

THE MARION SANITARY CODE

for

***THE PROTECTION OF
PUBLIC AND ENVIRONMENTAL
HEALTH***

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SECTION 1: AUTHORITY

1.10: This Sanitary Code is adopted pursuant to MGL Chapter 111, Section 31, and empowers the Board of Health with the authority to make reasonable health regulations. [March 13, 1990]

1.10.1: This Sanitary Code may be amended by the Board of Health in conformance with MGL Chapter 111, Section 31 and other applicable statutes. Said amendments may be adopted only after a Public Hearing is held. [March 13, 1990]

a) The nature of the proposed amendment(s) and the place, date and time of the Public Hearing must be advertised in a locally circulated newspaper at least once in each of two successive weeks prior to the week of said Public Hearing. [March 13, 1990]

1.20: Sections of this Sanitary Code are further adopted under MGL Chapter 111, Section 122 which directs the Board of Health to examine into all nuisances, sources of filth, and causes of sickness within its town, or on board vessels within the harbor of such town, which may, in its opinion, be injurious to the public health and to destroy, remove, or prevent the same as case may require [March 13, 1990]

1.30: Sections of this Sanitary Code are further adopted under MGL Chapter 111, Section 143 which directs the Board of Health to regulate noisome trades. [March 13, 1990]

1.40: Sections of this Sanitary Code are further adopted under the provisions of 105 CMR 410, which establish minimum standards of fitness for human habitation to be enforced by the Board of Health. [March 13, 1990]

1.50: The Board of Health is responsible for the enforcement of The State Environmental Code, Title 5: Minimum Requirement for the Subsurface Disposal of Sanitary Sewage. Massachusetts Sanitary Regulations 310 CMR 15 have been promulgated to provide minimum standards for the protection of public health and the environment when circumstances require the use of individual systems for the disposal of sanitary sewage in areas where municipal sewage systems are not accessible. Specific, identifiable local conditions may require more stringent regulations to protect the public health and environmental interests of present and future citizens of the Town of Marion. In an effort to protect those interests in the light of local conditions the Board of Health has established the Marion Sanitary Code (MSC). [November 1, 1988]

1.60: The Board of Health is responsible for the enforcement of 105 CMR 590.000 Sanitary Code Article X, Minimum Sanitation Standards for Food Establishments.[July 1, 2009]

1.70: Sections of this Sanitary Code are further adopted pursuant to MGL Chapter 111, Section 122A by which the Board of Health may make determination of whether a drinking water supply is safe and adequate.[July 1, 2009]

SECTION 2: PURPOSE.

2.10: The Board of Health is authorized to take action to protect groundwater and aquifers that are currently or potentially useful for the provision of potable and non-potable water. The proper design and siting of septic systems and stormwater drainage systems addressed in this Sanitary Code is an essential part of this responsibility. [November 1, 1988]

2.20: The Board of Health is authorized to take action to protect the public health from present and potential sources of pollution to groundwater and fresh or saltwater bodies. These sources may include existing septic systems and stormwater drainage systems. The Board of Health must therefore establish regulations to insure that owners properly construct, expand, repair and maintain such systems. Sections of this Sanitary Code address this responsibility. [November 1, 1988]

2.30: The Board of Health is authorized to take action to prevent or mitigate any threat to the public health from reduced water quality of coastal and inland water bodies and wetlands. This requires the periodic analysis of these resources for the presence of pathogens, toxins, nutrients, and other pollutants that may have a degrading effect on water quality, and the determination of appropriate public policy after consideration of the results of such analysis. The correct design, siting and maintenance of septic systems and stormwater drainage systems, the design and use of marine toilets, and the regulation of agricultural practices necessary to protect water quality are properly addressed in this Sanitary Code. [November 1, 1988]

2.40: The Board of Health is authorized to take action to protect the public from hazardous toxic materials. Use, storage and transport of such materials must be done in as safe a manner as possible. Sections of this Sanitary Code regulate these activities in order to insure the protections of the public health. [March 13, 1990]

2.50: The Board of Health is authorized to take action to protect the health, safety and well being of the occupants of housing and the general public, and to facilitate legal remedies available to occupants of sub-standard housing. Portion of this Sanitary Code are adopted for this purpose. [See 105 CMR 410] [March 13, 1990]

2.60: The Board of Health is charged with the responsibility of protecting the public from food borne illness through a sound public health food protection program. This is accomplished through licensure, inspection and enforcement of compliance of retail food and food service establishments. [July 1, 2009]

2.70: The Board of Health is authorized to take action to protect public health by ensuring that private drinking water wells are properly located and private users of the water acceptable for human consumption.[July 1, 2009]

SECTION 3: DEFINITIONS

3.10: Unless otherwise defined in this Sanitary Code, all terms used shall have the definitions stipulated in Massachusetts Wetlands Regulations 310 CMR 10 and Massachusetts Sanitary Regulations 310 CMR 15. [November 1, 1988]

3.20: The terms listed below used in the Marion Sanitary Code are defined as follows:

ABANDONED WELL

A well that has not been used for water supply for a period of one (1) year or more, unless the owner declares his intention in writing to the Board of Health to use the well again for supplying water within one year. [March 13, 1990]

AS-BUILT PLAN (SEPTIC SYSTEMS)

A stamped and signed plan, submitted by an engineer or sanitarian, showing the Disposal Works Construction Permit number, actual elevations, dimensions, setbacks from lot lines and wetlands of septic tank, distribution box and leaching area of the septic system, established by on-site measurement during construction. This plan shall also locate any clean-out holes, the distribution box and the septic tank by means of two distances taken from the two nearest corners of the foundation of the dwelling to which the septic system is connected.

[March 13, 1990]

AS-BUILT PLAN (WATER SUPPLY WELLS)

A stamped and signed plan, submitted by a qualified engineer, showing actual elevations, setbacks from lot lines, roadways, driveways, septic systems, and any identified source of pollution (see MSC 12.60.3(c)) within two hundred (200) feet, including any analysis of groundwater flow required under MSC 12.60.2(c)). Such as-built plan must show the actual location of the well and septic system, if any, on the lot as cross tie distances from lot and/or foundation corners.

[March 13, 1990]

BEDROOM

Any room, other than a closet, hallway, dining room, living room, kitchen, or bathroom, that affords enough privacy for disrobing and sleeping.

[November 1, 1988]

BMP

BMP, or Best Management Practice, refers to the best design for a management solution to a given problem. (See Controlling Urban Runoff)

[November 1, 1988]

BOARD

The Board of Health for the Town of Marion, acting through its agent, except where a public hearing is provided for, and where otherwise required by law to act as a body. [March 1, 2003]

BOARD OF HEALTH

The Board of Health shall mean the Marion Board of Health unless otherwise specified [March 13, 1990]

COASTAL BANK

A coastal bank shall be defined as a bank of unconsolidated sediment or man-made structure which alters the natural topography, including the seaward face or side of any elevated natural or man-made landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action or flooding or other wetland or watercourse. [November 1, 1988]

COASTAL LANDS SUBJECT TO FLOODING

Coastal lands subject to flooding are defined as those areas bordering or adjacent to coastal dunes, coastal banks, marshes and/or barrier beaches; and are further defined as those areas depicted as AE or VE zones on FEMA flood maps. [December 6, 1988]

COASTAL WETLAND

Coastal wetland shall be defined as a coastal wetland as defined in 310 CMR 10 and 310 CMR 15. This includes, but is not limited to, resource areas specified in 310 CMR 10.27, 10.29, 10.30, 10.32, and 310 CMR 15.01. [November 1, 1988]

CONTROLLING URBAN RUNOFF

Controlling Urban Runoff refers to the publication: Schueler, Thomas R. 1987. Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs; Department of Environmental Programs, Metropolitan Washington Council of Governments, Washington, D.C. [March 13, 1990]

DEEP HOLE TEST

A test performed in conformity with 310 CMR 15.03 (3). [March 13, 1990]

DETENTION POND/BASIN

A Detention Pond/Basin is a BMP for treating storm water runoff designed to detain storm water for a period of time to allow for sediment settling and the prevention of erosive floods downstream. (See Controlling Urban Runoff.) [March 13, 1990]

DEVELOPED PROPERTY

Developed property is defined as a parcel of land with a man-made structure erected upon it which has affixed to it a septic system. [November 1, 1988]

ENVIRONMENTAL HEALTH IMPACT REPORT (EHIR)

An EHIR is a report, drafted by generally recognized competent persons, that may include, but is not limited to, the following:

1. A detail analysis of soil conditions throughout the area of the proposed use.
2. A complete hydrogeologic report of surface and groundwater conditions, including the installation of groundwater monitoring wells.
3. An analysis of surface and groundwater for total and fecal coliforms, nitrates and phosphates, ammonia-nitrogen, and other applicable agents.
4. An analysis of the impact of the proposed use on existing resource areas, including, but not limited to, zones of contribution to public and/or private drinking water supplies, surface water bodies, watercourses, wetlands, coastal fisheries and recreational areas.
5. An analysis of storm water runoff impacts on and off the lot of constructed impervious surfaces, road drainage, parking areas, indicating proposed BMPs to mitigate any adverse impacts on proposed or existing septic system leaching areas and on existing resource areas, including, but not limited to, zones of contribution to drinking water supplies, surface water bodies, coastal fisheries and recreational areas. [March 13,1990]

FAILED SYSTEM

A failed system is defined as a septic system in which there is either evidence of sewage flow to the surface, evidence of overload of the system, or evidence that the septic system is in such a state of disrepair that it cannot function as originally intended. A failed system is a danger to the public health. [November 1, 1988]

FEMA FLOOD MAPS

Federal Emergency Management Agency (FEMA) National Flood Insurance Rate Maps (FIRM) of the Town of Marion, community-panel numbers 255213 0001 – 0011, dated 2/17/88, as amended. [December 6, 1988]

FOOD ESTABLISHMENT

1. Food establishment means an operation that stores, prepares, packages serves, vends, or otherwise provides food for human consumption including but not limited to:
 - a) a restaurant; satellite or catered feeding location when these locations are equipped with facilities to prepare, store or serve food; catering conveyance used to transport people; market; retail bakery; vending location; institution; food bank; residential kitchens in bed and breakfast homes and bed and breakfast establishments; residential kitchens for retail sale and,
 - b) an establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

2. Food establishment includes:

An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority;

And an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises;

3. Food establishment does not include:

- a) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- b) A food processing plant;
- c) A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale;
- d) A kitchen in a private home that prepares food for distribution to a charitable facility in accordance with M. G. L. c. 94, § 328;
- e) An area where food that is prepared as specified in 105 CMR 590.002: Food Establishment (3)(c) is sold or offered for human consumption;
- f) A kitchen in a private home, such as a family day –care provider; or a bed and breakfast home that serves only a continental breakfast; or,
- g) A private home that receives catered or home delivered food.^(FC)

(<http://www.mass.gov/Eeohhs2/docs/dph/regs/105cmr590.pdf>) [July 1, 2009]

For more information, please refer to 105 C.M.R. 590.000 State Sanitary Code, Chapter X, Minimum Standards for Food Establishments.

(<http://www.mass.gov/Eeohhs/docs/dph/regs/105cmr590.pdf>)

FOOD SERVICE ESTABLISHMENT

A place where food and/or beverages are prepared and intended for individual portion service, and includes the site at which individual portions are poured and/or provided, that is in a covered area and/or located within a permanent structure. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food and/or beverages. [November 1, 2005]

GOOD SYSTEM

A good system is defined as a septic system that conforms to all current Title 5 and Marion Sanitary Code provisions, and is functioning properly.

[November 1, 1988]

INFILTRATION BASIN/TRENCH

An Infiltration Basin/Trench is a BMP designed to treat storm water runoff by removing soluble and particulate pollutants, recharge the groundwater, and mitigate erosive flows downstream. Infiltration basins/trenches are dry except in storm events. (See Controlling Urban Runoff) [March 13, 1990]

INSTALLER

An individual, partnership or corporation authorized in writing by the Board of Health to install, expand or repair septic systems. [March 13, 1990]

MARGINAL SYSTEM

A marginal system is defined as a septic system having one or several symptoms, including, but not limited to: the system can not be judged because the system has been out of use for such a period of time that it cannot be determined if it operates properly; there are problems with the individual components of the system or with the system's location; records show excessive pumping (more than two (2) times within any ninety (90) day period for residential or commercial property, except for required grease trap maintenance for commercial property); the presence of visible Ferric Sulfide stains; there is evidence that the leaching field separation to groundwater is less than four (4) feet; the system is inadequate to service the structure(s) to which it is connected; system is located within one hundred (100) feet of a domestic drinking water supply well, coastal wetland or coastal bank, or within seventy five (75) feet of a wetland or watercourse. [November 1, 1988 and March 13, 1990]

MARINE SANITARY DEVICE (MSD)

A toilet or head, permanently installed in a boat. [March 13, 1990]

MARION WATERS

All waters within the geographic bounds of the Town of Marion, including ocean waters along the coastal bounds of the town, extending into Buzzards Bay as defined by boundaries depicted on United States Geological Survey Maps (Marion and Onset Quadrangles). [November 1, 1988 and March 13, 1990]

MEAN SEA LEVEL (MSL)

Mean seal level shall be defined as mean sea level as defined by United States Geological Survey (USGS) datum. [November 1, 1988]

MSD INSPECTOR

An individual authorized in writing by the Board of Health to perform inspections of marine sanitary devices. [March 13, 1990]

NON-CONFORMING SYSTEM

A non-conforming system shall be defined as a septic system which functions properly, not in a failed or marginal state, but which does not meet current Title 5 or Marion Sanitary Code Design or performance standards. [November 1, 1988]

OPEN INSPECTION

An open inspection is defined as an inspection where some or all structure(s) are uncovered and a visual inspection conducted by a sanitarian or engineer. [March 13, 1990]

PERSON

Any individual or entity, including, but not limited to, partnerships, corporations, trusts, public bodies or unincorporated associations. [November 1, 1988]

POLLUTION

Adverse effect on water quality created by the introduction of any matter.
[March 13, 1990]

PROBABLE MAXIMUM HIGH GROUND WATER

Probably maximum high groundwater shall be the greatest elevation above Mean Sea Level of ground water that can be anticipated at any site. This elevation will be determined by direct observation of Marion ground water monitoring wells in conjunction with reference to relevant historical ground water data and other pertinent information. The Board of Health may adjust the actual ground water level observed to reflect hydrologic conditions at the time of observation.
[November 1, 1988]

QUALIFIED ENGINEER (Engineer)

A qualified engineer shall be defined as a civil engineer licensed to design and inspect septic systems and/or to design water supply wells and water systems, and related structures in the Commonwealth of Massachusetts and authorized in writing by the Board of Health to practice in the Town of Marion.
[November 1, 1988 and March 13, 1990]

QUALIFIED SANITARIAN (Sanitarian)

A qualified sanitarian shall be defined as a sanitarian licensed to design and inspect septic systems in the Commonwealth of Massachusetts and authorized in writing by the Board of Health to practice in the Town of Marion.
[November 1, 1988 and March 13, 1990]

RENTED OR LEASED PROPERTY

Any dwelling, or portion thereof, used for habitation or business purposes by an occupant other than the owner, for the use of which a fee is paid. This includes, but is not limited to, campgrounds, motels, bed and breakfasts, inns, rooming houses, hotels, motels, and other accommodations used on a transient basis, as well as community-type buildings which are rented to community groups.
[March 13, 1990]

RESOURCE AREA

A resource area shall be defined as a resource area as defined in 310 CMR 10.04
[November 1, 1988]

RETENTION POND/BASIN

See Wet Pond [March 13, 1990]

SANITARY WASTE (SANITARY SEWAGE)

Any water-carried putrescible waste resulting from the discharge of water closets, laundry tubs, washing machines, sinks, showers, dishwashers, swimming pools or spas filter backflush, or any other source. [March 13, 1990]

SEASONAL DWELLING

A seasonal dwelling is defined as any dwelling that has not been winterized through the installation of insulation and/or a heating system. A seasonal dwelling is further defined as any dwelling which is not customarily occupied on a continuous basis for at least nine months of the year. [November 1, 1988]

SEPTAGE HAULER

An individual authorized in writing by the Board of Health to remove, transport, and dispose of septage under the provisions of Title 5, 310 CMR 15.02(3) and the Marion Sanitary Code. [November 1, 1988 and March 13, 1990]

SEPTIC SYSTEM

A septic system is a sub-surface sanitary waste disposal system. [November 1, 1988]

TEMPORARY FOOD ESTABLISHMENT

Temporary Food Establishment defined in 1999 food code as a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. [APRIL 14, 2009]

TITLE 5 OR TITLE V

The regulations of the Department of Environmental Protection at 310 CMR 15.000 et seq. [March 1, 2003]

TRANSFER OF PROPERTY

Transfer of property is defined as an act by which title of a property is conveyed from one person to another. [November 1, 1988]

TOXIC OR HAZARDOUS MATERIALS

Toxic or hazardous materials shall be defined as all liquid hydrocarbon products including, but not limited to, gasoline, fuel or diesel oil, and any other toxic or corrosive chemicals, radioactive materials or other substance controlled as being toxic or hazardous by the Division of Hazardous Waste of the Commonwealth of Massachusetts, under the provisions of Massachusetts General Laws, Chapter 21C, Section 1, et. seq. [December 6, 1988]

WATERCOURSE

A watercourse shall be defined as a watercourse as defined in 310 CMR 15.01 [November 1, 1988]

WASTE OIL

Used or surplus engine oil, fuel oil, gear oil, cutting oil, hydraulic oil, transmission fluid, and brake fluid, uncontaminated by anti-freeze or other substance. [March 13, 1990]

WELL

Any pit, pipe, excavation, spring, casing, drill hole, or other source of water to be used for any purpose of supplying water, and shall include dug wells, driven or tubular wells, drilled wells (artesian or otherwise) and springs, gravel packed wells, gravel walled wells, gravel developed and washed borings and as further described in the U.S. EPA Manual of Individual Water Supply Systems. For the purpose of these regulations, it shall include both private potable wells, and non-potable wells. [March 13, 1990]

WELL, POTABLE (INTENDED FOR HUMAN CONSUMPTION)

Any well supplying water for human consumption, bathing, or washing purposes, which is not otherwise regulated as a "public water system" (community or non-community water supply) under 310 CMR 22.00. [March 13, 1990]

WETLAND

A wetland shall be defined as including a wetland as defined in Massachusetts Regulations 310 CMR 10 and 310 CMR 15. This includes, but is not limited to, resource areas specified in 310 CMR 10.02.1(a)(b)(c), and watercourses specified in 310 CMR 15.01 [November 1, 1988]

WELL DRILLER

Any person, firm, or corporation drilling, constructing, or destroying a water supply well. [March 13, 1990]

WET POND

A wet pond, also known as a retention pond or basin, is a groundwater recharge facility for the treatment of storm water runoff. A wet pond's distinguishing characteristic is a permanent pool that supports aquatic life. [March 13, 1990]

YIELD

Quantity of water delivered per unit time which may flow or to be continuously pumped from the well. [March 13, 1990]

SECTION 4: SUBSURFACE DISPOSAL OF SANITARY WASTE

4.10: Disposal System Installers Permit. {15.019}

4.10.1: Any person, who constructs, expands, or repairs septic systems in the Town of Marion must have first obtained a disposal system installer's license from the Board.

4.10.2: Any person who constructs, expands, or repairs a septic system without first obtaining a disposal system installers license from the Board may be denied a license to install septic systems in the Town of Marion.

4.20: Disposal System Construction Permit. {15.020}

4.20.1: Any person, who constructs, expands, or repairs a septic system must obtain a disposal system construction permit from the Board.

4.20.2: Any septic system installer who constructs, expands, or repairs a septic system, or any part of a septic system, without having first obtained a disposal works construction permit from the Board may have his/her disposal system installer's license revoked by the Board.

4.20.3: Procedures to obtain a disposal system construction permit.

- a) An application for a disposal system construction permit shall be submitted completely filled out, signed, and stamped by a Professional Engineer or Registered Sanitarian. An incomplete application will not be accepted.
- b) Five (5) copies of the proposed plan shall be submitted with the application as well as the appropriate fee for disposal system construction permit.
- c)
 - 1) For those septic designs that do not require a variance from the Marion Sanitary Code or Title 5, the Board will review the septic plan and process the disposal system construction permit application within 30 days of receipt of the complete application.
 - 2) For those septic designs that do require a variance from the Marion Sanitary Code or Title 5, the following procedure shall apply: Upon receipt of the variance request letter, the complete proposed plan, the disposal system construction permit, and the appropriate fee, the Board will schedule a public hearing to be held within 30 calendar days. After a hearing, the Board will post its decision within 14 calendar days and process the disposal system construction permit application within 45 days of the Board of Health decision.
- d) The Board shall notify the applicant by mail whether the plan has been approved.
- e) Upon approval of the disposal system construction permit application AND before work on the system begins, a licensed septic installer shall sign the application and obtain the approved disposal system construction permit and approved septic plan.
- f) Once the septic system has been completely installed and satisfactorily inspected by the Board, the engineer shall submit to the Board three

copies of the as-built plan certified by the licensed Engineer or Sanitarian.

- g) The as-built plan shall include, but not be limited to:
 - 1) The approved septic plan with the swing tie measurements for the septic tank covers and distribution box in plain view, and
 - 2) The as-built elevations indicated above the proposed elevations in the system profile section of the septic plan.

4.20.4: The Disposal System Construction Permit shall be valid for two years from the date of approval and may be renewed by the Board of Health upon request in writing at least thirty (30) days prior to the expiration date of the disposal system construction permit.

4.20.5: A change in ownership in the property subject of a construction permit represents a change in the application. The new owner, desiring to retain the permit, shall file a change of ownership form with the Board of Health before commencing the work authorized by the permit. Failure to do so may result in revocation of the permit and require the filing of a new application.

4.30: GENERAL PROVISIONS. {15.100}

All new construction shall be in compliance with Title 5 and the Marion Sanitary Code.

4.40: Minimum Setback Distances. {15.211}

4.40.1: For new construction or an increase in the size of a structure serviced by a septic system, no part of the soil absorption system shall be within 75 feet of a naturally occurring wetland or watercourse, or within 100 feet of a coastal wetland or top of a coastal bank.

4.40.2: For repairs or upgrades to an existing septic system without increase in the size of the structure serviced by the system, no part of the soil absorption system shall be within 50 feet of a naturally occurring wetland or watercourse, or within 100 feet of a coastal wetland or top of a coastal bank. The repair or upgrade to a system within 50 feet of a naturally occurring wetland or watercourse or within 100 feet of a coastal wetland or top of a coastal bank may be allowed only by a variance granted by the Board after application for variance and payment of the applicable variance fee.

4.40.3: For the purpose of this regulation, any part of a waterproof retaining wall shall be considered part of the leaching area. Any retaining wall shall be constructed in conformity with 310 CMR 15.255.

4.50: Construction in Velocity Zone and Floodway. {15.213}

4.50.1: For new construction or an increase in the septic flow or size of a structure serviced by a septic system, no part of a septic system that is to be constructed in the velocity zone shall be placed above the naturally occurring grade. The Board shall grant no variance to this requirement.

4.50.2: For repairs or upgrades to existing systems without increase in the septic flow or the size of a structure serviced by the septic system, the Board, without variance, shall approve those plans for septic system repair or upgrade that are in the velocity zone and are above the naturally occurring grade, but are so designed to minimize threats to health or property resulting from damage to the system by the flow of water or the diversion of the flow of water.

4.60: Sewage System Flow Design Criteria. {15.203}

4.60.1: A septic system, that will serve a new residential dwelling unit, shall be considered new construction and be designed with a minimum daily flow rate of 165 gallons per bedroom per day with a minimum capacity of 495 gallons per day.

4.60.2: A septic system that will be repaired in dwellings that have three or fewer bedrooms shall be designed with a minimum daily capacity of 400 gallons per day.

4.60.3: Septic systems that will be repaired in dwellings that have four or more bedrooms shall be designed with a minimum daily capacity of 400 gallons per day and an additional minimum daily bedroom flow of 110 gallons for each bedroom exceeding three.

4.60.4: Where the alteration of a structure results in a change in the number of bedrooms, the flow design shall comply with the requirements of 4.60.2 and 4.60.3, applicable to the number of bedrooms in the altered structure.

4.70: Content of Plans and Specifications. {15.220}

The septic plan shall include the following information:

4.70.1: The property owners name, street address, and the Marion Assessor's plan and lot number in the name block of the septic plan.

4.70.2: The septic plan shall include the statement "This plan conforms to the Marion Sanitary Code and Title 5," unless an application for a variance is submitted.

4.70.3: Should an application require a variance from either Title 5 or the Marion Sanitary Code, the plan shall include the statement: "This design requires the following variance from Title 5 / Marion Sanitary Code..." and identify the variances requested referencing the applicable Sections of the Marion Sanitary Code or Title 5.

4.80: Septic Tank Capacity. {15.223}

All dwellings of five bedrooms or larger shall have a septic tank of at least 2000 gallon capacity.

4.90: Soil Absorption Systems. {15.240}

4.90.1: All pipes used in the construction, expansion, or repair of the septic system shall be of schedule 40 or of equal quality.

4.90.2: An individual septic system must be located on the same lot of land as the dwelling, building, or premises, to which it is to be connected except that the Board may allow the repair or upgrade of a system not located on the same lot if the building lot is unable to accommodate a system which otherwise complies with the Marion Sanitary Code and Title 5.

4.95: Soil Absorption System Siting Requirements. {15.245}

A septic system that will serve a new residential dwelling unit shall be considered new construction. New construction systems shall not be sited in areas with percolation rates that are slower than 30 minutes per inch. [November 1, 2005]

4.100: Constructions in fill. {15.255}

4.100.1: Filling or replication of wetlands, watercourses, or coastal wetland for the purpose of establishing Marion Sanitary Code setbacks is not permitted.

4.100.2: Setback measurements taken from the edge of the wetlands, watercourses, or coastal wetlands filled or replicated after the date of the adoption of this regulation will not satisfy the provision of the Marion Sanitary Code.

4.100.3: If any part of the septic system soil absorption system is to be placed above the naturally occurring grade, it shall be considered to be constructed wholly or partially in fill.

4.110: Reserve Areas. {15.248}

Trench systems shall not have reserve areas located in between primary system trenches.

4.120: System Inspections. {15.301}

Any modification to a septic system shall require the approval of the Board as set forth in the Marion Sanitary Code and Title 5. Failure to obtain this approval from the Board, or to obtain the appropriate Title 5 inspection report, shall be grounds for declaring the dwelling of the septic system unfit for human habitation.

4.130: Criteria for Inspection. {15.302}

4.130.1: The determination of groundwater elevation for Subsurface Sewage Disposal System Inspections, as described in 15.301 of Title 5, shall be determined by soil evaluation. The soil evaluator shall have been previously approved by the Department of Environmental Protection. The soil evaluation may be conducted at any time of the year. If soil mottling is observed to be higher than observed groundwater elevations, the design groundwater elevation to be used for the septic system shall be that of the mottling measurement. The soil evaluation shall be conducted in the presence of the agent for the Board.

4.130.2: The Board may waive the requirement for a soil evaluation to determine groundwater elevation if it has on record an evaluation by a professional engineer in the immediate vicinity of the home being inspected that was performed after March 1, 1995.

4.140: Systems Failing to Protect Public Health and Safety and the Environment. {15.303}

4.140.1: All cesspools and privies, located in the Town of Marion, not found to be failing are considered non-conforming systems. At the time of real estate transfer, all cesspools and privies shall be upgraded to meet the standards set forth in Title 5 and the Marion Sanitary Code.

4.140.2: No person, owner, or operator, shall construct, repair, upgrade or replace a failed cesspool or privy servicing a dwelling or facility within the Town of Marion without first obtaining a permit from the Board.

4.140.3: Cesspool upgrades, which cannot meet the standards of Title 5 and the Marion Sanitary Code shall be upgraded with the approval of the Board to the maximum feasible extent as required under Title V and the Marion Sanitary Code. {15.401 through 15.422}

4.140.4: Cesspools and privies that cannot be upgraded to the standards, outlined in Title 5 and the Marion Sanitary Code, may be upgraded through innovative and alternative technology subject to approval by the Board.

4.150: Approval of Title 5 Inspectors. {15.340}

4.150.1: All persons conducting Title 5 inspections in the Town of Marion must be licensed by the Marion Board of Health. {15.302}

4.150.2: Title 5 inspectors may have their licenses to conduct Title 5 inspections in the Town of Marion suspended or revoked by the Board of Health for the following reasons:

- a) Failure to use current water table data from percolation tests performed in the area where the Title 5 inspection is performed or
- b) Failure to comply with the provisions of Title 5 or the Marion Sanitary Code.

4.150.3: The Board will report all inspectors, with suspended or revoked Marion licenses, to the Department of Environmental Protection and may pursue the revocation of the state license to conduct Title 5 inspections in the Commonwealth of Massachusetts.

4.160: Maintenance of Septic Systems. {15.351}

4.160.1: Every owner or agent of a premises in which there are any private sewers, individual sewage disposal systems, or other means of sewage disposal shall keep the sewers and disposal systems in proper operational condition. Every owner or agent shall have such works cleaned and maintained at such time as ordered by the Board. The Board may cause the works to be cleaned or repaired. All expenses incurred by the Board to clean or repair the works are to be paid by the owner.

4.160.2: Sewage disposal shall be conducted in a manner that will not create objectionable conditions or cause the works to be a source of pollution to any of the waters of the Town of Marion or of the Commonwealth.

4.160.3: No person shall pump, clean, or otherwise perform maintenance on a septic system without having first obtained a license to do so from the Board.

4.160.4: Every septic hauler, who pumps or cleans a septic system, shall submit monthly pump out records to the Board. Failure to submit such records may result in suspension of the license.

4.160.5: No person shall add any acid, enzyme, emulsifier, or any other chemical or substance to a septic system without authorization, in writing, from the Board.

4.170: Variance. {15.410}

4.170.1: The Board of Health may grant variances to the Marion Sanitary Code in conformity with the standards and procedures of the Title 5. {CMR11.11 and 310 CMR 15.410 through 15.416}

4.170.2: All applications to the Board of Health for variances shall be in writing. The application shall reference the specific sub-section from which a variance is sought.

4.170.3: No application for a variance to the Marion Sanitary Code or Title V shall be granted or denied by the Board of Health until it has held a public hearing on the said application.

4.170.4: The applicant or the applicant's representative shall, by certified mail, notify all property owners abutting the subject property and directly across the street from the subject property not less than ten (10) days prior to the date of the public hearing. The notice shall include a copy of the legal advertisement or all information required in the legal advertisement as noted in this section and as provided by the Board. The notification of the abutters shall be at the expense of the applicant.

4.170.5: The name of the applicant, the nature and the location of the variances applied for, and the place, date, and time of the Board's public hearing on the variance must be advertised in a locally circulated newspaper. The Board will place this advertisement in the locally circulated paper at least once in each of the two weeks prior to the week of the public hearing. The cost of this legal advertisement is to be paid by the applicant. The payment shall accompany the cost of the permit application, proposed plans, and variance application. Public hearings will not be scheduled until the variance submittal is complete and the Board has approved the application for advertisement.

[Unless otherwise indicated, the entire Section Four was effective March 1, 2003]

SECTION 5: SUBDIVISION SUBMISSIONS.

5.10: Any person who files a subdivision plan with the Town Clerk must also simultaneously file a copy of that plan, along with all other information required by MSC Section V, with the Board of Health. Failure to do so will result in rejections of that plan by the Board of Health. [March 13, 1990]

5.20: Any subdivision plan submitted to the Board of Health for approval must include the words "No Lot to be Built Upon without Prior Approval of the Marion Board of Health" [December 6, 1988 and March 13, 1990]

5.30: Any proposed use of a parcel of land within the Town of Marion, including land not previously subdivided and approved by the Marion Planning Board, on which the total anticipated discharge of domestic or industrial waste, including, but not limited to, sanitary waste, is more than four thousand (4,000) gallons per day, an Environmental Health Impact Report (EHIR) may be required by the Board of Health prior to the issuance of any construction permits. For a proposed use resulting in over eight thousand (8,000) gallons per day of such discharge an EHIR must be submitted to the Board of Health [March 13, 1990]

5.30.1: Reasons for requiring the filing of an EHIR for discharges under eight thousand (8,000) gallons per day shall include, but not be limited to:

- a) Proximity of public or private water supply wells. [March 13, 1990]
- b) Proximity of shellfish beds, cranberry bogs, and other sources of food for human consumption [March 13, 1990]
- c) Location of wetlands, watercourses, coastal banks, and other resource areas within the proposed area of the project, or within one hundred (100) feet of its boundaries. [March 13, 1990]
- d) Soil conditions are such that percolation rates are at the extremes of the permitted range, and/or very high or perched groundwater exists in the area of the project. [March 13, 1990]

5.40: Any subdivision plan submitted to the Marion Board of Health must include on it specific reference to the following information also submitted:

5.40.1: A plan showing the provisional location of all wetlands and coastal wetlands within the subdivision and one hundred (100) feet beyond the subdivision perimeter. [March 13, 1990]

5.40.2: Evidence that reasonable steps have been taken to prevent the contamination by stormwater runoff of wetlands, water bodies, and other resource areas in conformity with MSC Section VI. [March 13, 1990]

5.50: Subdivision plans submitted to the Board of Health without information required in MSC 5.40 shall be deemed incomplete and will be denied by the Board of Health. [March 13, 1990]

SECTION 6: STORMWATER DRAINAGE

Stormwater Management- Pursuant to the authority granted by M.G.L. c.111, s.31 and in recognition of the relationship between stormwater and the quality of the Town's surface and groundwater resources, the Board of Health hereby incorporates the design and performance standards of the TOWN OF MARION SUBDIVISION RULES AND REGULATIONS, SECTION 4600. STORMWATER MANAGEMENT [Revised May 5, 2008] more fully printed below (SECTION 18/FORMS)[July 1, 2009]. [

6.10: No direct discharge of untreated stormwater run-off from impervious surfaces including, but not limited to, roadways, parking lots, driveways, and roofs to a wetland or watercourse will be permitted. [December 6, 1988]

6.20: Subdivision drainage plans will be designed to allow no greater quantity of stormwater to be transferred out of the subdivision than was transferred out prior to the construction of any drainage system. [March 13, 1990]

6.30: Detention and infiltration basins shall be constructed to allow a minimum of two feet of naturally occurring pervious material between the bottom of the basin and the probable level of maximum high groundwater elevation, as determined in conformity with The Marion Sanitary Code. (See MSC 4.10.3) [March 13, 1990]

6.30.1: Deep hole test must be dug within the location of the proposed basin. [13 March 1990]

6.30.2: Detention and infiltration basins may not be located within the VE Zone as depicted on the FEMA National Flood Insurance Program maps of the Town of Marion, dated 17 February 1988, as amended. [March 13, 1990]

6.30.3: In the case of a repair to, or an emergency expansion of an existing drainage system, the Marion board of Health may grant a variance allowing the calculation of probable maximum high groundwater. [March 13, 1990]

6.40: Wet ponds (retention basins) may not be constructed without a permit from the Board of Health. [March 13, 1990]

6.40.1: Design, construction and maintenance program criteria of wet ponds shall be in conformity with the guidelines articulated in Controlling Urban Runoff. [March 13, 1990]

SECTION 7: MARINE SANITARY REGULATIONS

7.10: Any owner of a boat, or person in charge of a boat, moored in Marion waters, docked at a marina for more than fourteen (14) days, or passing through Marion waters, shall maintain that boat's sanitary waste disposal system (MSD), if it is fitted with such a system, so that sewage is not discharged into Marion waters.

[December 6, 1988 and March 13, 1990]

7.20: Any owner of a boat, or person in charge of a boat, mooring in Marion waters, or passing through Marion waters, shall take all reasonable precautions to prevent discharge of gasoline, oil, or any other toxic material into Marion waters. [December 6, 1988]

SECTION 8: FOOD SERVICE

8.10: All food service establishments shall comply with 105 CMR 590.000, State Sanitary Code Chapter X- Minimum Sanitary Standards for Food Establishments Article X of the State Sanitary Code. [July 1, 2009]

8.20: Temporary Food Establishment Guidance for Operators .A temporary food establishment is defined in the 1999 Food Code (FC) as a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. Temporary food establishments (TFE) are permitted and inspected by the Board of Health in accordance with Massachusetts Regulations 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments-Chapter X.

Temporary food establishments (TFE) present special challenges since they may operate either indoors or outdoors and often have limited physical and sanitary facilities available. Menus, physical facility and equipment design, storage and preparation space, refrigeration and hot holding units, hand washing facilities, food supply sources and food handling procedures must be carefully reviewed by the Board of Health prior to the issuance of a permit.

The goal and responsibility of the Marion Board of Health is to make sure event coordinators and TFE operators are aware of their responsibilities and are operating in compliance with state regulations. The materials in this packet are designed to facilitate the application approval process and to provide event coordinators and TFE operators with food safety requirements, necessary to prevent a food-borne outbreak. [July 1, 2009]

This packet includes:

- Cover letter
- Coordinator's Checklist- to be submitted to the Health Office 30 days before the event.
- Temporary Food Permit Application- to be submitted to the Health Office 14 days before the event.
- "Are You Ready?" Checklist
- Food Safety at temporary events pamphlet

EXEMPT OR NOT?

Certain organizations may presume that they are exempt from 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments because of their non-profit status. Non-profits organizations are not exempt from state regulations except for bake sales offering only nonperishable foods (no refrigeration required). Non-profit organizations are **exempt from the permit fee only if they distribute the food for free or at cost.**

Proof of non-profit status is required. Fundraisers are not exempt from the permit fee.

An event that is advertised with fliers, banners, newspaper articles, radio or TV announcements, or by other means, is considered a public event and is subject to 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments. Private events **for members only**, that are not advertised, are not considered public events by the

Marion Board of Health and therefore do not have to comply with 105 CMR 590.000 Minimum Standards for Food Establishments.

Roadside stands and farmers market which sell only fresh produce are exempt from 105 CMR 590.000 Minimum Sanitation Standards for Establishments. [July 1, 2009]

MENU CONSIDERATIONS

Food preparation in TFE operations can pose significant hazards due to limited physical facilities and equipment. The lack of proper storage and preparation space, inadequate hand washing facilities and the lack of a hot/cold potable water supply are factors which may contribute to cross-contamination, inadequate holding temperatures and the contamination of food by infected food handlers. Each menu must be carefully evaluated in relation to the proposed physical settings for the preparation and service of food.

Food preparation procedures have been divided into 3 categories of Risk: High, Medium, and Low.

High Risk Procedures:

- Preparation (weighing, measuring, mixing, portioning) Potentially Hazardous Foods* (**PHF**).
- Cooking PHFs then cooling, reheating, thawing, and cold or hot holding for later cooking.

High risk procedures must be conducted in a permitted food establishment kitchen. This is required since the operator needs to have adequate, easily cleanable food contact surface, hand washing facilities with a hot water supply, the ability to wash, rinse and sanitize utensils once they are used, the ability to quickly refrigerate prepared ingredients after handling and access to equipment to maintain proper hot or cold holding temperatures. High risk procedures cannot be conducted in a residential kitchen or on site at the event.

If cold or hot potentially hazardous foods will be transported, adequate hot or cold holding equipment may be necessary depending on the time in transit to ensure that they will be maintained at proper temperatures. All food must be kept covered and protected from contamination during transportation.

Approval requires the supervision of a Certified Food Protection Manager who is responsible for monitoring safe food handling practices and initiating corrective action to ensure compliance with 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments.

Medium Risk Procedures:

- Cold holding and serving PHFs, at the event, which have been prepared in a permitted food establishment kitchen.
- Hot holding and serving PHFs, at the event, which have been prepared in a permitted food establishment kitchen.
- Cook-serve PHFs with no or minimal holding time such as commercially prepared meat, poultry, seafood, vegetables.

Medium risk procedures will be allowed only if the operator has suitable units to properly heat and hold hot food and/or proper cold holding equipment adequate for the proposed volume, and hand wash facility, gloves, thermometer, spare serving utensils and/or a temporary ware washing facility with wash, rinse and sanitize capabilities.

If a permanent hand wash facility is not available, an alternative hand wash station may be used. An alternative hand wash station is comprised of a large insulated urn (2 gallons minimum) full of warm water, a soap dispenser, a roll of paper towels and a bucket to collect wastewater may be sufficient. A hand wash facility will not be required if no exposed foods are being offered. No bare hand contact is allowed.

Ware-washing facilities must include 3-compartment sink or 3 basins large enough for complete immersion of utensils and be supplied with adequate hot water. Disposable single-service utensils for use by the consumer must be used if adequate ware washing facilities are not available. If cold or hot potentially hazardous foods will be transported, adequate hot or cold holding equipment may be necessary depending on the time in transit to ensure that they will be maintained at proper temperatures. All food must be kept covered and protected from contamination during transportation.

At the discretion of the Health Agent, PHFs may be stored in effectively insulated containers using a coolant to maintain temperatures below 45° F at events of short duration. With all other foods and/or at events of long duration, mechanical refrigeration should be provided. All refrigeration units must have a numerically scaled thermometer to accurately measure the air temperature of the unit. Ice Cream may be stored on dry ice.

A metal stem thermometer must be provided where necessary to check the internal temperatures of hot and cold foods. Thermometers must be accurate to +2° F.

PHFs which are reheated for hot holding shall be discarded if not used/sold by the end of the day.

Approval requires the supervision of a Certified Food Protection Manager who is responsible for monitoring safe food handling practices and initiating corrective action to ensure compliance with 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments.

Low Risk Procedures:

- Service of non-PHF's such as bottled water/soda, coffee, nonperishable baked goods, fresh fruit, candy, commercially packaged snacks, ice cream, hot dogs, frozen preformed hamburgers and condiments.
- The operator must have an alternative hand wash station if exposed foods are offered. Chemically treated towelettes may be used in lieu of a hand washing facility if only hotdogs and non-PHF's are being served. (Gloves, spare serving utensils and/or temporary ware washing facilities with wash, rinse and sanitized capabilities.) Disposable single-service utensils for use by the consumer must be used if adequate ware-washing facilities are not available. No bare hand contact is allowed.
- **Approval does not require** the supervision of a Certified Food Protection Manager.

- A. **“Potentially Hazardous Food*”**, as defined in the 1999 Food Code, means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:
- (i) The rapid and progressive growth of infectious or toxigenic microorganisms;
 - (ii) The growth and toxin production of *Clostridium Botulinum*; or
 - (iii) In raw shell eggs, the growth of *Salmonella Enteritidis*.
- B. **“Potentially Hazardous Food”** includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph (A) of this definition.
- C. **“Potentially Hazardous Food”** does not include:
- (i) An air cooled hard-boiled egg with shell intact;
 - (ii) A food with an a_w value of 0.85 or less;
 - (iii) A food with a pH level of 4.6 or below when measured at 75° F.
 - (iv) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution; and
 - (v) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. Botulinum* can not occur, such as a food that has an a_w and the pH that are above the levels of specified under subparagraphs c (ii) and (iii) of this definition and may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.
 - (vi) A food that does not support the growth of microorganisms as specified under Subparagraph (A) of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness. [July 1, 2009]

8.30: Application Procedures for Opening a Food Service Establishment

What steps should I take to obtain my permits for a food service establishment?

1. Planning Board - A permit from the Planning Board may be necessary to operate your new establishment. To find out what the Planning Board requires, please contact Debbie Paiva, Planning Secretary. Her office is located within the Board of Health office. The Planning Office's phone number is (508) 748-3517.
2. Building Department - Your new establishment may need Building Permits, Electrical Permits, and Plumbing Permits. Richard Marx, Building Commissioner, can help you with the Building Department requirements. The Building Department's phone number is (508) 748-3555.
3. Attached Permit Applications - Please fill out the application and return it along with the appropriate fee.
4. Floor Plans - Shall be submitted for review. These plans shall include a detailed layout of the establishment, including all equipment specifications, floor, wall and ceiling construction, storage and bathroom facilities. A handout entitled, *Highlight of 105 CMR 590.000, Minimum Standards for Food Establishments*, can help you with requirements for construction of commercial kitchens.
5. Plans shall be reviewed within a reasonable time frame. If additional information is necessary, the applicant will be notified.
6. Upon approval of the floor plan, the Board of Health shall conduct frequent inspections during the construction phase of the project. When renovations have been completed and the establishment is compliant with all of the construction requirements, then permits shall be granted for the establishment to open.
7. If you are interested in more detailed information about *105 CMR 590.000 Minimum Standards for Food Establishments, Retail Food Requirements*, please reference this material on the Town's website, www.townofmarion.gov. (Please click on Town Departments, then Board of Health. On the Board of Health web page, click on Food Related Links to Mass Health Topic Index. - Click on Food Protection, then go to Regulations). [July 1, 2009]

SECTION 9: Bathing Beaches and Swimming Pools.

9.10: No person owning a dog shall allow that dog to foul a beach to which the public has access. [March 13, 1990]

9.20: Inground swimming pools shall be enclosed by a barrier that is six (6) feet in height and firmly secured at ground level. Such enclosure shall include a gate that is six (6) foot in height. The gate shall have a self closing latch, placed four (4) feet above the ground and inaccessible from the outside to children eight (8) years of age and under. The enclosure shall be constructed and maintained so as to not permit entry of young children into the area. [February 28, 1996]

9.30: All public, semi public and special purpose swimming pool drain/grate covers MUST conform to the ASME A112.18.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs, or any successor standard, published by the American Society of Mechanical Engineers (ASME). [July 1, 2009]

SECTION 10: CONSTRUCTION AND REPAIR OF BUILDINGS

10.10: Any new building to be constructed, or any building undergoing additions or renovations equal to twenty percent (20%) of said building's assessed value, must have toilets with a flush volume of one and one-half (1.5) gallons installed or retrofitted to all bathrooms. Any alteration to a bathroom or kitchen must include retrofitting of these devices. [March 13, 1990]

SECTION 11: TOBACCO

11.10: Authority and Purpose.

11.10.1: The Board of Health is authorized to take action to protect and establish reasonable regulations, to ensure that tobacco is not available to minors through vending machines, to protect the health of persons in public places and in workplaces in the Town of Marion, while imposing no unreasonable restrictions on individual decision relative to smoking in private. [May 1, 1994]

11.10.2: Sections of this Sanitary Code are further adopted under Massachusetts General Laws, Chapter 111, Section 31, State Sanitary Code 105 CMR as a reasonable health regulation designed to protect the residents of Marion from the dangers of tobacco and tobacco smoke. The smoking of tobacco is found to be a danger to the health and well-being of both smokers and non-smokers. Medical and scientific evidence demonstrates that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies, and irritations to the eyes, nose, and throat to both smokers and non-smokers exposed to second-hand smoke. Evidence further demonstrates that tobacco is extremely addictive and causes serious health problems. The Surgeon General has concluded that cigarettes and other forms of tobacco are habit forming in the same sense as drugs, such as heroin and cocaine. Cigarette smoking is the chief avoidable cause of death in the country. [May 1, 1994] The Environmental Protection Agency (1993) has designated environmental tobacco smoke (also known as second-hand smoke) to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure. [January 1, 2002]

11.10.3: Furthermore, more than 80 percent of all smokers begin smoking before age eighteen, and more than 3,000 young people begin smoking every day in this nation. Massachusetts youths are beginning to smoke at very young ages. [May 1, 1994]

11.10.4: Other Applicable Laws. These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety, or fire codes, regulations, or statutes. [May 1, 1994]

11.20: DEFINITIONS.

BAR

Any area which is primarily dedicated to the selling of alcoholic beverages and in which the service of food is only incidental to consumption of such beverages. [May 1, 1994]

BUSINESS AGENT

An individual who has been designated by the owner or operator of any workplace, public place or membership association to be the manager or otherwise in charge of said workplace, public place or membership association. [November 1, 2005]

EMPLOYEE

Any individual or person who performs services for compensation for an employer at the Employer's workplace, including a contract employee, temporary Employee, an independent contractor who performs a service in the Employer's workplace for a substantial part of the workday.

[May 1, 1994 and November 1, 2005]

EMPLOYER

Any individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one or more employees at one or more workplaces, at any one time, including the Town.. [January 1, 2002 and November 1, 2005]

ENCLOSED

Any space, bound by walls, with or without fenestrations, and enclosed by one or more doors.. [May 1, 1994 and November 1, 2005]

FENESTRATION

The arrangement, proportioning, and design of windows and doors in a building. [November 1, 2005]

MEMBERSHIP ASSOCIATION

A not-for-profit entity that has been established and operates, for a charitable philanthropic, civic, social, benevolent, educational, religious, athletic, recreational or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the Commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans organization incorporated or chartered by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction,

an entity shall not be a membership association for the purposes of this definition, unless individual membership containing not less than the full membership costs and benefits is required for all members of the association for a period of not less than 90 days. [November 1, 2005]

INDOOR SPORTS ARENA

Any sports pavilion, gymnasium, health spa, boxing area, swimming pool, roller/ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports events. [May 1, 1994]

MINOR

Any person under eighteen years of age. [May 1, 1994]

OUTDOOR SEATING

Any outside area of an establishment that is under the control of the management of said establishment. [November 1, 2005]

OUTDOOR SPACE

An outdoor area, open to the air at all times, not enclosed by a wall or side coverings, and not including a fixed or flexible protective covering such as an awning or canopy which may adjoin a building or similar structure on no more than two sides. [November 1, 2005]

PERMIT YEAR

January 1 to December 31 [November 1, 2005]

PERSON

Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, restaurant, membership association or retail store, or the business agents or designees of any of the foregoing. [January 1, 2002 and November 1, 2005]

PREMISES

The entire property located at the Town address of a particular company, corporation, organization, building, establishment, business, restaurant, membership association or retail store, or the business agents or designees of any of the foregoing. [November 1, 2005]

PRIVATE ASSEMBLY ROOM

That enclosed area/room within a hotel, motel, restaurant, bar, membership association or function hall that is primarily used for rental or used by the public for private functions, parties, banquets or conferences. [November 1, 2005]

PUBLIC PLACE

Any building, facility, vehicle or vessel owned, leased, operated or occupied by the Town, including school buildings and grounds; any enclosed area open to the general public, including but not limited to retail stores, retail food stores, supermarkets, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotels/motels lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, hall exits, entrance ways, elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outside platforms, or open meeting of a governmental body as defined in section

11A of c. 30A, section 23A of c. 39 and section 9F of c. 34 of the General Laws, and licensed child-care locations. [May 1, 1994 and November 1, 2005]

RESTAURANT

Any establishment serving food for consumption on the premises or which maintains tables for the use of its customers, including cafeterias and workplace cafeterias. [May 1, 1994]

RETAIL FOOD ESTABLISHMENT

Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes, but is not limited to supermarkets, grocery stores, convenience stores, and delicatessens. [May 1, 1994 and November 1, 2005]

RETAIL STORE

Any establishment selling goods, articles, or personal services to the public. [May 1, 1994]

SEATING CAPACITY

The capacity designated on the occupancy permit of a restaurant, theater, or sports arena. [May 1, 1994]

“SECOND-HAND SMOKE” OR E.T.S. ENVIRONMENTAL TOBACCO SMOKE

A combination of smoke released from the burning end of a lighted tobacco product as well as exhaled smoke. [November 1, 2005]

SMOKING OR SMOKE

The lighting of a cigar, cigarette, pipe or other tobacco or non-tobacco product, or possessing a lighted cigar, cigarette, pipe or other non-tobacco product designed to be combusted or inhaled. [May 1, 1994 and November 1, 2005]

TOBACCO

Cigarettes, chewing tobacco, snuff, or tobacco in any of its forms. [May 1, 1994]

TOBACCO VENDING MACHINES

Any device which dispenses tobacco products by self-service or by remote control. [May 1, 1994]

WORKPLACE

An indoor area, structure or facility or portion thereof at which one (1) or more employees perform a service[s] for compensation for an Employer, or other enclosed spaces rented to do or otherwise used by the public; except where the Employer has the right or authority to exercise control over the space.

[January 1, 2002 and November 1, 2005]

11.25: Permit for Location and Sales of Tobacco.

11.25.1: After the effective date of this amendment, the Board of Health of the Town of Marion will issue a "Permit for Location and Sales" that will specify the name, address, and approved location per the Board of Health of the Town of Marion or their designated agent(s) for retailers who sell tobacco products.

[January 1, 1999]

11.25.2: After the effective date of this regulation, all retailers who are required to hold a state license to sell cigarettes or other tobacco products, will be required to hold and maintain a valid "Permit for Location and Sales" from the Town of Marion for each location at which tobacco products are sold. [January 1, 1999]

11.25.3: After receiving the permit, the merchant will receive signs that state "sale of cigarettes or any tobacco products to persons under age eighteen (18) is illegal. MGL Chapter 270, Sections 6 & 7." Any merchant not posting said signs will be in non-compliance of the Regulation and subject to penalties per Subsection 11.30 of this Regulation. [January 1, 1999]

11.25.4: The term of the permit shall be one year. [January 1, 1999]

11.25.5: The fee for the one year tobacco retailer's "permit for Location and Sales" of tobacco products is \$10.00 for each tobacco retail location.

[January 1, 1999]

11.25.6: A "Permit for Location and Sales" is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations. [January 1, 1999]

11.25.7: During such time that a "Permit for Location and Sales" of tobacco products has been suspended or revoked for violation of this Regulation, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined according to Section 11.30 until said permit is reinstated by the Board of Health of the Town of Marion or its designated agent(s). [January 1, 1999]

11.30: Posting, Violations, Enforcement, and Penalties.

11.30.1: Posting. Every person having control of an area in the premises upon which smoking is prohibited shall display signs that are clearly visible to all Employees, customers, or visitors while in the establishment. Such sign or signs must be of such size and design, and conspicuously located so that at least one of

them are easily read from every part of the area to which persons have access. Such sign or signs shall state "No Smoking" or words of similar import, or may display a graphic symbol commonly understood to prohibit smoking.

[May 1, 1994 and November 1, 2005]

11.30.2: Violations. It shall be a violation of this regulation:

- a) For any person to smoke in an area in which smoking is prohibited by this regulation. [May 1, 1994]
- b) For any person who owns or controls an area in which smoking is prohibited by this regulation to knowingly fail to direct a person who is smoking in that area to stop smoking in that area. [May 1, 1994]
- c) For any person who owns or controls an area in which smoking is prohibited by this regulation to fail, after complaint to him by any other person, to direct a person who is smoking in that area to stop smoking in that area. [May 1, 1994]
- d) For any person to violate any provision of these regulations. [May 1, 1994]

11.30.3: Enforcement. These regulations shall be enforced by the Board of Health, or its Chairman, or any authorized agent of the Board of Health, or any police officer. Action for enforcement shall be brought criminally, except to the extent that this regulation may be subject to non-criminal disposition by a by-law of the Town. Any of the officials or officers designated above may also seek enforcement through injunctive relief in the Superior Court. [May 1, 1994]

11.30.4: Penalties, Fines, Suspension and/or Suspension Hearings or Permit.

It shall be the responsibility of the permit holder and/or his agent to ensure compliance with all sections of this Regulation pertaining to their place of business. The permit holder and/or his agent, or persons involved in violation of any of the provisions of this Regulation may receive:

- a) In the case of the first violation, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a letter of warning from the Marion Board of Health. [January 1, 1999]
- b) In the case of the second violation within one year, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of one hundred dollars (\$100.00). [January 1, 1999]
- c) In the case of a third violation within one (1) year, the permit holder and/or his or her agent, or persons not in compliance with provisions of this Regulation shall receive a fine of two hundred (\$200.00) and the permit shall be suspended for seven (7) consecutive business days. [January 1, 1999]
- d) In the case of a fourth or more violations within one (1) year, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of three hundred dollars (\$300.00) and the permit shall be suspended for thirty (30) consecutive business days. [January 1, 1999]

e) The Board of Health of the Town of Marion shall provide written notice to the permit holder of the intent to suspend or revoke a Permit for Location and Sales of Tobacco. The notice shall contain the reasons for the suspension or revocations and establish a time and date for a hearing. The date of the hearing shall be not earlier than seven (7) days after the date of said notice. The Permit Holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons in writing. [January 1, 1999]

11.35 Smoking Prohibited.

11.35.1: No person shall smoke nor shall any person be permitted to smoke in any workplace, public place, food establishment or membership association, including any outdoor seating thereto in the Town, except as otherwise provided in Section 11.40 Exemptions and Variances of this regulation.

11.35.2: It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation, or the business agent or designee of such workplace, public place, food establishment or membership association, to permit a violation of this regulation.

11.35.3: Smoking shall be prohibited in all outdoor areas of restaurants, bars, taverns, and any other outdoor place where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the consumers and/or served to consumers. [November 1, 2005]

11.40: Exemptions and Variances.

11.40.1: Exemptions. This regulation does not apply to:

- a) Private residences (except when used as a licensed child care facility or health care facility). [January 1, 2002]
- b) Private or semi-private rooms of nursing homes and long-term care facilities occupied by one or more patients all of whom are smokers who have requested in writing on the facility admission form to be placed in a room/s where smoking is permitted. [May 1, 1994]
- c) In a nursing home, licensed pursuant to MGL, chapter 111, Section 71 under the jurisdiction of the Commonwealth, holding a Food Establishment permit issued by the Town, provided that:
 1. The nursing home apply to the Board for designation of a part of it's facility as a residence, and;
 2. The nursing home's application delineate the residential portion of it's facility which will be used solely for permanent residents of the facility, wherein no temporary or short-term resident may reside, and which shall not contain an employee workspace, such as an office, restroom or other area used primarily by Employees and;
 3. All areas in the designated residential area in which smoking is allowed will be conspicuously designated as smoking areas and adequately ventilated to prevent migration of smoke to non-smoking areas and;

4. Said application includes suitable documentation, acceptable to the Board that the nursing home is the permanent domicile of residents residing in that portion of its facility, that information on the hazards of smoking and second-hand smoke will be provided to all residents, and that smoking cessation aids will be available to all residents who use tobacco products and;
 5. The designated residential area is in conformance with the smoking restriction requirements of MGL chapter 111, Section 72X and 105 CMR 150.015 (D)(11)(b), including the clear designation of all residential areas as such, and the requirement that such designation not be altered or otherwise changed without the express written approval of the Board and;
 6. All areas of the nursing home not designated as a residence comply with this section, and;
 7. The nursing home makes reasonable accommodations for Employees, residents or visitors who do not wish to be exposed to smoke, whereupon;
 8. Upon compliance with this section, submission of the required documentation, conduct of a satisfactory inspection and Board certification of a designated portion of the facility as a residence, this exception shall be valid for the period of the permit year only, unless otherwise suspended or revoked.
 9. No fewer than 30 days prior to the expiration of such an exception, the nursing home may apply for renewal of its exception. If the Board does not renew such an exception before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the exception shall be considered to continue in effect until such time as the Board notifies the nursing home of its exception otherwise.
- d)** In outdoor seating portions of a food service establishment, including but not limited to patios, decks, and porches, provides that:
1. Neither food nor beverages are sold nor served there, and;
 2. Said outdoor seating portions of the food service establishment are not enclosed and;
 3. Except for a fixed or flexible covering such as an awning or canopy which may adjoin an enclosed food service establishment on no more than two sides, all outdoor seating portions of the food service establishment shall be physically separated from said establishment, and;
 4. If doors, windows, sliding or folding windows or doors or other fenestration form any part of the border to said outdoor seating portions of the food establishment, the openings shall be closed to prevent the migration of smoke into the enclosed food service establishment, and;

5. If doors, windows, sliding or folding windows or doors or other fenestration are opened or otherwise do not prevent the migration of smoke into the enclosed food service establishment, said outdoor seating portions shall be considered an extension of the enclosed food establishment and subject to the Section 11.35 of this regulation, and;
 6. The food service establishment submits a written request with sufficient documentation for the exception to the board.
- e) In an outdoor space on the premises of a workplace or food establishment, including but not limited to patios, decks and porches, provided that;
1. Said outdoor space is not enclosed, and;
 2. Except for a fixed or flexible covering such as an awning or canopy which may adjoin the workplace or food establishment on no more than two sides, said outdoor space is open to the air at all times and physically separated from an enclosed workspace to prevent the migration of smoke into the workplace or food establishment, and;
 3. The workplace or food establishment submits a written request with sufficient documentation for this exception to the Board.
- f) Exception shall be valid only when duly issued in writing by the Board, and only for the period of permit year, unless otherwise suspended or revoked. [November 1, 2005]

11.50: Tobacco Sales to Minors Is Prohibited.

11.50.1: Posting State Law.

- a) In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of the Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously by the owner or other persons in charge thereof in the shop or other place used to sell cigarettes at retail. Such notice shall directly face the purchase and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. [January 1, 2002]
- b) The Board of Health or its enforcement officer/s shall enforce this regulation. [May 1, 1994]
- c) Whoever violated this provision shall be punished by a fine of not more than five dollars (\$5.00). Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of ten dollars (\$10.00). [May 1, 1994]

11.50.2: Self Service Displays Prohibited. Self Service displays of cigarette products, from which individual packages or cartons may be selected by the customer, shall be prohibited. [January 1, 1999]

11.50.3: Sale by Persons Under Age 18. No person or entity, selling tobacco products, shall allow anyone to sell cigarettes or other tobacco products until the employee reads the Board of Health regulations and State laws regarding sale of tobacco and signs a sworn statement, a copy of which will be placed on file in the

office of the Board of Health that s/he understands and will uphold the regulations. [May 1, 1994]

11.50.4: Prohibit Cigarette Vending Machines. No tobacco products may be sold by vending machine within the Town of Marion [May 1, 1994]

11.50.5: Out-of-Package Sales Prohibited. No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes. [January 1, 2002]

11.50.6: Free Distribution of Tobacco Products.

a) No person or entity shall distribute products containing tobacco for any promotional or other commercial purposes within the Town of Marion. Such restrictions shall not apply to coupons in magazines or other periodicals or affixed to the packaging. [January 1, 2002]

b) No person, firm, corporation, establishment or agency shall distribute by hand any coupons or vouchers redeemable for tobacco or tobacco products for free or at nominal cost in the Town of Marion. [January 1, 2002]

11.60: Public Places.

11.60.1: Smoking shall not be allowed in any municipal building in the Town of Marion and within 25 feet of each point of entry to each municipal building. Smoking shall be prohibited in all public places. [January 1, 2002]

11.60.2: To the extent that the following are not covered by applicable State laws, no person shall smoke in any room in which the public is permitted including, but not limited to, any health care facility, classroom, lecture hall, motion picture theater, auditorium, school, day care facility, reception area, restroom/lavatory, waiting room, or public area of a bank. [May 1, 1994]

11.70: Workplace.

11.70.1: It shall be unlawful for any person to smoke in any workplace. [January 1, 2002]

11.70.2: No person shall smoke nor shall any person, employer, or other person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such person, permit a person to smoke in a restaurant or bar (see Section 11:30.2 a) Violations). [January 1, 2002]

11.70.3: Each person having control of premises upon which smoking is prohibited by this regulation, or his/her agent/designee shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). [January 1, 2002]

11.80: Restaurants.

11.80.1: No person shall smoke in any food service establishment or bar. [January 1, 2002]

11.90: Retail Stores.

11.90.1: Smoking is prohibited in retail stores. [May 1, 1994]

SECTION 12: MASSAGE THERAPY ESTABLISHMENTS

12.10: Authority and Purpose.

These guidelines are adopted by the Marion Board of Health as authorized by Massachusetts General Laws, Chapter 111, Section 31, and Massachusetts General Laws, Chapter 140, Section 51.

The Board of Health is authorized to take action to promulgate rules and regulations for the purpose of ensuring proper sanitation and maintenance of health care clinics.

12.20: Definitions.

12.20.1: MASSAGE/BODYWORK shall be defined as the application of various techniques to the muscular structure and soft tissue of the human body. Application of massage and bodywork techniques may include, but is not limited to stroking, kneading, tapping, compression, friction, pressure, and those techniques based on manipulation or the application of pressure to the muscular structure of soft tissue of the human body.

12.20.2: ESTABLISHMENT shall mean the room or group of rooms, office, building, place of business, or premises where massage is practiced or where therapeutic or conditioning baths of water, vapor, or other substances are given.

12.20.3: APPROVED COURSE OF MASSAGE shall mean a course on the art and science of massage that includes both theory and practice. This course of study shall include a 500-hour course of study, which meets the standards of the Associated Body Work and Massage Professionals (AMP) or the American Massage Therapy Association (AMTA).

12.20.4: MASSAGE THERAPIST shall mean a person who provides massage services or therapy for compensation.

12.30: Requirements For Individual Licensing.

12.30.1: No person shall practice massage/muscular therapy or conduct massage/muscular/body work therapy at an establishment for the giving of massage, vapor, pool shower or other baths for hire or reward OR advertise or hold himself/herself out as being engaged in the business of massage, or giving said baths in the Town of Marion without obtaining a valid license from the Board of Health.

12.30.2: All establishments offering massage/muscular therapy shall hold a valid license to operate such establishment from the Marion Board of Health. A license issued to an establishment or massage therapist is not transferable.

12.30.3: All persons engaged in the practice of massage/muscular therapy shall hold a license from the Marion Board of Health.

12.30.4: The license of the establishment and all massage therapists must be displayed in a conspicuous place.

12.30.5: The application for a massage therapy license shall consist of:

- a) The Marion Board of Health Application for Massage Therapy completed by the applicant.
- b) Proof of satisfactorily completing a 500-hour course of study at an approved school of massage therapy or muscular therapy approved by the