

# THE TEWKSBURY BOARD OF HEALTH REGULATIONS

## CHAPTER 1: ADMINISTRATIVE AND ORGANIZATIONAL

### 1.1 AUTHORITY

These Regulations are adopted by the Tewksbury Board of Health (the "TBOH" or the "Board") under the authority of MGL c. 111 § 31, and other applicable provisions of the Massachusetts General Laws.

### 1.2 PURPOSE

These regulations are promulgated for the protection of the environment and the public health, welfare, and safety within the Town of Tewksbury (the "Town").

### 1.3 DEFINITIONS

**Abutter:** Abutters and owner(s) of land directly opposite on any public or private street or way, abutters to abutters within three hundred (300) feet of the property line of the premises, which is subject matter of the application or appeal, as the owner(s) appear on the most recent applicable tax list, notwithstanding that the land of such owner(s) is located in another city or town.

**Board of Health:** The Town of Tewksbury Board of Health. .

**Cost Recovery:** Any and all costs incurred by TBOH or by the Health Department to abate a nuisance deemed to cause a threat to the environment or the public health, welfare or safety.

**Day:** A calendar day unless otherwise noted.

**Decision:** Shall mean any decision, order, waiver, variance, permit, and the like.

**Director:** The Director of Public Health

**Facility:** Something that is built, installed, or established to serve a particular purpose, such as a restaurant, dwelling, commercial business, or the like.

**Health Agent:** Agents appointed by the TBOH pursuant to M.G.L. c. 111 § 30 and may include, but not limited to, health director, sanitary inspector, public health nurse, and health inspectors.

**Health Department:** The Department of Public Health for the Town.

**Owner(s):** A person who, individually or severally with others, has legal title, care, charge or control of any of any dwelling, dwelling unit, mobile dwelling unit, mobile home park, building, structure, or parcel of land, vacant or otherwise.

**Permit:** Any permit, license, variance, waiver, determination of applicability, or other such like approval.

**Person(s):** Any individual, partnership, company, corporation, trustee, trust, organization, or other legal entity. .

**Plan:** Any drawings including, but not limited to, calculations, test data, supplemental maps, and any information utilized, requested or required that is necessary to explain a substantial design or plans for submittal to the TBOH.

**Project:** A specific plan or design or a planned undertaking.

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**Special Health Agent:** Agent(s) appointed pursuant to M.G.L. c. 111 § 30, by TBOH to perform certain specific, limited Board of Health and Health Department duties and responsibilities.

**Special Inspections:** Any inspection which is not routine and is out of the ordinary including, but not limited to, inspections regarding court cases, inspections of code violations in food establishments, markets, restaurants, and like, inspections of construction projects or any inspection conducted outside normal working hours of the Health Department. Special inspections shall be any inspection in excess of two (2) follow-ups of a routine inspection and may be subject to special inspection fees.

**Variance:** Any variance or waiver of the TBOH Regulations.

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#### **1.4 OFFICERS AND DUTIES**

**1.4.1 Election of Officers:** The TBOH shall annually, elect a Chairperson, Vice Chairperson, and Clerk. The Chairperson shall notify the Town Manager and the Town Clerk of any changes in the Officers or membership.

**1.4.2 Chairperson:** The Chairperson presides at all meetings and hearings, administers oaths, calls witnesses, decides questions of order, calls special meetings, and signs official documents that require the signature of the Chairperson.

**1.4.3 Vice Chairperson:** The Vice Chairperson act for the Chairperson whenever the latter is absent from meetings or hearings and performs other necessary duties of the Board, as directed by the Chairperson.

**1.4.4 Clerk:** The Clerk shall review for accuracy the minutes of the meetings and hearings and, when necessary, shall prepare the meeting and hearing minutes and submit the minutes to the TBOH for approval.

**1.4.5 Subcommittee:** There shall be at least one TBOH member on each TBOH subcommittee.

#### **1.5. POWERS AND DUTIES OF THE BOARD OF HEALTH**

The TBOH is responsible for the promulgation and enforcement of regulations affecting the environment and the public health, welfare and safety and shall have such powers as are provided to the TBOH by M.G.L. c. 111 to c. 114 and as may otherwise be provided under the State Regulations, Sanitary Codes, Town By-Laws, Town Special Act Charter and other laws and regulations.

#### **1.6 BOARD OF HEALTH MEETINGS AND AGENDA**

**1.6.1** The TBOH shall meet regularly on the first and third Thursday of each month. During the months of July, August, and September the TBOH shall meet on the third Thursday. Any special meetings shall be held at the discretion of the Chairperson.

**1.6.2** The agenda for all TBOH meetings shall close at 4:00 p.m. seven (7) days before the scheduled meeting. No person or applicant shall be placed on an agenda after the seven (7) day closing deadline unless the Director is instructed to do so by the Chairperson of the TBOH. Hearings which require application approval and notification to abutters shall be submitted in sufficient time to provide a proper review by the TBOH's health agents and consultants. Therefore, unless otherwise provided by statute, all documents, information, plans and calculations shall be submitted by the applicant before scheduling a hearing date; and the

reviewing agencies shall be allowed ten (10) business days to review all submitted material. The applicant will then be scheduled for the next available meeting.

**1.6.3** The meetings for the upcoming year shall be established at the first meeting in October of each year.

**1.6.4** In order to conduct a meeting or hearing, the presence of three (3) TBOH members is required to have a quorum.

**1.6.5** All meetings and hearings shall be held in accordance with the provisions of the Open Meeting Law, M.G.L. c. 39 §§ 23A, 23B and 23C.

**1.6.6** All members of the TBOH must refer to the "Town of Tewksbury - Reference Guide" distributed by the Town Clerk's Office for various information related to the Open Meeting Law, Conflict of Interest Law, Public Records Law, Code of Ethical Conduct, and Meeting Minutes Report.

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**1.7 GENERAL ADMINISTRATIVE PROCEDURES:**

**1.7.1 REGULATIONS:** The TBOH from time to time shall promulgate regulations to protect the environment, and public health, welfare and safety. During this process, the TBOH, at its discretion, where a public hearing is not required by law, may conduct a public hearing for the general public's comments.

**1.7.2** Upon adoption of a TBOH Regulation and as required by M.G.L. c. 111 § 31, the TBOH shall publish a summary, which shall describe the substance of the Regulations, in a newspaper of general circulation in the Town.

**1.7.3** The effective date of a regulation shall be two weeks after the date of advertisement unless otherwise provided by the TBOH Regulations.

**1.7.4 POLICIES:** The TBOH may, from time to time, adopt policies for the administration, interpretation, and enforcement the laws and regulations.

**1.7.5 STANDARD CONDITIONS AND GUIDELINES:** The TBOH may, from time to time, establish guidelines and standard conditions that generally apply to all projects, variances, decisions and/or permits in order to properly inform applicants of their responsibilities before and after an approval is granted for any project. Such standard conditions and guidelines shall not be considered as a final standard or guideline. Special conditions may be deemed necessary for any project, variance, decision, and/or permit under review by the TBOH. The following are the current standard conditions:

**1.7.5.1** Any changes to the submitted and/or approved project shall require immediately filed with the TBOH by the applicant. Further review and approval shall be required.

**1.7.5.2** An as-built plan or other documentation of any TBOH approved project shall be submitted to the Health Department and TBOH before submitting a request for occupancy permit with the Building Department.

**1.7.5.3** There shall be no encroachment into the Flood Plain as delineated and approved on the submitted plan. The owner(s) shall execute a deed restriction on a form approved by the TBOH, which deed shall run with the land in perpetuity and shall be recorded with the Middlesex North Registry of Deeds and/or its Land Court section, binding the owner(s) and the owner(s') successors.

1.7.5.4 There shall be no stump dump or dumping of any solid waste or liquid waste on the applicant's property, and any such activity shall constitute a violation of .M.G.L. c. 111 § 150A.

1.7.5.5 Any conditions imposed by the TBOH shall not be modified without the written approval of the TBOH and only after a public hearing.

1.7.5.6 Upon completion of the work, the applicant shall forthwith request in writing to the TBOH that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.

1.7.5.7 An approved permit or decision by TBOH or Health Department does not relieve the applicant or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.

1.7.5.8 Any fill used in connection with any 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, animal carcasses, refrigerators, motor vehicles or parts of any of the foregoing.

1.7.5.9 A decision shall not grant any property rights or any exclusive privileges and does not authorize any injury to private property or invasion of private rights.

1.7.5.10 Failure to comply with any and all conditions of any permit or decision and with all related statutes, laws, and regulations shall be deemed cause to modify, suspend, or revoke any permit or decision. .

1.7.5.11 The TBOH Agent shall have access to the subject property to conduct inspections to ensure compliance with permits or decisions and take actions necessary to protect the environment and the public health, welfare and safety..

1.7.5.12 The applicant shall provide final approved plans prior to the issuance of any permit. Final approved plans are plans approved by all appropriate Town Departments.

1.7.5.13 Applications shall not be approved by the TBOH until all outstanding invoices from the TBOH, consulting engineer, and/or consultant have been paid by the applicant. See M.G.L. c. 44 § 53G.

1.7.5.14 When appropriate or required, conditions shall be properly recorded with the Middlesex North Registry of Deeds and/or Land Court section; and a certified copy of such recordation shall be returned to the TBOH showing the marginal reference on the owner(s') recorded deed or certificate prior to the TBOH issuance of a certificate of compliance or approval of any Town Department's "check-off" sheet, or the like. The applicant shall effect such recordation prior to requesting any building permits or occupancy permits from the Building Department.

1.7.5.15 Any other special conditions deemed necessary by the TBOH.

## **CHAPTER 2 REQUEST FOR AN ADMINISTRATIVE DETERMINATION OF APPLICABILITY**

Any person may request a determination from the Director to determine the applicability of any TBOH Regulations. The Director may issue a determination with conditions, if he or she determines that a person's proposal complies with the TBOH's Regulations, and that the protection of the environment and the public health, welfare, and safety can be maintained. The

Director shall employ best professional judgment practices to make such administrative determinations. The authority for the Director to grant such administrative determinations shall be authorized by a majority vote of the TBOH.

## **2.2 ADMINISTRATIVE ORDERS AND ENFORCEMENT**

**2.2.1** The Director issue administrative orders to effect administrative enforcement actions. Orders may require, but are not be limited to, corrective action, permit probation, conditional permits issued by the TBOH, the use of consultants in accordance TBOH Regulations, or other actions deemed necessary to enforce public health laws and regulations.

**2.2.2** An enforceable agreement shall mean a agreement between the TBOH and the owner(s) of facility or the person(s) acquiring ownership of such a facility relative to compliance with any Regulations enforced by the TBOH (e.g. to upgrade a septic system or to connect the facility to a sanitary sewer pursuant to Title 5 within a specified period of time following the transfer of title). The agreement is legally binding upon the owner(s) and their successor(s) and shall not limit the powers or responsibilities of the TBOH and/or the Health Department in any way to enforce TBOH Regulations and other laws or regulations or take any other action deemed necessary to protect public health.

## **2.3 APPEAL OF ADMINISTRATIVE DECISION**

Any decision by the Director may be appealed in writing, to the TBOH for further review. The TBOH may rescind, sustain, or modify any decision of the Director. Said appeal shall be filed within ten (10) days of the date of the issuance of a decision.

## **2.4 VARIANCES**

**2.4.1** Any person may seek a variance of any TBOH Regulation and shall provide documentation to demonstrate a hardship which would result from strict enforcement of regulation.

**2.4.2** The applicant shall also demonstrate that no other method or technology exists that will comply with the TBOH Regulations. Further, the applicant must employ every measure to ensure the greatest degree of compliance that can be reasonably achieved.

**2.4.3** Variances may be granted if the TBOH finds that the applicant has proposed adequate measures to protect the environment and public health, welfare and safety, that the proposed variance is in keeping with the intent of TBOH Regulations, and that the grant of the variance will not be detrimental to the environment and public health, welfare and safety.

## **2.5 VARIANCE REQUEST PROCEDURE/ABUTTER NOTIFICATION**

**2.5.1** An applicant shall submit a written variance request to the Health Department, either in hand or by certified mail. A proper submittal shall include, but may not be limited to the following:

### **Step 1**

- a) Eight (8) copies of a properly completed and signed application on a form supplied by the Health Department.
- b) If the owner is not the applicant, the application shall be submitted with a notarized affidavit signed by the owner or owners authorizing the application.
- c) Eight (8) copies of the Health Department's Determination Letter, if appropriate.

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- d) Eight (8) sets of a certified plot plan dated within six (6) months from the date of a submission, with surveyor's or engineer's original seal, showing premises affected, and other details (i.e. other structures, septic systems, wells, external grease tanks, and any other proposed items). The locus should be clearly identified (i.e. assessor's map indicating map and lot numbers), if applicable.
- e) Eight (8) copies of the Owner(s) Quitclaim Deed or Land Court Certificate.
- f) Eight (8) copies of a Certified Abutters List from the Assessor's Office, which shall be dated within sixty (60) days of submission.
- g) Eight (8) copies of a brief statement of details including other documentation supporting the petitioner's request.
- h) Eight (8) copies of any pertinent information deemed necessary by the Director
- i) Appropriate fees paid, including the Geographic Information Systems (GIS) surcharge.
- j) All documents must be separated into eight (8) packages.
- k) One set of stamped envelopes bearing names and addresses of the abutters and , tenants on the premises, if applicable. These envelopes will be used to notify these parties of the TBOH decision.

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**Step 2**

Application packages shall be submitted to the Health Department at least three (3) weeks prior to the hearing date.

**Step 3**

The Health Department shall establish the hearing date after proper submission of application.

**Step 4**

The applicant shall transmit and pay for legal notice, which shall be given by publication in a newspaper of general circulation in the Town for two consecutive weeks. The first publication to be not less than fourteen (14) days before the day of the hearing.

**Step 5**

The Health Department shall post such notice in a conspicuous place in the Town Hall and in accordance with Open Meeting Law for a period of not less than fourteen (14) days before the day of such hearing.

**Step 6**

The applicant shall notify all abutters by Certified Mail, Return Receipt Requested, at the applicant expense, at least ten (10) days before such hearing. Notification shall include a description of the variance the applicant is seeking, reasons therefore, and also the date, time and place for the scheduled hearing.

**Step 7**

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

**Step 8**

The Post Return Receipt cards (green cards) shall be addressed to the Health Department and will become a record and part of the applicant's file.

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**2.6 CONDUCT OF HEARING**

- 2.6.1 The Chairperson shall announce the matters set for such hearing as listed on the posted agenda. The Chairperson shall inform the audience that, in addressing the TBOH, persons will approach the microphone, announce his/her name including the spelling of his or her name and state his/her address.
- 2.6.2 The Chairperson shall explain the procedures for the hearing.
- 2.6.3 The Chairperson shall provide the opportunity for proponents and then opponents of the application to make their statements to the TBOH.
- 2.6.4 Upon completion of each speaker's presentation, the Chairperson shall provide the opportunity to each TBOH member to ask questions of the speaker as necessary.
- 2.6.5 The Health Department, on behalf of the TBOH, shall retain any exhibits displayed or offered by the proponents and opponents during the hearing as part of the file. Any person(s) wishing to offer exhibits shall be informed by the Chairperson of this policy.
- 2.6.6 The Chairperson shall have the Clerk read into the record any written submissions made by persons unable to attend the hearing.
- 2.6.7 The Chairperson shall close evidentiary portion of the public hearing after all interested parties have had the opportunity to speak.
- 2.6.8 After all testimony has been presented and all questions by the TBOH have been answered, the TBOH will publicly deliberate the facts and issues involved.
- 2.6.9 At the conclusion of the deliberative portion of the hearing, the matter may be immediately voted on or taken under advisement for a vote at a later meeting.
- 2.6.10 The Chairperson shall close the public hearing after all interested parties have had the opportunity to speak and after TBOH has deliberated.

**2.7 CERTIFICATE OF COMPLIANCE/OCCUPANCY INSPECTION**

- 2.7.1 All projects approved by the TBOH shall require a Certificate of Compliance, if applicable. A Certificate of Compliance form shall be utilized as the form necessary to demonstrate that the project has been completed to the satisfaction of the TBOH. The fee for a Certificate of Compliance shall be in accordance with the TBOH fee schedule in effect at the time the request for a Certificate of Compliance form is filed.
- 2.7.2 Director or his designee may inspect any premises requiring a "sign-off" for occupancy. During this inspection, compliance with TBOH Regulations, conditions and other laws and

regulations such as, but not limited to, Chapter X (105 CMR 90.000), Article II (105 CMR 410.000), and Title 5 (310 CMR 15.000), shall be accomplished prior to the endorsement of any document the occupancy of the subject premises. If other regulations and/or laws are applicable to this inspection process, then compliance will also be necessary with such regulations and/or laws. (Affected parties are encouraged to seek the assistance of the Health Department in determining requirements to assure compliance.)

**2.8 ADMINISTRATIVE DENIAL/HEARING DATE**

**2.8.1** Failure to submit a complete application shall be grounds for denial of a project or plans at an administrative level, unless state or federal law requires a hearing.

**2.8.2** Any person aggrieved by the comments or corrections recommended as a result of a plan review by the TBOH health agent, designee or consultant, may request a hearing before the TBOH. The TBOH may affirm the determinations recommended by TBOH health agent, or consultant, or waive, modify, or rescind any such recommendations of its health agent, designee or consultant.

**2.8.3** Any person aggrieved by the TBOH decision has the right to appeal under M.G.L. c 249 §249, § 4 or under any other provisions of law.

**2.9 CONSULTING ENGINEERS/CONSULTANT SERVICES**

The TBOH may engage consultants deemed appropriate, for the purpose of implementing the authority conferred by statute or regulation to protection of the environment and eth public health, welfare, and safety in accordance with M.G.L. c 44 § 53G.

**2.10 EMERGENCY PROCEDURES**

Whenever an emergency exists in which the interest of protecting the environment or public health, welfare, and safety requires that ordinary procedures be dispensed with, the Director, or his or her authorized agent, acting in accordance with the provisions of M.G.L. c. 111 § 30, shall have the authority of the TBOH.

**2.11 ADMINISTRATIVE AUTHORITY**

The Director shall have the authority to develop applications and procedures and to issue reasonable administrative policies for effective operation of the Health Department and enforcement TBOH regulations if authorized by a vote of the TBOH.

**2.12 FEE SCHEDULES/BONDS**

**2.12.1** The TBOH may, from time to time, adopt reasonable fee schedules for certain permits, hearings, and other matters to which it deems necessary to assess fees. All such fees are non-refundable and shall not be prorated at any time.

**2.12.2** At the TBOH's discretion and as a condition, the TBOH may require performance bonds or other security in an amount determined by the TBOH to secure performance for any project.

**2.13 INSPECTIONS/GENERAL DUTY REQUIREMENTS**

Any person who obtains a permit from the TBOH shall fully cooperate with the TBOH and its health agents during any inspection or investigation of any activity subject to such permit. During any inspection or investigation, Health Agents may require photographs, copies of records, documents, samples, or other material deemed necessary to complete said inspection or investigation. Failure to

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cooperate shall be deemed just cause for further enforcement action and/or modification, suspension, or revocation of such permits as deemed necessary by the TBOH.

**CHAPTER 3: OTHER**

**3.1 PENALTIES**

**3.1.1** Any person(s) violating or failing to comply with any provision of any Regulations of the TBOH, shall be warned in writing that said person(s) shall be subject to the appropriate enforcement action and/or to the non-criminal disposition process adopted by Special Town Meeting at its meeting of May 8, 1991 (warrant article number 47) as follows:

1st offense – written warning.

2nd offense – one hundred (\$100) dollar fine.

3rd offense – two hundred (\$200) dollar fine.

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

**3.1.2** The TBOH may modify, suspend, or revoke, for just cause, any permit issued by the TBOH. In addition, the TBOH health agent or his or her designee may enforce the TBOH Regulations using any other established means of enforcement in addition to or in lieu of non-criminal disposition process.

**3.2 SEVERABILITY**

If any paragraph, sentence, phrase or word of the TBOH Regulations shall be finally declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other provision of the TBOH Regulations, which Regulations shall remain in full force and effect; and to this end the provisions of the TBOH Regulations are declared severable.

**3.3 EFFECTIVE DATE**

Regulations adopted on 7/22/10 and shall take effect on 8/25/10.

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