

CHAPTER 5

ENVIRONMENTAL AND MISCELLANEOUS REGULATIONS

SECTION 1: GENERAL CONSTRUCTION REGULATIONS

5.1.001 BASEMENT FLOOR/SLAB ELEVATION: The elevation of the basement floor or slab of any new building shall be no less than two (2) feet higher than the estimated seasonal highground water table (ESHGWT) as determined by a Massachusetts Certified Soil Evaluator and approved by the Board of Health.

5.1.002 CONNECTION TO PUBLIC WATER SUPPLY: In order to promote and preserve the public health the Board of Health requires that all new structures intended for human habitation be connected to the public water supply where said water supply is within three hundred (300) feet of the structure.

5.1.003 PRIVATE WELLS: No person or company shall dig or drill a well without first obtaining a permit for such from the Board of Health. The fee for said permit shall be in conformance with the current Board of Health fee schedule. A plan showing the lot to be served must be submitted and shall show as a minimum, the location of the well and all subsurface sewage disposal systems within two hundred (200) feet of the proposed well on the proposed lot and all adjacent lots. The plan shall also include all horse barns within one hundred (100) feet of the proposed well. The well shall be tested by a certified laboratory for its potability, and in conformance with current E.P.A. safe drinking water standards. The minimum to be tested shall include total coliform, pH nitrate/nitrogen, and sodium. All results shall be submitted to the Board of Health. Wells used for monitoring or irrigation do not require testing unless ordered by the Board of Health.

5.1.004 At the Board of Health's discretion, annual testing of potable water may be required and certified by a Massachusetts Certified Laboratory. Also more frequent testing of the potable water may be necessary depending upon the analysis report. All costs incurred are the responsibility of the property owner, agent, or their representative and not the City of Newburyport.

5.1.005 HORSE BARN: Horse barns shall not be constructed within one hundred (100) feet of a surface water supply, private well, or a water course defined in 5.1.003 nor shall any well be constructed within one hundred (100) feet of a horse barn.

SECTION 2: DESIGN CRITERIA FOR SEPTIC SYSTEMS

5.2.001 Percolation tests may be performed at any time of the year provided that weather conditions are conducive to testing. Percolation tests shall be performed by a Massachusetts Registered Professional Engineer, a Massachusetts Registered Sanitarian, or a D.E.P. approved Soil Evaluator in the presence of a representative from the Board of Health. The Director of Public Health or his designee will make determinations relative to suitable weather conditions for conducting tests.

5.2.002 Deep hole tests may be conducted at any time during the year provided a D.E.P. approved

Soil Evaluator makes and records on site the soil evaluation as required in Title 5. This test may be conducted provided that weather conditions are conducive to testing. The Director of Public Health or his designee will make determinations relative to suitable weather conditions for conducting tests. All deephole testing conducted for design of a sewage disposal system shall be performed in the presence of an authorized representative of the Board of Health.

5.2.003 The Board of Health or its agents shall have sole authority to make final determinations as deemed necessary regarding deephole testing.

5.2.004 PERCOLATION TESTING FOR THE UPGRADE OF AN EXISTING SYSTEM: Conditions may exist as to make a percolation test difficult. At the discretion of the Director of Public Health or his designee and with the concurrence of the soil evaluator, the perc rate may be based upon existing data from abutting properties with similar physical conditions. Where multiple perc test results exist, the slowest rate shall be used for the system upgrade design.

5.2.005 A complete application and fee in conformance with the current Board of Health fee schedule, for the observation of soil and ground water testing shall be submitted prior to scheduling. Any parcel of land to be tested shall be staked out so that property boundaries are clearly visible.

5.2.006 A fee for all Disposal Works Construction Permits in conformance with the current Board of Health fee schedule, as applicable, is required prior to issuance. A Disposal Works Construction permit granted by the Board of Health shall expire three (3) years from date of issue. An extension of one (1) year may be granted with administrative approval.

5.2.007 All subsurface sewage disposal systems for new construction of single family dwellings and multiple family dwellings, including condominiums shall be designed to accept a minimum flow of four hundred forty (440) gallons of effluent per day for each dwelling unit. All subsurface sewage disposal systems must be designed and contained on the lot or property it is to service. If a four hundred forty (440) gallon per day design cannot be achieved, then a system may be designed for a design flow of three hundred thirty (330) gallons per day only if a deed restriction limiting the use of the dwelling to three (3) bedrooms is provided. The deed restriction shall state:

“This dwelling is restricted to use as a three (3) bedroom home. Any change in use or expansion of use shall require written approval from the Board of Health. This restriction shall become null and void upon an approved connection to the municipal sewer system. The owner(s) and subsequent owner(s) shall disclose this restriction to any potential buyers of the property.” No new system shall be designed for less than three hundred thirty (330) gallons per day.

5.2.008 VENTING OF SOIL ABSORPTION SYSTEMS: All soil absorption systems connected to a vent shall be equipped with a suitable air filtering system.

5.2.009 Property which is to be serviced by a water supply other than municipal water, shall not be occupied until water test results are submitted and approved by the Board of Health.

5.2.010 INDIVIDUAL ON-SITE SEWAGE TREATMENT FACILITIES: The construction of individual sewer treatment facilities shall be prohibited throughout the City of Newburyport.

5.2.011 The minimum sewage disposal system design flow for commercial and industrial facilities shall be seventy-five (75) gallons per one thousand (1,000) square feet of floor area. In addition, the design flow criteria for the activities specified in 310CMR15.203, Title 5 shall be applicable, especially for multi-use facilities. A system may be designed in accordance with Title 5 if a proper deed restriction is administratively approved by the Director of Public Health and properly recorded at the Registry of Deeds.

5.2.011(a) Stand alone food service establishments are exempt from Section 5.3.011 but are subject to all applicable system sewage flow design criteria set forth in 310CMR15.203.

5.2.012 The installer of a Sewage Disposal System shall submit within fourteen (14) days to the Board of Health an “as built” plan of the system as constructed on a form approved by the Board of Health. The “as built” shall include all measurements and reference points necessary to locate at a future date said subsurface sewage disposal system and all its component parts as well as reflect any changes to the approved design plans.

5.2.012(a) The as built plans shall be prepared as follows.

- (1) Provide a sketch of the complete sewage disposal system including ties to at least two permanent reference points.
- (2) Show the location of the building served relative to the nearest street(s).
- (3) Label all components of the system.
- (4) Specify the capacity of septic tanks, pump chambers, and any other similar components.
- (5) Provide the dimensions of the soil absorption system.
- (6) Provide ties to the perimeter of the soil absorption system.

5.2.013 The design engineer shall provide a certified “as built” plan of the complete system to the Health Department. Any changes to the design plans shall be reflected on the “as built” plans. The “as built” plans shall be prepared in accordance with the specifications in 310CMR15.220, Title 5.

5.2.013(a) The as built plans shall include the finish grades of a mounded system showing the system meets the side slope and breakout requirements of Title 5.

SECTION 3: SUBSURFACE SEWAGE DISPOSAL SYSTEM PLAN REQUIREMENTS

5.3.001 Subsurface sewage disposal system plans must include as a minimum the following information to be considered for approval. These requirements indicated minimum standards, equivalent or superior methods will be reviewed upon submission.

(1) Plan view drawn at 1 inch = 20 feet or less for lots up to 30,000 square feet, 1 inch = 30 feet or less for lots equal to or greater than 30,001 square feet but less than 50,000 square feet, 1 inch = 40 feet or less for lots equal to or greater than 50,000 square feet. Plans drawn at a scale of 1 inch = 40 feet shall include a blow up of components at a scale of 1 inch = 20 feet for clarity.

(2) Building first floor and basement floor elevations.

(3) Setbacks to property lines for proposed building, leaching area and well.

(4) Septic tank shown, labeled and offset to building.

(5) Distribution box shown and labeled.

(6) Primary and secondary leaching areas shown, labeled and overall dimensioned.

(7) Water service shown and labeled as either pressure or suction with the offset to the leaching area.

(8) All test pits and perc shown and labeled.

(9) Identify all parcels of property within two hundred (200) feet of the proposed soil absorption system and provide the sources of water supply to those parcels (i.e. by name and water account number; or by private well location on each respective parcel of property).

(10) Subsurface drains within twenty-five (25) feet of the system line.

(11) North Arrow.

(12) Street Name.

(13) Benchmark and Datum. Two (2) benchmarks will be required adequately described with their orientation to plan. Preferably they should be located in an area not to be disturbed. Datum must be labeled and shall be NGVD 1929 when site is deemed near a Flood Plain. Plan should identify Benchmark used to obtain elevation of NGVD 1929 Datum.

(14) Legend.

(15) Topography must be obtained by the transit stadia method and shall extend to all areas identified herein.

(16) Plan shall be contoured at a maximum of two (2) foot contour interval. On flat topography, a smaller contour interval and supplemental spot grades at appropriate locations will be required. Plan shall show existing contours as well as proposed contours including grading at house, driveway, walks, retaining walls, etc..

(17) Identify existing structures, old foundations, fences, edge of pavement or traveled way, stone walls, ledge outcrops, watercourses, etc. (any on or off site feature which could influence the design of the system).

(18) Identify any vegetated wetland as identified by Massachusetts General Laws, Chapter 131, Section 40 within fifty (50) feet of any property line.

(19) Identify the Green Engineering Flood Plain zone district line within one hundred (100) feet of any property line.

(20) Lot or lot numbers and total area.

(21) Shade or outline with dimensions limits of excavation of impervious or unsuitable materials.

5.3.002 PROFILES:

(1) Drawn at: Horizontal: 1 inch = 20 feet,

Vertical: 1 inch = 4 feet

(2) First floor and basement floor shown with elevations.

(3) Show water table offset to basement floor.

(4) Invert at building.

(5) Size, slope, length and type of pipe between building and septic tank.

(6) In and out inverts of septic tank.

(7) Size, slope, length and type of pipe between septic tank and d-box.

(8) In and out inverts of d-box and size of d-box.

(9) Size and type of pipe to beginning of leaching line No. 1. A note indicating that a minimum of the first two (2) feet from the d-box is to be set level shall also be in the profile.

(10) Leaching area length of pipe and slope if applicable beginning invert, ending invert, bottom elevation of stone, offset to water table, and ends capped, looped or vented whichever is applicable.

(11) Existing grade along profile.

(12) Proposed grade along profile where it meets the existing grade.

(13) Show required offset and proposed offset from top of leaching area to side slope for compliance of breakout requirement.

(14) Where there are additional components to the leaching system such as grease trap, dosing chamber, pump chamber, etc. They shall be included in the profile.

(15) Shade or outline with dimensions limits of excavation of impervious or unsuitable materials.

5.3.003 LEACHING FACILITY SECTION:

(1) To be drawn to scale only if there are questions of compliance to breakout requirement and more than one section may be required to demonstrate compliance. Reserve area must be included.

(2) Leaching trenches/field

(a) Spacing of trenches include reserve area.

(b) Width of trenches/field.

(c) Spacing of pipes in field.

(d) Depth of stone.

(e) Slope size and type of leaching pipe. All piping shall be a minimum of Schedule 40 PVC for new construction.

(f) 2 inch of 1/8 inch to 1/2 inch washed stone to cover pipes and stone.

(g) Type of fill material over trenches/field.

(h) If in fill show limit to which topsoil, subsoil or fill material must be removed.

(3) Leaching pits/galleries/chambers

(a) Detail of pit or gallery with width, height.

(b) Side and bottom stone thickness.

(c) Spacing of inlet pipes for galleries and length of galleries.

(d) 2 inch of 1/8 inch to 1/2 inch washed stone to cover system.

(e) Type of fill material over pits/galleries.

(f) Show manholes for access if applicable.

(g) If in fill show limit to which topsoil, subsoil or fill material must be removed.

(4) All plans must illustrate a cross section of the soil absorption system. This cross section must be in detail on the plans submitted.

(5) Reserve areas shall be prepared for system replacement during initial construction with all required appurtenances.

5.3.004 DETAILS:

- (1) Details shall be included for all components of the septic system.
- (2) They need not be drawn to scale.
- (3) Shall specify vehicle loading (if applicable) and dimensions of components.
- (4) Septic tanks for new construction and replacement tanks for upgrades shall be equipped with a suitable effluent filter at the outlet of said tank.
- (5) For pump chambers, the following shall be included:
 - (a) Sizing calculations for chamber and pump (may be submitted separately).
 - (b) Elevations for bottom pump on, pump off alternate pump and alarm on, top of twenty-four (24) hour reserve (if applicable) in invert elevation, force-main out elevation and rim elevation.
 - (c) The electrical junction box in the pump chamber shall be installed outside the chamber and riser. The electrical box shall be suitably protected from corrosion and impact as well as readily accessible for inspection and maintenance. The electrical box may be housed in its own separate component to comply with this requirement.
 - (d) All wire conduit to and from the pump chamber shall be properly sealed with silicone or equivalent material to prevent the passage of sewage gases through the conduit.
- (6) Distribution boxes shall be equipped with suitable flow equalizers in all gravity flow systems.

5.3.005 SUBSURFACE EXPLORATION LOGS:

- (1) Show cross section of each test pit. All testing must be shown.
- (2) Identify soil makeup for each.
- (3) Provide elevation of ground and water table.
- (4) If no water table is encountered state so.
- (5) Date of testing and who was present.

5.3.006 DESIGN CRITERIA:

- (1) Number of bedrooms/people/building square feet/seats (whichever is applicable).
- (2) State whether it is designed for a garbage disposal.
- (3) Number of gallons the leaching system is designed for.
- (4) State the design percolation rate and loading to soil.
- (5) Provide grease trap sizing information and size used (if applicable).

- (6) Provide septic tank sizing information and size used (if applicable).
- (7) Provide dosing chamber sizing information and size used (if applicable).
- (8) Provide leaching area sizing calculations.

5.3.007 PRIMARY AND RESERVE GRADES LEACHING FACILITY:

(1) In table form, give the following information for the primary and reserve leaching area. Line number, beginning invert, ending invert (if applicable) bottom elevation, and water table elevation (for each leaching structure or line).

5.3.008 OTHER PLAN REQUIREMENTS:

- (1) Assessor's plate and parcel number.
- (2) Title stating the following (in any order or form):
 - (a) Subsurface Sewage Disposal System in Billerica
 - (b) Street
 - (c) Scales
 - (d) Bar Scale
 - (e) Date
 - (f) Name and address of designer and job number
- (3) Locus map showing the site within the Town.
- (4) If there is a request for a variance from the Board of Health or 310CMR15.000 requirements, it shall be noted on the plan.
- (5) The following designer's certification shall be on the plan. I hereby warranty that this plan meets all requirements of 310CMR15.000 Title 5 of the State Environmental Code, and all applicable regulations of the City of Newburyport, Board of Health. I assume liability for any errors and/or omissions in the design of this sewage disposal system. I certify that this plan has been reviewed by me personally and to the best of my knowledge and belief is correct and free of errors. This warranty must be signed and dated by a Registered Professional Engineer or Registered Sanitarian.

_____	_____
Date	Registered Professional Engineer, or Registered Sanitarian

- (6) Any other information or data to support full compliance with Title 5.

(7) If the plan has been prepared by a Registered Sanitarian then it shall also bear the stamp and signature of a Professional Land Surveyor or a note indicating the name of the land surveyor who prepared the topography, his address and date when it was performed.

(8) Proposed sewage disposal systems that create significant changes in the existing topography may be subject to a drainage review. The design engineer shall be prepared to provide any information deemed necessary to make this determination.

(9) The design engineer shall provide to the Board of Health and its agents, any information deemed necessary to complete a review of any proposed sewage plan.

SECTION 4: LICENSING OF DISPOSAL WORKS INSTALLERS, SEPTAGE HAULERS, OFFENSIVE SUBSTANCE HAULERS

5.4.001 LICENSING OF DISPOSAL WORKS INSTALLERS: No person shall engage in the construction, upgrade or expansion of any sewage disposal system without first obtaining a Disposal Works Installer's License from the Board of Health. The following requirements must be met by all persons currently holding or applying for a Disposal Works Installer's License:

(1) The person(s) shall demonstrate capacity of knowledge and experience of the proper construction and installation of sewage disposal systems in accordance with Title 5 and Newburyport Health Regulations.

(2) Satisfactory completion (80%) of a written/oral test based on Title 5 of the State Environmental Code and local Health Regulations. This test will be administered during the months of March and November on the 1st and 3rd Monday of the month by appointment only. A test fee is required in accordance with the most current Board of Health fee schedule. This test may be required annually or as often as the Board of Health deems necessary.

(3) License's for Disposal Works Installers are renewed annually on or before July 1 of each year. A proper application, fee and proof of the following minimum insurance requirements is required prior to renewal:

(a) Public Liability \$100,000 - \$300,000

(b) Property damage \$50,000

(c) Underground hazards

(d) Completed operations

The fee for a disposal works license shall be in accordance with the current Board of Health fee schedule.

5.4.002 LICENSING OF SEPTAGE HAULERS, SEPTAGE HAULING COMPANIES AND OFFENSIVE SUBSTANCE HAULERS: No person(s) and/or companies shall remove and transport septage and offensive substances through the streets of the City of Newburyport in which the septage or offensive substances were first collected without first obtaining a license from the Board of Health. The following requirements must be met by all persons and companies currently holding or applying for the aforementioned licenses.

(1) Satisfactory completion (80%) of a written/oral test based on Title 5 of the State Environmental Code and local Health Regulations. This test will be administered during the months of March and November on the 1st and 3rd Monday of the month by appointment only. A test fee is required in accordance with the most current Board of Health fee schedule. This test may be required annually or as often as the Board of Health deems necessary.

(2) Licenses are issued for a one (1) year period. All licenses must be renewed on or before July 1st of each year. A properly completed application containing all required information including all disposal sites or treatment works, approved by DEP, where the hauler is authorized to dispose of septage and offensive substances and the applicable fee(s) shall be submitted to the Board of Health prior to the issuance of a license. No license shall be transferred except with the written approval of the Board of Health.

(3) Copies of all contracts or other agreements between the hauler and the receiving facility including any permits to discharge septage and offensive substances shall be submitted to the Board of Health upon request.

(4) Septage and Offensive Substance Haulers shall note all activity on a system pumping form approved by the Board of Health and the report shall be submitted to the Board of Health on a monthly basis. Whenever the contents of a septic tank, cesspool, leaching pit, grease trap, portable toilet or other holding tanks are pumped, the conditions shall be noted on the report. If there was no activity for a particular month, then that shall be reported to the Board of Health. Pumping reports shall be properly completed with all required information including the treatment works where the hauler disposed of septage and offensive substances.

(5) Grease traps shall be inspected monthly for maintenance and shall be cleaned by a licensed septage hauler whenever the level of the grease is twenty-five (25) percent of the effective depth of the trap, or at least every three (3) months, whichever is sooner. This activity shall be noted on a monthly pumping report submitted to the Board of Health.

SECTION 5: MISCELLANEOUS REGULATIONS

5.5.001 IMPROPER DISPOSAL, NOISE, ODORS:

(1) No person as defined in Chapter 1 Section 1.006 shall improperly dispose of any rubbish, refuse, bulky waste, hazardous waste, junk, scrap, sewage, offal, demolition material, building material waste or any noxious substance, or allow any such substance to escape into the environment. Further, no person shall create excessive noise, or allow offensive odors, materials, substances, etc. as determined by the Health Department, to escape into the environment which in the opinion of the Health Department causes harm to other persons. Any act in violation of this

regulation shall constitute a nuisance relative to Massachusetts General Laws Chapter 111, Section 122 and shall be punishable as the law allows or may be punishable by non-criminal disposition provided for under Chapter 1 Section 19.001.

(2) **ASBESTOS DISPOSAL:** The Board of Health requires a permit for asbestos removal and disposal. Said permit may be issued after all information and applicable fees are submitted to the Board of Health.

5.5.002 PRIVATE SOLID WASTE DISPOSAL AND COLLECTION:

(1) Collection and disposal for private solid waste shall not commence prior to 7:00 a.m. and shall cease no later than 7:00 p.m.

(2) The Board of Health may require certain persons, deemed to be creating a public health nuisance, to take appropriate action to abate said public health nuisance to the satisfaction of the Board of Health.

5.5.003 Definitions.

Health Department The Health Department or its agent or designee

Compactor. Container used to create less volume than its original state of packaging. This container is also used for external storage and collection of solid waste, refuse, garbage, rubbish, offal or other offensive substance for municipal, residential, industrial or commercial.

Container. Will represent a compactor, dumpster, and grease dumpster for the purposes of this regulation.

Contractor: is any commercial or private hauler of residential, business, commercial, industrial, and municipal solid waste, recycling , fats, oils and grease who is licensed by the commonwealth of Massachusetts for the purpose of collection, transport and disposal of solid waste , recycling , fats, oils and grease

Dumpster/Tote. Any rubbish container (other than a conventional trash can with tight lid) for the external storage and collection of solid waste, refuse, rubbish, offal, or other offensive substance for municipal, residential, industrial, or commercial refuse.

Grease Dumpster. Also known as “bulk grease tank” used for external storage and collection of liquid waste matter.

Grease Container –used for the external storage and collection of fats, oils, grease, cooking grease.

5.5.004 Application Requirements.

The contractor shall state on the application: home address, business address, the telephone number under which the business is operated, as well as the email address, telephone number and name of owner/agent of property being serviced. He shall sign the application. Contractor shall supply a list of customers’ names and locations of containers.

5.5.005 Name Display.

The contractor shall have the name and telephone number conspicuously displayed on the container.

5.5.006 Emptying Time Limit.

The contractor shall adhere to emptying of the container contents by the contractor shall not commence before 7 a.m. and shall cease by 8 p.m. Monday through Saturday. No pick-ups allowed on Sundays unless authorized by the Board of Health.

5.5.007 Fee.

The fee for each permit for the contractor to transport for compensation shall be two hundred and fifty dollars (\$250.00) for the first (vehicle) permit, and fifty dollars (\$50.00) for each additional vehicle or a flat rate of five hundred dollars (\$500.00) with unlimited vehicles. The current vehicle registration number shall be affixed to said permit. Any vehicle not permitted with the Health Department will be subjected to penalties within these regulations

5.5.008 Sanitation.

(a) The contractor shall remove the contents so as not to cause any sanitation issues or spillage during removal and transportation of contents within City limits.

(b) The contractor shall be responsible for any and all cost reimbursement to the City of Newburyport for cleanup associated with the contractor's negligence, sanitation issues or spillage during collection, removal and transportation of waste thought the City of Newburyport.

(c) All persons that use commercial waste containers shall keep said containers, all appurtenant structures, and ground areas properly maintained and in a clean and sanitary manner.

5.5.009 Spillage.

(a) The contractor shall remove the contents so as not to cause spillage during removal and transportation.

(b) all persons that use commercial waste containers shall maintain said containers all appurtenant structures, and ground areas properly maintained and in a clean and sanitary manner to prevent spillage

(c) The contractor shall be responsible for any and all costs reimbursement to the City of Newburyport for cleanup associated with the contractor's negligence, sanitation issues or spillage during collection, removal and transportation of waste thought the City of Newburyport.

5.5.010 Revocation-Removal.

The Health Department may suspend or revoke a contractor's solid waste permit to operate in the City for unsatisfactory service of a residential, business, commercial, industrial or municipal property or continuous violations of said regulations at any time. The Health Department may order the contractor in person, by telephone or letter to immediately remove a container and contents from any residential, business, commercial, industrial or municipal property being serviced whenever a container remains overflowing or an overflowing condition is continuously being repeated. All permits expire on December 31 in the year issued. If a contractor and or container permit is not renewed within thirty (30) days of expiration (Saturdays, Sundays and Holidays included), there will be an additional charge of one hundred (100%) percent of the original fee.

5.5.011 Application of Regulations.

These regulations apply to all contractors of dumpsters, grease traps, compactors, and similar units within the City of Newburyport used for residential, business, commercial, industrial or municipal use.

5.5.012 Variance Request.

The Health Department will, on an individual basis, determine extenuating circumstance. Any exceptions will be made in the best interest for the public health of the community. The business filing for an exemption must do so in writing, stating all hardships and reasons. The request letter must be received in the office of the Board prior to any permits being issued.

5.5.013 Penalties.

Any contractor who violates the terms of these regulations shall be subject to a fine/s in pursuant with the above regulations and or the City of Newburyport City Ordinance Section 8-83(G):

- 1st offense written warning followed by a (\$300) dollar fine for each subsequent offense and/or enforcement action including possible revoke of permit to operate in the City of Newburyport City of Newburyport City Ordinance Section 8-83(G)
- 1st offense –written warning followed by a three hundred (\$300) dollar fine for each subsequent offense.

5.5.014 Right to Hearing

A. Right to Hearing. Any person upon whom a notice of violation has been served may request a hearing from the Health Department by filing a written petition requesting a hearing on the matter with the Health Department within (7) seven days after the day the notice of violation

B. Hearing Notice. Upon receipt of a petition, the Health Department shall inform the petitioner of the date, time, and place of the hearing in writing.

C. Time for Hearing. The hearing shall commence within thirty days after the day on which the notice of violation was served. The time period in which the cited violations must be remedied shall be stayed upon receipt of the petition for a hearing until such time as the hearing is held.

D. Hearing of Petitioner. At the hearing, the petitioner shall be given an opportunity to be heard, to present witnesses or documentary evidence, and to show why the notice of violation should be modified or withdrawn. Failure to hold a hearing within the time period specified herein shall not affect the validity of any notice of violation.

E. Final Decision after Hearing; Failure to Comply with Final Order.

1. Within seven (7) days after the conclusion of the hearing, the Health Department shall sustain, modify, or withdraw the notice of violation and shall inform the petitioner in writing of its decision and the reasons therefore. If the Department sustains or modifies the notice of violation, said violation shall be remedied within the time period allotted in the original notice of violation or in the modification.

2. If a written petition for a hearing is not filed with the Health Department within seven (7) days after the notice of violation has been served, or if after a hearing the notice of violation has been sustained in full or in any part, each day's failure to comply with the notice of violation within the time allotted as issued or modified shall constitute an additional offense, including any days prior to the filing of a written petition, and any days subsequent to the issuance of the written decision by the Director of Health, or a designee.

5.5.015 Exemptions

Waste haulers of solid waste and recycling that are contracted by the City of Newburyport are only exempt from section 5.5.07 of said regulations.

Regulations to go into effect January 1, 2012

SECTION 6: RULES AND REGULATIONS RELATIVE TO THE USE OF RECOMBINANT DNA TECHNOLOGY

5.6.001 USE OF RECOMBINANT DNA TECHNOLOGY:

(1) The experimentation with, or use of, recombinant DNA technology shall be undertaken only in strict conformity with the current "Guidelines" of the National Institute of Health (NIH), or in conformity with such superseding laws and regulations as may be established by other Federal Agencies or by Act of Congress; and in conformity with this regulation and other health regulations as the Newburyport Board of Health may from time to time promulgate.

(2) The Institutional Biosafety Committee required by the NIH Guidelines should be broad-based in its composition. It should include members from a variety of disciplines within the institution. It shall also include at least two (2) community representatives appointed by the Newburyport Board of Health, one of who shall be the Director of Public Health. The two (2) community representatives shall be bound to the same provisions on non-disclosure and non-use of proprietary information and trade secrets as other members of the Institutional Biosafety Committee, except to the extent that disclosure is necessary to alleviate any public health hazard.

The minutes of all meetings of the Institutional Biosafety Committee shall be delivered to the Board of Health within ten (10) days of the meeting after first removing any proprietary information and trade secrets therefrom. Such minutes shall be public records. The full test shall remain on file in the records of the institution for inspection at all times by any member of the Committee.

(3) The institution shall prepare a Biosafety Manual which describes how the NIH Guidelines will be implemented at the institution. The manual should include provisions defining the following:

- (a) Work project and containment level approval process.
- (b) Personnel training requirements.

- (c) Medical surveillance program,
- (d) Standard laboratory rules and practices.
- (e) Emergency procedures.

This manual shall be approved by the Institutional Biosafety Committee.

(4) The institution shall observe the following requirements:

(a) Personnel training requirements shall be appropriate to the task assigned. Training shall include orientation to the NIH Guidelines and/or any superseding laws and regulations, the Biosafety Manual and general laboratory safeguards.

(b) Emergency procedures shall describe actions to be taken if an accident contaminates personnel, the laboratory or the environment, and procedures for notification of appropriate governmental agencies. Newburyport Police, Fire and Public Health Officials shall be trained in appropriate emergency response procedures.

(c) The institution shall, subject to the limitations of available technology, utilize personnel and laboratory monitoring techniques appropriate to each organism's degree of hazard.

(d) The institution shall, to the extent possible, ensure the purity of host organism strains and test resulting recombinant containing organisms for resistance to commonly used therapeutic antibiotics.

(e) Any significant breach of containment and the associate remedial action shall be reported to the Institutional Biosafety Committee. Any environmental release shall be reported immediately.

(f) Any significant or potentially rDNA related employee illness shall be reported to the Institutional Biosafety Committee.

(g) It shall be the duty of the Institutional Biosafety Committee to investigate any case of potentially work-related illness associated with the use of rDNA. The results of such investigation shall be forwarded to the Director of Public Health. All personnel medical records shall be kept confidential and shall not be public records.

(h) The Institution shall allow inspection and review of practices and procedures under this regulation. The Newburyport Board of Health may retain competent professional assistance in the conduct of such inspection. The institution shall reimburse the Town of Newburyport for the direct expense of up to one (1) inspection or review per year. Any inspector shall be subject to the same requirements regarding the confidentiality of trade secret and proprietary information as a community resident member of the Institutional Biosafety Committee. Any inspection reports shall be delivered to the Board of Health only after all confidential and proprietary information has been removed. Such reports shall than become public record. The full text of the inspection report or review shall remain on file in the records of the institution for inspection at all\reasonable times by any member of the Committee.

5.6.002 RESTRICTIONS ON THE USE OF RECOMBINANT DNA TECHNOLOGY:

(1) Experimentation with, or use of, recombinant DNA requiring a P3 or P4 level of containment shall not be permitted.

(2) Use of recombinant DNA technology shall not be permitted in areas for residential purposes.

SECTION 7: REGULATIONS REGARDING STABLING OF HORSES

5.7.001 No person, firm, or corporation, owning or responsible for the custody of horses or ponies shall keep said animals or occupy any buildings, shed or other structure which does not conform with the requirements of these regulations for the purpose of stabling such animal, unless a permit is first issued and the provisions of these regulations are fully complied with.

(1) All permits shall expire June 30th of each year but may be renewed annually provided the applicant is then qualified to receive a permit and the premises for which a renewal is sought has been inspected by the Animal Inspector. Further a proper application and fee must be submitted.

(2) No structure for the stabling of horses shall be smaller than will adequately house such animals, nor shall such stable be less than nine (9) feet by thirteen (13) feet, with a minimum ceiling height of eight (8) feet. Five hundred (500) square feet of corral space for each horse shall be provided. This corral space will be adequately fenced so as to prevent the escape of the horses therefrom.

(3) The walls and roof of the stable shall be constructed to be weather proof. The use of rotten half burned or inferior lumber is prohibited. The interior of the stable shall be free from any protrusions (i.e.: nails or splinters) liable to injure the animals.

(4) The door of every stable shall be no less than four (4) feet by seven (7) feet, properly hung, so as to be weather proof when closed.

(5) Properly sized receptacles, adequate for the number of permitted horses, shall be provided for the storage of grain. Sanitary space shall be maintained for the storage of hay and bedding. An adequate supply of clean water shall be maintained convenient to the stable.

(6) No horse barn or stable shall be located within one hundred (100) feet of a private well, Flood Plain or water course as defined in 5.1.003

(7) The individual stalls in a stable shall be separately partitioned in a suitable manner and faced with suitable boards to a height of four (4) feet above the stall floor. Such stall shall be provided with adequate drainage. Each box stall shall be no less than ten (10) feet in width by ten (10) in depth. Four (4) feet by eight (8) feet is to be considered a straight stall. A service space shall be provided in the rear of not less than nine (9) feet in width.

(8) A suitable manure storage area must be designated on the property which is adequate for the number of permitted horses. Said manure shall be properly disposed of when necessary. The designated area must be located maintained to avoid causing a nuisance. The stable shall be maintained in clean, sanitary condition at all times and the interior shall be cleaned as often as necessary to maintain sanitary conditions.

(9) Any lawfully permitted premises, building shed or other structures used for the purpose of stabling horses which create such a condition as to be dangerous to the public health in any way or to be injurious, noxious or offensive to the neighborhood, shall be declared to be a nuisance as determined by the Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 122.

10) All property owners with horse/stable permits issued by the Board of Health are required to comply with all other applicable laws, rules or regulations of the Commonwealth of Massachusetts and the City of Newburyport. It shall be the responsibility of the permit holder to assure compliance with applicable laws, rules or regulations other than the Board of Health.

SECTION 8: CARNIVALS, FESTIVALS AND CIRCUS'

5.8.001 All midway food concessions shall be inspected prior to actual opening date. Items of concern, include, but not limited to, those that are potentially hazardous, such as tuna fish, chicken salad, egg salad, etc.

5.8.002 FOOD PROTECTION: Plastic shields shall be provided on concession stands featuring cotton candy, taffy apples, pop corn, and whenever deemed necessary to prevent contamination from dirt, dust, sneezing, etc.

5.8.003 No sleeping or smoking shall be allowed in any midway food concession stand.

5.8.004 Dumpsters and/or refuse containers shall be provided in a quantity to contain all rubbish and shall be emptied as conditions require. Refuse containers should be placed in locations determined by the Board of Health. All areas including the midway shall be cleaned daily to eliminate wind blown litter.

5.8.005 POTABLE WATER SUPPLY: Water shall be supplied from the City water system and shall be under pressure. Hot and cold water shall be provided under pressure at all food concession stands.

5.8.006 SANITARY WASTES: All trailers with chemical toilets shall not discharge contents into the environment, but shall have them pumped or cleaned out as needed. Waste water from washing procedures shall be controlled so as not to create a nuisance. A minimum of five (5) portable chemical toilets are to be provided, two (2) for each sex and one (1) handicapped. Additional units shall be required, if in the opinion of the Board of Health, they are necessary.

5.8.007 Before any horses and/or ponies or other animals are allowed on the grounds of the carnival, festival, or circus, evidence shall be produced of valid inoculations against encephalitis, tetanus and the result of the Coggins test.

5.8.008 An application and applicable fees in accordance with the current Board of Health fee schedule to hold a carnival, festival, or circus must be submitted to the Board of Health office seven (7) days before the event is to open. Approval of an application and final inspection must be completed of the premises twenty-four (24) hours before said event is to open.

5.8.009 There shall be a cash bond posted in the amount of two thousand (2,000) dollars and a bond agreement submitted with the Board of Health prior to issuance of a permit. The bond will be returned after a special inspection of the premises, after the event closes, and there are no outstanding violations which need correction.

SECTION 9: HOUSING STANDARDS

5.9.001 The Board of Health adopts by reference 105CMR400.000 Chapter I and 105CMR410.000 Chapter II of the Massachusetts State Sanitary Code as local regulations. Further, all future Amendments to existing laws shall be considered adopted as local regulations.

5.9.002 HOUSING INSPECTIONS and RENTAL PERMIT REGULATIONS

The City of Newburyport hereby enacts a regulation whereby owners of rental property must obtain a Certificate of Habitability prior to renting or leasing certain dwelling units.

FINDINGS

This Regulation is enacted in accordance with the Board of Health's authority as set forth in Massachusetts General Law c. 111, § 3I, and the Sanitary Code 105CMR 410, Minimum Standards of Fitness for Human Habitation.

1. Definitions

Board means the Newburyport Board of Health

Dwelling means every building or shelter including but not limited to rooming houses and temporary housing used or intended for human habitation and every other structure or condition located within the same lot line whose existence causes or is likely to effect noncompliance with the provisions of 105CMR 410.

Dwelling Unit means the room or group of rooms within a dwelling used or intended for use by one person, family or household for living, sleeping, cooking and eating. Dwelling Unit shall also mean a condominium unit.

Owner means every person who alone or severally with others:

- (a) Has legal title to any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park; or
- (b) Has care, charge or control of any dwelling or dwelling unit, mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix. Trustee or guardian of the estate of the holder of legal title; or
- (c) Is a mortgagee in possession of any such property; or
- (d) Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- (e) Is an officer or trustee of the association of unit owners of a condominium?
- (f) Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. Owner also means every person who operates a rooming house.
- (g) Renting or Leasing means any arrangement whereby an owner of a dwelling unit allows any third party that is not a member of the owners immediate family to occupy said dwelling unit for purposes of household living, sleeping, cooking and eating.
- (h) Season and Short Term Rentals means all rentals or leases of dwelling units for term not lasting more than 5 months.
- (i) Tenant means any person occupying a dwelling unit through a lease or rental arrangement with an owner.

(2) Intent

- (a) Although the laws established by the Commonwealth and Federal agencies are of a minimum nature, they are deemed to be generally adequate to protect the public health and the environment in the interest of present and future residents of Newburyport.
- (b) However, specific identifiable local conditions may require more stringent regulations to protect these interests with respect to rental housing. It is with this intent that the Newburyport Board of Health, pursuant to the statutory authority granted them in the General Laws of the Commonwealth, the amendments and additions thereto, and by the power thereto enabling, and in accordance therewith the State's Sanitary Code, in the interest of and for the preservation of the public health, have adopted the following Regulation.
- (c) This is a local regulation that was adopted by the Board of Health to ensure that tenants are moving into housing that meets the Minimum Standards for Fitness for Human Habitation as defined in the State Sanitary Code.

(3) Certificate of Habitability

Prior to renting or leasing a dwelling unit to a tenant that is not a member of the owner's immediate family, the owner of said dwelling unit must obtain a Certificate of Habitability from the Board of Health.

- (a) This requirement for a Certificate of Habitability shall apply to any rental or leased dwelling unit, currently occupied by a tenant or will be occupied by a tenant. In the case where dwelling units are currently occupied, property owners must receive a Certificate of Habitability within one year from the effective date of this regulation.

In the case where a dwelling unit is vacant or will be rented or leased in the future the property owner must obtain a Certificate of Habitability prior to rental. In all cases, each time a rental or leased unit is vacated a new Certificate of Habitability must be obtained by the property owner prior to allowing the unit to be occupied, and each unit must obtain a new Certificate of Habitability every three (3) years. Nothing in this section shall be construed as limiting the Board's authority with respect to enforcement of the State Sanitary Code or local regulation for any occupied dwelling.

- (b) An owner of rental or leased property may obtain a Certificate of Habitability by filing an application on a form prescribed by the Board of Health. The owner must be able to demonstrate that:
- Town water and wastewater bills are current;
 - Real estate taxes are current;
 - The dwelling unit conforms to the Fire Department's requirements relative to smoke detectors and carbon monoxide detectors and;
 - The dwelling unit(s) is in "move in condition", i.e. vacant, clean, walls painted, appliances clean and in good working order, bathroom fixtures of a smooth impervious material, floors, walls and ceilings in good condition.
 - The unit complies with 105CMR 410.000 and local regulations
- (c) Upon receipt of a completed application, the Health Department or its designee shall conduct an inspection of the premises in accordance with the procedures set forth in 105CMR 410.821 and 410.822. If the inspection reveals that the dwelling unit does not comply with this Regulation or the provisions of 105CMR 410, the Health Department may deny the application or issue such orders as it deems appropriate under the circumstances. Any owner aggrieved by the Health Department's decision may request a hearing before the Board. Such request shall be in writing and received by the Board within seven (7) days of receipt of the Health Department's decision.
- (d) Term – Once issued, the Certificate of Habitability shall remain in effect until the dwelling unit is vacated, or expires, except for seasonal and short term rentals (see paragraph 4 below). The owner of the dwelling unit shall apply for a new Certificate of Habitability prior to renting or leasing a dwelling unit to a new tenant.
- (e) Issuance of a Certificate of Habitability shall be based solely upon the condition of the dwelling unit at the time of inspection. The issuance of a Certificate of Habitability shall not preclude enforcement of the State Sanitary Code or any other pertinent statute, bylaw, rule or regulation if violations are brought to the Health Department's attention after the issuance of a Certificate of Habitability.

- (f) The fee for inspections, administrative fees, and issuance of a Certificate of Habitability shall be in accordance with the current Board of Health fee schedule.

(4) Seasonal and Short Term Rentals

Owners of dwelling units wishing to rent or lease those units on a short term or seasonal basis may obtain an Annual Certificate of Habitability from the Board of Health. An Annual Certificate of Habitability will be valid for one year notwithstanding turnovers and vacancies of the dwelling unit. Applications for an Annual Certificate of Habitability must be received from April 1 to June 30th. Upon receipt of an application for an Annual Certificate of Habitability, an inspection will be conducted in accordance with the procedures of Section 3 (d) above.

(5) Penalties

Failure to obtain a Certificate of Habitability for any dwelling unit subject to this Regulation shall result in the Owner being fined Two Hundred Fifty (\$250.00) Dollars a day for each and every day that the unit is occupied without the required certificate.

The provisions of this Regulation may also be enforced by the Newburyport Police Department, Board of Health or its agent through non-criminal disposition pursuant to the provisions of G.L. c.40, § 21D, and General Bylaws Ch. 1, § 1-6. For purposes of non-criminal disposition, each violation of this Regulation shall be subject to a fine of \$250.00. Each day's failure to comply with the provisions of this Regulation shall constitute a separate violation.

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

(6) Effective Date

Adopted: May 21, 2009 and advertised with the Newburyport Daily News

This Regulation shall take effect on January 1, 2010.

All lease/rental housing must comply with this Regulation on or before December 31, 2010.

SECTION 10 THROUGH 20

Reserved for future regulations, amendments, etc.

SECTION 21: PENALTIES

5.21.001 Any persons, firm, or corporations violating or failing to comply with any provision of these rules and regulations, shall be penalized in accordance with the penalty provisions of Chapter 1, Section 19 inclusive.

SECTION 22: SEVERABILITY

5.22.001 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.