

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 and the Federal Food Code.

All Food Service Establishments must have grease barrels to properly store their grease. All grease must be poured into these barrels, and the grease collected by 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 six 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.

Section 7.

A. Illegal Dumping and/or Littering

1. 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.
2. Persons apprehended in committing this act will be considered guilty of littering and/or illegal dumping.
3. Said person will be punished by a fine of not more than Five Hundred Dollars (\$500) for each offense.
(Amended by unanimous VOTE of the Board on August 8, 2011.)

B. 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.

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.

Section 8. Sanitary Disposal of Dog Excrement

Adoption of Town By-Law Chapter 87, Section 10, and as may be amended from time to time, "No person owning or having custody or control of a dog shall permit such dog to defecate on any public street or sidewalk of the town, including the town wharves, or any public park, beach or grounds of a public building, including school grounds, unless such person picks up the dog waste and disposes of it in a sanitary manner, including lawful disposal as solid waste or sewage. This section shall not apply to the visually impaired in custody or control of a Seeing Eye dog, or to any person unable to comply with the requirements of this section due to a physical disability. This section may be enforced by the Dog Officer, the Board of Health Agent, and any other person so designated by the Board of Health or the Board of Selectmen." Each violation of this Regulation shall be punishable by a fine of One Hundred Dollars (\$100.00) per offense.
(As adopted by the Board of Health, July 8, 2015)

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. A certified statement by the design engineer, or other professional authorized to prepare subsurface sewage disposal system plans, who is unaffiliated with the construction disposal works installer, must be received by the Board of Health prior to the issuance of a certificate of compliance. The statement must ensure that the subsurface sewage disposal system has been installed according to the Board of Health approved plans and must include an as-built drawing prepared by the engineer who is unaffiliated with the construction disposal works installer, showing the final locations and elevations of all system components. Amended and Voted by the Board of Health May 16, 2017.

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. orthocholorobenzene |
| 2. 1, 1, Itrichloroethane | 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 (bvw), salt marshes, inland and coastal banks" by adding "The minimum acceptable distance between a wetland, a bvw, 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.

A. Building. 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.

B. Combining House Lots. An owner of two adjoining lots, each with a principal building thereon and each being serviced by a separate stub to the sewer system, may combine said lots and build one principal building thereon. The new principal building may contain no more than the combined number of bedrooms contained in the previous two principal buildings. The remaining sewer stub may not be relocated to another lot.

§ 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 July 9, 2007.

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 be 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 must be an owner, tenant or occupant of the premise or property at which the animals shall be kept. The applicant shall notify all abutters in writing of the pending permit application at least fifteen days prior to issuance of the permit. The abutter notification condition is waived in areas considered suitable for agricultural use and for those applicants who have been granted a Special Permit by the Fairhaven Zoning Board of Appeals. The applicant must meet with the Board of Health for approval of an initial application.

B. No barn, stable, yard or other facility for the keeping of barnyard animals (including poultry) shall be located closer than 20' to any dwelling, 10' from any property line, 100' to any potable well and 100' to any Bordering Vegetative Wetlands.

C. A written plan for the disposal of manure and bedding material must be submitted as part of the animal permit application and be approved by the Board of Health. All such material will be stored, kept and/or spread in a manner, which will prevent the contamination of surface water and groundwater, prevent infestation by rodents and insects and prevent the release of objectionable odors.

D. A written plan for the storage of feed must be submitted as part of the animal permit application and be approved by the Board of Health. All such feed must be stored and maintained in a manner that will prevent infestation by rodents and insects and prevent the release of objectionable odors.

E. If required by the Board of Health a written plan showing drainage facilities must be submitted as part of the animal permit application and must be approved by the Board of Health. Drainage facilities shall prevent the accumulation of standing water and 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 owners or persons in control of any buildings or premises in which animals are kept shall keep the buildings and premises clean and free from decaying food, filth, dust, stagnant water and animal wastes. 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.

Language Change and voted by the Board of Health July 21, 2014.

CHAPTER VIII

FEE SCHEDULE-RESERVED

CHAPTER IX

MASSAGE REGULATIONS-VOIDED

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

Fairhaven Board of Health Regulation Restricting the Sale of Tobacco Products

A. Statement of Purpose:

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

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development⁵;

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

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

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

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in “Trends in Tobacco Use”, ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

⁵ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

More than 80 percent of all adult smokers begin smoking before the age of 18; and more than 90 percent do so before leaving their teens⁶;

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁷;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010⁸; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;⁹

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹⁰ largely because these flavored products were marketed to youth and young adults,¹¹ and younger smokers were more likely to have tried these products than older smokers;¹²

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹³ neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁴

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health.

⁷ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁸ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

⁹ SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health*.

¹⁰ 21 U.S.C. § 387g.

¹¹ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ 21 U.S.C. § 387g

¹⁴ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;¹⁵

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;¹⁶

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁷

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one¹⁸;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.3% in 2011¹⁹;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported²⁰;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history²¹;

¹⁵ King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

¹⁶ Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

¹⁷ Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁸ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

¹⁹ CDC (2011) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2012: 87 (No SS-61)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

²⁰ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%²²;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes²³;

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit²⁴ and high prices deter youth from starting.²⁵ Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)²⁶;

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

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is

²¹ Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

²² Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

²³ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

²⁴ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

²⁵ Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>.

²⁶ TTB (2011). *Statistical Report – Tobacco (2011)* (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”²⁷.

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

B. Authority:

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

C. Definitions:

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

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

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.

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

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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

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

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

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

²⁷ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

Employee: Any individual who performs services for an employer.

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

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

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

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

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

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

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

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Fairhaven Board of Health.

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

Schools: Public or private elementary or secondary schools.

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

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

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

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Fairhaven is 18.

2. Required Signage

- a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Fairhaven Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage, if provided by the Department of Public Health that discloses current referral information about smoking cessation.
- c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that

“The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 18 years is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the town of Fairhaven without first obtaining a Tobacco Product Sales Permit issued annually by the Fairhaven Board of Health. Only owners of establishments with a permanent, non-mobile location in Fairhaven are eligible to apply for a permit and sell tobacco products at the specified location in Fairhaven.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Fairhaven regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.
4. The fee for a Tobacco Product Sales Permit shall be determined by the Fairhaven Board of Health annually.
5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.
6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco products 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 and federal laws.
8. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
10. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.
11. **Maximum Number of Tobacco Product Sales Permits.**

At any given time, there shall be no more than 18 Tobacco Product Sales Permits issued in Fairhaven. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed or are returned to the Board of Health.
12. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
 - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
 - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Fairhaven.
4. The Fairhaven Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product.

H. Prohibition of the Sale of Blunt Wraps:

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

I. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein, for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

J. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of liquid nicotine, an “acutely hazardous waste” as identified in 310 CMR 30.136, must provide the Fairhaven Board of Health with a written plan for disposal of said product, including a disposal plan for any breakage or spillage of the product.

K. Self-Service Displays:

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

L. Vending Machines:

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

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

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

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

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

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

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

P. Violations:

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

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

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

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

4. The Fairhaven Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Fairhaven Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

Q. Non-Criminal Disposition:

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

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

R. Enforcement:

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

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

S. Severability:

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

T. Effective Date:

Adopted by unanimous vote of the Board of Health on November 10, 2014.

This regulation shall take effect on January 1, 2015.

CHAPTER XVI

Fairhaven Board of Health Regulation Prohibiting Smoking in Workplaces and Public Places

SECTION 1 – PURPOSE

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

SECTION 2 - AUTHORITY

This regulation is promulgated under the authority granted to the Fairhaven Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.”²⁸ It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

SECTION 3 - DEFINITIONS

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

²⁸ This sentence is only applicable to Board of Health regulations. If enacting an ordinance or by-law, this section can begin with the second sentence, with the word “also” omitted.

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

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

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

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

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

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Retail tobacco store: an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Fairhaven Board of Health.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

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

SECTION 4 - SMOKING PROHIBITED

- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- (b) Smoking is hereby prohibited in Fairhaven in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law").

(c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:

- i. Membership associations/private clubs;
- ii. Nursing homes;
- iii. Retail tobacco stores, including smoke shops;
- iv. Smoking bars;
- v. Within twenty-five (25) feet of all entrances, exits, operable windows and air supply intakes at municipal buildings;
- vi. During the private charter or rental of a limousine, bus or van where a driver is provided as part of the charter or rental.

(d) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

SECTION 5 - ENFORCEMENT

(1) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:

- a. \$100 for the first violation;
- b. \$200 for a second violation occurring within 36 months of the date of the first offense; and
- c. \$300 for a third or subsequent violation occurring within 36 months of the second violation.

(2) Each calendar day on which a violation occurs shall be considered a separate offense.

(3) This regulation shall be enforced by the Board of Health and its designees.

(4) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

(5) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.

(6) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(7) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 6 - SEVERABILITY

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

SECTION 7 - CONFLICT WITH OTHER LAWS OR REGULATIONS

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

SECTION 8 - EFFECTIVE DATE

Adopted by unanimous vote of the Board of Health on November 10, 2014.
This regulation shall be effective as of January 1, 2015.

CHAPTER XVII

RESERVED

CHAPTER XVIII

Fairhaven Board of Health Regulation 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 HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood and body fluid-contaminated products.

4. Exemptions

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

5. Restrictions

- (A) No tattooing, piercing of genitalia, branding or scarification shall be performed on a person under the age of 18.
- (B) Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18 provided that the person is accompanied by a properly identified parent, legal custodial parent or legal guardian who has signed a form consenting to such procedure. Properly identified shall mean a valid photo identification of the adult and a birth certificate of the minor.
- (C) No body art shall be performed upon an animal.
- (D) The following body piercings are hereby prohibited: piercing of the uvula;

piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called “deep” piercing of the penis -meaning piercing through the shaft of the penis, or “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

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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.