

CHAPTER 1: ADMINISTRATIVE PROCEDURES

SECTION 1: DEFINITIONS

1.1.001 ABUTTOR:

Shall mean any and all abutters within three hundred (300) feet of the property boundaries of the project under review, or in specific situations (i.e. Plum Island sewer/water Project) as determined by policy, rule or ordinance.

1.1.002 BOARD:

Shall mean the City of Newburyport Board of Health.

1.1.003 DAY:

Shall mean a calendar day unless otherwise noted.

1.1.04 THE MASSACHUSETTS STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Shall be referred to as D.E.P.

1.1.05 THE MASSACHUSETTS STATE DEPARTMENT OF PUBLIC HEALTH:

Shall be referred to as D.P.H.

1.1.006 THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY:

Shall be referred to as the E.P.A.

1.1.007 PERSON:

Shall mean any individual, partnership, company, corporation, trustee, trust, organization, or applicant.

1.1.008 PLAN:

For the purposes of these regulations, shall be defined and interpreted as follows: Any drawings, calculations, test data, supplemental maps, any information utilized, requested or required to sustain the design of plans for submittal to the Board of Health.

1.1.009 SPECIAL INSPECTIONS/COST RECOVERY

(1) **SPECIAL INSPECTIONS:**

Shall mean any inspection conducted which is not routine, and is out of the ordinary. This shall include but not be limited to inspections to resolve court cases, inspections of code violations in Food Establishments, Markets, Restaurants, etc., inspections of construction projects or any inspection conducted outside normal working hours of the Health Department. In the case of Food Service Establishments, Special Inspections may be hand delivery of Special Notices, Pre-Operation Inspections, Complaint Investigation Inspections, or any other inspection deemed necessary by the Board of Health. All special inspections may be subject to special inspection fees in accordance with the current Board of Health fee schedule.

(2) COST RECOVERY:

The Board of Health may assess cost recovery charges to any person as defined in this chapter for costs incurred by the Board of Health to abate a nuisance deemed to cause a threat to public health or the environment, or a charge may be assessed for any emergency actions taken by the Board of Health to abate an imminent threat to public health or the environment or if the Board of Health is called/or responds to an emergency.

Cost Recovery charges may be assessed for services undertaken by the Board of Health for any public health response efforts as deemed necessary.

Failure by any person to properly reimburse the Board of Health for any cost recovery charges assessed shall be cause for further legal action to collect recovery costs as allowed by law, or may result in administrative actions to suspend, revoke, or modify any permit or other approvals issued by the Health Department.

SECTION 2: GENERAL ADMINISTRATIVE PROCEDURES

1.2.001 POLICY MEMORANDUMS:

The Board of Health may, from time to time, adopt policies for the clear and concise interpretation of local and/or state regulations, for proper enforcement of local and/or state regulations, or adopt policies to protect public health, the environment, and citizens of Newburyport.

1.2.002 STANDARD CONDITIONS:

The Board of Health may, from time to time, establish a list of standard conditions that generally apply to all projects. The list will be in written form in order to properly inform applicants of their responsibilities once an approval is granted for any project.

This list of conditions shall not be considered as a final list. There may be special conditions deemed necessary and imposed for any project under review by the Board of Health. The following is the list of current standard conditions:

1. This variance shall not take effect until it is properly recorded at the Registry of Deeds and a certified copy of this variance is returned to the Board of Health office indicating that a marginal reference was made on the original deed.
2. Any changes in the plan submitted and approved shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.
3. An as built plan may be required by the Board of Health before the approval of any occupancy permit, or other documentation to satisfy the intent of the Board of Health's approval of any project.
4. All approvals with or without conditions shall be deemed a restriction and extend to all future owners of a property, business, or permit holder.
5. There shall be no stump dumps or dumping of any solid waste or liquid waste on site. Such activity shall constitute a violation of Massachusetts General Laws Chapter 111, Section 150A.
6. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.
7. Sewerage disposal methods which are provided by mechanical means such as a low pressure sewer system, grinder pump, etc. shall have a deed restriction attached, which indicates that the homeowner is responsible for the proper maintenance and upkeep of said system from the dwelling to the municipal sewer line.
8. All drainage structures shall be installed and functioning in accordance with design standards prior to the approval of an occupancy permit. A status letter may be submitted as proof of compliance with this condition, to satisfy the intent of the Board of Health.
9. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
10. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
11. The work authorized by these conditions shall be completed within two years from the date of this order, unless the time for completion has been extended to a specific date more than two years from the date of issuance

and both that date and the special circumstances warranting the extended time period are set forth in this order.

12. This order may be extended by the issuing authority upon application to the issuing authority at least 30 days prior to the expiration date of this order.
13. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
14. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
15. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
16. The Board of Health Consulting Engineer/Consultant shall conduct inspections to ensure compliance with approved plans and conditions. All inspections shall be conducted in accordance with an inspection schedule approved by the Director of Public Health.
17. Agents of the Board of Health or their designee's, such as the Board of Health Consulting Engineer or others so designated shall have access to property covered by these conditions to make inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
18. The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all city departments.
19. Any approval, variance or waiver granted by the Board will not become effective until all outstanding invoices from the Consulting Engineer/Consultant have been paid by the applicant.
20. These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, or any other approval required by the Board of Health.
21. Any special conditions deemed necessary and imposed by the Board of Health.

1.2.003 REQUEST FOR AN ADMINISTRATIVE DETERMINATION OF APPLICABILITY:

Any person may request a determination by the Director of Public Health in order to ascertain a finding of facts to determine the proper applicability of the Board of

Health Rules and Regulations. The Director may issue a determination with conditions, if he/she determines that a person's actions will comply with the intent of its Board of Health regulations, and further provided that the same degree of public health and environmental protection can be maintained. The Director shall employ best professional judgment practices to make administrative determinations. The authority for the current Director of Public Health or future Directors of Public Health to grant an administrative determination must be authorized by a vote of the Board.

1.2.003(a) ADMINISTRATIVE ORDERS AND ENFORCEMENT:

The Director of Public Health may issue administrative orders to affect Administrative Enforcement Actions. Orders may require but not be limited to corrective action, permit probation, conditional permits issued by the Board of Health, the use of consultants in accordance with Chapter 1, Section 1.4.001 of Newburyport Health Regulations, or other actions deemed necessary to enforce public health laws and regulations. In addition to administrative orders, the Director of Public Health may conduct enforcement conferences in order to inform persons, individuals, companies, corporations, etc. of pending actions and requirements to avoid further penalties.

1.2.003(b) ENFORCEABLE AGREEMENT:

Shall mean a document containing an understanding between the Board of Health and the owner(s) of a facility or the person(s) acquiring ownership of a facility relative to compliance with any rules and regulations enforced by the Board Health (e.g. to upgrade a septic system or to connect the facility to a sanitary sewer pursuant to Title 5 within a specified time frame following the transfer of title). The agreement is legally binding upon the owner(s) and on any subsequent owner(s). The agreement shall in no way limit the powers or responsibilities of the Board of Health to enforce any rules and regulations or take any other action deemed necessary to protect public health, safety, welfare, or the environment.

1.2.004 APPEAL OF ADMINISTRATIVE DECISION'S:

Any decision by the Director of Public Health may be appealed to the Board for further review. The Board may rescind, sustain, or modify any decision of the Director of Public Health. Said appeal must be filed within twenty-one (21) days of the date of the issuance of a decision.

1.2.005 WAIVER OF REGULATIONS:

A person may petition the Board of Health for a waiver of its regulation(s). If the Board of Health determines that a waiver will not have a detrimental affect to abutters, it will not cause a public health threat or environmental harm, and if a delay may cause a hardship, the Board may waive its regulation.

1.2.006 VARIANCE REQUEST:

Any person may seek a variance of any Board of Health Regulation (s). The applicant must provide documentation to demonstrate a hardship which would result from strict enforcement of regulations.

The applicant must also demonstrate that no other method or technology exists that would allow compliance with the regulations. Further, the applicant must employ every measure to assure the greatest degree of compliance that can be achieved.

Variances may be granted if the majority of the Board finds that the petitioner has proposed to take adequate measures to protect the public health and environment, and the proposed variance is in keeping with the intent of these rules and regulations and that the grant of the variance will not be detrimental to the public health and environment.

1.2.007 VARIANCE REQUEST PROCEDURE/ABUTTOR NOTIFICATION:

Step 1:

Petitioner submits written variance request to the Board of Health office, either in hand or by certified mail. A proper submittal shall include, but may not be limited to the following:

- 1) Properly filled out application.
- 2) Appropriate fees paid.
- 3) Two (2) sets of plans, if applicable.
- 4) Certified Abutters list from the Assessor's Office which must be dated within sixty (60) days of submission.
- 5) Documentation supporting petitioner's request.
- 6) Any pertinent information deemed necessary to set hearing date.

Step 2:

Office sets hearing date after proper submission has been determined.

Step 3:

Petitioner notifies all abutters by Certified Mail, Return Receipt Requested, at least ten (10) days before hearing. Notification shall include the variance the petitioner is seeking, reasons therefore, and also the date, time and place for the scheduled hearing. If a variance request procedure is provided for by other laws, rules, or regulations, that procedure shall supercede this variance request procedure.

Step 4:

Certified mail slips stamped by the post office shall be provided to the Board of Health office seven (7) days prior to the scheduled hearing with a copy of the notification to abutters.

Step 5:

The night of the scheduled hearing, the petitioner shall provide, as evidence to the Board, the Post Return Receipt cards (Green Cards).

1.2.008 CERTIFICATE OF COMPLIANCE/OCCUPANCY INSPECTION:

- (1) All projects approved by the Board of Health shall require a Certificate of Compliance, if applicable. A Certificate of Compliance form shall be utilized as the form necessary to demonstrate that any project required to have a Certificate of Compliance has been completed to the satisfaction of the Board of Health. The fee for a Certificate of Compliance shall be in accordance with the current Board of Health fee schedule.
- (2) The Director of Public Health or his designated Health Agent may inspect any premises requiring a "sign-off" for occupancy. During this inspection, compliance with Board of Health regulations, conditions and other laws such as, but not limited to, Chapter X (105CMR590.000), Article II (105CMR410.00), and Title 5 (310CMR15.000), shall be expected prior to the endorsement of any document pertaining to occupancy of the subject premises. If other laws are applicable to this inspection process, then compliance will also be expected with those respective laws. Affected parties are required to seek the assistance of the Health Department in determining requirements to assure compliance.

1.2.009 BOARD OF HEALTH AGENDA:

The agenda for all Board of Health meetings shall close at 4:00 pm seven (7) days before the scheduled meeting. Hearings which require plan approval and notification of abutters must be submitted in enough time to provide a proper review by the Board's Consultant/Consulting Engineer. Therefore, before receiving a scheduled hearing date, all plans and calculations must be submitted and the Consultant/Consulting Engineer shall be allowed ten (10) business days to review all material submitted. The applicant will then be scheduled for the next available meeting. Further, no person or applicant shall be placed on an agenda after the seven (7) day shut off period unless the Director of Public Health is instructed to do so by a member of the Board of Health.

SECTION 3: CONSULTING ENGINEER / CONSULTANT COORDINATION AND PLAN REVIEW COMMENTS:

- 1.3.00** It is the responsibility of the applicant and his design engineer to facilitate coordination between all consulting engineers/consultants and other concerned parties, in order to facilitate an efficient review. The consulting engineer/consultant shall be allowed sufficient time to review all plans, calculations and any other

material deemed necessary to complete the review. Plans shall be reviewed and review comments issued within ten (10) business days upon submission of a completed application. A design engineer/applicant's consultant failing to coordinate properly and cooperate with the Board of Health shall be deemed just cause for denial of a project.

1.3.002 ABUTTOR NOTIFICATION:

It is the responsibility of the applicant and his/her design engineer, or other designated person, to properly notify all abuttors in accordance with abuttor notification procedures pursuant to Chapter 1, Section 2.007.

1.3.003 ADMINISTRATIVE DENIAL/HEARING DATE:

Failure to submit a complete application shall be deemed an automatic denial of plans at an administrative level. A hearing date shall be established following receipt of the consulting engineer/consultant review comments. Failure to receive the consultant engineer's/consultant's review comments shall be deemed just cause for denial of plans.

1.3.004 APPEAL:

Any person aggrieved by the comments or corrections recommended as a result of a plan review by the Board's Consultant, may request a hearing from the Board of Health. The Board may make determinations, policies, or waive or rescind any recommendations of their consultant.

SECTION 4: CONSULTING ENGINEERS/CONSULTANT SERVICES

- 1.4.001** The Board of Health may engage consultant engineers, or other consultant services that it deems appropriate, for the purpose of the orderly operation of the Health Department, to effect public health and environmental protection. The Board of Health requires that an applicant for a permit or other approval under the Board of Health's Rules and Regulations agree, as a condition of the Board's acceptance of the application, to pay the cost of the professional services rendered to the Board of Health by the Board's Consulting Engineer/Consultant in connection with the application. The Board's Consulting Engineer/Consultant shall submit his or her bill for services rendered directly to the applicant, and the applicant shall be responsible for making full payment of such bill directly to the Board's Consulting Engineer/Consultant. Any approval, variance or waiver granted by the Board will not become effective until all outstanding invoices from the Consulting Engineer/Consultant have been paid by the applicant.

SECTION 5: EMERGENCY PROCEDURES

- 1.5.001** Whenever an emergency exists in which the interest of protecting the public health or the environment requires that ordinary procedures be dispensed with, the Board of Health or its authorized agent, acting in accordance with the provisions of Section 30 of Chapter 111 of the General Laws, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as the Board of Health deems necessary to meet the emergency. Notwithstanding any other provision of these regulations, any person to whom such order is directed shall comply therewith within the time specified in the order. Each day's failure to comply with the order shall constitute a separate offense. Upon compliance with the order and within seven (7) days after the day the order has been served, he may file a written petition in the office of the Board of Health requesting a hearing. He shall be granted a hearing as soon as possible. The procedures for such hearing shall otherwise conform with the hearing requirements which would have existed had the order been issued under non-emergency circumstances.

SECTION 6: ADMINISTRATIVE AUTHORITY

- 1.6.001** The Director of Public Health shall have the authority to formulate proper applications and procedures in order to effectively apply General laws, Statutes, Rules and Regulations and local rules and regulations. Further, he/she shall have authority to issue reasonable administrative policies for effective operation of the Health Department and enforcement of applicable laws, rules, and regulations. The authority for the current Director of Public Health or future Directors of Public Health to exercise administrative authority must be authorized by a vote of the Board.

SECTION 7: FEE SCHEDULES/BONDS

1.7.001 FEE SCHEDULES:

The Board of Health may, from time to time, adopt reasonable fee schedules for certain permits, hearings, and other matters it deems necessary to assess fees. All fees submitted with applications, etc. are non-refundable. In order for the fee schedules to take effect, only a majority vote of the Board of Health shall be required.

1.7.002 BONDS:

The Board of Health may, at its discretion, require bonds to be posted in a manner to be determined by the Board of Health, as a condition, for any project which is subject to approval or any project within the purview of the Board of Health.

SECTION 8: INSPECTIONS/GENERAL DUTY REQUIREMENTS

- 1.8.001** Any person as defined by Section 1.1.007 of Chapter 1 of Newburyport Health Regulations which obtains a permit, license, variance, waiver, determination of applicability, or any other approval from the Board of Health, shall be required to cooperate with the Health Department and its agents fully during any inspection or investigation of any activity covered by the aforementioned permits, approvals, etc. Said cooperation shall be considered as the general duty of any person holding a permit or obtaining a permit or other approval from the Board of Health. Further, during any inspection or investigation, Newburyport Health Agents may require photographs, copies of records, documents, samples, or other material deemed necessary to complete said inspection or investigation. Failure to adhere to this general duty clause shall be deemed just cause for further enforcement action as deemed necessary by the Board of Health.

SECTION 9: PLAN REVIEWS AND APPROVAL/TRANSFER OF PERMITS

- 1.9.001** Any plan submitted to the Board of Health for review and approval must be submitted with a completed application and shall be reviewed within thirty (30) days of submittal. Any denial of an application shall be in written form. Each submittal is subject to a review period of thirty (30) days.

1.9.002 TRANSFER OF PERMITS:

Any application submitted for a transfer of permits shall be reviewed within thirty (30) days of submittal. Said application, if denied, shall state the reasons for denial in writing. Each submittal is subject to a thirty (30) day review period. Any permit issued by the Board of Health shall not be sold, assigned, or transferred without approval from the Board of Health.

1.9.003 SUPERCEDING REVIEW TIMES:

Any state law, rule, or regulation which allows a greater review period of time as stated in Section 1.9.001 and 1.9.002 shall be applicable.

1.9.004 EXPIRATION OF APPROVED PLANS:

Approved plans not permitted or under construction may be subject to further review in order to determine compliance with current laws, rules, or regulations.

SECTION 10 THROUGH 18

Reserved for future regulations, amendments, etc.

SECTION 19: PENALTIES

1.19.001 Any persons, firms, or corporations violating or failing to comply with any provision of any rules and regulations of the Board of Health, shall be warned or fined in accordance with the non-criminal disposition process adopted by *The City of Newburyport City Council, December 11, 1989.

(1) 1st offense – written warning or one hundred (100) dollar fine

(2) 2nd offense – two hundred (200) dollar fine

(3) 3rd offense – three hundred (300) dollar fine

(4) 4th and subsequent offenses – three hundred (300) dollar fine and/or enforcement action

1.19.001(a) TOBACCO CONTROL VIOLATIONS

Any employee of an establishment holding a Tobacco Sales Permit which sells tobacco products to persons under eighteen (18) years of age may be fined as follows:

(1) 1st offense – Two Hundred (200) dollar fine

(2) 2nd offense – Two Hundred Fifty (250) dollar fine and Seven (7) day suspension

(3) 3rd and subsequent offenses – Three Hundred (300) dollar fine and Thirty (30) day suspension, permit revocation or other legal action as deemed necessary by the Board of Health.

This provision does not apply to the establishment (owner) which may be fined as cited in section 1.19.001.

- 1.19.002** The Board of Health may revoke or suspend, for just cause, any license, permit, variance, waiver, Determination of Applicability, or other approvals issued by the Board. In addition, the Board of Health may enforce its rules and regulations using any other established means of enforcement in addition to or in lieu of non-criminal disposition methods.

SECTION 20: SEVERABILITY

- 1.20.01** If any paragraph, sentence, phrase or word of these rules and regulations shall be declared invalid for any reason whatsoever, the decision shall not affect any other portion of these rules and regulations which shall remain in full force and effect and to this end the provisions of these rules and regulations are hereby declared severable. Notwithstanding the provisions that may be in conflict with the Massachusetts General Laws, the revised by-laws of the City of Newburyport, these rules and regulations will be binding upon all parties concerned.

- Section 1-17 Noncriminal disposition of ordinance violations.
- Any ordinance of the city or rule or regulation of its boards, commissioners and committees, the violation of which is subject to a specific penalty, may, in the discretion of the city official who is the appropriate enforcing person, be enforced by way of the method provided in M.G.L.A. c. 40, § 21D. "Enforcing person," as used in this section, shall mean any police officer of the city with respect to any offense, and building inspector and his designees, the members of the conservation commission and its designees, the dog officer and his designees, the board of health and its designees, and such other officials as the city council may, from time to time, designate, each with respect to violation of ordinances and rules and regulations within their respective jurisdictions. If more than one (1) official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto. Each day that any violation exists constitutes a separate offense.