1996.
- D.** The foregoing subsection A through C shall not apply to any structure or lot which is the subject of a written approval allowing connection to the sewer line, provided that such approval was issued by the Board of Health prior to the effective date of this amended regulation as set forth in §491-7.

§ 491-5. Construction Limits.

No structure which is directly or indirectly connected to the sewer system shall be increased in size or otherwise altered in such a way as to increase the total number of bedrooms which existed in that structure on January 28, 1996 except that the total number of bedrooms serviced by a single connection to the sewer system may be

increased from one to two with the prior written approval of the Board of Health. For the purpose of this regulation the term "bedroom" shall be defined by 310 CMR 15.002 Bedroom.

§ 491-6. Board of Health Approval.

A. Building. No construction, reconstruction, expansion or alteration of a structure which is, or is intended to be, connected directly or indirectly to the sewer system shall be allowed without prior written approval of the Board of Health. Such approval shall be allowed by the Board if the proposed work is in full compliance with this regulation and all other applicable laws and regulations, and if not in compliance then such approval shall be denied.

B. Connection to the sewer system. No connection shall be made directly or indirectly to the sewer system without the prior written approval of the Board of Health. Such approval shall be allowed by the Board if the proposed connection is in full compliance with this regulation and all other applicable laws and regulations, and if not in compliance then such approval shall be denied.

C. Failure to Approve. Failure of the Board to give written approval within thirty days of receipt of a written request therefore shall be deemed a denial.

§ 491-7. Effective Date.

The original regulation, Chapter VI of the Fairhaven Board of Health Rules and Regulations, was duly adopted by the Board of Health on January 28, 1996. This regulation was further amended on March 1, 2005 and the amended regulation shall take effect upon its publication in summary form in the Legal Notices of Section of The Advocate, with an anticipated publication date of March 10, 2005.

CHAPTER VII

DOMESTIC ANIMALS

Section 1. Owners or occupants of premises keeping domestic animals shall report to the Board of Health annually before January 1. The term domestic animals shall include, but not limited to barnyard animals, horses, cows, goats, sheep, rabbits, swine and poultry.

The Board of Health may require such owners or occupants to obtain a permit to keep certain classes of domestic animals. Such permit shall be subject to the following conditions:

A. The applicant shall notify all abutters in writing of the pending permit application at least fifteen days prior to issuance of the permit. This condition is waived in areas considered suitable for agricultural use.

B. No barn, stable, yard or other facility for the keeping of barnyard animals shall be located closer than twenty feet to any dwelling. Distance from property line is to be determined by the Board of Health

C. Provisions shall be made for the disposal of manure and bedding material in a manner, which will prevent the contamination of surface and groundwaters, prevent infestation by rodents and insects and prevent the release of objectionable odors.

D. Provisions shall be made for the storage of feed in a manner that will prevent infestation by rodents and insects and prevent the release of objectionable odors.

E. Drainage facilities shall be provided as necessary to prevent the accumulation of standing water and to prevent contamination of surface water and groundwater.

F. Access of barnyard animals to surface water bodies shall be restricted as necessary to prevent stream bank erosion and contamination of surface water bodies.

G. The keeping of pigs on any premises shall be limited to not more than two pigs and one litter. A litter shall be defined as the offspring of a single sow from the same pregnancy and being not over six weeks of age.

All permits issued under this section shall expire on the last day of the year in which they are issued and may be revoked by the Board at any time for violation of any of the above conditions.

Section 2. The owner or other persons having control of any barn, stable, yard or other facility for the keeping of barnyard animals shall maintain such facilities in a clean and sanitary condition. Such facilities may be subject to periodic inspection by the Board of Health or its agent.

Section 3. All equine animals within the boundaries of the Town of Fairhaven shall be vaccinated against encephalitis on or before June 1 of each year. A valid certification of vaccination shall be made available to the Board of Health. The Board of Health may require any other vaccination to immunize against diseases common to animal and man.

Section 4. The Board of Health may require that dogs be restrained from entering certain public recreation areas, such as Town playgrounds and beaches. Any such restrictions shall be posted at the site and shall be designed to minimize the transmission of parasites.

Section 5. A permit must be obtained for the keeping and housing of exotics, or animals and birds, commonly held for exhibit. Provisions of Section 1 are applicable.

Section 6. A permit must be obtained for the keeping of game or wild birds and animals. Provisions of Section 1 are applicable.

Section 7. Any person or persons keeping five or more cats within the Town in any building or on any premises of which he may be the owner, lessee, tenant or occupant, shall require a permit for the keeping thereof. This permit shall require the owner to restrain the cats to the premises and shall be granted conditionally and shall be subject to spot inspections by any agent of the Board of Health. A litter of kittens may be kept for a period not to exceed six weeks.

Any person, firm or corporation engaged in the keeping and/or sale of cats and kittens shall be required to secure a permit authorizing the business. All permits will be issued after an on-site inspection by a designated agent of the Board of Health.

CHAPTER VIII

FEE SCHEDULE

CHAPTER IX

MASSAGE REGULATIONS

The Fairhaven Board of Health adopts the following regulations, amending regulations adopted on May 8, 2000, under authority of Massachusetts General Laws: Chapter 111, Section 31 and Chapter 140, Sections 51 and 53. These regulations are adopted to protect the public health and safety and general welfare of the citizens of the community as it relates to the operation of massage establishments and masseuses.

SECTION I. DEFINITIONS AND EXEMPTIONS/EXCLUSIONS

1.01 DEFINITIONS

For the purpose of these regulations:

- 1) Massage shall be defined as the application of various techniques to the muscular structure and soft tissues of the human body for purported health or medical treatment. Application of massage techniques may include, but not be limited to, stroking, kneading, tapping, compression, friction, pressure and those techniques based on manipulation or the application of pressure to the muscular structure of soft tissue of the human body.
- 2) Establishment for giving of massage shall be defined as the office, place of business or premise where massage is practiced.
- 3) Approved shall be defined as approved by the Fairhaven Board of Health.

- 4) Approved course of massage shall be defined as a post secondary academic institution for massage, bodywork and/or somatic therapy offering a course of instruction totaling 750 hours or more. Such institution being approved by the Massachusetts higher education department or an equivalent agency in another state.
- 5) Massage Therapist shall be defined as a person who practices massage services or therapy.
- 6) Home Therapy shall be defined as massage therapy performed in the home of a licensed massage therapist.
- 7) Chair Therapy shall be defined as therapy performed upon fully clothed individuals in a chair designed specifically for said therapy by a licensed massage therapist.

1.02 EXEMPTIONS AND EXCLUSIONS

For the purpose of these regulations:

- 1) Physicians, physical therapists, osteopaths, chiropractors or nurses who are duly licensed to practice their respective profession in Massachusetts.
- 2) School athletic trainers
- 3) Barbers and beauticians who are duly registered under the laws of Massachusetts except that this exemption shall apply solely to the massage of the neck, face, scalp and hair of the customer or client for cosmetic or beautifying purpose.
- 4) Establishments: Hospitals, nursing and convalescent homes, home health agencies or and other similarly licensed institutions.

SECTION II: LICENSE REGULATIONS

2.01 LICENSE REQUIREMENTS AND FEE

No person shall practice massage or conduct an establishment for the giving of massage for hire or advertise themselves as being engaged in the business of massage in the Town of Fairhaven without receiving a license from the Fairhaven Board of Health. The Board of Health shall set the license fee in its fee schedule. A license issued to an establishment is not transferable.

2.02 APPLICATION FOR A LICENSE FOR INDIVIDUAL MASSAGE THERAPISTS

REQUIREMENTS FOR INDIVIDUAL LICENSING

Qualified persons desiring a license shall file a written application with the Board of Health on a form provided by the Board. The applicant shall submit the correct license fee with the application.

- 1) No person shall be licensed to practice massage in the Town of Fairhaven unless they meet the following requirements:
 - a) Written proof of having satisfactorily completed a 750 hour course of study at an institution approved by the Massachusetts higher education department or an equivalent agency in another state. The course shall include at least 100 hours of anatomy/physiology; at least 200 hours of theory, practice and techniques of massage therapy and at least 100 hours devoted to professional aspects of the practice of massage including but not limited to ethics draping, contraindications, first aid, CPR and business management.
 - b) Written proof that the applicant is at least eighteen (18) years of age.
- 2) In special cases with extenuating circumstances the board may consider the application of otherwise qualified persons.

2.03 APPLICATION FOR A LICENSE FOR A MASSAGE ESTABLISHMENT (SPA)

REQUIREMENTS FOR LICENSING A MASSAGE ESTABLISHMENT (SPA)

Every establishment desiring a license shall file a written application with the Board of Health on a form provided by the Board. The applicant shall submit the correct application fee with the application.

1. No Establishment shall be licensed for the giving of massage unless they meet the following requirements:
 - a) The Board of Health must inspect every Establishment at least annually and the Board may perform additional inspections at any time during regular business hours. The Establishment must pass inspection by the Board of Health.
 - b) It is expected that the location of the business will be in a commercial building.
 - c) The rooms of the Establishment and furniture and equipment shall be kept clean at all times and shall insure separation of the sexes.
 - d) There shall be adequate facilities for the cleaning and sterilizing of all equipment.
 - e) All materials which come in direct contact with the body shall be properly sterilized.
 - f) Only licensed massage therapists may be employed within the Establishment.
 - g) Every person practicing massage shall wash their hands thoroughly with soap and hot water immediately before and after treating a patron.
 - h) Smoking is not allowed in any building or Establishment that is being used for the purpose of giving a massage.
 - i) Any person afflicted with any skin eruption or other disease shall not be treated by a therapist unless such person shall have furnished a written certification from a physician to the effect that the eruption or disease is not of a contagious or transmissible character.

- j) No Establishment shall be open between the hours of 11:00 PM and 7:00 AM without specific written authorization from the Board of Health.
- k) No food or alcoholic beverages shall be permitted in the areas where massage is performed.
- l) Every licensee shall notify the Board of Health prior to any change of name, address or ownership.
- m) No licensed establishment shall operate under any name or designation not specified on the license.
- n) The license of the Establishment and all massage therapists must be displayed in a conspicuous place.
- o) Establishment licenses shall only be granted to individuals who hold individual massage therapist licenses issued by the Fairhaven Board of Health, or to corporations whose principal officers hold such individual licenses.
- p) The Board of Health, at its discretion, may waive any of these requirements in its sole and absolute discretion as long as the waivers do not nullify the intent of these regulations.
- q) The Board of Health may require the installation of showers in all Establishments when in their opinion this would be in the interest of good health practice

SECTION III: REVOCATION OR SUSPENSION OF A LICENSE

- 3.01 Any massage therapist or massage establishment license issued under this regulation shall be subject to suspension or revocation by the Board of Health for violations that would warrant denial of issuance of such license initially. The Board, upon such revocation or suspension shall state its reasons in writing, specifying the particular grounds for revocation or suspension.
- 3.02 No license shall be suspended or revoked without first providing to a licensee, notice of such intended suspension or revocation at least seven (7) days prior thereto and affording an opportunity for a public hearing before the Board.

SECTION IV: PENALTIES

- 4.01 Whoever violates any provision of these regulations shall be punished by a fine of not more than one hundred dollars (\$100) per violation per day for each day the violation exists.

SECTION V: SEVERABILITY

- 5.01 If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

Voted: May 8, 2000

Effective upon publication in The Advocate Newspaper, May 11, 2000.

CHAPTER X

PLACES OF ASSEMBLY

Section 1. There shall be a minimum of one toilet and one lavatory provided per sex at all places where food or drink is prepared, handled or served to the public for consumption on the premises, mobile units excepted. Such facilities shall be conveniently located as determined by the Board of Health.

Section 2. In establishments not affected by 248 CMR, there shall be made available to the public a minimum of one toilet and one lavatory per sex in all establishments where food is prepared, handled, and/or served to the public for consumption on or off the premises, mobile units excepted. Such facilities shall be located as defined by current rules and regulations.

CHAPTER XI

RESIDENTIAL SWIMMING POOLS

Section 1. No pool used for swimming or bathing designed for a water depth of twenty-four inches or more or with a surface area greater than one hundred and fifty square feet shall be placed in service until the initial installation has been inspected and approved by the Board of Health or its agent. All such pools shall comply with the State building code and the following standards.

A. All pools shall be entirely enclosed by a building wall and/or fence of not less than four feet in height. Any gate shall be equipped with a secure lock. Such fencing shall be designed and constructed so as to make the pool inaccessible to children by climbing or entering through fence openings.

B. All pools shall provide filtration, disinfection or other facilities as necessary to maintain the quality of pool water within the standards specified by State regulation for public swimming areas.

C. All pools shall be located in conformance with zoning by-laws as accessory structures and shall be located at least ten feet from any dwelling or property line and at least twenty feet from any sewage disposal facilities

CHAPTER XII

WELLS

Section 1. Before any well may be installed or used as a source of potable water, a permit must be obtained from the Board of Health. Such permit will be issued only if the applicant demonstrates to the satisfaction of the Board that the following conditions will be met:

A. The well shall be located so as to minimize the danger of contamination. A well shall not be installed less than one hundred and fifty feet from a sewage disposal system, manure storage area or waste disposal site, less than ten feet from a street layout, or less than five feet from the property line.

A special variance may be granted by proper authority in cases where relocation is necessary because of pollution or failure.

B. The well shall be designed and installed in a manner which effectively prohibits the leakage of surface water into the well.

C. The location of any well which is completely below the ground surface or otherwise obscured from view shall be clearly marked either by the placement of a permanent marker above the well or by the installation of a marker on the foundation wall of the building served by the well.

D. Private drinking wells shall be tested for and meet the minimum requirements for standards (MCL-maximum concentration level) for Standard Potability Test, VOC's Lead and Copper. Adopted as Policy on February 12, 2001, at a Regular Board meeting by unanimous vote of the Board.

CHAPTER XIII

NASKETUCKET RIVER BASIN

Refer to § 198-28. Code of The Town of Fairhaven

CHAPTER XIV

HARBOR POLLUTION CONTROL

Refer to § 132. Code of The Town of Fairhaven

CHAPTER XV

Town of Fairhaven

Board of Health Tobacco Control Regulations
Governing Municipal Buildings, Vehicles or Vessels

SECTION I- PURPOSE

Whereas, conclusive evidence exists that tobacco Smoke causes cancer, respiratory and cardiac disease, negative birth outcomes, irritations to the eyes, nose, and throat; and

Whereas, the harmful effects of tobacco and non-tobacco Smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and

Whereas, Environmental Tobacco Smoke (ETS), a known human carcinogen, includes both exhaled Smoke and the side stream Smoke from burning tobacco products and causes the death of 53,000 Americans each year; and

Whereas, the Commonwealth of Massachusetts enacted the Smokefree Workplace Law, M.G.L. c.270, sec. 22, effective July 5, 2004; and

Whereas, **the Board of Health of the Town of Fairhaven has a duty to safeguard the life and health of individuals of all ages in the community by taking a strong stand on Smoking and Second-Hand Smoke;**

Now Therefore, the Board of Health establishes this regulation to protect and improve the public health and welfare by prohibiting Smoking in Municipal Buildings, Vehicles or Vessels.

SECTION II- AUTHORITY

The Fairhaven Board of Health pursuant to M.G.L. c.111, sec.31, consistent with and in addition to M.G.L. c.270, sec.22 thereto adopts the following regulation affecting: “No Smoking in Municipal Buildings, Vehicles or Vessels” as a reasonable health regulation designed to protect and improve the health of the Town’s employees and its residents.

SECTION III- RESERVED

Deleted: Initial enactment / Implementation dates: February 5, 1996/ May 31, 1996 (World No Tobacco Day) ¶
Amendment enactment /Implementation dates: April 10, 2000 / May 11, 2000 . . . ¶
Amendment enactment /Implementation dates: March 12, 2002/ April 4, 2002 . . . ¶
Amendment enactment / Implementation dates: TBA ¶
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Deleted: A. To prevent “second-hand smoke” from affecting the health of the general public.¶
B. To prevent indoor air pollution.¶
C. To promote a safe and healthy environment in work areas under the jurisdiction of the Town of Fairhaven.¶

SECTION IV-DEFINITIONS

Board: Board of Health of the Town of Fairhaven.

E.T.S.: Environmental tobacco smoke, also known as second hand smoke, a combination of smoke released from the burning end of a lighted tobacco product as well as exhaled smoke.

Municipal Buildings: Any buildings owned, operated, leased and/or under the control of the Town of Fairhaven, including, but not limited to Town Hall, Council on Aging sites, School Buildings (M.G.L. c.71, sec. 2A), School Administration Building, Police Station(s), Fire Station(s), Library, Maintenance/Repair Buildings, Water Treatment Plants, Sewer Treatment Plants, and Office Buildings under the control or jurisdiction of the Town of Fairhaven.

Municipal Vehicle or Vessel: Any Town-owned, operated, leased or contracted vehicle or vessel under the control of the Town of Fairhaven.

Smoking: 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.

Town: The Town of Fairhaven.

SECTION V-PROHIBITION OF SMOKING IN MUNICIPAL BUILDINGS, VEHICLES, OR VESSELS

Consistent with and in addition to M.G.L. C. 270, Sec. 22:

- A. Smoking shall not be allowed in any Municipal Building in the Town and within 25 feet of each point of entry to each Municipal Building.
- B. Smoking shall not be allowed in any Municipal Vehicle or Vessel.

SECTION VI-PROVISIONS

All points of entry to Municipal Buildings shall conspicuously display on the premises the international symbol for "No-Smoking" (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or a statement that the Building is a "Smoke-Free Building". Such signs shall include language stating no smoking allowed within twenty-five (25) feet of this entrance per order of the Board. All Municipal Vehicles and Vessels shall conspicuously display on the Vehicle or Vessel the international symbol for "No Smoking" or a statement that the "Vehicle [or Vessel] is a Smoke-Free Vehicle [or Vessel]".

SECTION VII - RESERVED

SECTION VIII-IMPLEMENTATION

The managers of each municipal department shall be responsible for monitoring the conduct of employees under their supervision and shall make reasonable efforts to prevent Smoking within the entire confines of all Municipal Buildings, Vehicles or Vessels and within 25 feet of each point of entry at all Municipal Buildings.

SECTION IX - VIOLATIONS AND PENALTIES

Consistent with and in addition to M.G.L. c.270, sec.22: Any person who violates any provision of this regulation shall be issued a \$100 fine for the first violation; shall be punished with a fine of \$200 for a second violation occurring within two (2) years of the date of the first violation; and \$300 for a third or

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- Deleted: The lighting of, or having in one's possession any lighted tobacco product including a cigarette, cigar, pipe, or any other lighted tobacco smoking equipment
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- Deleted: SECTION IX- VIOLATIONS AND PENALTY – Delete and replace ¶ Any person who violates any provision of these regulations may be subject to a disciplinary action under Chapter XIII of the Fairhaven Board of Health Rules and Regulations "Penalty Clause." Alternatively, any person who violates any provision of these regulations may be penalized by a non-criminal complaint pursuant to the provisions of M.G.L. Chapter 40, Section 21 D and Chapters XXXV and XXXVII of the Town of Fairhaven BY-Laws. The penalty for each violation of these regulations under the non-criminal complaint procedure is \$25.00. Each violation of these regulations shall be considered a separate offense.

subsequent violation within two (2) years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense.

SECTION X - SEVERABILITY

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall continue in full force and effect.

SECTION XI-ENFORCEMENT

A. The Board ~~and/or its agents~~ shall have the authority to enforce this regulation.

Deleted: of Health

B. Any citizen who desires to register a complaint of non-compliance under this regulation may do so by contacting the Board.

Deleted: of Health.

SECTION XII-EFFECTIVE DATE

This regulation was initially adopted on February 15, 1996 effective May 31, 1996 (World No Tobacco Day); amended on April 10, 2000 effective May 11, 2000; further amended on March 12, 2002 effective April 4, 2002. This regulation was further revised on **October 13, 2004** and shall take effect as amended upon publication in summary form in the Legal Notices Section of the Advocate. Publication date: **November 18, 2004.**

Authorized by the Town of Fairhaven Board of Health.

CHAPTER XVI

Tobacco Control Regulation Affecting "Youth Access to Tobacco Products"

Section I. STATEMENT OF PURPOSE

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

Whereas, more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and

Whereas, nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and

Whereas, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and

Whereas, despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem;

Now Therefore, it is the intention of the Town of Fairhaven Board of Health to curtail the access of tobacco products by minors.

SECTION II - AUTHORITY

This Town of Fairhaven Regulation Affecting Youth Access to Tobacco Products, hereinafter **“Tobacco Control Regulation”** is promulgated pursuant to the authority granted to the Town of Fairhaven Board of Health by Massachusetts General Laws Chapter 111, Section 31 "Boards of Health may make reasonable health regulations"

SECTION III – RESERVED

SECTION IV - DEFINITIONS

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

“Adult only” Establishments: Establishments in which the owner or business agent ensures that no person younger than eighteen years of age is present or permitted to enter at anytime. Establishments must post signs prohibiting entry by anyone under the age of eighteen at anytime.

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.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Fairhaven and any agency thereof, which uses the services of one (1) or more employees.

Minor: Any individual who is under the age of eighteen (18).

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

Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

Self Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, blunt wraps, snuff, or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

SECTION V - SALE AND/OR DISTRIBUTION OF TOBACCO PRODUCTS

A. Tobacco Sales Permit

1. No person shall sell or otherwise distribute tobacco products at retail within the Town of Fairhaven without first obtaining a valid tobacco sales permit issued annually by the Fairhaven Board of Health. Only owners of establishments with a permanent, non-mobile location are eligible to apply for a permit and sell tobacco products in the Town of Fairhaven.

2. As part of the tobacco sales permit application process, the applicant will be provided with the Fairhaven Board of Health 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 sales regarding both state laws regarding the sale of tobacco and this regulation.

3. Each applicant is required to provide proof of a current Cigarette Retailer's License, if applicable, filed with the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

4. The fee for a tobacco sales permit shall be determined by the Fairhaven Board of Health annually and set forth in the Board of Health's Fee Schedule for Licenses, Permits and Services. All such permits shall be renewed annually by December 31st. Applications for renewal must be submitted at least thirty (30) days prior to the expiration date or a late filing fee may apply.

5. A separate permit is required for each retail establishment selling tobacco products.

6. Each "true original" tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.

7. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

8. A tobacco sales permit is non-transferable from a person or a location. A new owner of an establishment that sells tobacco must apply for a new tobacco sales permit. No new permit will be issued for a given location unless and until all outstanding penalties incurred by the previous permit holder at that location are satisfied in full.

9. Issuance of a tobacco 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.

10. A tobacco 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.

B. Tobacco Vending Machines

All tobacco vending machines are prohibited.

C. Packaging/ Distribution

1. No person shall distribute or cause to be distributed, any free samples of cigarettes or tobacco products in the Town of Fairhaven. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals or attached packaging.

2. It shall be unlawful to remove and commercially sell single cigarettes or other tobacco products from the original manufacturer's package intended for resale, which package shall state the federally required health warnings. Commercial sale and/or distribution of cigarettes or other tobacco products in a form other than the original factory-wrapped packaging, is prohibited.

3. 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.

D. Self-Service Displays

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

E. Tobacco Sales To Minors Prohibited

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco products to a minor.

2. Identification: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

3. All retail sales of tobacco must be face-to-face between the seller and the buyer.

F. Sales by Employees

No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco products and signs a statement provided by the Fairhaven Board of Health, a copy of which will be placed on file in the office

of the employer, that he/she has read the regulation and applicable state laws. Such signed statements, must be made available for review on-site within seven (7) days of each routine inspection, during the permit holders normal business hours upon request of an agent of the Board of Health.

G. Reserved

SECTION VI - POSTING OF NOTICES

A. Reserved

B. Points of Entry

Notices provided by the Board of Health or its agents must be posted in a conspicuous place by the permit holder or his or her business agent in charge thereof at all accessible points of entry at each establishment or place used to sell cigarettes or tobacco products at retail. Such notice shall be at least 48 square inches, shall directly face any person entering the establishment at each point of entry, 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.

C. Cash Registers

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 Fairhaven Board of Health or its agents. The notice shall be posted conspicuously by the permit holder in the retail establishment or other place used to sell tobacco products. The notice shall be posted 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.

1. Such notice shall be at least 48 square inches and shall be posted at the cash register, which receives the greatest volume of cigarette or other tobacco product sales.

2. For all other cash registers that sell tobacco products, a notice shall be posted that is no smaller than nine (9) square inches.

D. Removal of Notices

Notices provided by the Board of Health in accordance with Section VI, Parts B and C of this regulation must not be removed from the designated posting locations on the premises of the permit holder. Any permit holder removing said signage will be in non-compliance of this regulation.

SECTION VII - PENALTIES, FINES, SUSPENSION, REVOCATION AND HEARINGS

A. Sale and/or Distribution of Tobacco Products

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section V of this regulation pertaining to his or her distribution of tobacco products. The violator shall receive:

a. In the case of a first violation of Section V., a fine of one hundred dollars (\$100.00) shall be assessed.

b. In the case of a *second violation* within 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00) shall be assessed and the tobacco sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more *violations* within a 24-month period, a fine of three hundred dollars (\$300.00) shall be assessed and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

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

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer 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.

4. The Fairhaven Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which shall contain the reasons therefore and establish a date and time for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit-holder or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons therefore in writing.

5. Revocation.

(1) The Board of Health may, after providing opportunity for a hearing, order the revocation of a permit for:

- (a) Serious or repeated violation of any of the requirements of this regulation;
- (b) Interference with the Board of Health in the performance of its duties; or
- (c) A criminal conviction of the permit holder relating to the Sale and /or Distribution of Tobacco Products.

(2) Notice of the intent to revoke a permit shall be given by the Board of Health to the permit holder in writing. The notice shall specify the reason(s) for which the permit is to be revoked and that the revocation shall be imposed at the end of the ten days following service of such notice unless a written request for hearing is filed with the Board of Health by the permit holder or his or her business agent within such ten-day period. If no request for hearing is filed within the ten-day period, the permit shall be revoked. If a written request for a hearing is filed within the ten (10) day period, a hearing shall be scheduled no earlier than seven (7) days after the date of said filing. The permit holder or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons in writing.

6. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

B. Posting of Notices

It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section VI of this regulation pertaining to their place of business. The permit holder and/or his or her business agent, or persons involved in violation of any of the provisions of Section VI may receive:

1. In the case of a violation of Section VI- B and/or C, the permit holder shall receive a written warning and/or a fine of twenty-five dollars (\$25.00).

2. In the case of a violation of Section VI - D, the permit holder shall receive a written warning and/or a fine of ten dollars (\$10.00).

SECTION VIII - NON-CRIMINAL CIVIL DISPOSITION

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

SECTION IX - PUBLIC EDUCATION

The Board of Health shall supply retailer education for all new applicants for tobacco sales permits at the time of application for permitting. Such education may include distribution of materials to guide retailers in their compliance with this regulation.

SECTION X - ENFORCEMENT

A. The Fairhaven Board of Health and/or its designated agent(s) shall enforce this regulation.

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

SECTION XI- SEVERABILITY

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall continue in full force and effect.

SECTION XII - EFFECTIVE DATE

This regulation shall be adopted as revised and effective upon publication in summary form in the Legal Notices Section of the **Fairhaven Neighborhood News**. Authorized by unanimous vote of the Fairhaven Board of Health on **2/6/07**. Publication date: **3/1/07**.

CHAPTER XVII

Governing Smoking in Workplaces, Public Places, Membership Associations and Food Establishments

Section I - Purpose

Whereas, conclusive evidence exists that tobacco Smoke causes cancer, respiratory and cardiac disease, negative birth outcomes, irritations to the eyes, nose, and throat; and

Whereas, the harmful effects of tobacco and non-tobacco Smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and

Whereas, Environmental Tobacco Smoke (ETS), a known human carcinogen, includes both exhaled Smoke and the side stream Smoke from burning tobacco products and causes the death of 53,000 Americans each year; and

Whereas, the Commonwealth of Massachusetts enacted the Smokefree Workplace Law, M.G.L. c.270, sec. 22, effective July 5, 2004; and

Whereas, the Board of Health of the Town of Fairhaven has a duty to safeguard the life and health of individuals of all ages in the community by taking a strong stand on Smoking and Second-Hand Smoke;

Now Therefore, the Board of Health establishes this regulation to protect and improve the public health and welfare by prohibiting Smoking in all Workplaces, Public Places, Membership Associations and Food Establishments in Fairhaven, except as provided herein.

Section II - Authority

This regulation is promulgated under the authority granted to the Board of Health under Massachusetts General Laws c. 111, sec. 31 and c. 270, sec. 22.

Section III - Definitions

This regulation incorporates the definitions provided in M.G.L. c.270, sec. 22 and the following, which shall have the meanings respectively ascribed to them in this section:

Board: The Fairhaven Board of Health.

Business Agent: An individual who has been designated by the owner or operator of any workplace, public place or membership association to be the manager or otherwise in charge of said workplace, public place or membership association.

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 minimis* amount of time.

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

Enclosed: A space bounded by walls, with or without windows or fenestrations, and enclosed by one or more doors.

Food Establishment: A Food Service Establishment and/or Retail Food Establishment permitted by the Board.

Food Service Establishment: A place where food and/or beverages are prepared and intended for individual portion service, and includes the site at which individual portions are poured and/or provided, that is in a covered area and/or located within a permanent structure. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food and/or beverages.

Membership Association: 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 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 purposes 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.

Outdoor Seating: Any outside area of an establishment that is under the control of the management of said establishment where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to consumers, served to consumers, or may otherwise be consumed or carried by the consumers.

Outdoor Space: An outdoor area, open to the air at all times, not enclosed by a wall or side covering(s), and not including a fixed or flexible protective covering such as an awning or canopy which may adjoin a building or similar structure on no more than two sides.

Permit Year: January 1 to December 31.

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 building, establishment, business, restaurant, Membership Association or retail store, or the Business Agents or designees of any of the foregoing.

Premises: The entire property located at the Town address of a particular company, corporation, organization, building, establishment, business, restaurant, Membership Association or retail store, including without limitation, and Private Assembly Rooms thereon.

Private Assembly Room: That Enclosed area/room within a hotel, motel, restaurant, bar, Membership Association or function hall that is primarily used for rental or use by the public for private functions, parties, banquets or conferences.

Public Place: Any building, facility, vehicle or vessel owned, leased, operated or occupied by the Town, including school buildings and grounds; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, retail tobacco stores, smoking bars, supermarkets, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outside platforms, open meetings of a governmental body as defined in sec. 11A of c. 30A, sec. 23A of c. 39 and sec. 9F of c. 34 of the General Laws, and licensed child-care locations.

Retail Food Establishment: Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes, but is not limited to, supermarkets, grocery stores, convenience stores, and delicatessens.

Retail Tobacco Store: An establishment 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

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products is merely incidental and neither possesses nor is required to possess a retail food or a food service permit.

**“Second Hand Smoke” or E.T.S.:** Environmental Tobacco Smoke. A combination of Smoke released from the burning end of a lighted tobacco product as well as exhaled Smoke.

**Smoking or Smoke:** The lighting of a cigar, cigarette, pipe or other tobacco or non-tobacco product, or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

**Town:** The Town of Fairhaven

**Workplace:** An indoor area, structure or facility, or portion thereof, at which one 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.

#### **Section IV - Smoking Prohibited**

A. No person shall Smoke nor shall any Person be permitted to Smoke in any Workplace, Public Place, Food Establishment or Membership Association, including any Outdoor Seating thereto in the Town, except as otherwise provided in Section V of this regulation.

B. It shall be unlawful for any Person having control of any Premises upon which Smoking is prohibited by this regulation, or the Business Agent or designee of such Workplace, Public Place, Food Establishment or Membership Association, to permit a violation of this regulation.

C. Smoking shall be prohibited in all outdoor areas of restaurants, bars, taverns and any other outdoor place where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the consumers and/or served to consumers.

#### **Section V - Exceptions**

Upon submission of a written request and sufficient documentation to the Board, and notwithstanding the provisions of Section IV of this regulation and otherwise consistent with applicable state law, including but not limited to M.G.L. c.270, sec. 22, the Board may permit Smoking in the Town:

A. In a nursing home, licensed pursuant to M.G.L. c.111 sec. 71 under the jurisdiction of the commonwealth holding a Food Establishment permit issued by the Town, provided that:

1. The nursing home apply to the Board for designation of part of its facility as a residence, and;
2. The nursing home’s application delineate the residential portion of its facility which will be used solely for permanent residents of the facility, wherein no temporary or short-term resident may reside, and which shall not contain an Employee Workspace, such as an office, restroom or other area used primarily by Employees, and;

3. All areas in the designated residential area in which Smoking is allowed will be conspicuously designated as Smoking areas and adequately ventilated to prevent migration of Smoke to Non-Smoking areas, and;
4. Said application includes suitable documentation, acceptable to the Board, that the nursing home is the permanent domicile of the residents residing in that portion of its facility, that information on the hazards of Smoking and Second Hand Smoke will be provided to all residents, and that Smoking cessation aids will be available to all residents who use tobacco products, and;
5. The designated residential area is in conformance with the Smoking restriction requirements of M.G.L. c. 111 sec. 72X and 105 CMR 150.015 (D)(11)(b), including the clear designation of all residential areas as such, and the requirement that such designation not be altered or otherwise changed without the express written approval of the Board, and;
6. All areas of the nursing home not designated as a residence comply with this section, and;
7. The nursing home makes reasonable accommodations for Employees, residents or visitors who do not wish to be exposed to Smoke, whereupon;
8. Upon compliance with this section, submission of the required documentation, conduct of a satisfactory inspection and Board certification of a designated portion of the facility as a residence, this exception shall be valid for the period of the Permit Year only, unless otherwise suspended or revoked.
9. No fewer than 30 days prior to the expiration of such an exception, the nursing home may apply for renewal of its exception. If the Board does not renew such an exception before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the exception shall be considered to continue in effect until such time as the Board notifies the nursing home of the status of its exception otherwise.

B. In Outdoor Seating portions of a Food Service Establishment, including but not limited to patios, decks and porches, provided that:

1. Neither food nor beverages are sold nor served there, and;
2. Said Outdoor Seating portions of the Food Service Establishment are not enclosed, and;
3. Except for a fixed or flexible covering such as an awning or canopy which may adjoin an Enclosed Food Service Establishment on no more than two sides, all Outdoor Seating portions of the Food Service Establishment shall be physically separated from said establishment, and;
4. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to said Outdoor Seating portions of the Food Service Establishment, the openings shall be closed to prevent the migration of Smoke into the Enclosed Food Service Establishment, and;

5. If doors, windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of Smoke into the Enclosed Food Service Establishment, said Outdoor Seating portions shall be considered an extension of the Enclosed Food Service Establishment and subject to Section IV of this regulation, and;

6. The Food Service Establishment submits a written request with sufficient documentation for this exception to the Board.

C. In an Outdoor Space on the Premises of a Workplace or Food Establishment, including but not limited to patios, decks and porches, provided that:

1. Said Outdoor Space is not Enclosed, and;

2. Except for a fixed or flexible covering such as an awning or canopy which may adjoin the Workplace or Food Establishment on no more than two sides, said Outdoor Space is open to the air at all times and physically separated from an Enclosed workspace to prevent the migration of Smoke into the Workplace or Food Establishment, and;

3. The Workplace or Food Establishment submits a written request with sufficient documentation for this exception to the Board.

D. Exceptions shall be valid only when duly issued in writing by the Board, and only for the period of the Permit Year, unless otherwise suspended or revoked.

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## Section VI- Reserved

## Section VII – Posting of Notices

Consistent with M.G.L. c. 270, sec. 22 Ɂ (g) (4), the owner or his/her Business Agent, having control of the Premises upon which Smoking is prohibited by and under the authority of this regulation, shall post notices conspicuously, so that the signs are clearly visible to all Employees, customers, or visitors while in the establishment, at all points of entry and in every area upon the Premises which state “No Smoking” or that this is a “Smoke-Free Establishment”, or that display the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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## Section VIII - Conflict With Other Laws, By-Laws or Regulations

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Notwithstanding the provisions of the foregoing Section IV of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other laws or regulations, including the Smokefree Workplace Law M.G.L. c.270, sec. 22 so as to permit Smoking in areas where it is prohibited by that law or such other fire, health or other law or regulation.

## Section IX - Penalties

A. It shall be the responsibility of the Employer to provide a smokefree environment for all Employees working in an Enclosed Workplace. It shall be the responsibility of the permit

holder/owner, or his/her Business Agent, to ensure compliance with all provisions of this regulation. A permit holder/owner, Business Agent or other Person in control of any Workplace, Public Place, Food Establishment or Membership Association governed by this regulation, who violates any provision of this regulation, shall be subject to the following:

1. A fine of one hundred dollars (\$100) for the first violation.
2. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200). ~~and~~
3. In the case of a third violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) ~~and~~, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for seven (7) consecutive calendar days.
4. In the case of a fourth violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for thirty (30) consecutive calendar days.

**Deleted:** for a second offense

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**Deleted:** for the third or subsequent offenses.

**B.** If an owner, manager or other Person in control of any permitted Workplace, including Food Establishments and Membership Associations governed by this regulation violates this section repeatedly, or demonstrates egregious noncompliance with this regulation, the Board may suspend or revoke its license to operate and shall send notice of said suspension or revocation to the Town Licensing Board and the Massachusetts Department of Public Health.

**C.** Each day on which any violation of these Tobacco Control Regulations exists shall be deemed to be a separate violation.

**D.** Violations of this regulation may be found upon sufficient evidence of Smoking, including but not limited to ashtrays and other smoking materials, extinguished cigar and cigarette butts, etc., and shall not be limited to the discovery of actively burning tobacco and non-tobacco products in a Workplace, Public Place, Membership Association or Food Establishment.

**E.** If applicable, the Board shall provide written notice to a permit holder/owner, or his/her Business Agent of the intent to suspend or revoke a "Food Establishment Permit".

1. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder/owner, or his/ her Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.

2. Notice of the intent to revoke a permit shall be given by the Board to the permit holder/owner, or his/ her Business Agent in writing. The notice shall specify the reason(s) for which the permit is to be revoked and that the revocation shall be imposed at the end of the ten (10) days following service of such notice unless a written request for a hearing is filed with the Board of Health by the permit holder within such ten (10) day period. If no request for a hearing is filed within the ten (10) day period, the permit shall be

revoked. If a written request for a hearing is filed within the ten (10) day period, a hearing shall be scheduled no earlier than seven (7) days after the date of said filing. The permit holder/owner, or his/her Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.

3. If applicable, a permitted establishment will be closed and prohibited from operating during such time that its Food Establishment permit has been suspended or revoked for violation of this regulation.

#### Section X - Non-Criminal Civil Disposition

Whoever violates any provision of these Tobacco Control Regulations, the violation of which is subject to a specific penalty, may be penalized by the Non-Criminal Method of Disposition as provided in Massachusetts General Laws, c. 40, sec. 21D or as outlined in c. 270, sec. 22 or by filing a criminal complaint at the appropriate venue.

**Deleted:** Upon amendment of the city ordinance authorizing Non-Criminal Civil Disposition of this regulation, as an alternative to initiating criminal proceedings,

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#### Section XI - Enforcement

A. The Board and its designees shall enforce this regulation.

**Deleted:** Enforcement of this regulation shall be implemented by the New Bedford Board of Health or its designated agents

B. Enforcement may include, but not be limited to, periodic, unannounced inspections of those establishments subject to this regulation.

C. Any Person who desires to register a complaint under this regulation may do so by contacting the Board.

#### Section XII - Severability

If any provision, clause, sentence, paragraph or word of this regulation or the application thereof to any Person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared severable.

#### Section XIII - Effective Date

This regulation was initially adopted on July 26, 1999 effective January 3, 2000; amended on April 10, 2000 effective May 11, 2000. This regulation was further amended on October 27, 2004 and shall take effect upon publication in summary form in the Legal Notices Section of the Advocate. Publication date: November 18, 2004.

**Deleted:** This regulation initially went into effect on January 3, 2000 after its publication in the Legal Notices Section of the New Bedford Standard Times on August 29, 1999. This amended regulation shall take effect upon publication in summary form in the Legal Notices Section of the New Bedford Standard Times. **Publication date June 11, 2000.** ¶

Authorized by the Town of Fairhaven Board of Health.

## CHAPTER XVIII

### BODY ART ESTABLISHMENTS AND PRACTITIONERS

#### 1. Purpose

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

#### 2. Authority

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

#### 3. Definitions

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

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

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

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

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

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

Body Art means the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following

techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which procedures are prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Operator means any person who individually, or jointly or severally with others, owns, or controls an establishment, but is not a body art practitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Universal Precautions means a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC), as “Guidelines for Prevention of Transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) to Health-Care and Public-Safety Workers” in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol.38 No. S-6, and as “Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures” in MMWR, July 12, 1991, Vol.40, No. RR-8. This method of

infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for FIIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood and body fluid-contaminated products.

#### 4. Exemptions

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

#### 5. Restrictions

- (A) No tattooing, piercing of genitalia, branding or scarification shall be performed on a person under the age of 18.
- (B) Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18 provided that the person is accompanied by a properly identified parent, legal custodial parent or legal guardian who has signed a form consenting to such procedure. Properly identified shall mean a valid photo identification of the adult and a birth certificate of the minor.
- (C) No body art shall be performed upon an animal.
- (D) The following body piercings are hereby prohibited: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called "deep" piercing of the penis -meaning piercing through the shaft of the penis, or "transpenis" piercing in any area from the corona glandis to the pubic bone; so called "deep" piercing of the scrotum -meaning piercing through the scrotum, or "transcrotal" piercing; so called "deep" piercing of the vagina.

- (E) The following practices hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; three dimensional/beading/implementation tooth filing/fracturing/removal/tattooing; cartilage modification; amputation, genital modification; introduction of saline or other liquids.
- (F) No person shall operate a mobile establishment for the purpose of Conducting Body Art in the Town of Fairhaven.

## 6. Operation of Body Art Establishments

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

### (A) Physical Plant

- (1) Walls, floors, ceilings, and procedure surfaces shall be smooth, durable, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.
- (2) Solid partitions or walls extending from floor to ceiling shall separate the establishment's space from any other room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.
- (3) The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.
- (4) Each operator area shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a divider or partition at a minimum.
- (5) The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 foot candles 3 feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, where instruments and sharps are assembled and all cleaning areas.
- (6) All electrical outlets in operator areas and cleaning areas shall be

equipped with approved ground fault (GFCI) protected receptacles.

- (7) A separate, readily accessible hand sink with hot and cold running water under pressure, preferably equipped with wrist- or foot-operated controls and supplied with liquid soap, and disposable paper towels stored in fixed dispensers shall be readily accessible within the establishment. Each operator area shall have a hand sink.
- (8) There shall be a sharps container in each operator area and each cleaning area.
- (9) There shall be a minimum of one toilet room containing a toilet and sink. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A body art establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such body art establishment if Board-approved toilet facilities are located in the retail shopping center within 300 feet of the body art establishment so as to be readily accessible to any client or practitioner.
- (10) The public water supply entering a body art establishment shall be protected by a testable, reduced pressure back flow preventor installed in accordance with 142 Code of Massachusetts Regulation 248, as amended from time to time.
- (11) At least one covered, foot operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leakproof, rodent-resistant containers and be removed from the premises weekly.
- (12) At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-contaminated liquid wastes in accordance with all applicable Federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.
- (13) All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.
- (14) The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic

cleaning unit.

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

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

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

(C) Sanitation and Sterilization Measures and Procedures

- (1) All non-disposable instruments used for body art, including all reusable solid core needles, pins and stylets, shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot

water, (to remove blood and tissue residue), and shall be placed in an ultrasonic unit sold for cleaning purposes under approval of the U.S. Food and Drug Administration and operated in accordance with manufacturer's instructions.

- (2) After being cleaned, all non-disposable instruments used for body art shall be packed individually in sterilizer packs and subsequently sterilized in a steam autoclave sold for medical sterilization purposes under approval of the U.S. Food and Drug Administration. All sterilizer packs shall contain either a sterilizer indicator or internal temperature indicator. Sterilizer packs must be dated with an expiration date not to exceed six (6) months.
- (3) The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Board. Autoclaves shall be located away from workstations or areas frequented by the public.
- (4) Each holder of a permit to operate a body art establishment shall demonstrate that the autoclave used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three (3) years and made available to the Board upon request.
- (5) All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. After sterilization, the instruments used in body art procedures shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.
- (6) Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing.
- (7) If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
- (8) When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized sterile techniques to ensure that the instruments and gloves are not contaminated.
- (9) Reusable cloth items shall be mechanically washed with detergent and mechanically dried after each use. The cloth items shall be stored in a dry, clean environment until used. Should such items become contaminated

directly or indirectly with bodily fluids, the items shall be washed in accordance with standards applicable to hospitals and medical care facilities, at a temperature of 160°F or a temperature of 120°F with the use of chlorine disinfectant.

(D) Posting Requirements

The following shall be prominently displayed:

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

(E) Establishment Recordkeeping

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

- (1) Establishment information, which shall include:
  - (a) establishment name;
  - (b) hours of operation;
  - (c) owner's name and address;
  - (d) a complete description of all body art procedures performed;
  - (e) an inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;
  - (f) A Material Safety Data Sheet, when available, for each ink and dye used by the establishment;

- (g) copies of waste hauler manifests
- (h) copies of commercial biological monitoring tests
- (i) Exposure Incident Report (kept permanently)
- (j) a copy of these regulations.

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

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

(4) Exposure Control Plan

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

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

7. Standards of Practice

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

- (A) A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S Centers for Disease Control and Prevention.
- (B) A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.
- (C) Practitioners who use ear-piercing systems must conform to the manufacturers directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear piercing system on any part of the client's body other than the lobe of the ear.
- (D) Health History and Client Informed Consent. Prior to performing a body art procedure on a client, the practitioner shall:
  - (1) Inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:
    - (a) history of diabetes;
    - (b) history of hemophilia (bleeding);
    - (c) history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants etc.;
    - (d) history of allergies or adverse reactions to pigments, dyes, or other sensitivities;
    - (e) history of epilepsy, seizures, fainting, or narcolepsy; (0 use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting, and
    - (g) any other conditions such as hepatitis or HIV.
  - (2) Require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents them from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by section 7(K).
- (E) A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

- (F) In performing body art procedures, a practitioner shall wear disposable single-use gloves. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with section (F) before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for handwashing procedures as part of a good personal hygiene program.
- (G) The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
- (H) Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.
- (I) Preparation and care of a client's skin area must comply with the following:
  - (1) Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
  - (2) Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
  - (3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.
- (J) Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded.

(K) The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:

- (1) on the proper cleansing of the area which received the body art;
- (2) to consult a health care provider for:
  - (a) unexpected redness, tenderness or swelling at the site of the body art procedure;
  - (b) any rash;
  - (c) unexpected drainage at or from the site of the body art procedure; or
  - (d) a fever within 24 hours of the body art procedure; and
- (3) of the address, and phone number of the establishment.

A copy shall be provided to the client. A model set of aftercare instructions shall be made available by the Board.

- (L) Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waster, State Sanitary Code, Chapter VII.

#### 8. Exposure Incident Report

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

Each Exposure Incident Report shall contain:

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

#### 9. Injury and/or Complication Reports

A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded

by the operator to the Board which issued the permit, with a copy to the injured client within five working days of its occurrence or knowledge thereof. The report shall include:

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

#### 10. Complaints

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

#### 11. Application for Body Art Establishment Permit

- (A) No person may operate a body art establishment except with a valid permit from the Board.
- (B) Applications for a permit shall be made on forms prescribed by and available from the Board. An applicant shall submit all information required by the form and accompanying instructions. The term "application" as used herein shall include the original and renewal applications.
- (C) An establishment permit shall be valid from the date of issuance and for no longer than one year unless revoked sooner by the Board.
- (D) The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:
  - (1) Name, address, and telephone number of:

- (a) the body art establishment;
  - (b) the operator of the establishment; and
  - (c) the body art practitioner(s) working at the establishment;
- (2) The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;
  - (3) A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board's body art regulations;
  - (4) A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process; and,
  - (5) Exposure Report Plan
  - (6) Such additional information as the Board may reasonably require.
- (E) The annual fee for the Body Art Establishment Permit shall be \$250.00.
  - (F) A permit for a body art establishment shall not be transferable from one place or person to another.

12. Application for Body Art Practitioner Permit

- (A) No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board. The Board shall set a reasonable fee for such permits.
- (B) A practitioner shall be a minimum of 18 years of age.
- (C) A practitioner permit shall be valid from the date of issuance and shall expire no later than one year from the date of issuance unless revoked sooner by the Board.
- (D) Application for a practitioner permit shall include:
  - (1) name;
  - (2) date of birth
  - (3) residence address;
  - (4) mailing address;
  - (5) phone number;
  - (6) place(s) of employment as a practitioner; and
  - (7) training and/or experience as set out in (E) below.

(E) Practitioner Training and Experience

- (1) In reviewing an application for a practitioner permit, the Board may consider experience, training and/or certification acquired in other states that regulate body art.
- (2) Training for all practitioners shall be approved by the Board and, at a minimum, shall include the following:
  - (a) bloodborne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; handwashing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques; and
  - (b) Current certification in First Aid and cardiopulmonary resuscitation (CPR).

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

- (3) The applicant for a body piercing practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin).
- (4) The applicant for a tattoo, branding or scarification practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin). Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the anatomy course.
- (5) The applicant for all practitioners shall submit evidence satisfactory to the Board of at least two years actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner permit to perform, whether such experience was obtained within or outside of the Commonwealth.

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

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

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

practice body art;

- (B) The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board intends to deny, revoke, or refuse to renew a permit. The applicant, establishment or practitioner shall have seven (7) days after receipt of such written notice in which to comply with the Board's regulations. The Board may deny, revoke or refuse to renew a permit, if the applicant, establishment or practitioner fails to comply after said seven (7) days subject to the procedure outlined in Section 15.
- (C) Applicants denied a permit may reapply at any time after denial after having complied with all aspects of this regulation.

#### 14. Grounds for Suspension of Permit

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

#### 15. Procedure for Hearings

The owner of the establishment or practitioner shall be given written notice of the Board's intent to hold a hearing for the purpose of suspension, revocation, denial or refusal to renew a permit. This written notice shall be served through a certified letter sent return receipt requested or by constable. The notice shall include the date, time and place of the hearing and the owner of the establishment or practitioner's right to be heard. The Board shall hold the hearing no later than 21 days from the date the written notice is received. In the case of a suspension of a permit as noted in Section 13, a hearing shall be scheduled no later than 21 days from the date of the suspension.

#### 16. Severability

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.

#### 17. Fine for Violation

The fine for a violation of any provision of these Rules and Regulations shall be \$100.00 per offense. Each day that a violation continues shall be deemed to be a separate offense.

#### 18. Non-criminal Disposition

In accordance with MGL chapter 40, section 21D and Town of Fairhaven By-Laws whoever violates any provision of these Rules and Regulations may be penalized by non-

criminal disposition.

19. Effective Date

These rules and regulations shall be effective as of date of publication May 24, 2001.

**CHAPTER XIX**

**PENALTY CLAUSE**

Whoever violates any of the rules and regulations of the Fairhaven Board of Health shall be fined not less than Fifty Dollars (\$50), nor more than Three Hundred Dollars (\$300) for each day the violations exist. Such fine shall be levied at the discretion of the Board of Health. (VOTED August 7, 1989).

All charges incurred by the Town of Fairhaven in the process of abating violations in the Board of Health Rules and Regulations shall be assessed to the violation if present.

**CHANGE IN REGULATIONS**

The Board of Health may from time to time amend or abrogate any of these regulations if in its opinion the health and safety of the public requires such action.

**CHAPTER XX**

**UNCONSTITUTIONALITY CLAUSE**

Should any section, paragraph, sentence, clause, phrase, or word of these Regulations be declared unconstitutional or invalid for any reason, the remainder of said Regulations shall not be affected thereby.