

Town of Edgartown Board of Health
Rules and Regulations

As revised & adopted May 1, 1991, amended
November 6, 1991,
January 26, 1998,
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October 12, 2010 sewer tie-in regulations,
October 22, 2013 tobacco sale revisions,
November 12, 2013 smoking in public places,
October 10, 2017 Tobacco 21,
March 28, 2017 IAT Program with Barnstable Department of Public Health & Environment,
October 25, 2018 Board of Health fees,
December 10, 2019 food fees,
March 9, 2022 septic fees,
April 15, 2025 tobacco sale revisions,
May 27, 2025 sewer tie-in regulation revisions,
December 16, 2025, septic calculations

Chris Edwards, Chair

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STATEMENT CONCERNING REGULATORY AUTHORITY

Pursuant to the Regulatory Authority conferred upon Boards of Health by Mass. General Laws, Chapter 111, Sections 31, 3 IA and 31B and such other authority as the General Laws may confer upon Boards of Health, the Edgartown Board of Health has adopted the following regulations.

Unless otherwise provided, these regulations shall be applied throughout the Town of Edgartown. These regulations supersede all previously adopted rules & regulations of the Edgartown Board of Health.

Each use of acidic additives as prohibited by these regulations shall constitute a separate violation. All septic system or cesspool failures defined in this regulation shall be considered a nuisance to public health.

SECTION A: INDIVIDUAL ONSITE SUBSURFACE SEWAGE DISPOSAL

1.000 Areas of Edgartown, Boundaries

1.10 Groundwater Divide: A line beginning at the intersection of Atlantic Drive and Mattakesett Road following Mattakesett Road north northwesterly to a point where it joins the New England Telephone right of way. The line will continue northward, along the New England Telephone right of way, as delineated on the December 1979 Assessor's map, where it intersects with Pennywise Path, thence, northwesterly along Pennywise Path to the intersection with Tar Kiln Path, thence, westerly, to the State Forest, thence westerly to the Four Town Bound. This divide creates two general areas in the Town to be known as North & East and South & West of the groundwater divide.

1.20 Katama Area: Commencing at the shore of the Atlantic Ocean; thence northerly to the southeasterly corner of Edgartown Great Pond; thence along the shoreline of the pond to the tip of Turkeyland Cove; thence due north to Meetinghouse Way; thence along Meetinghouse Way to the junction of Herring Creek Road; thence along Herring Creek Road to the junction of Crocker Drive; thence along Crocker Drive to the junction of Katama Road; thence along a line extended due east from Crocker Drive to Katama Bay; thence along the westerly border of Katama Bay to the westerly extremity of Mattakesett Bay; thence south to the Atlantic Ocean; thence westerly by the ocean to the point of beginning.

1.21 Edgartown Bay Road area: Bordered on the North by a line beginning at the intersection of Pond Lot Road and Katama Road, extending in an easterly direction along the north boundary of the Faulkner property to Katama Bay. Bordered on the west starting at the intersection of Pond Lot and Katama Roads and via Katama Road southerly to the Atlantic Ocean. This encompasses all of the land between the aforementioned boundary and Katama Bay.

1.22 Ocean Heights/Arbutus Park Wastewater Disposal Regulation Area: As on the attached map titled "Appendix E, Ocean Heights and Arbutus Park Wastewater Disposal Regulation Area, 1 inch equals 600 feet" prepared by the Martha's Vineyard Commission, dated March 7, 2007.

1.23 Chappaquiddick: The entire portion of Edgartown called Chappaquiddick, sometimes an island.

Supply Wells:

1.31 Lily Pond: As shown on a plan titled "Groundwater Evaluation of the Lily Pond Aquifer, Edgartown, Massachusetts, Zone II Delineation" prepared by Anderson-Nichols & Co., Inc. dated April 1988, scale 1"=200 ft.

1.32 Meshacket: As shown on a plan depicting the Meshacket Well Zone II entitled "Edgartown Water Department Zone II Overlay" prepared by EarthTech, dated January 2008, scale 1"=1,000 ft.

1.33 Wintucket: As shown on a plan depicting the Meshacket Well Zone II entitled "Edgartown Water Department Zone II Overlay" prepared by EarthTech, dated January 2008, scale 1"=1,000ft.

1.34 Shurtleff: Shurtleff well has been deactivated and no longer has a Zone II.

2.000 Design & Permitting

2.10 Sewage Flow Estimates: Sewage flow estimates shall be determined using procedures given in the 310 CMR 15.000 The State Environmental Code, Title 5, as amended July 7, 2023 and supplemented by the following additional requirements;

2.11 Each bedroom shall be calculated as generating 110 gallons per day of sewage flow. For the purpose of calculating sewage flows in all dwellings, a room indicated on a building plan for use as a den, study, library, office or any comparable use that in the judgment of the Board of Health or its designated agent, is capable of being used as a bedroom, shall be considered as a bedroom in calculating sewage flows.

2.12 For new construction and/or renovation, a basement containing a full bathroom shall always be considered to have at least one bedroom for the purposes of calculating septic flow.

2.13 For the purposes of assigning allowable flow to another proposed bedroom, decommissioning an existing bedroom shall require elimination of reasonable expectation of privacy. This includes, but is not limited to, removal of the door and expansion to an opening of 9ft. If 9ft is deemed unfeasible by the Board, then alternative criteria for decommissioning a bedroom may be established by the Board.

2.20 Sewage Flow Volumes & Nitrate Concentrations: Computation of Nitrate loading shall be according to Table 1. The nitrate nitrogen figure presented is the concentration of nitrate nitrogen expected to be generated from commercial, recreational and domestic land uses, assuming ammonia nitrogen has been bacteriologically oxidized and is in the nitrate form.

2.30 Performance Standards: In the stated area of Edgartown, the following standards for wastewater discharges shall be applied (see the definition of "lot area" in Section 9 when computing maximum daily flow):

2.31 Areas South & West of the Groundwater Divide: The wastewater flow estimates for lots created after July 15, 1985 shall not exceed 110 gallons per day per 15,000 square feet of land area. Lots created before July 15, 1985 shall be permitted 330 gallons of wastewater flow per

day or 110 gallons of wastewater flow per day per 15,000 square feet of land area, whichever is greater.

2.32 Areas North & East of the Groundwater Divide served by Public water from the Edgartown Water Dept: Notwithstanding the requirements contained in section 2.353, Ocean Heights/Arbutus Park Wastewater Disposal Regulation Area, the wastewater flow for all other land north and east of the groundwater divide shall not exceed 330 gallons per day for the first 10,000 square feet of area. For every additional 10,000 square feet of lot area an additional 110 gallons per day of wastewater will be permitted. For property held in contiguous ownership prior to July 17, 1985, the aggregate number of square feet shall be the figure used to compute wastewater flow allowances.

2.32 A: Areas North and East of the Groundwater Divide served by on site wells: The wastewater flow estimates shall be made in compliance with the State of Massachusetts Envir. Code 310 CMR 15.214(2). For property held in contiguous ownership prior to July 17, 1985, the aggregate number of square feet shall be the figure used to compute wastewater flow allowances.

2.33 Katama Area: For dwelling and non-dwelling uses the sewage flow will not exceed 110 gallons per day per 10,000 square feet of lot area. Septic systems will not be designed or installed to exceed a capacity of greater than four (4) bedrooms. No new guesthouses or multifamily dwellings are permitted.

2.34 Chappaquiddick: No septic systems designed to accommodate more than 110 gallons of wastewater flow per day per 15,000 square feet of lot area will be approved.

2.35 Zone II Areas: The installation of any new onsite wastewater disposal systems is prohibited in the Zone II area within 1000 feet of the wellheads.

2.351 Lily Pond: As shown on a plan titled "Groundwater Evaluation of the Lily Pond Aquifer, Edgartown, Massachusetts, Zone II Delineation" prepared by Anderson-Nichols & Co., Inc. dated April 1988, scale 1"=200 ft.

For each new use no dwelling shall exceed 110 gallons of wastewater flow per 30,000 square feet of land area when using a standard Title 5 system; or 110 gallons per day per 20,000 square feet of land area when utilizing enhanced denitrifying treatment technology with an approved effluent nitrogen concentration of 19mg/L or less; or 110 gallons per day per 10,000 square feet of land area when utilizing enhanced denitrifying treatment technology with an approved effluent nitrogen concentration of 11mg/L or less.

2.352 Meshacket, Wintucket/Quenomica and Nunnepog: No dwelling shall exceed 110 gallons of wastewater flow per 10,000 square feet of land area. Only single family residences are permitted. No guesthouses will be permitted. For non-dwelling uses the sewage flow will not exceed 150 gallons of wastewater flow per day per 10,000 square feet of land area. Commercial developments will be limited to dry goods only.

2.353 Ocean Heights/Arbutus Park Wastewater Disposal Regulation Area: Wastewater design flows shall be computed pursuant to the System Sewage Design Flow Criteria contained in Title 5, 310 CMR 15.203 (1), (2), (3), (4) and (5) and shall not exceed the following volumes in relation to the given lot areas stated in Section 1.2.353 (A) below.

2.353 (A): Ocean Heights/Arbutus Park Wastewater Disposal Regulation Area: Wastewater design flows shall be computed pursuant to the System Sewage Design Flow Criteria contained in Title 5, 310 CMR 15.203 (1), (2), (3), (4) and (5) and shall not exceed the following design flow volumes in relation to the specified lot areas stated in Section 1.2.353 (A) below.

2.353(A):

(1) Lot Area between 6,000 sq. ft. and 9,999 sq. ft.

(a) New Construction (previously vacant land): 220 gallons per day (must utilize enhanced treatment in all cases, see (*) below).

(b) Repairs and Up-grades to existing systems involving complete system replacement or replacement of the leaching facility: 220 gallons per day OR the flow resulting from existing legal conditions, as defined by Town of Edgartown Zoning and Health Regulations, whichever is greater (must utilize enhanced treatment in all cases, see (*) below).

ALL DISPOSAL SYSTEM CONSTRUCTION PERMITS FOR COMPLETE SYSTEM CONSTRUCTION OR REPLACEMENT OF A FAILED SYSTEM OR LEACHING AREA SHALL EMPLOY NITROGEN REMOVAL TECHNOLOGY APPROVED AND PERMITTED BY THE STATE OF MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP), ENHANCED TREATMENT SYSTEM PROGRAM AS DETAILED IN 310 CMR 15.280 THROUGH 15.288. SAID ENHANCED TREATMENT SYSTEM SHALL BE APPROVED BY DEP FOR PRODUCING A PRESCRIBED EFFLUENT QUALITY OF NOT GREATER THAN 19 MG/L TOTAL NITROGEN (as measured at the distribution box). FURTHER, SAID ENHANCED TREATMENT SYSTEM SHALL BE LISTED AS APPROVED BY THE MASSACHUSETTS DEP FOR REMEDIAL USE, PILOTING, PROVISIONAL USE, OR GENERAL USE AND SHALL BE IN GOOD STANDING WITH THE MASSACHUSETTS DEP ALTERNATIVE SYSTEM PROGRAM AT THE TIME THE APPLICATION IS FILED WITH THE EDGARTOWN BOARD OF HEALTH.

(2) Lots between 10,000 sq. ft. and 29,999 sq. ft.

(a) New Construction (previously vacant land): 220 gallons per day when utilizing standard Title 5 treatment technology (no enhanced wastewater treatment) or 330 gallons per day when

utilizing an enhanced treatment nitrogen removal technology as defined in section 2.353(A)(l)(*) above.

(b) Repairs and Up-grades to existing systems involving complete system replacement or replacement of the leaching facility: 220 gallons per day when utilizing standard Title 5 treatment technology (no enhanced wastewater treatment) or 330 gallons per day when utilizing an enhanced treatment nitrogen removal technology as defined in section 2.353(A)(l)(*) above OR the flow resulting from existing legal conditions, as defined by Town of Edgartown Zoning and Health Regulations, whichever is greater. Enhanced treatment, as defined in section 2,353(A)(1)(*) above, must be utilized if existing flow exceeds maximums allowed for New Construction contained in (2)(a) above.

(3) Lot Areas between 30,000 sq. ft. and 39,999 sq. ft.

(a) New Construction (previously vacant land): 330 gallons per day when utilizing standard Title 5 treatment technology (no enhanced wastewater treatment) or 440 gallons per day when utilizing an enhanced treatment nitrogen removal technology as defined in section 2.353(A)(1)(*) above.

(b) Repairs and Up-grades to existing systems involving complete system replacement or replacement of the leaching facility: 330 gallons per day when utilizing standard Title 5 treatment technology (no enhanced wastewater treatment) or 440 gallons per day when utilizing an enhanced treatment nitrogen removal technology as defined in section 2.353(A)(1)(*) above OR the flow resulting from existing legal conditions, as defined by Town of Edgartown Zoning and Health Regulations, whichever is greater. Enhanced treatment, as defined in section 2.353(A)(l)(*) above, must be utilized if existing flow exceeds maximums allowed for New Construction contained in (3)(a) above.

(4) Lot areas 40,000 sq. ft. and greater.

(a) New Construction (previously vacant land): 440 gallons per day per 40,000-sq. ft. of land area when utilizing standard Title 5 treatment technology (no enhanced wastewater treatment) or 550 gallons per day per 40,000-sq. ft. of land area when utilizing an enhanced treatment nitrogen removal technology as defined in section 2.353(A)(1)(*) above.

(b) Repairs and Up-grades to existing systems involving complete system replacement or replacement of the leaching facility: 440 gallons per day per 40,000 sq. ft. of land area when utilizing standard Title 5 treatment technology (no enhanced wastewater treatment) or 550 gallons per day per 40,000 sq. ft. of land area when utilizing an enhanced treatment nitrogen removal technology as defined in section 2.353(A)(l)(*) above OR the flow resulting from the existing legal conditions, as defined by Town of Edgartown Zoning and Health Regulations, whichever is greater. Enhanced treatment, as defined in section 2.353(A)(l)(*) above, must be utilized if existing flow exceeds maximum(s) allowed for New Construction contained in (4)(a) above.

(c) For property held in contiguous ownership on or after March 8, 2007, the aggregate number of square feet shall be used to compute maximum allowable wastewater flow volumes.

2.353(B) Drinking water supply requirements within the Ocean Heights/Arbutus Park Wastewater Disposal Regulation Area are as follows.

(1) All Disposal System Construction Permit applications to serve new construction (previously vacant land) and/or repairs and up-grades to existing systems that propose complete system replacement or replacement of a leaching facility must be served by a water supply connected to the Town of Edgartown Public Water Supply system. Disposal System Construction Permit applications for new construction (previously vacant land) which identify or utilize an on-site well as the potable water supply are prohibited.

(2) Service from existing water supply wells for lots on which a Disposal System Construction Permit is being sought to allow complete system replacement or replace of the leaching facility must be discontinued and water supply to existing homes must be converted to Town of Edgartown Public Water service within 120 days from the time that the Edgartown Public Water main distribution line, located in the street layout, is within 100 ft. of said private water supply well. In the case of a newly constructed water distribution main, the timing of the connection must occur within 120 days from the date the water has been deemed potable and is available for delivery by the Edgartown Water Department.

(3) When the horizontal distance between a Town of Edgartown water main distribution line, located in the street layout, is greater than 100 ft. from the nearest the property line of a lot in question, the Board of Health may consider a written request, on a case by case basis, to continue use

of an existing on-site drinking water supply well serving a single family dwelling.

(a) In consideration of a request to continue use of an on-site well serving an existing dwelling, the Board of Health shall require an initial water test, drawn in the presence of a representative for the Edgartown Board of Health. Said water shall be tested at a Massachusetts DEP certified laboratory for coliform bacteria, ammonia nitrogen and nitrate nitrogen. The Board of Health may approve requests to continue use of an on-site well only for those wells that produce an initial water test with ammonia nitrogen and nitrate nitrogen together totaling no greater than 5.0 mg/l. Additionally, the Board of Health may impose annual water testing requirements, may require a covenant disclosing use of an on-site well and may require a signed enforceable agreement with the Edgartown Board of Health to connect the subject property to the Edgartown Public Water Supply System prior to transfer of title or change of ownership of said property.

2.353(C) The Edgartown Board of Health shall require each property owner seeking a Disposal System Construction Permit to sign a written disclosure of the potential for the Ocean Heights and Arbutus Park area(s) to be served by town sewer at some future time and acknowledging that future requirements of the Town of Edgartown may order the abandonment of an on-site wastewater disposal system constructed in compliance with the requirements contained herein and that a connection be made to town sewer.

2.40 Plan Submittal: A completed application for installation of onsite wastewater disposal systems shall consist of a plan properly prepared by a Professional Engineer complying with the requirements of 310 CMR 15.02(5) and in addition the plan shall contain: a locus showing the general location in town of the lot in question and whether it occurs (a) north & east or (b) south & west of the groundwater divide (GWD). For lots north & east of the GWD, excepting areas and sites on the municipal water supply in BI, 1311 and R5 zones, the plan must give the ownership since July 17, 1985 of abutting lots. In the Edgartown Zoning ByLaw areas B 1, BII & R5, the total area of abutting lots in common ownership as of that date and thereafter shall be used to compute the wastewater flow allowances for the site; information sufficient to establish that the required vertical separation exists between the bottom of the leach facility and maximum groundwater elevation at the site; estimates of actual elevations (relative to NGVD, 1929 datum) shall cite the information source used; if the property is protected from current regulations by an approved Form A, B or C subdivision plan, the date and grantee of that approval is to be supplied.

2.41 Edgartown Great Pond Watershed Mandatory Sewer Tie-in Regulation:

Whereas, the Edgartown Board of Health has received the findings of the Massachusetts Estuaries Report and the draft Edgartown Great Pond System Total Maximum Daily Loads For Total Nitrogen (the reports) for Edgartown Great Pond (the pond) prepared by SMAST, Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs, Department of Environmental Protection and Bureau of Resource Protection, and,

Whereas, the report concludes that Edgartown Great Pond is showing moderate to significant habitat impairment as a result of watershed nitrogen load, and,

Whereas, the reports find that 80% of the pond's controllable watershed nitrogen is from wastewater and approximately 70% of the total wastewater nitrogen is from on-site septic systems, and,

Whereas, the findings of the reports make certain recommendations for reducing nitrogen in the Edgartown Great Pond watershed to improve water quality and restore habitat within the pond by providing sewer service to properties within the Edgartown Great Pond watershed, and,

Whereas, the Town of Edgartown has funded and provided sewer service infrastructure within the Great Pond Watershed to provide sewer service and will continue to plan and provide extension of the sewer infrastructure to the extent possible, and,

Whereas, the Edgartown Board of Health seeks to implement, through its Rules and Regulations to the extent that it can, the Total Maximum Daily Load (TMDL) limits delivered to the Town of Edgartown by the Massachusetts Department of Environmental Protection, and,

Whereas, the Town of Edgartown Board of Health seeks to implement the recommendations of the Estuaries project in order to provide protection of the public health, safety, welfare and environment and to ensure the protection of Edgartown Great Pond, therefore,

Pursuant to Massachusetts General Laws, Chapter 83, Sections 3 and 11, and Chapter 111, Sections 31, 122 and 127, The Edgartown Board of Health hereby adopts the following regulation requiring abandonment of on-site septic disposal systems and connection to the Town of Edgartown sewer system within the required timeline.

Adopted May 27, 2025

2.41.1. Authority and Purpose:

These regulations are enacted under the authority of Massachusetts General Laws, Chapter 83, Sections 3 and 11, and Chapter 111, Sections 31, 122 and 127, and are enacted for protection of the public health, safety, welfare and environment and for the further purpose of ensuring the protection of the Edgartown Great Pond and Sengekontacket Pond watersheds and reversing trends of increasing water quality impairment.

2.41.2. Mandatory Connection to the Sanitary Sewer System:

- a. The owners of all houses, buildings or properties used for human occupancy, employment or recreation, or in any way generating wastewater flows, situated within the Edgartown Great Pond and Sengekontacket Pond watersheds and abutting on any street, road or right-of-way in which there is located, or may in the future be located, a sanitary sewer line of the Town of Edgartown that has been deemed by the Edgartown Wastewater department to be capable of accepting wastewater flow from said use, shall be required to connect to the sanitary sewer system by a building sewer as defined, specified and administered by the Town of Edgartown Wastewater Department and to obtain a certificate of compliance for septic system abandonment by the Board. Such connection shall be made within two years of the official mailed notice of sewer availability.
- b. All properties to which a sewer service availability notice has been mailed and to which ownership is transferred shall connect to the sewer line within 30 days of transfer and obtain a certificate of compliance for septic system abandonment from the Board.
- c. Whenever a property to which a sewer service availability notice has been mailed experiences any of the conditions of systems failing to protect public health and safety and the environment as defined in 310 CMR 15.303, the owner of said property shall connect to said town sewer and obtain a certificate of compliance for septic system abandonment from the Board within 90 days, unless a shorter period of time is set by the Board based upon the existence of an imminent health hazard.
- d. The Board shall have the authority to defer deadlines in this regulation if, in the opinion of said Board, the provisions of this regulation impose an exceptional burden on a property owner. Requests for a deferment hearing must be submitted in writing.
- e. Any property owner who has installed an innovative/alternative denitrifying septic system as defined in 310 CMR 15.000 The State Environmental Code, Title 5, less than 10 years prior to an order to connect may, upon approval by the Board, defer connecting to town sewer to allow such owner to utilize their innovative/alternative septic system for a total of ten years from the date of the issuance of the certificate of compliance for said system. The owners of said system must prove a history of compliance in operation and maintenance of the system, as contained in the Board and Department of Environmental Protection approval. If the property is transferred during that time, the property shall be connected to the public sewer within 30 days of transfer, unless the Board of Health has approved an extension prior to the transfer. Requests for an extension hearing must be submitted in writing to the Board.
- f. All costs and expenses associated with the installation and connection of the building sewer shall be the sole responsibility of the property owner, and shall be governed by the Town of Edgartown Sewer Connection Regulations.

2.41.3. Severability:

If any portion, sentence or clause contained herein is held invalid, the remainder of the regulation shall remain in full force and effect.

2.41.4. Violation:

Any person who violates these regulations shall be subject to a fine of \$200.00 for each violation (see G.L. c.83, §11.) Each day a violation continues shall be deemed a separate offense.

2.41.5. Effective Date:

These regulations shall be effective May 27, 2025 upon publication in accordance with M.G.L. c111, §31 and upon filing an attested copy with the Department of Environmental Protection and shall so remain in effect until modified or amended by the Board.

3.000 Construction and Installation:

3.10 Vertical Separations: There shall be provided, in all areas below the 20 foot contour, USGS, a five foot vertical separation between the bottom of the disposal facility and the top of groundwater. Groundwater determinations in areas below the 20 foot contour shall be done in April or May. If determinations are done in any other month, a seven (7) foot vertical separation must be provided.

3.20 Horizontal Separations:

3.21 Katama Area: There will be a two hundred (200) foot separation between proposed wells and septic systems, and between any proposed new septic system and existing wells used for domestic water supply.

3.22 Notwithstanding the requirements of the Edgartown Zoning By-Laws, Article XIV, Section 14.1.e.4. through 9., there shall be a minimum of one hundred-foot separation between a soil absorption system (SAS) and a WETLAND as defined in Section 9. of the Edgartown Board of Health Rules and Regulations.

4.000 Maintenance & Upgrading:

4.10 Every septic tank shall be pumped and cleaned at intervals of no less than once every three years. All septic wastes removed from a tank shall be taken to the Edgartown Wastewater Treatment facility for proper treatment and disposal.

4.20 All septic disposal facilities shall undergo evaluation and upgrading at the time of any significant renovation or remodeling of the structure(s) serviced by said facility. All applicants shall be required to upgrade wastewater disposal facilities to be in compliance with Title 5 and these regulations at the time of any increase in wastewater flow or change of use of the property.

4.30 The use of acidic additives or synthetic organic solvents in bulk quantities at on site leaching facilities is prohibited.

5.000 Failure & Repair

5.100 A septic system or cesspool shall be considered to have failed when any component does not function as intended. Any septic system or cesspool that causes effluent to be discharged onto the surface of the ground, stream, etc., or has the septic tank or cesspool pumped to remove septage more than twice in thirty (30) days or any five (5) times in a twelve month period shall be considered to have failed.

5.101 A septic tank shall be considered to have failed when it cannot retain sewage.

5.102 A cesspool shall be considered to have failed when it no longer permits the infiltration of effluents to the soil, or no longer supports the cover, top or cap.

5.103 A dosing tank shall be considered to have failed when it cannot retain sewage.

5.104 A siphon and/or pump shall be considered to have failed when it no longer alternates and/or doses sewage to the disposal area or no longer meets the requirements of the State Environmental Code: Title 5, 15.09 Pumps.

5.105 A distribution box shall be considered to have failed when it no longer retains effluent or does not distribute effluent evenly.

5.106 A leach facility shall be considered to have failed when sewage is discharged to the surface of the ground, to water courses, or no longer permits the infiltration of effluent to the soil.

5.107 A pipe will be considered to have failed when it is clogged, fractured, becomes un-cemented, or does not hold or transport sewage to the intended component.

5.108 In the case of repair of a failed system, the new system capacity shall not exceed that permitted for the failed system or the new nitrate limit, whichever is greater.

5.109 No person or persons shall allow septic effluent to discharge onto the surface of the ground.

5.110 Emergency repairs must have the consent of the Board of Health or its designated agent before work commences.

5.111 All cesspools shall be abandoned, pumped and filled when onsite facilities are upgraded or repaired. New precast septic tanks must be installed, Conversion of existing cesspools to septic tanks is not permitted.

6.000 Existing vs. New

6.10 Lots already built upon prior to July 15, 1985 shall not exceed the wastewater flows permitted for their existing septic systems or the new nitrate loading limit, whichever is greater. Lots being subdivided after July 15, 1985 shall not exceed the wastewater flows already permitted for the undivided parcel or the new nitrate limit, whichever is greater.

7.000 Compliance

7.10 In cases where there are multiple commercial uses, e.g. tenants sharing a septic system serving the lot, compliance of the total use with the greater of the new standard or the existing permitted wastewater flow must be demonstrated. Every proposed change of use in commercial tenancy will require presentation of a statement of compliance by the owner to the Board of Health's satisfaction.

7.20 It will be the responsibility of the applicant(s) to demonstrate compliance of a proposed use with the performance standards by submitting such certification prepared by a Professional Engineer. In the event of a substantial change of use, or addition to an existing use of an existing structure, the entire use of the structure and parcel will be required to comply with the performance standards or the existing permitted wastewater flow, whichever is greater.

8.000 New Technology

8.10 In considering applications for Disposal Works Construction Permits requesting variances or waivers from the Edgartown Board of Health Rules and Regulations to allow a greater number of bedrooms than stipulated in the land area to bedroom ratios set forth in Section 1.2.2.31, Section 1.2.2.32, Section 1.2.2.32 A, Section 1.2.2.33, 1.2.2.34, and 1.2.2.352 the Board of Health shall not allow for greater than 25% maximum presumed removal of total nitrogen in the treated wastewater for technologies with current approvals in the Massachusetts DEP innovative/alternative technologies program.

8.20 In considering the permitting and use of various alternative septic treatment technologies in the Town of Edgartown, the Edgartown Board of Health recognizes that there may be specific local circumstances which warrant the Board to require more stringent conditions for the installation and monitoring of these alternative systems than may be required by the Mass. Dept. of Environmental Protection (DEP). As allowed under Mass. General Laws Chapter 111, section 31 and as required by the revised 310 CMR 15.00 sections 15.285(2d) 15.2866) and 15.2888(4), the Edgartown Board of Health hereby reserves the right to impose any additional conditions or monitoring requirements it views as necessary to ensure the safe performance of any alternative onsite septic system which the Board agrees to permit in the Town of Edgartown.

9.00 Sale and Transfer Inspection: As of June 6, 2000, all Sale and Transfer Inspections will require examination and exposure of the leaching area of the septic system as part of the sale and transfer inspection process required by 310 CMR 15.000 Title 5.

SECTION B ON SITE WATER WELLS

1.000 Design & Permitting

1.10 Prior to the drilling of a private well within the Town of Edgartown for the purpose described herein, a permit must first be obtained from the Board of Health.

1.20 All new water supply well applications shall be accompanied by a plan prepared by a Registered Professional Engineer and a fee as provided in Section 11, Fees. Said plans shall include, but not be limited to, the exact location of the proposed well; the location of the proposed septic disposal facility, with reserve area; all abutting septic disposal facilities, with sufficient area designated for a reserve area; all abutting water supply wells; lot boundaries; the location of all cement bounds.

1.30 All persons making application for the installation of a water supply well, shall have placed upon the parcel in consideration, cement bounds indicating two property corners. Said bounds must be placed by a Registered Professional Land Surveyor or other person authorized to locate and place said bounds.

1.40 Well Location

1.401 A distance of no less than one hundred (100) feet must be maintained between the well and all the subsurface sewage disposal facilities, including reserve area, in the area. The Board of Health reserves the right to require greater well to septic separation. 200 feet is required in the Katama Area, Section A, 1.20 and in the Coastal District of the Edgartown Zoning Bylaw.

1.402 There shall be a minimum five (5) foot separation between any water supply well and the property line.

1.50 Upon compliance with these regulations, a Well Driller's Construction Permit will be issued.

2.000 Construction & Installation

2.10 Well Drillers/Installers

2.101 Anyone drilling a private well which will be providing the primary source of water to a dwelling or building and such water is to be used for human consumption, must file a current Well Drillers Certificate with the Board of Health.

2.102 No person shall engage in the business of digging or drilling wells within the Commonwealth unless he is registered with the Water Resources Commission. Each

person intending to engage in said business shall register annually with said Commission.

2.103 It will be the responsibility of the well driller to have the well tested for chemical and biological count. This test should be analyzed at a state approved laboratory, the results turned over to the Board of Health. At this time a Water Well Completion report must be filled out by the driller. (One copy to the State, one copy for the Board of Health records, and a copy to the owner of the well.)

2.20 The proposed well location shall be staked and certified by the design Registered Professional Engineer prior to construction.

3.000 Use

3.10 A private well can only be utilized to service those dwellings on a single lot or single bounded area. The use of a single well to supply water to buildings on two or more lots is unauthorized.

3.20 Upon completion of the testing and the Water Well Completion report, the well may be approved by the Board of Health.

3.30 The building and septic permit applications will be processed and, if approved, will be granted but not issued until the well installation has been approved.

4.000 Failure/Repair

4.10 When a potable supply well fails, for whatever reason, said well may be reconstructed provided that a minimum distance of 100 feet from septic leaching facilities is provided. An application form with a plan must be submitted however, no permit fee is required, all articles of Section 2, On Site Water Wells, are applicable.

5.000 Monitoring Wells

5.10 Monitoring wells do not require permitting, however, the Board requests that all monitoring wells be registered with the Board.

6.000 Irrigation & Other Applications

6.10 Irrigation & other water wells must be permitted by the Board of Health prior to construction, pursuant to these regulations. Site specific requirements may be imposed by the Board of Health.

6.20 Adequate measures must be taken by the owner to assure that irrigation well water is not available for human consumption. Appropriate signage will be required by the Board of Health where applicable.

SECTION 3 - GROUND WATER PROTECTION REGULATION

TOWN OF EDGARTOWN BOARD OF HEALTH GROUNDWATER PROTECTION REGULATION

ARTICLE, TITLE, PAGES

I. TITLE, NEED, AND PURPOSE

II. SCOPE OF AUTHORITY

III. DEFINITIONS .

IV. GROUNDWATER PROTECTION ZONES .

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VI. ESTABLISHMENT AND DELINEATION OF GROUNDWATER PROTECTION

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IX. EFFECTIVE DATES FOR ALL FACILITIES

X PENALTIES

XI SEVERABILITY

TOWN OF EDGARTOWN GROUNDWATER PROTECTION REGULATION DECEMBER 14, 1998

ARTICLE 1: TITLE, NEED AND PURPOSE

This regulation shall be known and referred to as:

1.1 Town of Edgartown, Massachusetts Groundwater Protection Regulation.

1.2 As all public and private water supplies are obtained from the same aquifer, it is necessary that a Groundwater Protection Regulation be established for each public water supply well in the town. This need is supported by the fact that the EPA has determined that the entire Island of Martha's Vineyard, including Chappaquiddick, is within the boundaries of a sole source aquifer designation. This means that the Vineyard's aquifer is the sole source of drinking water for the Island's residents and visitors; that there are no viable alternate sources of water in case of contamination; and that such contamination would pose a serious public health hazard.

1.3 The purpose of this Groundwater Protection Regulation is to:

- promote the health, safety and general welfare of the Town of Edgartown by ensuring an adequate quality and quantity of drinking water for all residents, visitors and businesses of the town
- preserve and protect existing and potential sources of drinking water supplies.
- conserve the natural resources of the Town; and prevent temporary and permanent contamination of the environment.

1.4 And whereas:

- siting of land uses that have the potential to release hazardous waste, petroleum products, or other contaminants significantly increases the risk of contamination; and poor management

practices, accidental discharges, and improper maintenance of these facilities may lead to the release of pollutants; and discharges of hazardous wastes, leachate, pathogens, and other pollutants have repeatedly threatened surface and ground water quality throughout Massachusetts; and surface and groundwater resources in the Town of Edgartown contribute to the town's drinking water supplies; therefore, the Town of Edgartown adopts the following regulation, under its authority as specified in Article II of this regulation as a preventative measure for the purposes of:

- preserving and protecting the Town of Edgartown's drinking water resources from discharges of pollutants; and
- minimizing the risk to public health and the environment to the Town due to such discharges.

ARTICLE 11 - SCOPE OF AUTHORITY

2.1 The Edgartown Board of Health (BOH) adopts this regulation pursuant to authorization granted by M. G. L. c. 111 s.31 and s. 122. The regulation shall apply, as specified herein to all applicable facilities within the Zone IIS and/or the Interim Wellhead Protection Areas (IWPA), whichever is the accepted area of protection around the drinking water resources of the town. These regulations supersede all Zone II and/or Interim Wellhead Protection Area regulations adopted by the Board of Health prior to the effective date. The effective date of this regulation is December 14, 1998 (amended February 21, 2008 by addition of the Nunnepog supply well).

2.2 The Groundwater Protection Regulation shall apply to all new construction, reconstruction or expansion of existing buildings, change of use and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts which fall within the Groundwater Protection Areas must additionally comply with the requirements of this regulation. Uses that are prohibited in the underlying zoning districts shall not be permitted in the Zone II's as herein after established.

ARTICLE 111 - DEFINITIONS

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

Aquifer: Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

Commercial Fertilizers: Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed by its manufacturer to have value in promoting plant growth. Commercial fertilizers do not include unmanipulated animal and vegetable manure's, marl, lime, limestone, wood ashes, and gypsum.

Department: The Massachusetts Department of Environmental Protection.

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

Hazardous or Toxic Materials: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Edgartown. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapter 21 C and 2 IE and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

Historical High Groundwater Table Elevation: A groundwater elevation which is determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Interim Wellhead Protection Areas (IWPA): For public supply wells or wellfields that lack a Department approved Zone II, the Department will apply an interim wellhead protection area. This interim wellhead protection area shall be a one-half mile radius measured from the well or wellfield for sources whose approved pumping rate is 100,000 gpd or greater. For wells that pump less than 100,000 gpd, the IWPA radius is proportional to the well's approved daily volume following the IWPA Chart as referenced in Division Water Supply Policy 92-01.

Landfill: A facility established (in accordance with a valid site assignment) for the purpose of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

Mining: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Non-Sanitary Wastewater: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

Open Dump: A facility which is operated or maintained in violation of the Resource Conservation and Recovery Act 42 U. S. C. 4004(a)(b), or the regulations and criteria for solid waste disposal.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as Zone I, Zone II or Zone III.

Septage: The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. septage does not include any material which is a hazardous waste, pursuant to 310 CMR 30.000.

Sludge: The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

Treatment Works: Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

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

Very Small Quantity Generator: Any public or private entity, other than residential, which produces less than 27 gallons (100 kilogram's) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with M. G. L. c. 12 s, 52A.

Other sources for definitions are:

- U.S. Geological Survey Water-Supply Paper 1988

Groundwater and Wells Second Edition Published by Johnson Division, St. Paul Minnesota 55112 1986 Page 885 (Glossary)

ARTICLE IV - GROUNDWATER PROTECTION ZONES

4.1 The recharge areas of existing wells are divided into three zones - Zone I, Zone II and Zone III. Each zone has a different level of significance in terms of well head protection and the boundaries of each are determined as follows:

ZONE I - the area requiring the most stringent protection, is a circle around the well with a diameter of 400 feet for wells with DEP approved yields of 100,000 gallons per day (gpd) or greater, which applies to all public wells. Under the Massachusetts Drinking Water Regulations, 310 CMR 22.21 (1) 4, requires that the Edgartown Water Department own, or control through conservation restrictions, the entire Zone I. In addition, only those activities directly related to the water supply system are allowed within the Zone I.

ZONE II - the area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 Code of Massachusetts Regulations (CMR) 22.00

ZONE III - the land area beyond the area of Zone II from which surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00.

IWPA (See definitions on page 19)

4.2 To protect groundwater recharge areas for private wells and future public wells land use controls are also addressed in this regulation.

ARTICLE V - OVERVIEW OF TOWN OF EDGARTOWN AND ITS USES OF AQUIFER

5.1 The Town of Edgartown located at the eastern extreme of the Island has a net land area of 26.8 square miles with ground surface elevations throughout town varying between sea level and Elev. 80. The aquifer slopes west to east with the zone of contribution extending into the Town of West Tisbury in the Martha's Vineyard State Forest. The year round population is approximately 3,000 with an estimated additional 10,000 seasonal residents. Although primarily a low density residential town, there is a dense mercantile and hotel area along Main Street and on the harbor.

5.2 The Edgartown Water Department serves about 2,000 of the estimated 3,800 housing units. The average summer day demand is about 1.0 million gallons. That leaves about 1500 or one-third outside the municipal water distribution system which are served by private wells.

5.3 Edgartown has a municipal sewer system and treatment plant that serves about 400 customers who, for the most part, are located in the densely populated downtown area. The treated effluent from the Wastewater Plant is discharged to the ground as are all wastewaters from the individual subsurface wastewater disposal systems that serve the remainder of the population.

ARTICLE VI - ESTABLISHMENT AND DELINEATION OF GROUNDWATER PROTECTION AREAS

6.1 Under this regulation, there are hereby established within the Town certain groundwater protection areas, consisting of aquifers or recharge areas which are delineated on a map which can be viewed at the office of the Edgartown Board of Health during normal business hours. Said map shall be referred to as the "Edgartown Water Department Zone II Overlay" prepared by EarthTech, dated January 2008, scale 1"=1,000— ft. depicting the following Groundwater Protection Areas:

A. Wintucket/Quenomica Wells Groundwater Protection Area.

B. Meshacket Well Groundwater Protection Area.

C. Lily Pond Well Groundwater Protection Area.

D. Nunnepog Well Groundwater Protection Area

ARTICLE VII - PROHIBITIONS

A. Notwithstanding any land uses which are otherwise permitted by local, state, and/or other federal laws, the siting of any of the following is prohibited in the Zone II or IWPA:

1. landfills,
2. open dumps,
3. automobile graveyards and junkyards,
4. sludge and septage monofils,
5. stockpiles (disposal) of chemically treated snow and ice that have been removed from highways and roadways outside the Zone II,
6. petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the U. S. Office of Management and Budget and maybe determined by referring to the publication, Standard Industrial Classification and any subsequent amendments.

B. Facilities for the treatment or disposal of non-sanitary wastewater are prohibited, with the following exceptions:

1. Replacement or repair of an existing system is exempt if the existing design capacity is not exceeded; and
2. Treatment works approved by the Department and designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.0503); and
3. Publicly owned treatment works

C. Facilities that generate, treat, store, or dispose of hazardous waste are prohibited, with the following exceptions:

1. treatment works for the restoration of contaminated ground or surface waters in compliance with M. G. L. c. 21E and 310 CMR 40.000.

D, Removal of soil, loam, sand, gravel, or any other mineral substances within four feet of the historical high groundwater table elevation is prohibited with the following exceptions:

1. substances which are removed and redeposited within 45 days of removal on site to achieve a final grade greater than four feet above the historical high water mark; and
2. excavations for the construction of building foundations or the installation of utilities.

E. Land uses that result in impervious cover of more than 15% or 2500 square feet of any lot, whichever is greater, are prohibited; unless a system of artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.

ARTICLE VIII-CONDITIONAL PROHIBITIONS

The storage of certain waste materials, chemicals, and petroleum products is prohibited except if contained in accordance with the following requirements.

1. Storage of sludge and septage is prohibited unless storage is in compliance with 3 IOCMR 32.00.
2. Storage of roadway de-icing chemicals (sodium chloride, chemically treated abrasives, or other chemicals) and the storage of chemical fertilizers are both prohibited, unless the storage is in a structure that prevents the generation and release of contaminants or contaminated runoff.
3. Storage of animal manure is prohibited unless covered or contained in accordance with the standards and guidelines of the Natural Resource Conservation Service.
4. Storage of liquid hazardous materials, as defined in M. G. L. c. 21 E, and/or liquid petroleum products is prohibited unless the materials are stored.
 - a. above ground level, and
 - b. on an impervious surface, and
 - c. in containers (or above ground tanks) within a building, or, outdoors in covered containers (or above ground tanks) designed and operated to hold either 10% of the total possible storage capacity of all container's storage capacity, whichever is greater.These storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.
5. Compliance with all provisions of this regulation must be accomplished in a manner consistent with Massachusetts Plumbing, Building and Fire Code requirements.

ARTICLE IX-EFFECTIVE DATES FOR ALL FACILITIES

The effective date of this regulation is December 14, 1998 , which shall be identical to the date of adoption of the regulation.

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

The Building Inspector has been notified of this regulation.

ARTICLE X-PENALTIES

Failure to comply with provisions of this regulation will result in the levy of fines of not less than \$100.00, but no more than \$300.00. Each day's failure to comply with the provisions of this regulation shall constitute a separate violation.

ARTICLE XI-SEVERABILITY

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

SECTION 3A FLOOR DRAIN REGULATION

FLOOR DRAIN HEALTH REGULATION EDGARTOWN BOARD OF HEALTH

Section 1. PURPOSE OF REGULATION

Whereas:

floor drains in industrial and commercial facilities are often tied to a system leading to a leaching structure (e.g. dry well, cesspool, leach field) or a septic system; and

poor management practices and accidental and/or intentional discharges may lead petroleum and other toxic or hazardous materials into these drainage systems in facilities managing these products; and

improper maintenance or inappropriate use of these systems may allow the passage of contaminants or pollutants entering the drain to discharge from the leaching structure or septic system to the ground ; and

discharges of hazardous wastes and other pollutants to floor drains leading to leaching structures and septic systems have repeatedly threatened surface and ground water quality throughout Massachusetts: and surface and ground water resources in the Town of Edgartown contribute to the town's drinking water supplies; the Town of Edgartown adopts the following regulation, under its authority as specified in Section II, as a preventative measure for the purposes of: preserving and protecting the Town of Edgartown's drinking water resources from discharges of pollutants to the ground via floor drains, and minimizing the threat of economic losses to the Town due to such discharges.

Section 11. SCOPE OF AUTHORITY

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

Section 111. DEFINITIONS

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

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

Department: The Massachusetts Department of Environmental Protection.

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

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

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

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

Toxic or Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Edgartown. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws

(MGL) Chapter 21C and 2 IE or Massachusetts Hazardous Waste regulations (310 CMR 30.000), and also include such products as solvents, thinners, and pesticides in quantities greater than normal household use.

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

Section IV. PROHIBITIONS

With the exception of discharges that have received (or have applied and will receive) a Department issued permit prior to the effective date of this regulation, no floor drain(s) shall be allowed to discharge, with or without pretreatment (such as an oil/water separator), to the ground, a leaching structure, or septic system in any industrial or commercial facility if such floor drain is located in either:

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

Section V. REQUIREMENTS FOR EXISTING FACILITIES

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

1. disconnect and plug all applicable inlets to and outlets from (where possible) applicable leaching structures, oil/waste separators, and/or septic systems;
2. remove all existing sludge in oil/water separators, septic systems, and where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations (310 CMR 30.000). Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate Department policies;
3. Alter the floor drain system so that the floor drain shall be either:
 - a. connected to a holding tank that meets all applicable requirements of Department policies and regulations, with hauling records submitted to the Edgartown Board of Health at the time of hauling;
 - b. connected to a municipal sanitary sewer line, if available, with all applicable Department and local permits; or
 - c. permanently sealed. {Any facility sealing a drain shall be required to submit for approval to the Board of Health a hazardous waste management plan detailing the means of collecting, storing, and disposing any hazardous waste generated by the facility, including any spill or other discharge of hazardous materials or wastes.}

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

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

D. Upon complying with one of the options listed under Section V.A.3., the owner/operator of the facility shall notify the Department of the closure of said system by filing the Department's UIC Notification Form {which may be obtained by calling 617292-5770} with the Department, and sending a copy to the Edgartown Board of Health.

Section VI. EFFECTIVE DATES FOR ALL FACILITIES

The effective date of this regulation is the date posted on the front page of the regulation, which shall be identical to the date of adoption of the regulation which is December 14, 1998.

A. Existing Facilities:

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

B. New Facilities:

1. As of the effective date of the regulation, all new construction and/or applicable change of use within the Town of Edgartown shall comply with the provisions of this regulation.
2. Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits.
3. The use of any new oil/water separator shall comply with the same requirements as for existing systems, as specified above in Section {V. B.}

Section VII. PENALTIES

Failure to comply with provisions of this regulation will result in the levy of fines of not less than \$100.00, but no more than \$300.00. Each day's failure to comply with the provisions of this regulation shall constitute a separate violation.

Section VIII. SEVERABILITY

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

SECTION 4 UNDERGROUND STORAGE TANK REGULATIONS

Whereas, leaking underground storage tanks pose an immediate and serious threat to Martha's Vineyards sole source aquifer, and, Whereas the Town of Edgartown does not have records to locate all such tanks installed within the Town, Therefore, under Chapter 1 1 1, Section 3 1, of the Massachusetts General Laws, the Edgartown Board of Health hereby adopts the following revised regulation to protect the ground and surface waters from contamination with liquid toxic or hazardous materials.

When used in Section 4, "Toxic or hazardous materials" shall be defined as all liquid hydrocarbon products including, but not limited to, gasoline, fuel and diesel oil, and any other toxic or corrosive chemicals, radioactive materials or other substance controlled as being toxic or hazardous by the Division of Hazardous Waste of the Commonwealth of Massachusetts, under the provisions of Massachusetts General Laws, Chapter 21C, Section 1, et. seq.

The following regulations apply to all underground toxic or hazardous material storage systems:

1.000 Installation of Underground Storage Tanks (UST)

1.110 Following the effective date of this regulation, the installation of all underground fuel, gasoline or other chemical storage tanks less than 2000 gallons will be prohibited. All other underground fuel, gasoline, or other chemical storage tanks shall conform to the following criteria:

1.120 In that the United States Environmental Protection Agency designated the Town of Edgartown as overlying a sole source aquifer, secondary containment and an approved in-tank or interstitial space monitoring system shall be required for new or replacement tanks.

1.130 All tank installations within four feet of high water table or within two hundred feet of a surface water body shall be vaulted or of fiberglass construction.

1.140 Underground liquid fuel and hazardous material storage tanks and systems installed after the date of adoption of these regulations within the Town must be reviewed and approved by the Edgartown Board of Health, per instruction on file in the Edgartown Board of Health office.

1.150 All tanks shall be properly installed as per Massachusetts Fire Prevention Regulations and manufacturers specifications, under the direction of the Fire Department. Tanks shall be of approved design and protected from internal and external corrosion. The following tank construction systems are considered to provide adequate corrosion protection: all fiberglass construction; steel with bonded fiberglass and internal lining; and the Steel Tank Institute 3-Way Protection System. Used tanks may not be installed. Any other system must be shown to provide equivalent protection.

2.000 Tank Registration

2.110 The following regulations shall apply to A) all underground tanks containing toxic or hazardous materials as defined above which are not currently regulated under 527 CMR 9.24-Tanks and Containers, to B) all tanks containing fuel oil, whose contents are used

exclusively for consumption on the premises, and to C) farm and residential tanks of 1,100 gallon capacity, or less, used for storing motor fuel for non-commercial purposes.

2.120 Owners shall file with the Board of Health, on or before September 15, 1990 the size, type, age and location of each tank, and the Wpe of fuel or chemical stored in them. Evidence of date of purchase and installation, including fire department permit, if any, shall be included along with a sketch map showing the location of such tanks on the property. Owners of tanks for which evidence of installation date is not available shall, at the order of the Board of Health, have such tank systems tested. If in the opinion of the Agent of the Board of Health or Fire Chief the tank is not product tight, it shall be replaced if not covered in 1.110. Upon registering the tank with the Board of Health, the tank owner will receive a permanent metal or plastic tag, embossed with a registration number unique to that tank. This registration tag must be affixed to the fill pipe in such a location as to be visible to any distributor when filling the tank and to any inspector authorized by the Town.

2.130 Effective September 15, 1990 every petroleum and other chemical distributor, when filling an underground storage tank, shall note on the invoice or bill, for the product delivered, the registration number appearing on the tag affixed to the tank which was filled. Every petroleum and other chemical distributor shall notify the Board of Health of the existence and location of any unregistered or untagged tank which they are requested to fill. Such notification must be completed within two (2) working days of the time the distributor discovers that the tank registration tag is not affixed to the fill pipe.

2.140 Prior to the sale of a property containing an underground storage tank, the fire department must receive from the current owner a change of ownership form for the registration of the underground storage tank. Such a form can be obtained from the Board of Health Office.

3.000 Testing

3.110 The tank owner shall have each tank and its piping tested for tightness fifteen (15) years after installation and annually after twenty (20) years. A tank shall be tested by any final or precision test, not involving air pressure, that can accurately detect a leak of 0.05 gal/hr, after adjustment of relevant variables, such as temperature change and tank end deflection, or by any other testing system approved by the Board of Health, as providing equivalent safety and effectiveness. Piping shall be tested hydrostatically to 150 percent of the maximum anticipated pressure of the system. Certification of the testing shall be submitted to the Board of Health no later than two weeks following the date of the test. Tanks which are currently tested under the provisions of 527 CMR 9.18 are exempt from this section. Any tank failing the test shall be neutralized and disposed of under the direction of the Fire Chief and the Board of Health at the owner's expense.

4.000 Report of Leaks or Spills

4.110 Any person who is aware of a spill, loss of product, or unaccounted for increase in consumption which may indicate a leak shall report such spill, loss or increase immediately to the head of the fire department and to the Board of Health. All leaking tanks must be emptied within 24 hours of leak detection and removed in a time period determined by the Fire Chief and Board of Health. The owner of the property affected or the individual in control of the property affected if not the owner shall be responsible for compliance with these regulations.

5.000 Tank Removal

5.110 All fuel, gasoline or other chemical tanks not required under 527 CMR 9.00 (farm or residential tanks of 1,100 gallons or less and underground tanks storing fuel for consumption use at the property) in service on the effective date of this regulation, shall be removed thirty (30) years after the date of installation. If the date of installation is unknown, it shall be assumed to be September 15, 1970. All underground storage tanks currently subject to the removal regulations (30 years or older) must be removed by April 15, 1991.

5.120 Prior to the removal of an underground storage tank governed by this regulation, the owner shall first obtain a permit from the head of the fire department, pursuant to M.G.L., C. 148.

5.130 Any person granted a permit by the Marshal or the head of a local fire department to remove a tank under the provisions of M.G.L., C. 148 or 527 CMR 9.00, shall, within (72) hours, provide the permit granting authority with a receipt for delivery of said tank to the site designated on the permit.

5.140 Before any person is granted a permit by the Marshal or the head of a local fire department to remove a tank, under the provisions of M.G.L., C. 148 or 527 CMR 9.00, and said tank is not being transported to an approved tank yard, the person requesting the permit shall provide the Fire Department with written approval from the owner/manager of the disposal site. (Reference: 502 CMR 3.00 for tank removal and disposal procedure).

6.000 Costs

6.110 In every case, the owner shall assume the responsibility for costs incurred necessary to comply with this regulation.

7.000 Access

7.110 The Board of Health or its designated agent may enter upon privately owned property for the purpose of performing their duties under these regulations.

SECTION 5 FOOD PROTECTION AND COMPLIANCE BASED SURCHARGE PROGRAM

1.000 Public Reporting: In order to provide the community with appropriate and relevant information regarding the compliance status of licensed food establishments, it is the policy of the Health Department to give public notice of the following actions:

1.10 Order Letters- A list will be posted at the Board of Health office showing establishments to which Order Letters have been issued.

1.20 'Show Cause' Hearings- Copies of letters calling such hearings shall be posted at the Board of Health office and copies sent to the Board of Selectmen,

1.30 Other Actions- Notices or correspondence relative to License Suspensions/Revocations or Court Actions will be posted.

2.000 Administrative Hearings: Owners/Licensees are entitled to request a Hearing relative to Orders or other actions taken under Chapter X. A request for a Hearing must be made in writing and in accordance with the deadlines and procedural requirements of 105 CMR 590.00 et.seq.

3.000 Compliance Surcharges: In order to properly place some of the increased cost gaining compliance on the food establishments which require more frequent inspection visits or present the need for enforcement actions, a graduated series of surcharges will be assessed at the time of the next annual license renewal. To determine the fee for the renewal of the Food Service Permit, the basic charge will be applied and in addition, applicable surcharges will be determined by the highest level of compliance effort required during the past year, as shown on the following schedule-

3.100 Increased Program Contact	25% each
3.110 Late Renewal	
3.120 Consumer Complaints	
3.130 Trash Violations	
3.140 Smoking Violations	
3.200 Investigation of Food-Borne Illness	50%
3,300 Accelerated Inspection Status	60%
3.310 Two or more re-inspections as follow up to routine inspections.	
3.320 More frequent 'preventive' inspections to assure compliance.	
3.400 Order Letter	
3.410 Non-Critical Violations	75%
3.420 Critical Violations	100%
3.500 Show Cause Hearing	150%
3.600 License Suspension or Revocation	200%
3.700 Operating without Permit in place	50%

4.00 Rules and Regulations pertaining to certification in food safety.

4.10 Authority

The Town of Edgartown Board of Health, pursuant to the authority granted under Mass. General Laws Chapter III Sections 31 and 127 A, hereby adopts the following regulations to protect public health of the community.

4.20 Purpose

The Town of Edgartown Board of Health recognizes that an ideal food protection program is supported by a partnership effort between industry and food regulatory officials. Together, educated food handlers and effective inspection programs can reduce the incidence of high risk practices which can lead to foodborne disease outbreaks. Other benefits of food manager training including providing industry with a more professional approach to food safety, improving communication between industry and regulators, increasing consumer confidence in their food supply and avoiding negative economic impacts associated with foodborne disease outbreaks. Food establishments which have trained food handlers are also more likely to be in compliance, resulting in less inspection and enforcement time spent by the Board of Health.

Accordingly, the Board of Health declares that the purpose of this regulation is to improve the general sanitation conditions in the Town of Edgartown's food establishments, thus protecting the public health and welfare of the dining public.

Food manager certification will ensure that these managers have knowledge of the principles and practices of food sanitation in accordance with Chapter X of the State Sanitary Code, 105 CMR 590.00 Minimum Sanitation Standards for Food Establishments.

4.300 Food Manager Certification Required

All persons, firms or corporations that operate a food establishment serving potentially hazardous food to susceptible populations, any licensed food establishment designated as requiring increased program contact as defined in Edgartown Board of Health's Rules and Regulations Section 5 and all caterers licensed by the Town, shall employ on staff during all hours of operation at least one individual holding a certificate in food safety sanitation as defined in Section 4.

Such requirements shall have been met not greater than 3 years prior to the issuance of a Permit to Operate by the Board of Health and such permit shall be renewed no later than five (5) years from its last issuance.

Establishments with a change of ownership during the year-round operation, shall operate no more than sixty (60) days without compliance with this regulation.

4.400 CERTIFICATION

Certification shall be achieved by attending a food safety and sanitation course and attaining a passing grade on an exam provided by the Educational Testing Services (Food Protection Certification Program) or the Educational Foundation of the National Restaurant Association (ServeSafe) or an equivalent exam recognized by the Mass. Dept. of Public Health and approved by the Edgartown Board of Health.

SECTION 6 ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS

1.000 For the purpose of protecting the safety, convenience and welfare of the inhabitants of the Town, and to maintain the quality of surface waters, groundwater, public and private water supplies, the Board may require that the applicant submit an environmental impact statement, at his or her own expense. Such environmental impact statement shall be required before approval of well or septic system permits for five or more lots in a single subdivision. The environmental impact statement shall contain appropriate supporting data, according to guidelines supplied by the Board of Health, setting forth the probable impact or effect of the proposed subdivision on the neighborhood and the Town generally, if any, when it may be built. In compiling such environmental impact statement, the applicant shall consult with various Town departments having knowledge and authority in the various subjects cited below. Such impact statement shall cover at least the subject areas listed hereunder, for comparison with local, state and federal drinking water quality performance standards and such other subject areas as the Board may, in particular cases, deem necessary:

- A: Determination of nitrate loading
- B: Effect on nearby public and private water supplies
- C: Effect on undeveloped aquifers

SECTION 7 NON-CRIMINAL DISPOSITION

1.000 Non Criminal Disposition: As an alternative to more traditional methods of code enforcement, the Health Department may utilize procedures for the noncriminal disposition of violations, pursuant to MGL C40, S21D.

SECTION 8 VARIANCE PROCEDURE

1.000 General

1.10 The Board of Health may vary the application of any of its rules and regulations or of State Regulation, Title 5, the Environmental Code, for any case when an emergency exists, or when, in its opinion, A) the enforcement thereof would do manifest injustice and B) the applicant has proven that the same degree of environmental protection can be achieved without strict application of the particular provision.

1.20 Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons therefore. No variance shall be granted until the applicant has notified all abutters, as defined in Section 9, by certified mail, return receipt. Abutter notification(s) must be postmarked, to the addressee, no less than 21 days prior to the meeting at which the variance request will be on the agenda. Abutter notices shall be prepared, mailed and posted by the applicant. The abutter notice must be proofed and approved by the Edgartown Board of Health before being mailed. Abutter notification is not required for repair and upgrade to existing wastewater disposal system(s) if the repair/upgrade does not result in a reduction to any existing required off locus separation distances, does not propose or provide for an increase in existing flow and is applicable to Disposal System Construction Permit applications to serve single family residential use with a design capacity of 660 gallons per day or less. Notwithstanding the above, in the interest of protecting public health and the environment, the Board of Health reserves the right to require abutter notification for any upgrade/repair application which the Board determines is necessary or beneficial.

1.30 Any variance granted by the Board of Health shall be in writing. Any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial. A copy of each variance shall be conspicuously posted for thirty days following its issuance and shall be available to the public at all reasonable hours in the office of the Board of Health while it is in effect.

SECTION 9 DEFINITIONS

Abutter(s): Immediate property owners sharing common property boundaries and abutters to abutters within 300 feet.

Acidic Additives: Any substance used as an additive to onsite leaching facilities, coming from, relating to or being an acid, which causes a reaction or has the characteristics of an acid, or has the corrosive property capable of causing damage to onsite leaching facilities, and or any additive with a pH value that is less than five and one-half (5.5).

Bar: An area which is primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Bulk Quantities: Any amount greater than one liter in liquid measure or greater than one-half pound in solid weight.

Emergency Repairs of Failed Components: An emergency repair of any failed septic system, cesspool or septic system component is that repair that temporarily corrects the condition.

Employee: Any individual who performs services for an employer in return for wages or profit.

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Edgartown or any agency thereof, which regularly uses the services of two (2) or more employees.

Enclosed: Means a space bound by walls and under a roof.

Garbage: Food wastes, offal, and any other substance which causes or emits a painful or unpleasant sensation.

Indoor Sports Arena: Any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

Lot Area: (for the purpose of computing maximum allowable daily flow) The horizontal area of a lot exclusive of the following areas subject to Protection Under M.G.L. c. 131, § 40: Any bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, swamp, land under any of the water bodies listed above, land subject to tidal action and riverfront area.

Nonsmoking Area: Any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.

Public Place: An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: licensed child care locations; educational facilities;

elevators accessible to the public; hospitals, clinics and nursing homes; inns, hotel and motel lobbies, stairwells, halls, entranceways, and public rest rooms; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; theaters; auditoriums; public transit facilities; enclosed shopping malls; and any rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Repair & Upgrading: The repair and upgrading of a failed septic system, cesspool or septic system component is that repair and upgrading that causes the system, cesspool or component to be in conformance with the State Sanitary Code, Title 5.

Restaurant: Any establishment serving food for consumption on the premises which maintains tables for the use of its customers. This includes cafeterias and cafeterias in the workplace.

Retail Food Establishment: Any establishment commonly known as a supermarket or grocery store in which the primary activity is the sale of food items to the public for off-premise consumption.

Retail Store: Any establishment selling goods or articles or personal services to the public.

Seating Capacity: That capacity designated on the occupancy permit of a restaurant, theater or sports arena.

Smoking: The lighting of any cigar, cigarette, pipe or other tobacco product or having possession of any lighted cigar, cigarette, pipe or other tobacco product.

Waste Matters: Trash, refuse, rubbish, debris, scrap, waste or like material of any kind, including without limitation Garbage, as defined above, and any other substance of any kind which has been rejected or discarded.

Wetland: the following areas subject to Protection Under M.G.L. c. 131, § 40: Any bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, swamp, land under any of the water bodies listed above and land subject to tidal action (all as defined by M.G.L. c. 131, § 40).

Workplace: Any area within a structure or portion thereof at which two (2) or more employees perform services for their employer. It also includes employee lounges, rest rooms, conference rooms, hallways, stairways and entranceways.

SECTION 10 SPECIAL OR OTHER REGULATIONS

1.100 Requirements regarding Edgartown Zoning Bylaw, Article XI, section c.2; Recreational Vehicles;

1.101 All sanitary sewage, as defined by 310 CMR 15.01 of the State Environmental Code, Title 5, shall be contained within the recreational vehicle. Disposal of stored sanitary sewage will be at the discretion of the Superintendent of the Edgartown Sewage Treatment Plant. Under no circumstances will sanitary sewage be allowed to flow onto the surface of the ground, into any pit or hole in the ground or into any surface or groundwater body.

1.102 All garbage, trash or refuse will be contained in watertight, rodent proof, closable receptacles. Disposal of any garbage, trash or refuse will be by permit from the Edgartown Board of Health at the Sanitary Landfill.

1.103 The number of persons allowed to reside in the recreational vehicle will be at the discretion of the Edgartown Board of Health or its agent, however, no more than (6) be allowed.

1.200 Regulation regarding Pennywise Path

1.201 The regular curbing of animals is prohibited along or adjacent to Pennywise Path. (C.111, S. 122)

1.300 Repeal of Landfill Regulations

1.301 The "Town of Edgartown, Landfill Regulations" adopted March 14, 1988, are hereby repealed.

SECTION 11 FEES

	FEE
Application for Disposal Works Construction Permit	\$200.00
Application for Repair to On-site Septic System (no perc test required)	\$ 75.00
Body Art Facility/Practitioners	\$100.00
Application for Food Service Permit	\$200.00
Bed & Breakfast	
5 or less Rental Bedrooms	\$ 75.00
6 or more Rental Bedrooms	\$200.00
Disposal Works Installers Permit	\$150.00
Disposal Works Application/Design Plan Revision	\$ 50.00
Disposal System progress inspection at request of installer or required by design plan notes (any inspection prior to final inspection for Certificate of Compliance)	\$ 50.00
Septic Pumpers License	\$ 75.00 per vehicle
Tanning Facilities (adopted 2/20/91) CI 11 \$208)	\$ 75.00
Application for Permit to Install Well	\$ 75.00
Milk Pasteurization Permit	\$300.00
Application for Swimming Pool/Wading Pool (public or semi-public)	\$200.00
Application for Residential Swimming/Wading Pool	\$50.00
Lead Paint Abatement Compliance Letter	\$ 50.00
Permit for removal and/or transportation for hire of Waste Matters:	
for the first 6 vehicles	\$ 50.00 each/year
for 7 or more vehicles, an additional	\$25.00 each/year

Tobacco Vendor Permit

\$100.00

Regulation of the Edgartown Board of Health
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 throat;

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

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

Whereas, the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;

Whereas, cigars and cigarillos, can be sold in a single “dose;” and enjoy a low tax as compared to cigarettes;

Whereas, spitless tobacco, including oral nicotine pouches, sales have increased from 100,000 units a year in 2018 to over 700,000 units a year by 2023, and the current use among Massachusetts high school students increased from 1% in 2019 to 3.2% in 2023;

Whereas, nicotine use in any form during adolescence can cause addiction and can harm parts of the brain that control attention, learning, memory, mood, and impulse control. Nicotine use may also increase adolescents’ risk of future addiction to other drugs;

Whereas, spitless tobacco, in particular nicotine salt packages, provides a discrete, cheap nicotine delivery system;

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

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

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

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

Whereas, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;

Whereas, the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;

Whereas, policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;

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.”

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

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Edgartown Board of Health by G.L. c.111, §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:

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” in G.L. c. 270): An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that does not sell food, beverages or alcohol, that does not have a lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Edgartown Board of Health and applicable state licenses. The entrance to the establishment must be secure so that access to

the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

Blunt Wrap: Any product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, which may be used by the consumer to wrap or contain loose tobacco or other fillers.

Bona Fide Purchaser for Value: A bona fide purchaser is someone who exchanges value for property without any reason to expect irregularities in the transaction.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, 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, menthol, mint, wintergreen, 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.

Child-Resistant Package: Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C. 1471 through 1476.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package and is not otherwise defined as a cigarette under G.L. c. 64C, §1, Paragraph 1. Tobacco leaf in kits or roll-your-own packages shall be considered "blunt wraps" for the purpose of this regulation.

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, which is added by the manufacturer to a tobacco product during the processing, manufacturing, or packaging of the tobacco product.

Coupon: Any card, paper, note, form, statement, ticket, or other communication distributed for commercial or promotional purposes to be surrendered to receive an article, service, or accommodation without charge or at a discount price.

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

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

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

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 a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. Health care institutions include but are not limited to hospitals, clinics, health centers, pharmacies, drug stores, doctors' offices, and dental offices. A retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution.

Liquid Nicotine Container: A package:

1. from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and
2. that is used to hold a soluble nicotine in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of

nicotine in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.

Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products is not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products. A manufacturer documentation must:

1. Be written by the manufacturer of the product(s).
2. Certify that the product(s) listed in the documentation are neither flavored nor have a characterizing flavor as defined by 105 CMR 665.005.
3. Include an attestation clause indicating that the “letter is true and accurate.”
4. State that the “manufacturer will immediately provide an updated letter to correct any inaccuracy.”
5. State that the person signing the letter “is authorized on behalf of the manufacturer to sign the letter.”
6. Contain a signature of the manufacturer’s corporate officer or an owner; and
7. For any Electronic Nicotine Delivery System product, certify that it does not have a nicotine content greater than 35 milligrams per milliliter. The content amount must be in “milligrams per milliliter.” If the nicotine content is documented in a separate letter, the above-listed requirements must be included in that separate letter.

Note that a Manufacturer’s Documentation IS NOT conclusive evidence that a product is unflavored. A board of health may conduct a smell/taste test to determine if a manufacturer’s documentation misrepresents whether a product is flavored.

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 can make cigarettes, cigars, or other tobacco products. RYO machines located in private homes used solely for personal consumption are not Non-Residential RYO machines.

Oral Nicotine Pouches: Pre-portioned pouches containing nicotine and other ingredients, intended to be used between the cheek and gum to deliver nicotine.

Permit Holder: Any retailer 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 their business agent.

Retailer: Any person, 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 Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves, which do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine.

Self-Service Display: Any display including an unlocked humidor regardless of size 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.

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Town of Edgartown and (v) maintains a valid license issued by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars," "hookah bars" and "vape bars."

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

Tobacco Product: A product containing or 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, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that "tobacco product" shall also include any component, part or accessory of a tobacco product; and provided further, that "tobacco product" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively 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 available, as defined herein.

D. No Tobacco Sales to Persons [under Twenty-One (21) Years Old]

1. No retailer or person shall sell or provide a tobacco product to a person under twenty-one (21) years old.

2. Required Signage:

a. All retail establishments shall conspicuously post signage, made available from the Edgartown Board of Health. Such signage shall include: (i) referral information for smoking cessation resources; (ii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iii) health warnings associated with using electronic nicotine delivery systems; and (iv) except in the case of smoking bars, notice to consumers that the sale of flavored tobacco products are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. The signage may be in a form developed and made available by the Massachusetts Department of Public Health.

b. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

c. All smoking bars and those adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall warn persons entering that smoking and vaping may be present on the premises and provide information concerning the health risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

3. Identification:

a. Each person selling or distributing tobacco products shall first verify the age of every purchaser of tobacco products by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.

b. Each person admitting entrance into a smoking bar or adult-only retail tobacco store shall first verify the age of every person entering is 21 or older by means of a valid government-issued photographic identification containing the bearer's date of birth.

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

E. Tobacco Product Sales Permit:

1. No retailer or person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the Town of Edgartown without first obtaining a Tobacco Product Sales Permit issued annually by the Edgartown Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in Edgartown are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Edgartown.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Edgartown 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 all employees who will be responsible for tobacco product sales regarding federal, state and local laws about the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The [city/town] Board of Health shall determine the fee annually. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also be displayed conspicuously at the retail establishment.
5. 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. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.
6. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the age of 21 three times within the previous permit year and the time to appeal has expired. The violator may request a hearing in accordance with subsection 6 of the Violations section.
8. Retail Density.
 - a. If the purchaser of a business with a valid Tobacco Product Sales Permit pursuant to section E.9 below or the current holder of a valid Tobacco Product Sales Permit changes the location of the business, the new location shall not be located:
 - i. Within two thousand (2000) feet of a public or private elementary or secondary school as measured from the nearest point of the property line of the school to the nearest point of the property line of the site of the business.
 - ii. Within five hundred (500) feet of an existing retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

9. Sale of Business.

- a. Notwithstanding a cap on the total number of permit holders, the seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health, as required herein.
- b. The purchaser shall apply for the transfer of the permit no later than (30) calendar days after said purchase. The purchaser shall not sell tobacco product until the transfer of the permit is approved by the Board of Health; and
- c. All fines and suspensions of the previous owner must be satisfied prior to the sale.

10. Maximum Number of Tobacco Product Sales Permits.

- a. As of the effective date of this regulation, there shall be no more than ten (10) Tobacco Product Sales Permits issued in Edgartown.
- b. Any current permit surrendered, revoked or not renewed because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, or because a retailer fails to renew their permit within thirty (30) calendar days of its expiration, shall be returned to the Edgartown Board of Health and shall be permanently retired by the Board of Health.

F. Prohibition of Smoking Bars:

Smoking Bars are prohibited in the Town of Edgartown.

G. Oral Nicotine Pouches

No retailer or person shall sell or distribute or cause to be sold or distributed oral nicotine pouches with a nicotine content greater than 6 mg/per individual pouch.

H. Cigar Sales Regulated:

1. No retailer or person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents (\$2.90) or more.
2. No retailer or person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars unless such package is priced for retail sale at five dollars and eighty cents (\$5.80) or more.
3. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Edgartown.
4. The Edgartown 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.

I. Sale of Flavored Tobacco Products Prohibited:

No retailer, as defined herein, shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein.

Retailers must obtain Manufacturer Documentation as described in Section C, certifying that all products, possessed, held, kept, sold, or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

J. Nicotine Content in Electronic Nicotine Delivery Systems:

No retailer shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores or smoking bars.

Retailers must obtain Manufacturer Documentation verifying that all electronic nicotine delivery products, possessed, held, kept, sold, or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

K. Prohibition of the Sale of Blunt Wraps:

No retailer or person shall sell or distribute blunt wraps in Edgartown.

L. Free Distribution, Coupon Redemption and Discount Pricing: No retailer or person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein.
2. Accept or redeem, offer to accept, or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; and
3. Sell a tobacco product, as defined herein, through any discount (e.g., "buy-two-get-one-free") if the sale reduces the price of a pack to less than the listed or non-discounted price.

M. 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 retailer as defined herein, shall possess, hold, keep, sell, or distribute or cause to be possessed, held, kept, sold, or distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, Massachusetts Hazardous Waste Regulations.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 et seq."
4. No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

N. 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.
Adult-Only Retail Tobacco Stores are exempt from this section.

O. Vending Machines:

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

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

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

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

No health care institution located in Edgartown 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.

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

No educational institution located in Edgartown shall sell or cause to be sold tobacco products, as defined herein, including by any person or retailer on the property of an educational institution.

S. Incorporation of State Laws and State Regulations:

1. The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to those provisions found at G.L. c. 270, §§6, 6A, 7, 28, 29 and G.L. c. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 940 CMR 21.00, Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts, 940 CMR 22.00 Sale and Distribution of Cigars in Massachusetts; and 105 CMR 665.00, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

T. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation the violator shall receive:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) for a State Law or Local Policy violation shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended for one (1) business day.
 - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2,000.00) for a State Law violation and one

thousand dollars (\$1,000.00) for a Local Policy violation shall be issued 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 thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) for a State Law violation and one thousand dollars (\$1,000.00) for Local Policy violation shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

2. List of state laws and local policies:

POLICIES SUBJECT TO STATE LAW
FINES

FINES FOR THE BELOW-LISTED STATE
LAWS MAY BE ISSUED AFTER AN
ADMINISTRATIVE HEARING BY THE
BOARD OF HEALTH

- Tobacco and Vape Sales to persons under 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §28)
- Penalties for sales to a person under 21 of Tobacco/Vape products (105 CMR 665.045)
- Local Tobacco Sales Permit suspension for a first violation for sales to a person under 21 of Tobacco/Vape products (105 CMR 665.040(d))
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §29)
- Coupon Redemption (105 CMR 665.025)

POLICIES SUBJECT TO LOCAL
POLICY FINES

FINES FOR THE BELOW-LISTED
LOCAL POLICIES MUST BE
ENFORCED THROUGH AN
APPLICATION FOR A CRIMINAL
COMPLAINT

- Prohibition of the Sale of Blunt Wraps
- Ban on Smoking Bars
- Cigar Sales Regulated, including minimum sales price regulations.
- Tobacco Product Sales in Health Care Institutions as more broadly defined than in state law.
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Display of MA Department of Revenue license(s)
- No Local Tobacco Sales Permit
- Retailer Density Minimums
- Transfer of Permit in Sale of Business
- Restricting the Nicotine Content of Oral Nicotine Pouches
- Other local policies

- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a person under the age of 21 into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))
- Other state laws

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.

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

5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.

6. A permit issued pursuant to this regulation may be suspended, revoked, or not renewed for any of the following reasons:

a. Violation of the permit holder of any provision of state or local laws and/or regulations.

b. Fraud, misrepresentation, false material statement, concealment, or suppression of facts by the permit holder in connection with an application for a permit or for renewal thereof.

7. The Edgartown 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 a hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Edgartown Board of Health shall impose fines for the above-listed state violations and suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

8. For the purposes of such fines, the Board of Health 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.

U. Separate Violations:

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

V. Enforcement:

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

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

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

W. 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.

X. Effective Date:

This regulation shall take effect on April 15, 2025.

TRUE COPY ATTEST
TOWN CLERK OF
EDGARTOWN, MA.

SECTION 12 SMOKING

1.000 AUTHORITY

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac problems, allergies, and irritations to the eyes, nose, and throat in both smokers and nonsmokers exposed to secondhand smoke. Therefore, these regulations are adopted pursuant to Massachusetts General Laws Chapter 111, Section 31, as reasonable health regulations designed to protect and improve the health of the residents and visitors of the Town of Edgartown.

1.100 PROHIBITION ON SMOKING IN PUBLIC PLACES

No person shall smoke in any public place except that smoking shall be permitted in specifically designated smoking areas as hereinafter provided. No place governed by these regulations shall be designated as a smoking area in its entirety. Nothing in this section shall be construed to require the designation of smoking areas.

1.110 Restaurants.

1.111 The prohibition on smoking in public places shall apply to all restaurants, except in specifically designated smoking areas. Smoking areas may be designated by the proprietor(s)

or other person(s) in charge of a restaurant, except that rest rooms, entranceways, and lobbies, as well as places in which smoking is prohibited by the fire marshal, law, or regulation may not be designated as a smoking area.

1.112 Each restaurant shall have and comply with a policy of asking seating preference of patrons.

1.113 Smoking areas shall comprise no more than twenty five percent (25%) of the seating capacity of the restaurant. Seats at the bar, in the same room, shall be included when determining seating capacity for the purpose of calculating the size of the nonsmoking area. Seating shall be so situated as to utilize physical barriers and/or ventilation systems to minimize the presence of smoking by-products in nonsmoking areas.

1.114 The nonsmoking area shall be one integral area and shall not be located between two smoking areas.

1.120 Museums, Libraries, Hospitals, Clinics, Nursing Homes, Auditoriums, Indoor Sports Arenas, Hotels, Municipal Buildings. Smoking areas may be designated in museums; libraries; inns, hotel, and motel lobbies; hospitals; clinics; nursing homes; long term facilities; theaters; auditoriums; educational facilities; indoor sports arenas, and municipal buildings; provided, however, that comparable nonsmoking areas of sufficient size and capacity are available and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas, Hallways, elevators, entranceways, stairwells, rest rooms, and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.

1.130 Public Transit Facilities. The prohibition on smoking in public places shall apply to buses, taxis, and other means of public mass transit while operating within the boundaries of the Town of Edgartown, and indoor platforms.

1.140 Retail Stores. The prohibition on smoking in public places shall apply to retail stores doing business with the general public. Smoking areas may be designated in portions of said stores not open to the public and all areas within retail tobacco stores.

1.150 Enclosed shopping mall. No person shall smoke in any enclosed shopping mall except that smoking shall be permitted in specifically designated smoking areas; provided, however, that comparable nonsmoking facilities of sufficient size and capacity are available and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, rest rooms, and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked. The designated smoking area must have adequate ventilation facilities directly vented to the out of doors.

1.160 Areas Where Smoking Is Optional. Notwithstanding any other provision of these regulations, the following areas shall not be subject to the smoking restrictions of the regulations:

1.161 Any business which has been declared by its owner, operator, manager or person in charge to be a nonsmoking establishment;

1.162 Bars;

1.163 Private residences;

1.164 Hotel and motel rooms rented to guests;

1.165 Retail tobacco stores;

1.166 Hotel and motel conference/meeting rooms, and public and private assembly rooms while these places are being used for private functions;

1.167 Private or semiprivate rooms of nursing homes and long-term care facilities, occupied by one (1) or more patients, all of whom are smokers who have requested in writing on the facility admission form to be placed in rooms where smoking is permitted;

1.168 Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle;

1.169 Performers upon the stage, provided that the smoking is part of a theatrical production.

1.170 Implementation. The proprietor(s) or other person(s) in charge of a place covered by this regulation shall prevent smoking in non-smoking areas by:

1.171 Conspicuously posting a notice or sign at each entrance to the public place indicating smoking is prohibited therein, except in specifically designated areas. In addition, conspicuously posting "Smoking" or "No Smoking" signs, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in every area where smoking is permitted or prohibited by this ordinance;

1.172 Arranging seating so that existing physical barriers, ventilation systems and available space are utilized to minimize the exposure to smoke of persons in the nonsmoking area. Nonsmoking areas are to be situated near the fresh air intake vent of the building.

1.173 Asking patrons who may be smoking in the nonsmoking area either to refrain from smoking or to move to a smoking area;

1.174 Using any other means which may be appropriate and reasonable to enforce these regulations.

2.000 WORKPLACE

2.100 It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas as described in 2.200 below.

2.200 Each employer may specifically designate enclosed areas in which employees may smoke, provided, however, that comparable nonsmoking areas of sufficient size and capacity are available and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, rest rooms, and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.

2.300 Each person having control of premises upon which smoking is prohibited by this regulation, or his or her agent or designee, shall conspicuously display upon the premises an appropriate number of signs reading "Smoking Prohibited by Law."

2.400 It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation to knowingly permit, or for his or her agent to knowingly permit, a violation of this regulation.

3.000 ENFORCEMENT

3.100 Any person who smokes in a nonsmoking area shall be subject to a fine of not less than twenty dollars (\$20.00) nor more than fifty dollars (\$50.00) for each violation.

3.200 Any proprietor(s) or other person(s) in charge of a public place or workplace who fail(s) to comply with these regulations shall be subject to both:

3.210 a fine of up to two hundred dollars (\$200.00) for each day a violation continues; and

3.220 suspension of any license issued by the Board of Health for that public place for a period of up to two days for each day of non-compliance.

3.300 In addition to the remedies provided by 3.100 and 3.200 above, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a public place or workplace to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

3.400 Any person aggrieved by the failure or refusal to comply with restrictions in any municipal building may complain in writing to the heads of the department or agency occupying the area

where the violation takes place. Said agency or department head shall respond in writing within fifteen days to the complainant that he has inspected the area described in the complaint and has enforced the provisions of this section as provided herein.

4.000 OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations, or statutes.

SECTION 13. PENALTIES AND FINES

1.000 FAILURE TO COMPLY

Failure to comply with the provisions contained herein, where specific penalties are not established, shall be punishable by a fine of no less than one hundred dollars (\$ 100.00) and no more than five hundred dollars (\$500.00).

Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any regulation of the Board of Health, except for the regulations contained in Section 14, shall be punished by a fine of not more than five hundred dollars (\$500.00). Whomever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any regulation contained in Section 14 shall be punished by a fine of not more than fifty dollars (\$50.00). Each day on which a violation of Section 14 persists shall be considered a separate offense for purposes of assessing fines hereunder.

SECTION 14. STORAGE, REMOVAL, TRANSPORTATION AND DISPOSAL OF WASTE MATTERS

The Edgartown Board of Health promulgates the following rules & regulations concerning the storage, removal, transportation and disposal of Waste Matters.

1.000 Permitting

1.10 Persons and businesses must obtain a valid permit issued by the Edgartown Board of Health in order to remove and/or transport for hire Waste Matters of any kind from or through the streets of Edgartown, and must carry a valid permit with them in the vehicle used to remove and/or transport Waste Matters at all times during such removal and/or transportation.

Application for a permit to remove and/or transport Waste Matters shall be made directly to the Edgartown Board of Health, in writing, and shall state:

- (1) the name and address of the person or business proposing to remove and/or transport Waste Matters, and in the case of a business, the business owner's name and address;
- (2) the specific activity for which the permit under this Section 14 is being requested;
- (3) the make, model, year and registration number of each and every vehicle(s) proposed to be used for the removal and/or transportation of Waste Matters;
- (4) the time(s) of day during which the applicant proposes to undertake the removal and/or transportation of Waste Matters;
- (5) the route along which the applicant proposes to remove and/or transport Waste Matters within Edgartown;
- (6) the type and amount in pounds and cubic yards of substance proposed to be removed and/or transported;
- (7) the proposed site for final disposal or recycling of Waste Matters.

1.20 The Edgartown Board of Health reserves the right to include in any permit granted under the Section 14 for the removal and/or transportation of Waste Matters within residentially zoned areas of Edgartown, restrictions on the time of day the removal and/or transportation of Waste Matters may be undertaken, the route along which Waste Matters may be transported within Edgartown and the final disposal or reuse site of all Waste Matters.

2.000 Storage of Waste Matters

2.10 No Waste Matters shall be stored on private property out-of-doors for longer than 14 days. No Waste Matters shall be allowed to litter or otherwise scatter upon the ground, water, roadways, private or public lands of Edgartown.

2.20 All Garbage shall be kept and stored in water tight, rodent resistant containers at all times.

3.000 Transportation of Waste Matters

3.10 All Waste Matters shall be contained and covered during transit.

3.20 Containers and vehicles used to remove and/or transport Garbage shall be water tight and no liquid shall be allowed to flow onto the ground, asphalt, public or private ways during transit.

4.000 Exemption

4.10 Persons removing and/or transporting Waste Matters, (1) in motor vehicles owned by the commonwealth, or any of its political subdivisions, or (2) under contract to remove and/or transport Waste Matters with the commonwealth or any of its political subdivisions, shall, in either case, be exempt from the provisions of this Section 14.

Section 15

Edgartown Board of Health Rules and Regulations for Body Art Establishments and Practitioners

1. Purpose
2. Authority
3. Definitions
4. Exemptions
5. Restrictions
6. Operation of Body Art Establishments
7. Standards of Practice
8. Exposure Incident Report
9. Injury Reports
10. Complaints
11. Application for Body Art Establishment Permit
12. Application for Body Art Practitioner Permit
13. Grounds for Denial of Permit, Revocation of Permit or Refusal to Renew Permit
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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 City/Town of Edgartown passes these rules and regulations for the practice of body art in the City/Town of Edgartown 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 1 1 1, section 3 1, and are voted in full force and effect at the regularly scheduled meeting of the Edgartown Board of Health, held on September 12, 2002.

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 earpiercing.

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 a person so as to cause or allow the incised and interwoven strips of skin to heal in such intertwined condition.

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

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

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

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

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

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

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

Ear piercing means the puncturing of the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.
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 110⁰-130⁰F.

Instruments Used for Body 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, lowporosity 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 nongovernmental 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 welts 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 HealthCare and Public Safety Workers" in Morbidity and Mortality

Weekly Report) (MMWR), June 23, 1989, vol.38 No. S6, 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. RR8. 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

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 pre-sterilized single-use stud-and-clasp earpiercing 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.

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.

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, lightcolored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.

(2) Solid partitions or walls extending from floor to ceiling shall separate the establishment's space from any other room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.

(3) The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.

(4) Each operator area shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a dividers or partition at a minimum.

(5) The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 foot candles 3 feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, where instruments and sharps are assembled and all cleaning areas.

(6) All electrical outlets in 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 preventer

installed in accordance with 142 Code of Massachusetts Regulation 248, as amended from time to time.

(11) At least one covered, foot operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leakproof, rodent-resistant containers and shall be removed from the premises at least weekly.

(12) At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-contaminated liquid wastes in accordance with all applicable Federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.

(13) All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.

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 re-sterilizing.

(7) If the body art establishment uses only singleuse, 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 Edgartown Board of Health -

(3) An Emergency Plan, including:

(a) a plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency;

(b) a telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and

(c) a sign at or adjacent to the telephone indicating the correct emergency telephone numbers.

(4) An occupancy and use permit as issued by the local building official.

(5) A current establishment permit.

(6) Each practitioner's permit.

(E) Establishment Recordkeeping

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

(1) Establishment information, which shall include:

(a) establishment name;

(b) hours of operation;

(c) owner's name and address;

(d) a complete description of all body art procedures performed;

- (e) an inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;
- (f) A Material Safety Data Sheet, when available, for each ink and dye used by the establishment; and
- (g) copies of waste hauler manifests
- (h) copies of commercial biological monitoring tests (i) Exposure Incident Report (kept permanently) (j) a copy of these regulations.

(2) Employee information, which shall include:

- (a) full legal names and exact duties;
- (b) date of birth;
- (c) home address;
- (d) home /work phone numbers;
- (e) identification photograph;
- (f) dates of employment;
- (g) 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;

(f) use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and

(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 (E) before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of 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.

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, singleuse disposable razors or safety razors with singleservice 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) 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 VIII.

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:
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; 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.

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;

(3) A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process; and,

(4) Exposure Report Plan

(5) Such additional information as the Board may reasonably require.

(E) The annual fee for the Body Art Establishment Permit shall be \$ 100.00 per Calendar year

(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

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 seven (7) days subject to the procedure outlined in Section 15.

(C) Applicants denied a permit may reapply at any time after denial.

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

In accordance with MGL chapter 40, section 2 ID and Town of Edgartown town meeting vote on October 2, 1980, whoever violates any provision of these Rules and Regulations may be penalized by non-criminal disposition. Any violation of the Rules and Regulations shall be subject to a \$100.00 fine per offense via the non-criminal disposition process.

19. Effective Date

These rules and regulations shall be effective as of September 12, 2002.

SECTION 16. MESSAGE REGULATIONS

SECTION 17. RESERVED

SECTION 18. RESERVED

SECTION 19. RESERVED

SECTION 20. SEVERABILITY CLAUSE

1.000 Severability

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

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TOWN OF EDGARTOWN BOARD OF HEALTH REGULATIONS
Board of Health Regulation, Section 17

THE CONTENT AND APPLICATION OF FERTILIZER FOR TURF ON MARTHA'S VINEYARD,
TOWN OF EDGARTOWN

SECTION 1.

1.1 This Section details the public health and ecological foundations for the regulation of the use of fertilizer on turf in Edgartown.

1.2 In appropriate concentrations, nitrogen in the form of oxides plays a critical role in the nitrogen cycle and is essential to life. In excess, these forms of nitrogen represent an environmental pollutant that has the potential to harm our water resources, and ultimately damage human health. Excessive amounts of nitrogen, as well as phosphorus, contribute to undesirable algal and aquatic plant growth, and degrade the water used for drinking and shellfishing as well as swimming and boating.

1.3 Algal blooms cause our ponds and harbors to become increasingly anaerobic, with seabeds robbed of oxygen and devoid of aquatic life, and cloudy water columns filled with dense algal and aquatic plant growth. The algal bloom brings with it human health risks. Depending on the type, quantity and route of exposure, symptoms from algae blooms vary from skin and eye irritations to gastrointestinal and asthma-like symptoms, with children and pets being particularly susceptible.

1.4 Edgartown's groundwater is also at risk from nitrogen infiltration. Rising nitrogen levels in our Island ponds are caused in major part by rising nitrogen content in our groundwater. The groundwater/aquifer underlying Edgartown is the source of its existing and future drinking water supply and should be preserved and protected from excess nitrate infiltration. Ingested nitrates are converted by the body into nitrites, which are capable of converting hemoglobin into an oxidized form that does not bind tightly to blood oxygen. Infants, young children, pregnant women and some people with compromised immune systems who drink water in excess of established Safe Drinking Water Standards are particularly vulnerable and may become seriously ill if untreated. The Island's municipal and well water supply is an outstanding asset, one that is safe now and should be protected going forward.

1.5 The Island of Martha's Vineyard in its entirety has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients into its groundwater that flow ultimately into the Island's harbors, embayments, salt ponds and coastal resources, including the water and wetland resources of Edgartown. Additionally, soils associated with terminal moraine and glacial till contribute to rapid runoff into streams feeding coastal water bodies. These unique geologic, topographic and hydrographic characteristics require innovative soil management practices. The adoption of specific mrf and

soil fertilization requirements across the Island, including Edgartown, is necessary to protect the water and wetland resources of the Island, including Edgartown's.

1.6 The six towns comprising Martha's Vineyard have engaged the Massachusetts Estuaries Project ('Estuaries Project') to undertake analyses of many of the harbors, embayments, salt ponds and coastal resources in the Island towns and to prepare reports detailing the nutrient loading from multiple sources, including fertilizers. The Estuaries Project considers fertilizers a locally controllable source of water degradation. This is very significant as it is anticipated that the State will require all Massachusetts towns to bring the nutrient levels of their coastal ponds, harbors and other water resources to within recognized acceptable water quality standards established in the federal Clean Water Act.

1.7 As of the date of the enactment of this Regulation, Estuaries Project reports have been completed for Edgartown Great Pond, Farm Pond, Lagoon Pond, Sengekontacket Pond and Tisbury Great Pond. In addition, the Massachusetts Department of Environmental Protection has established the maximum amount of a pollutant that four of these ponds can receive and still safely meet water quality standards (known as "Total Maximum Daily Loads" or "TMDLs"). (TMDLs for Tisbury Great Pond are under consideration as of the date of the enactment of this Regulation.) Similar studies are currently underway for Cape Pogue, Chilmark Pond, Katama Bay, Menemsha Pond, Oak Bluffs Harbor, Oyster Pond, Pocha Pond, Squibnocket Pond and Tashmoo Pond. In due course, TMDLs will be established for all of these participating water bodies.

1.8 Of the fourteen coastal ponds and harbors participating in the Estuaries Project, eight have watersheds that encompass portions of more than one town, suggesting that an Island-wide, coordinated approach is necessary for effective management of water quality in these ponds.

1.9 The responsible application of fertilizers rests not only with property owners, but also with professional landscapers whose work takes them across the Island without regard to town or watershed boundaries. Coordinated regulation of fertilizers across the Island will facilitate the educational process for landscapers and will avoid confusion that might arise if fertilizer regulations were materially different from town to town.

1.10 The Edgartown Board of Health, recognizing that excessive use of fertilizers is part of the overall problem of nutrient pollution, promulgates this Regulation regarding the use of fertilizer on turf. As a parallel effort, the BMPs Working Group has assisted the Island town Boards of Health in drafting the Best Management Practices for Landscape Fertilizer Use on Martha's Vineyard, which is based on the UMass Amherst Extensions ' Best Management Practices for Soil and Nutrient Management in Turf Systems, both of which from time to time may undergo changes in response to scientific research.

1.11 The practices and standards set out herein are deemed necessary to protect the public health, including the maintenance of drinking water quality and the preservation of our water and wetland resources. They also represent an early step in achieving compliance with

applicable water quality standards. This Regulation is intended to allow our Island's waters to be both sustainable and sustaining, while affording reasonable use of fertilizers for the enhancement of lawn quality.

1.12 It is anticipated that compliance with this Regulation will be achieved primarily as a community responsibility and as a consequence of the adoption of a common standard of care in respect of both the sale and application of Fertilizer. This regulation provides for educational initiatives to enable this process to occur. To supplement these community-based activities, this Regulation also provides for an enforcement process applicable to those who apply Fertilizer in violation of the standards set out in this Regulation.

SECTION 2. PURPOSE

This Regulation provides for a reduction of nitrogen and phosphorus going into Edgartown's Water Resources by means of an organized system of education, licensure, regulation of practice, and enforcement. The Regulation is intended to contribute to Edgartown's ability to protect, maintain, and ultimately improve the water quality in all its Water Resources and assist in achieving compliance with any applicable water quality standards relating to controllable nitrogen and phosphorus.

SECTION 3. AUTHORITY

This Regulation is adopted by the Edgartown Board of Health as authorized by Massachusetts General Laws, Chapter III, Section 31 and is further authorized pursuant to the Fertilizer Management District of Critical Planning Concern designation, [detail authority], and by section 9 of Chapter 262 of the Acts of 2012, as amended.

SECTION 4. DEFINITIONS

For the purposes of this Regulation, the following words shall have the following meanings unless the context clearly indicates a different meaning:

"Agriculture" means farming in all of its branches and the cultivation and tillage of the Soil, the production, cultivation, growing, and harvesting of any agricultural, floricultural or horticultural commodities. For the purposes of this Regulation, agriculture means production for commercial sale.

"Application Fee" means a fee in the amount of \$100.

"Best Management Practices for Landscape Fertilizer Use on Martha's Vineyard" or "Martha's Vineyard BMPs", means a sequence of activities designed to minimize Fertilizer use while also promoting healthy vegetative growth, as prepared by a working group of Island landscape professionals, golf course superintendents, Health Agents, landscape retailers, and conservationists.

"Board of Health" means the Edgartown Board of Health whose members are elected by the voters of Edgartown to oversee public and environmental practices through the actions of its Health Department.

"Buffer Zone" means the area abutting a Resource Area within which no alteration (as that term is defined in Commonwealth's Wetland Protection Act or the Edgartown Wetland Protect Bylaws and Regulations) is permitted without an Order of Conditions or a Negative Determination from the Edgartown Conservation Commission.

"Compost Tea" means a liquid infusion of Organic Compost but, for the purposes of this Regulation, is not considered a Slow Release Fertilizer.

"Fertilizer" means a substance that enriches the Turf or Soil with elements essential for plant growth, such as nitrogen, phosphorus, or other substances. Fertilizer also includes 'combination products', sometimes referred to as 'weed and feed', which contain Fertilizer in combination with pre- or post-emergence herbicides, insecticides, other pesticides or plant growth regulators. Fertilizer does not include those substances that are non-nally excluded from Fertilizer such as dolomite, limestone, or lime.

"Golf Course" means the managed (i.e. mowed and fertilized) Turf at each of Chappaquiddick Golf Club, Farm Neck Golf Club, Edgartown Golf Club, Mink Meadows Golf Club, and Vineyard Golf Club.

"Health Agent" means the individual who has direct oversight of the daily activities of the Board of Health.

"Horticulture" is a general term meaning plant science and plant products. For the purposes of this Regulation, horticulture means the raising of flowers, fruits, vegetables, berries, herbs, nuts, and other similar products for commercial sale.

"Impervious Surface" means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, but does not include compacted areas on athletic fields, such as baseball infields, and intensely trafficked Turf.

"Landscape Professional" means a person, either as a sole proprietor or as an employee of a company or a municipality, who in exchange for money, goods, services, or other consideration applies Fertilizer to Turf. A Landscape Professional includes Turf management staff at a Golf Course.

"License" means that documentation issued by Edgartown authorizing the individual or commercial entity holder to apply Fertilizer in Edgartown.

"Licensee" means a Landscape Professional who has a valid License.

"Liquid Fertilizer" means a form of Fertilizer which typically is sprayed directly onto a plant.

"Martha's Vineyard Lawn Fertilizer Working Group" means the group of individuals from the six Island towns, including landscape professionals, golf course superintendents, Conservation Commissioners, Selectmen, Board of Health Commissioners and Health Agents, and Martha's Vineyard Commission members, who met and consulted with members of the public representing these and other constituencies to draft this Regulation.

"Organic Compost" is a Slow Release form of Fertilizer composed of the biologically stable, non-pelletized, humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

"Participating Town" means an Island town that has voted to adopt regulations governing the use of Fertilizer that are substantially similar to this Regulation.

"Property Owner" means the owner of record of the Turf or Soil to which Fertilizer is applied (and, for the avoidance of doubt, includes Edgartown).

"Relevant Employee" means a person engaged (as an employee, agent, contractor or otherwise) by a Landscape Professional who applies Fertilizer to Turf or Soil.

"Resource Area" means an area subject to protection under the Commonwealth's Wetland Protection Act or the Edgartown Wetland Protection By-Laws or Regulations.

"Slow Release" in relation to nitrogen, means nitrogen in a form that delays its availability for uptake and use after application, and is not rapidly available to Turf. Slow Release is also sometimes referred to as 'controlled-release', 'timed-release' or 'slowly soluble/available'. This definition expressly excludes nitrate salts and urea.

"Soil" means the upper-most layer of the earth's surface, comprised of mineral and organic matter, which can host biological communities.

"Soil Test" means a technical analysis of Soil conducted by a Soil testing laboratory that measures extractable nutrient values using a Modified Morgan soil testing procedure and making recommendations based on values as determined by the University of Massachusetts Extension Soil and Plant Tissue Testing Lab.

"Edgartown" encompasses the land and water of the Town of Edgartown on the island of Martha's Vineyard, County of Dukes County.

"Turf" means grass-covered Soil held together by the root system, and includes turf used for sports and recreational activities as well as for lawns and utility areas.

"Water Resource" includes, without limitation, groundwater, streams, including intermittent creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, embayments, estuaries and all waters defined in Massachusetts General Laws, Chapter 131, Section 40 and the Edgartown Wetland By-Laws or Regulations.

SECTION 5. TURF PERFORMANCE STANDARDS

5.1 General Turf Performance Standards

5.1.1 No person shall apply Fertilizer between November 15th and the following April 15

5.1.2 No person shall apply Fertilizer to Turf or Soil immediately before or during heavy rainfall when the Lawn or Soil is likely to be saturated with water, when the Turf or Soil has the characteristics of an Impervious Surface or when they are showing signs of stress due to drought, or any other time when the Fertilizer is unlikely to be taken up by the Turf root structure.

5.1.3 No person shall apply or deposit Fertilizer on any Impervious Surface or on any place or in such a manner as would allow the Fertilizer to enter into storm drains or other storm flowage receptacles and/or channels. If a person inadvertently applies or deposits Fertilizer to an Impervious Surface by spill or otherwise, or applies or deposits Fertilizer as prohibited in this section, that person must immediately remove the Fertilizer.

5.1.4 No person shall apply Fertilizer containing more than 0.5 pounds of nitrogen per 1000 square feet of Turf per application, provided, however, that a single application of Fertilizer between April 15 and June 1 and a single application of Fertilizer in September may contain up to .75 pounds of nitrogen per 1000 square feet of Turf. Cumulative applications of Fertilizer must not exceed 3.0 pounds of nitrogen per 1000 square feet of Turf per year. Fertilizer shall not be applied within 4 weeks of a prior application. For the purposes of this Regulation, Fertilizer applied by all persons to the same Turf will be aggregated.

5.1.5 No person shall apply Fertilizer unless it contains at least 50% of its nitrogen in the Slow Release form. Compost Tea and Liquid Fertilizer are exempt from this standard, provided that no single application exceeds 0.1 pounds of nitrogen per 1000 square feet over a 4-week period.

5.1.6 No person shall apply Fertilizer that contains phosphorus, unless a Soil Test taken within the prior 3 years indicates a phosphorus deficiency of less than 14 ppm, in which case the phosphorus application shall be limited to the quantity specified in the test results. A Soil Test is not required for the application of:

(a) Organic Compost;

(b) specially labeled 'starter' Fertilizer products intended for use in establishing Turf or in repairing damaged Turf when applied in conjunction with Turf seed;

- (c) Compost Tea; and
- (d) pelletized organic Fertilizer whose phosphate content by weight is no greater than 25% of its nitrogen content by weight.

5.2 Fertilizer in the Buffer Zone

5.2.1 The Turf performance standards set out in Sections 5 (not including Section 5.1.4) apply to the Buffer Zone, except as modified in this Section 5.2.

5.2.2 No Fertilizer may be applied in the 10-foot wide strip running parallel and immediately adjacent to a Resource Area. In the remainder of the Buffer Zone, no person shall apply Fertilizer containing more than 0.25 pounds of nitrogen per 1000 square feet of Turf per application, with cumulative applications not to exceed an annual maximum of 0.5 pounds of nitrogen per 1000 square feet of Turf, except that where there is a continuous 25-foot wide strip of Fertilizer-free, non-Turf vegetation running parallel to the Resource Area, Fertilizer may be applied to the area beyond the 25 foot strip to an annual maximum of 1.0 pound of nitrogen per 1000 square feet of Turf.

5.2.3 No person shall apply Fertilizer that contains phosphorus in the Buffer Zone, unless a Soil Test taken within the prior 3 years indicates a phosphorus deficiency of less than 14 ppm, in which case the phosphorus shall be limited to the quantity specified in the test results.

5.3 Fertilizer on Golf Courses

5.3.1 The performance standards set out in Section 5 (not including Section 5.1.6) apply to Fertilizer applied on Golf Courses except as modified in this Section 5.3.

5.3.2 Applications of Fertilizer to Golf Courses shall not be made between December 15 and the following April 15th

5.3.3 Liquid Fertilizer may not be applied more often than biweekly, provided that it is applied at a rate not to exceed 0.1 pound of nitrogen per 1000 sq. ft. per application.

5.3.4 The performance standards set out in Section 5.2.2 do not apply to putting greens and tee boxes in the Buffer Zone in existence at the effective date of this Regulation.

5.4 Exemptions: The following activities are exempt from Section 5:

5.4.1 Application of Fertilizer to home vegetable and flower gardens, landscape ornamentals, shrubs, trees, bushes, and container plants.

5.4.2 Application of Fertilizer for Agricultural or Horticultural use.

5.5 Precedence: To the extent that the Commonwealth of Massachusetts or Edgartown has enacted, enacts, or issues any law, regulation, bylaw, order or permit concerning the application of Fertilizer containing phosphorus or nitrogen on Turf or Soil which is more stringent than the performance standards set in this Section 5, those more stringent standards take precedence.

SECTION 6. EDUCATION, LICENSURE AND ADMINISTRATION

6.1 Education and Assessment

6.1.1 The Board of Health shall:

(a) maintain and offer for a fee a general program of Fertilizer education for Property Owners and Landscape Professionals that is based on this Regulation and the Martha's Vineyard mos; and

(b) administer an assessment to determine a Professional Landscaper's or a Property Owner's proficiency with respect to this Regulation and the Martha's Vineyard BMPs following completion of the general education program.

6.1.2 The Board of Health shall make available to the public, including Property Owners, Landscape Professionals and Fertilizer retailers a summary of the Section 5 performance standards, as well as a copy of this Regulation, as amended from time to time.

6.2 Licensure

6.2.1 No Landscape Professional shall apply Fertilizer in Edgartown without a License issued by the Board of Health in accordance with this Regulation.

6.2.2 Subject to Section 62.3, an application for a License shall be accompanied by the Application Fee and documentation that the applicant has both completed the general program of Fertilizer education referred to in Section 6.1.1 (a) and achieved proficiency as set forth in Section 6.1.1 (b).

6.2.3 Upon issuance of a License to an applicant, Edgartown shall forward a "Notice of Issuance of Fertilizer License" to each other Participating Town nominated by the Applicant.

6.2.4 When Edgartown receives a "Notice of Issuance of Fertilizer License" from any Participating Town, the Board of Health shall issue and mail (or email or otherwise forward) a License to the applicant. The payment of a fee and the production of additional documentation shall not be required.

6.2.5 A License shall indicate the License number and expiration date and shall be signed by the Licensee.

6.2.6 Licenses shall be effective on issue and shall continue in effect for three calendar years, expiring on the third December 31 after being issued.

6.2.7 Licenses may be renewed on application. Applicants for renewal must provide documentation of either re-completion of the general program of Fertilizer education or proficiency, as set out in Section 6.1.1, and pay the Application Fee.

6.2.8 A Landscape Professional licensed under this Regulation shall keep his/her License in their possession and shall display the License when requested to do so by any Edgartown enforcement officer.

6.2.9 A Relevant Employee does not need to obtain a License, provided his/her employer maintains a ratio of not less than 1 Licensee to 8 non-Licensed Relevant Employees (the License held by the employer/owner being included for this purpose) and:

(a) the employer has provided the Relevant Employee with training sufficient to ensure that the employee fully understands this Regulation and the Martha's Vineyard

(b) the Relevant Employee has demonstrated proficiency with respect to this Regulation and the Martha's Vineyard BMPs in accordance with an assessment tool provided by the Board of Health and administered by the employer;

(c) the employer provides supervision appropriate to ensure that the Relevant Employee complies with this Regulation; and

(d) the employer retains documentation sufficient to establish compliance with subsections (a), (b) and (c).

These requirements set out in (a) and (b) above must be complied with not less often than every three years and within 6 months after any material amendments to this Regulation for each Relevant Employee.

6.3 Services to be Performed by a Third Party: The Board of Health may appoint from time to time a third party to perform on its behalf the responsibilities and services set out above in Sections 6.1 and 6.2.

6.4 Liability

6.4.1 A Property Owner is liable for violations of this Regulation by a Landscape Professional or its Relevant Employees, including applying Fertilizer without a License, provided that the Property Owner knew or should reasonably have known that a violation would occur.

6.4.2 A Landscape Professional is liable for violations of this Regulation by its Relevant Employees.

6.4.3 Notwithstanding Sections 6.4.1 and 6.4.2, any person who applies Fertilizer in violation of this Regulation may be held liable.

6.5 Enforcement

6.5.1 The Health Agent and the Board of Health may enforce this Regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

6.5.2 Subject to Section 6.5.3, a person who violates any provision of this Regulation is subject to:

- (a) in the case of a first violation within a consecutive 36-month period, a written warning;
- (b) in the case of a second violation within a consecutive 36-month period, a fine in the amount of \$50.00;
- (c) in the case of three or more violations within a consecutive 36-month period, a fine in an amount of \$300.00 per violation, unless the Town proceeds by criminal complaint or indictment under Section 6.5.6, in which case the maximum fine for the third and subsequent violations is provided therein; and
- (d) in the case of a Licensee (or a Relevant Employee), and subject to the notice and hearing provisions of Section 6.5.4, suspension of the License (or that of his/her employer, as the case may be) for 180 consecutive days or revocation of that License.

6.5.3 A Licensed Professional who applies Fertilizer without having a valid License is subject to:

- (a) in the case of a first violation within a consecutive 36-month period, a written warning;
- (b) in the case of two or more violations within a consecutive 36-month period, a fine in the amount of \$300.00 unless the Town proceeds by criminal complaint or indictment under Section 6.5.6, in which case the maximum fine for the second and subsequent violations is provided therein.

6.5.4 The Board of Health may suspend or revoke a License issued pursuant to this Regulation or any other applicable law. Such revocation or suspension may only take place after a hearing held by the Board of Health of which the Licensee shall be given seven (7) days written notice. Such notice shall be deemed given upon certified return receipt mailing same to the address listed on the License application.

6.5.5 The Board of Health is authorized to penalize any person who violates these regulations by issuing a ticket under the noncriminal disposition process provided for in Massachusetts General Laws Chapter 40, Section 2 ID, and the Town's noncriminal disposition by-law, Sections 1-2, 1-3, 1-4, 1-5 and 1-6 of the Code of the Town of Edgartown. If noncriminal disposition is elected, then any person who violates any provision of this Regulation shall be subject to the penalties provided in Sections 6.5.2 and 6.5.3, as applicable, per violation or, in the case of a continuing violation, per day for each day of violation. Each day or portion thereof shall constitute a separate offense. If there is more than one violation, each shall constitute a separate offense.

6.5.6 A person who violates any provision of this Regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day

or portion thereof shall constitute a separate offense. If there is more than one violation, each shall constitute a separate offense.

SECTION 7. SEVERABILITY CLAUSE

If any section, part or provision of this Regulation is deemed invalid or unconstitutional by a court of competent jurisdiction, that decision shall not affect the validity of the remaining terms of this Regulation as a whole or any part thereof, other than the section, part or provision held invalid or unconstitutional.

SECTION 8. AMENDMENTS

8.1 This Regulation was developed by a broad group of stakeholders representing diverse interests and has been reviewed by soil and turf scientists and educators. Therefore, notwithstanding the requirements of G.L. c. 111, §31, no amendment to this Regulation shall be adopted until such time as the Board of Health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town and County once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been reviewed and commented upon by soil and turf scientists and educators and it is passed by the Board of Health.

8.2 Further, since these Regulations are also under Chapter 831 of the Acts of 1977, as amended, any amendments to the Regulations shall first be approved by the Martha's Vineyard Commission, as conforming to the guidelines for the Fertilizer Management District of Critical Planning Concern.

SECTION 9. EFFECTIVE DATE

This Regulation shall take effect on January 1st 2015 and upon publication pursuant to G.L. c. 111, §31.

SECTION 10. PROVISIONS

Landscape Professionals may apply Fertilizer without a license during the interim period between the effective date of this Regulation and the development of a licensing program by the Board of Health, provided that they comply with Section 5 of this Regulation.

SECTION 18. RESERVED

SECTION 19. RESERVED

SECTION 20. SEVERABILITY CLAUSE

1.000 Severability

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

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