

CHAPTER 1

ADMINISTRATIVE PROCEDURES

SECTION 1 DEFINITIONS

1.1.001 ABUTTER: shall mean any and all abutters within three hundred (300) feet of the property boundaries of the project under review.

1.1.002 BOARD: shall mean the Town of Billerica Board of Health.

1.1.003 DAY: shall mean a calendar day unless otherwise noted.

1.1.004 THE MASSACHUSETTS STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION: shall be referred to as D.E.P.

1.1.005 THE MASSACHUSETTS STATE DEPARTMENT OF PUBLIC HEALTH: shall be referred to as D.P.H.

1.1.006 THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY: shall be referred to as the E.P.A.

1.1.007 PERSON: shall mean any individual, partnership, company, corporation, trustee, trust, organization, or applicant.

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

1.1.009 SPECIAL INSPECTIONS/COST RECOVERY

(1) **SPECIAL INSPECTIONS:** shall mean any inspection conducted which is not routine, and is out of the ordinary. This shall include but not be limited to inspections to resolve court cases, inspections of code violations in Food Establishments, Markets, Restaurants, etc., inspections of construction projects or any inspection conducted outside normal working hours of the Health Department. In the case of Food Service Establishments, Special Inspections shall be any inspection in excess of two (2) follow ups of a routine inspection. Special Inspections may be subject to special inspection fees.

(2) **COST RECOVERY:** The Board of Health may assess cost recovery charges to any person as defined in this chapter for costs incurred by the Board of Health to abate a nuisance deemed to cause a threat to public health or the environment, or a charge may be assessed for any emergency actions taken by the Board of Health to abate an imminent threat to public health or the environment or if the Board of Health is called/responds to an emergency. Failure by any person to properly reimburse the Board of Health for any cost recovery charges assessed may be cause for further legal action to collect recovery costs as allowed by law.

SECTION 2 GENERAL ADMINISTRATIVE PROCEDURES

1.2.001 POLICY MEMORANDUMS: The Board of Health may, from time to time, adopt policies for the clear and concise interpretation of local and/or state regulations, for proper enforcement of local and/or state regulations, or adopt policies to protect public health, the environmental, and citizens of Billerica.

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

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

1. This variance shall not take effect until it is properly recorded at the Registry of Deeds and a certified copy of this variance is returned to the Board of Health office indicating that a marginal reference was made on the original deed.

2. Any changes in the plan submitted and approved shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.

3. An as-built plan shall be submitted to the Board of Health before the approval of any occupancy permit, or other documentation to satisfy the intent of the Board of Health's approval of any project.

4. There shall be no encroachment into the Flood Plain as delineated and approved on the plan submitted. This restriction shall be deemed a deed restriction and extend to all future owners of the property.

5. There shall be no stump dump or dumping of any solid waste or liquid waste on site. Such activity shall constitute a violation of Massachusetts General Laws Chapter 111, Section 150A.

6. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.

7. Sewerage disposal methods which are provided by mechanical means such as a low pressure sewer system, grinder pump, etc. shall have a deed restriction attached, which indicates that the homeowner is responsible for the proper maintenance and upkeep of said system from the dwelling to the town main.

8. All drainage structures shall be installed and functioning in accordance with design standards prior to the approval of an occupancy permit. A status letter may be submitted as proof of compliance with this condition, to satisfy the intent of the Board of Health.

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

10. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.

11. The work authorized by these conditions shall be completed within two years from the date of this order, unless the time for completion has been extended to a specific date more than two years from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this order.

12. This order may be extended by the issuing authority upon application to the issuing authority at least 30 days prior to the expiration date of this order.

13. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.

14. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.

15. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.

16. A cash bond shall be submitted to the Board of Health in an amount required by the following formula. Bonds required for projects shall be equal to ten (10) percent of the EQUITY OF THE PROJECT. Equity of the Project shall be determined as follows:

Sales of homes/buildings/building lease – Cost of Construction x 10% = Bond amount required

All bonds are subject to the following conditions:

- 1) All bonds shall be cash bonds deposited in a bank selected by the Board of Health with release signed by applicant.
- 2) Any additional requirements as deemed necessary by the Board of Health may be a condition placed on the bond.
- 3) Bonds shall be kept for a minimum period of one (1) year after the date of the issuance of a certificate of compliance or occupancy permit for the final home, or building sold, or leased or other time frames as determined by the Board of Health.
- 4) The maximum amount of any bond shall be two hundred fifty thousand (\$250,000) dollars.
- 5) Said bond shall be posted and used by the Board of Health to correct any violations of its rules and regulations or a public health nuisance as determined by the Board of Health, if an applicant refuses to correct a violation or public health nuisance after notice has been provided.
- 6) Said bond must be posted prior to approval of permits.

17. The Board of Health Consulting Engineer/Consultant shall conduct inspections to ensure compliance with approved plans and conditions. All inspections shall be conducted in accordance with an inspection schedule approved by the Director of Public Health.

18. Agents of the Board of Health or their designee's, such as the Board of Health Consulting Engineer or others so designated shall have access to property covered by these conditions to make inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.

19. The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.

20. Any approval, variance or waiver granted by the Board will not become effective until all outstanding invoices from the Consulting Engineer/Consultant have been paid by the applicant.

21. These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, etc.

22. Any special conditions deemed necessary and imposed by the Board of Health.

1.2.003 REQUEST FOR AN ADMINISTRATIVE DETERMINATION OF

APPLICABILITY: Any person may request a determination of the Director of Public Health in order to ascertain a finding of facts to determine the proper applicability of the Board of Health Rules and Regulations. The Director may issue a determination with conditions, if he/she determines that a person's actions will comply with the intent of its regulations, and further provided that the same degree of public health and environmental protection can be maintained. The Director shall employ best professional

judgement practices to make administrative determinations. The authority for the current Director of Public Health or future Directors of Public Health to grant an administrative determination must be authorized by a vote of the Board.

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

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

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

1.2.005 WAIVER OF REGULATIONS: A person may petition the Board of Health for a waiver of its regulation(s). If the Board of Health determines that a waiver will not have a detrimental effect to abutters, it will not cause a public health threat or environmental harm, and if a delay may cause a hardship, the Board may waive its regulation. In no case may the Board of Health grant a waiver if any harm may be caused or any person files a petition against the granting of a waiver either before or at the Board of Health meeting where a waiver request is scheduled. Any person may also file a petition within fourteen (14) days after a waiver has been granted. In that case, the Board must hold a public hearing and notify abutters in accordance with abutter notification procedures pursuant to Chapter 1, Section 2.006.

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

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

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

1.2.007 VARIANCE REQUEST PROCEDURE/ABUTTER NOTIFICATION:

Step 1: Petitioner submits written variance request to the Board of Health office, either in hand or by certified mail. A proper submittal shall include, but may not be limited to the following:

- 1) Properly filled out application.
- 2) Appropriate fees paid.

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

Step 2: Office sets hearing date after proper submission has been determined.

Step 3: Petitioner notifies all abutters by Certified Mail, Return Receipt Requested, at least ten (10) days before hearing. Notification shall include the variance the petitioner is seeking, reasons therefore, and also the date, time and place for the scheduled hearing.

Step 4: Certified mail slips stamped by the post office shall be provided to the Board of Health office seven (7) days prior to the scheduled hearing with a copy of the notification to abutters.

Step 5: The petitioner shall provide, as evidence to the Board, the Post Return Receipt cards (Green Cards).

1.2.008 CERTIFICATE OF COMPLIANCE/OCCUPANCY INSPECTION:

(1) All projects approved by the Board of Health shall require a Certificate of Compliance, if applicable. A Certificate of Compliance form shall be utilized as the form necessary to demonstrate that any project required to have a Certificate of Compliance has been completed to the satisfaction of the Board of Health. The fee for a Certificate of Compliance shall be in accordance with the current Board of Health fee schedule.

(2) The Director of Public Health or his designated Health Agent may inspect any premises requiring a "sign-off" for occupancy. During this inspection, compliance with Board of Health regulations, conditions and other laws such as, but not limited to, Chapter X (105CMR590.000), Article II (105CMR410.00), and Title 5 (310CMR15.000), shall be expected prior to the endorsement of any document pertaining to occupancy of the subject premises. If other laws are applicable to this inspection process, then compliance will also be expected with those respective laws. Affected parties are required to seek the assistance of the Health Department in determining requirements to assure compliance.

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

SECTION 3 DEFINITIVE SUBDIVISION PLANS – SUBMITTAL AND REVIEW, DRAINAGE REVIEW, MINOR PROJECTS REVIEW, APPLICATION REQUIREMENTS

1.3.001 MINIMUM PLAN SUBMISSION: Submission of plans shall include the following but not be limited to:

- a) Two (2) complete sets of plans.
- b) A signed contract with the Board of Health's Consulting Engineer/Consultant, and a deposit and payment as required pursuant to Chapter 1, Section 4.001. If review of plans exceeds the initial deposit, the applicant shall be required to submit additional funds forthwith, after notification, in an amount estimated to complete the plan review.
- c) All drainage calculations required pursuant to applicable regulations or as requested.
- d) All sewerage disposal data.
- e) Deep hole data/water tables.

f) All Flood Plain data required by local regulations, and Federal Flood Plain (clearly delineated) or note indicating absence of Flood Plain.

g) All wetlands as established by the Conservation Commission as properly identified by a botanist or a note indicating the absence of wetlands.

h) Deletion of any criteria above must be noted on the plan.

1.3.002 CONSULTING ENGINEER/CONSULTANT COORDINATION AND PLAN REVIEW COMMENTS:

(1) It is the responsibility of the applicant and his design engineer to facilitate coordination between all consulting engineers/consultants and other concerned parties, in order to facilitate an efficient review. The consulting engineer/consultant shall be allowed sufficient time to review all plans, calculations and any other material deemed necessary to complete the review. Plans shall be reviewed and review comments issued within ten (10) business days upon submission of a completed application. A design engineer/applicant's consultant failing to coordinate properly and cooperate with the Board of Health shall be deemed just cause for denial of a project.

(2) In order to facilitate a speedy approval for development of single lots in an established subdivision, and to provide for a drainage review in order to protect public health and the environment, the Board of Health, in conjunction with the Planning Board approval process, may allow a drainage review by the Department of Public Works. Any conditions stipulated by the Department of Public Works will be considered as an Order of Conditions imposed by the Board of Health for purposes of any proposed development. The Director of Public Health shall have authority to review any conditions or recommendations and reject, approve, or impose other reasonable conditions to accomplish compliance with the drainage regulations.

1.3.003 ABUTTER NOTIFICATION: It is the responsibility of the applicant and his/her design engineer, or other designated person, to properly notify all abutters in accordance with abutter notification procedures pursuant to Chapter 1, Section 2.006.

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

1.3.005 APPEAL: Any person aggrieved by the comments or corrections recommended as a result of a plan review by the Board's Consultant, may request a hearing from the Board of Health. Said appeal must be filed within twenty-one (21) days of the date of the issuance of a decision. The Board may make determinations, policies, or waive or rescind any recommendations of their consultant.

SECTION 4 CONSULTING ENGINEERS/CONSULTANT SERVICES

1.4.001 The Board of Health may engage consultant engineers, or other consultant services that it deems appropriate, for the purpose of the orderly operation of the Health Department, to effect public health and environmental protection.

- a) As provided by G.L. Ch. 44 §53G, the Board of Health may impose reasonable fees for the employment of outside consultants, engaged by the Board of Health, for specific expert services to assist the Board of Health in its review of permit applications and oversight of compliance.
- b) Special Account. Funds received pursuant to these rules shall be deposited with the municipal treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board of Health without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

- c) Consultant Services. Specific consultant services may include but are not limited to technical or legal review of the permit application and associated information, on-site monitoring during construction, or other services related to the project deemed necessary by the Board of Health. The consultant shall be chosen by, and report only to, the Board of Health or its staff.
- d) Notice. The Board of Health shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.
- e) Payment of Fee. The fee must be received prior to the initiation of consulting services. The Board of Health may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Board within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Board of Health to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld.
- f) Appeals. The applicant may appeal the selection of the outside consultant to the Board of Health, who may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Board of Health within ten (10) days of the date consultant fees were requested by the Board of Health. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.
- g) Return of Unspent Fees. When the Board of Health's review of a permit application and oversight of the permitted project is complete, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board of Health with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.

SECTION 5 EMERGENCY PROCEDURES

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

SECTION 6 ADMINISTRATIVE AUTHORITY

1.6.001 The Director of Public Health shall have the authority to formulate proper applications and

procedures in order to effectively apply these rules and regulations. Further, he/she shall have authority to issue reasonable administrative policies for effective operation of the Health Department and enforcement of these rules and regulations. The authority for the current Director of Public Health or future Directors of Public Health to exercise administrative authority must be authorized by a vote of the Board.

SECTION 7 FEE SCHEDULES/BONDS

1.7.001 The Board of Health may, from time to time, adopt reasonable fee schedules for certain permits, hearings, and other matters it deems necessary to assess fees. All fees submitted with applications, etc. are non-refundable.

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

SECTION 8 INSPECTIONS/GENERAL DUTY REQUIREMENTS

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

SECTION 9 PLAN REVIEWS AND APPROVAL/TRANSFER OF PERMITS

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

1.9.002 TRANSFER OF PERMITS: Any application submitted for a transfer of permits shall be reviewed within thirty (30) days of submittal. Said application, if denied, shall state the reasons for denial in writing. Each submittal is subject to a thirty (30) day review period.

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

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

SECTION 10 THROUGH 18

Reserved for future regulations, amendments, etc.

SECTION 19 PENALTIES

1.19.001 Any persons, firms, or corporations violating or failing to comply with any provision of any rules and regulations of the Board of Health, shall be warned or fined in accordance with the non-

criminal disposition process adopted by Town Meeting at its meeting of October 5, 2000 (warrant article number 47) as follows:

- 1st offense – written warning or one hundred (100) dollar fine
- 2nd offense – two hundred (200) dollar fine
- 3rd offense – three hundred (300) dollar fine
- 4th and subsequent offenses – three hundred (300) dollar fine and/or enforcement action

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

SECTION 20 SEVERABILITY

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

SECTION 21 EFFECTIVE DATE

This regulation shall take effect immediately upon adoption by the Board of Health.

The Board of Health reviewed the amendments to this Regulation on June 7, 2021.

The Board of Health held a Public Hearing on the amendments of this Regulation on December 6, 2021.

The Board of Health adopted the amendments to this Regulation on December 6, 2021, by a 4-0 vote.

Promulgation of this Regulation was advertised in the Lowell Sun on January 27, 2022.