TOWN OF HARWICH

BOARD OF HEALTH
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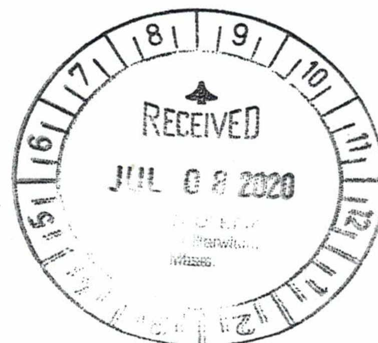

TOWN OF HARWICH BOARD OF HEALTH
WEDNESDAY, JULY 15, 2020-1:00 P.M.
WORK SESSION MEETING
HARWICH TOWN HALL – REMOTE MEETING

As required by law, the Town may audio or video record this meeting. Any person intending to either audio or video record this open session is required to inform the Chair

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Harwich Board of Health is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order.

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I **CALL TO ORDER**

II **BOARD OF HEALTH WORK SESSION**

A. **COVID-19 UPDATE-** *Vote to accept/deny/take this under consideration*
B. **DISCUSS ROLES AND RESPONSIBILITIES OF BOARD OF HEALTH, HEALTH DIRECTOR AND HEALTH DEPARTMENT-** *Vote to accept/deny/take this under consideration*
C. **DEVELOP MISSION STATEMENT FOR BOARD OF HEALTH-** *Vote to accept/deny/take this under consideration*

III **OTHER-** *Vote to accept/deny/take this under consideration*

IV **ADJOURN** - *Vote to accept/deny/take under consideration*

Authorized posting officer: Posted by:

Jennifer Clarke
Signature Date 7/8/2020 ~~Town~~ Clerk Date

Per the Attorney General's Office: The committee may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation, contact the Selectmen's Office at 508-430-7513

II - A.

Town of Harwich
Board of Health
732 Main Street Harwich, MA 02645
508-430-7509 – Fax 508-430-7531
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July 8, 2020

Weekly COVID-19 Case Update

To date there have been a total of 129 cases of COVID-19 in the Town of Harwich and 24 related deaths. There are currently 4 active cases of COVID-19 and 101 people have recovered from the virus.

As we head into the height of the summer season on Cape Cod, it is important to remember to wear a face covering when entering stores or businesses, when passing other people on the sidewalk and on the boardwalks to the beaches.

As we all expand our social circles, remember that frequent handwashing and vigilant social distancing are proven public health tools that work against the spread of coronavirus. Testing is widely available and should be done if you feel sick or have been in contact with someone who has been sick. Contact your primary care doctor for local testing options, or go to this website to find sites that do not require a referral:

https://www.mass.gov/info-details/about-covid-19-testing#where-can-get-a-test?-

Thank you and stay safe!

Meggan Eldredge
Health Director

II-B.

Massachusetts Executive Office of
Health and Human Services

Department of Public Health

Manual of Laws and Regulations Relating to Boards of Health

January 2010
Massachusetts Department of Public Health
250 Washington Street
Boston, MA 02108

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PART I. INTRODUCTION

Local boards of health in Massachusetts are required by state and local laws and regulations to perform many critical duties related to the protection of public health. These duties cover a wide range of public health control and prevention activities, including: disease surveillance; the promotion of sanitary conditions in housing, recreational facilities, and food establishments; elimination of nuisances; the protection of the environment; and numerous other responsibilities. These requirements reflect the principle that many critical health problems are best handled by local officials familiar with local conditions.

This manual is published by the Massachusetts Department of Public Health pursuant to Chapter 111, section 24, of the Massachusetts General Laws. It is available for download from the Department's website at www.mass.gov/dph. Its purpose is to provide a broad overview of the various responsibilities of local boards of health in Massachusetts and to serve as a tool for local officials to quickly reference state laws and regulations relevant to their work. As such, it contains only a brief summary of the relevant laws and regulations. More detailed guidance for local boards of health is contained in the Guidebook for Massachusetts Boards of Health published by the Massachusetts Association of Health Boards.

When accessing this manual on a computer with internet access, readers may review any cited law, regulation, or document by simply clicking on the highlighted link shown the first time a statute, regulation, or document is cited. Throughout this document, local boards of health are referred to as either "boards of health" or "boards." Unless otherwise specified, these terms include local departments of health, public health commissions, and regional health districts. "Department" means the Massachusetts Department of Public Health, unless otherwise indicated.

This manual may be updated periodically to reflect changes in laws and regulations relating to local boards of health. Every effort has been made to ensure that the information contained in this manual is accurate and up-to-date as of the date it is published. However, the information is provided as guidance only and should not be relied upon as legal advice. Links to statutes and regulations are provided for the convenience of the users of this manual. These links are not the official versions of the statutes or regulations and should not be relied upon as legally binding requirements. Official versions of the laws and regulations cited in this manual are available from the Secretary of the Commonwealth's State Publications and Regulations Division, through the State Bookstore. For a copy of an official version, contact the State Bookstore in Boston at (617) 727-2834.

PARTII. General Organization & Authority

A. Creation and General Authorizing Statutes

The general structure, powers, and duties of local boards of health are found at M.G.L. c. 111, s.26-33. Boards have authority to adopt and enforce reasonable health regulations under M.G.L. c.111, s.31. Case law upholds boards' authority to adopt regulations that are more restrictive than state standards so long as the local regulations do not conflict with state law and are not specifically preempted.

B. Regionalization

Boards of health and municipal health departments may form regional health districts for the purpose of enhancing health services, providing efficient use of resources, and receiving certain grants. M.G.L. c. 111 s.27A-27C.

Regionalization agreements are technical legal documents that need to be carefully and specifically drafted with input from counsel for each of the participating cities/towns. For example, agreements need to be specific and detailed about whether, and under what circumstances, individual cities/towns retain direction and control over their public employees even when the employees are performing duties in another town. Many other legal issues need to be addressed by city/town attorneys in regionalization agreements. Participation in a regional district requires approval from the city or town governing body as well as the participating boards of health.

PART III. Disease Prevention and Control

A. Diseases Dangerous to the Public Health

Health protection and disease control are important aspects of the duties and responsibilities of local boards of health. Boards consult with the State Department of Public Health regarding the prevention of dangerous diseases, M.G.L. c. 111, s. 7, and must report cases of dangerous diseases to the Department within twenty-four hours, M.G.L. c. 111, s. 112-113. A list of the diseases required to be reported can be found in the *Massachusetts regulations Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements, 105 CMR 300.000.* Boards of health must maintain records of reports of diseases dangerous to the public health. The board must forward copies to the local school committee as well as other local boards in whose jurisdiction the individual with the disease dangerous to public health resides, may have contracted the disease, or may have exposed others. M.G.L. c.111, s.111.

Reports of deaths from dangerous diseases must be reported weekly to the Department of Public Health. M.G.L. c. 111, s. 29.

Boards of health must collect notices of school children sent home because of dangerous disease. M.G.L. c. 71, s. 55A. See also the School Health Manual.

Boards receive reports of any inflammation, swelling, redness or unnatural discharge from the eyes of an infant less than two weeks old, and must take immediate action to prevent blindness. M.G.L. c. 111, s. 110.

Boards receive reports of people afflicted with cerebral palsy. Boards must submit an annual report of these cases to the Department of Public Health. M.G.L. c.111, s.111A.

Boards collect reports of food poisoning, which must be reported to the Department of Public Health. 105 CMR 300.100, 105 CMR 300.131.

Boards receive reports of inspections by the Division of Occupational Safety regarding violations of health laws or nuisances in industrial establishments. Local boards must investigate these reports and enforce appropriate laws. M.G.L. c.149, s.136.

The Department of Public Health has co-ordinate powers with local boards of health to investigate contagious or infectious diseases. M.G.L. c. 111, s. 7.

B. Services to the Community:

Boards of health must provide the following services to the community:

- Certify in writing within seven (7) days to a gas or electric company when there is a serious illness in a residence such that no gas or electric company shall shut off or fail to restore gas or electric service in any residence during such time as there is a serious illness. M.G.L. c.164, s.124A; 220 CMR 25.03(2).
- Provide anti-rabic vaccine and treatment. M.G.L. c.140, s.145A, 105 CMR 335.000.

- Supervise or carry out the disinfection of dwellings which have housed a person who has suffered from or died of a disease dangerous to the public health. M.G.L. c. 111, s. 109.

- Certify to the Department of Public Health persons with active tuberculosis who are unwilling or unable to accept proper medical treatment and pose a threat to public health. M.Γ.Λ. χ. 111, σ. 94A.
- Provide outpatient nurse case management services to individuals with tuberculosis. M.G.L. c. 111, s. 94H; M.G.L. c. 111, s. 95; 105 CMR 365.000.

C. Health Clinics and Hospitals

Boards may direct the operation of, and adopt rules for, city and town dental and medical health clinics. M.G.L. c. 111, s. 50. Boards may establish one or more hospitals for the reception of individuals with diseases dangerous to public health. M.G.L. c. 111, s. 92.

D. Isolation and Quarantine

Boards may direct the isolation and quarantine of individuals, animals, and property relative to communicable disease and maintain isolation hospitals to prevent the spread of infection. M.G.L. c. 111, s. 92-105, 116.

Boards enforce the isolation and quarantine regulations found at 105 CMR 300.200.

E. Vaccinations

Boards may require vaccination of inhabitants of the city or town. M.G.L. c. 111, s.181.

F. Disease Control

Boards may issue permits for removal of infected dead bodies. M.G.L. c. 111, s. 107. The may direct the removal of sick prisoners to hospitals. M.G.L. c. 111, s. 108.

PARTIV. State Sanitary Code Enforcement

The State Sanitary Code is a series of public health regulations promulgated by the Department of Public Health that specify minimum sanitation standards. The regulations are authorized pursuant to M.G.L. c. 111, s. 127A. They are organized as separate regulations but are listed as chapters of the State Sanitary Code. Boards of health have primary enforcement authority over most State Sanitary Code regulations. In extraordinary circumstances, the State Department of Public Health has the power to enforce the State Sanitary Code in like manner as boards of health if a board fails, after notice and a reasonable period of time, to enforce the code. With limited exceptions, the State Sanitary Code applies to all persons and businesses within the Commonwealth of Massachusetts. The Code does not apply to federally owned facilities and does not apply when specifically exempt by statute.

The following is a brief description of each chapter of the State Sanitary Code that boards of health are responsible for enforcing.

A. Chapter I: General Administrative Procedures

Chapter I of the State Sanitary Code, 105 CMR 400.000 entitled "General Administrative Procedures" sets forth procedures that are applicable to the administration and enforcement of all chapters of the State Sanitary Code. Unless otherwise specified in a specific chapter of the State Sanitary Code, the general administrative procedures set forth the requirements for inspections, enforcement, hearings, judicial review, penalties, and variance procedures for each chapter of the State Sanitary Code.

Boards have authority under these general provisions to issue orders reciting the existence of an emergency and requiring that such action be taken as the board deems necessary to meet the emergency. State Sanitary Code, Chapter I, 105 CMR 400.200(B), pursuant to M.G.L. c.111, s.127A; and State Environmental Code, Title I, 310 CMR 11.05(1).

B. Chapter II: Housing

Chapter II of the State Sanitary Code, 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II), sets forth the minimum standards for housing in the Commonwealth. The purposes of this chapter are to protect public health, safety, and the well-being of occupants and the general public and to provide enforcement procedures for local boards of health. Except as specified in this chapter, the housing code applies to all types of housing, including single and multi-family dwellings, rooming houses, dormitories, and temporary housing.

Local boards of health are required to enforce all aspects of the housing code, including conducting inspections upon their own initiative or upon request, issuing correction orders, and enforcing compliance. If the board determines that a dwelling has become a nuisance, is unfit for human habitation, or may be a cause of sickness or accident to the occupants or the public, the board may issue a written condemnation order requiring the occupants to vacate, requiring the premises be put in a clean condition, or torn down, or requiring compliance with the regulations set forth in the code or adopted by the board of health. M.G.L. c. 111, s. 127B.

A board must certify violations and enforce the provisions of the Sanitary Code. It may also grant variances in accordance with 105 CMR 410.840.

C. **Chapter III: Farm Labor Camps**

Housing and sanitation standards for farm labor camps for the housing of temporary/migratory farm workers are governed by Chapter III of the State Sanitary Code. 105 CMR 420.000. Farm labor camp regulations are enforced by the State Department of Public Health, but local boards may be notified concerning farm labor camp issues in their community.

D. **Chapter IV: Recreational Camps for Children**

Chapter IV of the State Sanitary Code, 105 CMR 430.000: Minimum Standards for Recreational Camps for Children (State Sanitary Code, Chapter IV), sets forth the minimum housing, health, safety and sanitary protection standards for children in the care of recreational camps operating in the Commonwealth.

Boards of health must license recreational camps for children. M.G.L. c.140 s.32B. Certain types of recreational programs are exempt (see definition of recreational camp for children in 105 CMR 430.020 for list of exemptions). A board of health must inspect each camp facility before granting a license for the upcoming year. Boards have the authority to grant variances. Variances must be submitted to the Department of Public Health, but are not subject to Department approval. Local boards have the authority to adopt, alter or amend rules and regulations to enforce M.G.L. c.140 s.32B, provided that they don't conflict with the State Sanitary Code.

E. **Chapter V: Public/Semi-Public Swimming Pools**

Chapter V of the State Sanitary Code, 105 CMR 435.000: Minimum Standards for Swimming Pools (State Sanitary Code, Chapter V), sets forth the minimum standards for health and safety of swimming, wading, and special purpose pools operated in the Commonwealth. It does not apply to private residential pools. Boards of health are required to inspect and issue annual permits to operate a swimming, wading or special purpose pool.

Boards may grant variances to 105 CMR 435.000 subject to Department approval. Except in cases of emergencies, no variance approved by a board may go into effect until the Department has approved it, or after 30 days if the Department fails to comment on the variance.

The Virginia Graeme Baker Pool & Spa Safety Act is a federal law designed to prevent serious injuries and fatalities associated with suction entrapment in pools and spas. While it is enforced by the federal Consumer Product Safety Commission, the Department of Public Health has adopted these requirements as part of 105 CMR 435.000. The specific requirements are available from the Department's website: http://www.mass.gov/Eeohhs2/docs/dph/environmental/sanitation/pool_federal_requirements.pdf

F. **Chapter VI: Family Type Camp Grounds**

Chapter VI of the State Sanitary Code, 105 CMR 440.000: Minimum Standards for Developed Family Type Camp Grounds (State Sanitary Code, Chapter VI), provides minimum health and safety standards for camp ground facilities used for recreational camping or group activities. Boards of health license family type campgrounds pursuant to M.G.L. c.140 s.32B, and the Family Type Camp Ground regulations. A board may grant variances to105 CMR 440.000 subject to Department approval. Except in cases of emergencies, no variance approved by a board may go

into effect until the Department of Public Health has approved it, or after 30 days if the Department fails to comment on the variance.

G. Chapter VII: Bathing Beaches

Chapter VII of the State Sanitary Code, 105 CMR 445.000: Minimum Standards for Bathing Beaches (State Sanitary Code, Chapter VII), sets forth minimum requirements for the operation of bathing beaches in the Commonwealth. These regulations are authorized by the State Sanitary Code as well as a specific bathing beach statute, M.G.L. c. 111, s. 5S. These regulations apply to state and local agencies as well as beaches operated by semi-public operators (e.g., motel, country club, or neighborhood association beaches), but not to privately owned beaches. Private beaches are those that are not considered public or semi-public beaches, as defined in 105 CMR 445.010. The purposes of these regulations are to protect the health, safety and well-being of the users of bathing beaches, to establish acceptable standards for bathing water quality, and to establish procedures for informing the public of any bathing water closures.

Boards of health must license beaches pursuant to M.G.L. c. 111, s. 5S, and the bathing beach regulations. A board of health may grant variances to 105 CMR 445.000 for any beach not operated by the Commonwealth subject to Department approval. All variances granted or denied by a board of health must be made in writing and shall be posted 30 days following its issuance. Approval is presumed if the Department does not respond within 45 days.

H. Chapter VIII: Medical or Biological Waste

Chapter VIII of the State Sanitary Code, 105 CMR 480.000: Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code, Chapter VIII), sets forth the minimum requirements for the storage, treatment, disposal and transportation of medical or biological waste. The purpose of the regulations is to safeguard the public and workers from potential health risks associated with the improper storage, management, treatment, and disposal of medical and biological waste.

The regulations specify the requirements to store medical or biological waste prior to treatment or shipment off-site for treatment. As authorized by M.G.L. c. 94C, s. 27A, agencies as well as businesses may establish sharps collection centers. Standards for the collection and management of sharps by sharps collection centers are set forth in 105 CMR 480.135. In addition, the regulations specify approved disinfection methods, disposal options, packaging, labeling and shipping requirements, and tracking and documentation procedures. Except for medical waste generated in a licensed health care facility, a board has the authority to inspect facilities that generate medical or biological waste as is necessary for the protection of the public health. In a community that collects and manages home sharps, the board must inspect all sharps collection centers and kiosks prior to operation. The board must notify the department within thirty days of inspection of the location and address of the sharps collection centers and kiosks. M.G.L. c. 94c, s. 27A. Boards may also enforce these regulations through their authority to abate nuisances.

I. Chapter X: Retail Food Establishments

Chapter X of the State Sanitary Code, 105 CMR 590.000 entitled "Minimum Sanitation Standards for Food Establishments" (State Sanitary Code, Chapter X),

sets forth the minimum requirements to operate a retail food establishment in the Commonwealth.

Boards issue permits for the operation of retail food establishments, including markets, temporary food events, caterers, food vendors, home kitchens that are part of a bed and breakfast operation, food pantries, and other charitable and/or church operated food events.

Boards are responsible for inspecting retail food establishments, issuing orders, and under certain circumstances suspending, revoking or not renewing permits or denying an application for an initial permit. Specific grounds for these enforcement actions are found at 105 CMR 590.012. Boards may use ticketing procedures in the enforcement of sanitation standards if the town has adopted M.G.L. c. 40, s. 21D as a by-law.

Food inspectors should be well trained. Training and continuing education is available through the Massachusetts Health Officers Association.

At the time a permit is initially issued, the local board of health should provide the permit holder with instructions for how to obtain a copy of 105 CMR 590.000 as well as a copy of the federal 1999 Food Code so that the permit holder is on notice of compliance requirements and the conditions that must be met for retention of the permit.

J. Chapter XI: Indoor Skating Rinks

Chapter XI of the State Sanitary Code, 105 CMR 675.000: Requirements to Maintain Air Quality in Indoor Skating Rinks (State Sanitary Code, Chapter XI), describes requirements to ensure the maintenance of safe and appropriate indoor air quality in ice skating rinks that utilize ice resurfacing equipment powered by combustible fuels which produce carbon monoxide or nitrogen dioxide. The purpose of the regulations is to prevent adverse health effects, particularly to children, from exposure to combustion products in enclosed indoor ice rinks. Local boards are responsible for enforcing 105 CMR 675.000, except with regard to state operated facilities.

A board may revoke or suspend a certificate with notice for failure to comply with 105 CMR 675.000. Boards may also grant variances.

K. Lead Poisoning Prevention

While not a chapter of the State Sanitary Code, the lead poisoning prevention statutes and regulations relate to housing conditions and authorize the enforcement of violations pursuant to the State Sanitary Code. Upon receiving a report of a lead poisoned child or upon the request of the occupant, the board must inspect residential premises constructed before 1978 in which a child under six resides for compliance with the State Lead Poisoning Prevention law and regulations. M.G.L. c.111, s.189 - s.199A and 105 CMR 460.000. Also, the board must inspect for lead any time it conducts a Sanitary Code inspection in such premises. Judicial proceedings must be initiated to enforce compliance in accordance with the timelines set forth in 105 CMR 560.000.

PARTV. Food Protection Laws and Regulations

In addition to the requirements in the retail food establishment regulations [105 CMR 590.000], Massachusetts has numerous other statutes and regulations that place requirements on local boards of health related to food safety, food security, and consumer protection. Other general food regulations are found at 105 CMR 510.000 entitled "Standards of Identity and Definitions of Purity and Quality of Food;" 105 CMR 515.000 entitled "Action Levels for Poisonous and Deleterious Substances in Food;" and 105 CMR 520.000 entitled "Labeling."

Other statutes related to food are as follows:

A. Eggs

Local Boards of Health issue permits for establishments for breaking and canning eggs. M.G.L. c. 94, s.89-92A.

B. Dairy/Milk

The law covering pasteurization plants, which are licensed by boards, is found at M.G.L. c. 94, s. 48A and the regulations entitled "Milk, Milk Products, and Milk Pasteurization Plants" are found at 105 CMR 541.000. Other laws related to milk and dairy products, such as butter, cream, and cheese, are found at M.G.L. c. 94, s. 12-63.

Boards may adopt bacterial standards for milk which are stricter than the standards adopted by the Department of Public Health. M.G.L. c. 94, s. 13E.

City health departments shall have milk inspectors. Town boards may appoint a milk inspector. Inspectors must inspect and license milk producers and dealers. M.G.L. c. 94, s.33 and s.40.

C. Bottled Water and Non-Alcoholic Beverages

Boards of health issue permits to facilities within the Commonwealth in the business of bottling or manufacturing water and/or non-alcoholic beverages. M.G.L. c. 94, s. 10A-10G. The Department of Public Health issues permits to facilities located outside the Commonwealth that sell bottled water and/or non-alcoholic beverages within the Commonwealth. M.G.L. c.94, s.10A. The manufacturing and bottling of water and non-alcoholic beverages is further regulated by 105 CMR 570.000 entitled "The Manufacture, Collection, and Bottling of Water and Carbonated Non-alcoholic Beverages.

D. Bakeries and Bakery Products

Boards enforce sanitary standards for bakeries and in the preparation, handling, storing, labeling, and transporting of bakery products. Boards may take enforcement action against bakeries found unfit for the production, handling, or storing of food, or that are dangerous to the health of its employees. M.G.L. c. 94, s. 2-10.

E. Frozen Desserts and Frozen Dessert Mix

1. Boards are responsible for licensing, inspecting, and enforcing the sanitary and
2. labeling standards applicable to the manufacturing of frozen desserts and
3. frozen dessert mixes pursuant to M.G.L. c. 94, s. 65G-65U and the regulations

found at 105 CMR 561.000.

F. **Cold Storage and Refrigerated Warehouses**
While the Department of Public Health issues licenses for cold storage and refrigerating warehouses, local boards of health are responsible for inspecting cold storage warehouses for compliance with M.G.L. c. 94, s. 66-72.

G. **Seafood and Shellfish**
Permits for retail and wholesale seafood and shellfish operations are issued jointly by the Division of Marine Fisheries and the Department of Public Health. The regulations governing seafood and shellfish operations are found at 105 CMR 533.000. Shellfish transported into Massachusetts for consumption must be through dealers who are certified and on the Interstate Shellfish Shippers List (ISSL). M.G.L. c. 130, s. 81. If the shellfish come from another country, the shellfish must be certified by that country under the uniform sanitation requirements program for the certification of interstate shellfish shippers. All shellfish must be properly labeled at all times, with the producer, shipper, number of certificates, and the place and date where taken. Other statutes related to seafood are found at M.G.L. c. 94, s. 74-88D. M.G.L. c.94, s. 88D authorizes the Department or its agents to immediately seize fish offered for sale that is found to be unfit for human consumption. Inspections and enforcement are primarily state responsibilities, but the watchfulness and input from local officials enhances the state's ability to carry out its enforcement mandates.

H. **Sampling of Food**
Boards of health are authorized to collect food samples pursuant to M.G.L. c. 94, s. 188- 189.

I. **Seizure of Food**
Boards of health are authorized to inspect and to seize tainted, diseased, decayed, unwholesome, or unfit meat, fish, vegetables, produce, fruit or provisions of any kind that are exhibited and exposed for sale as food. M.G.L.. c. 94, s. 146.

J. **Slaughter Houses**
Slaughter houses are generally under the jurisdiction of the Department of Public Health pursuant to M.G.L. c. 94, s. 118-139G, however, local boards of health may have concurrent jurisdiction where they have determined that a slaughter house is a nuisance.

K. **Farm Products and Other Emerging Food Issues**
Apples, cranberries and many other farm products generally fall under the jurisdiction of the Department of Agricultural Resources. There are some farm product areas that overlap with public health, and there are some emerging trends that are relevant to local boards of health, including: sale of raw milk; mobile poultry processing; aquaculture; and the sale of an expanding variety of foods at farmers' markets, such as shellfish. Local boards of health play a key role in monitoring these activities and providing data to state officials working on pilot projects and regulatory drafting in these emerging areas.

In November 2010, the 105 CMR 590.000 sections pertaining to listing calorie information on menus in certain food establishments go in to effect. In addition, regulations pertaining to the responsibility of food establishments concerning allergens will be promulgated in 2010.

PARTVI.Motels, Mobile Home Parks, and Public Lodging Places

The local board of health is responsible for licensing motels and manufactured housing communities. M.G.L. c. 140, s. 32B. The board shall at once notify the Department of Environmental Protection of the granting or renewal of such a license, and said department shall have jurisdiction to inspect the premises to determine that the sources of water supply and the works for the disposal of the sewage of such premises are sanitary. The board of health may adopt rules and regulations to enforce this statute.

A board must also grant licenses to public boarding houses in accordance with M.G.L. c. 140, s. 36. No license shall be granted until the board of health has certified that the building is provided with a sufficient number of water closets and urinals and with good and sufficient means of ventilation. A board may require the licensee to thoroughly cleanse and disinfect all parts of a public lodging place and the furniture therein to the satisfaction of the board. Motels and lodging houses are also subject to the requirements in chapter II of the State Sanitary Code (see page 7 of this Manual).

PARTVII.Environmental Protection:

A. Hazardous and Solid Waste

Boards of health assign sites for storage, treatment, or disposal of hazardous waste (not including wastewater treatment facilities permitted under M. G. L. c. 21, s. 43) in compliance with M.G.L. c. 111, s. 150B. Boards are required to notify the Department of Environmental Protection (DEP) of pending applications. DEP recommends notification to the mayor or selectmen concerning any pending applications for licenses for the collection, storage, treatment, or disposal of hazardous waste, as well as information supplied annually by DEP identifying types and quantities of hazardous waste generated, stored, treated or disposed of within the city or town. M.G.L. c. 21C, s. 4. A board may rescind, suspend, or modify the site assignment after due notice and hearing after determining that the operation and maintenance of a facility has resulted in a significant danger to the public health or is not in compliance with the conditions established in the assignment. A decision in writing must be made including a statement of reasons and facts relied upon by the board.

Boards of health also assign sites for sanitary landfills, refuse incinerators, waste storage or treatment plants, and refuse transfer stations, after a public hearing in accordance with M.G.L. c. 111, s. 150A and 150A1/2. DEP's site assignment for solid waste facilities regulations can be found at 310 CMR 16.00. Boards receive a site suitability report from DEP providing DEP's review of the application. Special wastes include asbestos waste, infectious waste, and sludges. 310 CMR 19.061 (3). Infectious wastes that have been rendered non infectious in accordance with 105 CMR 480.000 are not subject to 310 CMR 19.061. Boards also receive notification from operators of composting facilities as well as wood chipping and shredding operations, as required by 310 CMR 16.05.

B. Septage and Garbage

A board of health enforces compliance with the standard requirements for on site sewage treatment and disposal systems. 310 CMR 15.00. Authority to make rules and regulations for the removal, transportation, and disposal of offal, garbage, and other offensive substances is given to boards by M.G.L. c. 111, s. 31B. Along with these regulations, the board issues permits for the removal and transportation of these substances, including permitting waste haulers. M.G.L. c. 111, s. 31A.

A board may investigate illegal dumping and issue orders to clean up after such dumping. M.G.L. c. 111, s. 122.

C. Air Pollution

Boards may adopt and enforce regulations to control air pollution. M.G.L. c. 111, s. 31C. DEP's air pollution control regulations provide specific authority to local boards to enforce certain provisions. 310 CMR 7.00. Some of the specific areas include: open burning (310 CMR 7.07); incinerators (310 CMR 7.08); dust, odor, and construction and demolition (310 CMR 7.09); noise (310 CMR 7.10); transportation and idling (310 CMR 7.11); asbestos (310 CMR 7.15); and outdoor wood boilers (310 CMR 7.26(50)).

PARTVIII. Miscellaneous

A. Pesticides

Even though the Massachusetts General Laws give no authority to local boards of health to regulate pesticides, the Massachusetts Supreme Court has decided that they may make reasonable regulations that are not inconsistent with the Massachusetts Pesticide Control Act, M.G.L. c. 132B or state regulations, 333 CMR 2.00. M.G.L. c. 132B, 333 CMR 2.00. Wendell v. Attorney General, 394 Mass 518 (1985). Additionally, boards of health receive notice of application of herbicide to a right of way 21 days prior to the application. 333 CMR 11.07.

Boards also work to control mosquito-borne diseases, such as West Nile Virus and Eastern Equine Encephalitis, in collaboration with local mosquito control districts, when available, and in conjunction with the Department of Public Health and the Department of Agricultural Resources.

B. Nuisances

Boards of health are required to examine all nuisances, sources of filth and causes of sickness within the city or town. Whenever a board is aware of a nuisance or cause of sickness that may be injurious to the public health, the board is required to remove or destroy the nuisance or cause of sickness, or prevent the nuisance or cause of sickness. M.G.L. c. 111, s. 122. The board is required to make regulations related to the removal and destruction of such nuisances. M.G.L. c. 111, s. 122. Boards may condemn all nuisances and clean or tear down a nuisance. M.G.L. c. 111, s. 125. Boards are authorized to enter any land, building or premises, or go on board a vessel within its town, to examine into and destroy or prevent a nuisance, source of filth or cause of sickness. M.G.L. c. 111, s. 131.

C. Noisome and Noxious Trades

The board shall assign locations for noisome trades after a public hearing. M.G.L. c. 111, s. 143. A noxious trade is a slaughter house, melting or rendering establishment, or any other offensive trade or establishment. M.G.L. c. 111, s. 151. Anyone who wishes to run such an establishment must get the written consent of the board of health in the town where the building or premises are situated.

D. Animal Inspectors

Boards of health in towns may nominate animal inspectors. M.G.L. c. 129, s. 15.

E. Use of Traps

Boards of health may authorize the use of traps to capture furbearing mammals to minimize threats to human health and safety associated with activities of these mammals. They may issue emergency permits for such traps, not to exceed a period of ten days. A denial of an emergency permit may be appealed to the Department of Public Health. M.G.L. c. 131, s. 80A.

F. Vapor, Pool, Shower or Bath Houses

Boards of health may authorize businesses operating vapor, pool, shower or bath houses. M.G.L. c. 140, s. 51. The field of massage therapy is regulated by the state Board of Registration of Massage Therapy.

G. **Death Certificates and Burial Permits**
Local boards are responsible for issuing, receiving, and recording death certificates and burial permits. M.G.L. c. 114, s. 45; M.G.L. c. 46, s. 11.

H. **Funeral Directors**
Boards of health license funeral directors. M.G.L. c. 114, s. 49. Boards report to the Board of Registration of Funeral Directors and Embalmers.

I. **Location of Cemeteries**
Boards approve the location of cemeteries. M.G.L. c. 114. s. 34.

J. **Retain Charge of Cases**
Boards retain charge of any case arising under M.G.L. c.111 in which the board has acted. M.G.L. c. 111, s. 32.

K. **Enforcement of Local Health Regulations**
Boards enforce all local health regulations promulgated pursuant to M.G.L. c. 111, s. 31.

L. **Tanning Facilities**
Boards issue licenses to tanning facilities. 105 CMR 123.000. Boards must inspect tanning facilities within 30 days of licensure, every six months thereafter, and upon receipt of a complaint. Boards enforce regulatory requirements, hold hearings, and may issue variances.

M. **Smoking**
Enforcement of the Smoke-Free Workplace Act is delegated mainly to local boards of health. M.G.L. c. 270, s. 22(m)(1). Enforcement may be through non-criminal disposition. M.G.L. c. 270, s. 22(M)(2). Boards may receive complaints from the Department that initiate investigations regarding the failure to comply with the Smoke Free Workplace Act. M.G.L. c. 270, s. 22(m)(3). Enforcement may also occur through periodic inspections and locally received complaints. An annual report must be sent to the Commissioner of Public Health.

N. **Subdivision of Land**
A board must approve or disapprove definitive plans for the subdivision of land. M.G.L. c. 41, ss. 81S-81V.

O. **Fluoridation**
A board of health may order the fluoridation of public water supplies. However, this order may be overturned by a municipal referendum vote. M.G.L. c. 111, s. 8C.

P. **Drinking Water**
Upon determination that drinking water in a dwelling or food service establishment is unsafe, the boards may order discontinuance of use or order provision of a new source. M.G.L. c. 111, s. 122A.

Q. **School Physicians and Nurses**
In some cases, boards may be responsible for appointing school physicians and nurses.

M.G.L. c. 71, s. 53.

R. Public Sanitary Stations

In cities, and in towns with a population greater than ten thousand, towns must establish public sanitary stations with separate water closets for the use of each sex if, in the opinion of the board of health, public necessity requires it. M.G.L. c. 111, s. 33.

II-B.

DUTIES OF LOCAL BOARDS OF HEALTH IN MASSACHUSETTS

The following is not intended as legal advice but as a quick and convenient summary. To avoid errors, please check the original source regulation or law before using these citations in an official document. For more detailed information, refer to the MAHB Legal Handbook, or the Guidebook for Massachusetts Boards of Health

Local boards of health in Massachusetts are required by state statutes and regulations to perform many important and crucial duties relative to the protection of public health, the control of disease, the promotion of sanitary living conditions, and the protection of the environment from damage and pollution. These requirements reflect the legislature's understanding that many critical health problems are best handled by the involvement of local community officials familiar with local conditions.

The following is a list of duties and responsibilities of local boards of health in Massachusetts. Each item includes a citation to the statute or regulation which imposes the duty or responsibility. The items have been grouped under general subject categories.

Following this listing of Required Duties is a list of Additional Powers of local boards of health which extend the local board's authority over the broad range of health, sanitation and environmental problems.

A. Records, Recordkeeping and Reports:

1. In cities, submit an annual report to the city council concerning the board's activities during the preceding year and concerning the sanitary condition of the city. M.G.L. c.111, s.28.

2. Maintain numerous records and retain them for required minimum retention periods. (A list of approximately three dozen categories of board of health records and their retention periods, will be found in the Guidebook for Massachusetts Boards of Health published by the Massachusetts Association of Health Boards.

3. Process numerous types of reports of cases of diseases. These reports are detailed in Food Borne Illness Investigation and Control Reference Manual, and MAHB Guide book.

4. Process of death certificates. M.G.L. c.46, s.11.

B. Health Care and Disease Control:

1. Upon request, telephone to a gas and electric utility company and certify in writing within seven (7) days of said telephone call that there is a serious illness in a residence such that no gas or electric company shall shut off or fail to restore gas or electric service

in any residence during such time as there is a serious illness. M.G.L. c.164, s.124A; 220 CMR 25.03(2).

2. Receive reports of cases of disease dangerous to public health. Keep records of these reports and also forward copies of these reports to the local school committee, and to other local boards in whose jurisdiction the patient resides, or may have contracted the disease, or may have exposed others. M.G.L. c.111, s.111. See 105 CMR 300.100 for list of diseases required to be reported.

3. Report cases of dangerous diseases to the Department of Public Health within twenty-four hours. M.G.L. c.111, s.112. See 105 CMR 300.100 for a list of diseases required to be reported.

4. Consult with the Department of Public Health regarding the prevention of dangerous diseases. M.G.L. c.111,s.7.

5. Send to the Department of Public Health weekly reports of deaths due to dangerous diseases. M.G.L. c.111 s.29.

6. Receive notices of school children sent home because of dangerous disease. M.G.L. c.71, s.55A. See the <u>School Health Manual.</u>

7. Report to the Department of Public Health cases of a certain contagious disease occurring at diary farms. See 105 CMR 310.100-110 for list of such diseases required to be reported.

8. Receive reports of any inflammation, swelling, redness or unnatural discharge from the eyes of an infant less than two weeks old, and take immediate action to prevent blindness. M.G.L. c.111, s.110.

9. Receive reports of persons afflicted with cerebral palsy, and submit an annual report of these cases to the Department of Public Health. M.G.L. c.111, s.111A.

10. Provide anti-rabic vaccine and treatment. M.G.L. c.140, s.145A, 105 CMR 335.

11. Supervise or carry out the disinfection of dwellings which have housed a person who has suffered from or died of a disease dangerous to the public health. M.G.L. c.111, s.109.

12. Receive reports of food poisoning and send these reports to the State Department of Public Health, 105 CMR 300.000.

13. Receive notices from inspectors of the Division of Occupationl Safety regarding violations of health laws or nuisances in industrial establishments, investigate these reports, and enforce appropriate laws. M.G.L. c.149, s.136.

C. <u>Housing and Dwellings</u>:

1. Enforce Chapter II of the State Sanitary Code: Minimum Standards of Fitness for Human Habitation, M.G.L. c.111, ss.127A and 127B: 105 CMR 410.000. enforcement of Chapter II includes inspecting dwellings (upon request or upon the board's initiative) for compliance with the minimum standards, certifying violations, issuing orders, holding

hearings, granting variances and instituting court proceedings if necessary to enforce such orders.

2. Enforce the State Lead Poisoning Prevention regulations. M.G.L. c.111, s.198; 105 CMR 460.000. Enforcement of these regulations includes inspecting dwellings (upon request or upon the board's initiative) for lead paint, issuing orders for removal of lead paint, and instituting court proceedings to enforce such orders if necessary.

3. Review and approve or disapprove preliminary and definitive plans for the subdivision of land. M.G.L. c.41, ss.81S-81V.

4. Inspect and certify public lodging houses for waterclosets, urinals, ventilation and cleaning. M.G.L. c.140, s.36.

D. Hazardous Wastes:

1. Assign the site for a hazardous waste disposal facility as follows (M.G.L. c.111, s.150B):

   a. Notify the Department of Environmental Protection (DEP) of the receipt of an application to assign a site.

   b. Assess significance and degree of danger to public health and consider and evaluate any evidence submitted.

   c. Give public notice and hold a public hearing.

   d. Every decision of the board in assigning or refusing to assign a site must be in writing and include a statement of reasons and facts relied on.

2. Chairperson of board serves on the local assessment committee, established whenever a developer seeks to construct and operate a hazardous waste facility within the city or town. Committee has certain duties including negotiating with the developer, entering a contract, and adopting necessary rules and procedures. M.G.L. c.21D, s.5.

3. Notify the mayor and city council or board of selectmen of the following (M.G.L. c.21C, s.4):

   a. Pending applications for licenses for the collection, storage, treatment, or disposal of hazardous waste, upon notification from DEP.

   b. Information supplied annually by DEP identifying types and quantities of hazardous waste generated, stored, treated or disposed of within the city or town.

E. Solid Waste:

1. Assign sites of sanitary landfills, refuse incinerators, waste storage or treatment plants, and refuse transfer stations, after a public hearing. Ensure that these do not present a danger to public health. M.G.L. c.111, s.150A.

2. Consider and act on applications for permits for the disposal of special wastes. 310 CMR 19.16.

3. Consider and act on applications for special permits for salvaging or recycling materials from sanitary landfill sites or refuse transfer stations. 310 CMR 19.18; 18.15(1).

4. Periodically inspect sanitary landfill sites, and provide written notice of deficiencies. 310 CMR 19.25.

5. Periodically examine and evaluate refuse transfer stations. 310 CMR 18.00.

6. Inspect and verify satisfactory completion of all corrective work to sanitary landfill projects. 310 CMR 19.26(3).

7. Handle requests for variances of regulations governing sanitary landfills and refuse transfer stations (forward these to DEP); keep notices of the grants of these variances 310 CMR 19.32; 18.27.

8. Keep on file an emergency plan governing emergencies occurring at a refuse transfer station. 310 CMR 18.21.

F. Septage and Garbage

1. Enforce Title V of the State Environmental Code; Minimum Requirements for the Subsurface disposal Sewage, 310.CMR 15.00.

2. Make rules and regulations for the removal, transportation and disposal of garbage, offal and other offensive substances. M.G.L. c.111, s.31B.

3. Issue permits for the removal or transportation of garbage, offal or offensive substances when such refuse has been collected in the city or town. Keep registry of all transporters of refuse through the city or town, and enforce local rules and regulations regarding such transport. M.G.L. c.111, s.31A.

G. Nuisances:

1. Investigate nuisances which in the board's opinion may be injurious to health. The board shall destroy, prevent or remove such nuisances, and shall make regulations relative to nuisances. M.G.L. c.111, s.122.

2. License noisome trades M.G.L. c.111, s.151.

3. Assign location for slaughter houses or other noxious or offensive trade. M.G.L. c.111, s.143.

H. Food:

1. Issue permits for all food service establishments, including restaurants and food service facilities in stores, recreational camps for children, family style campgrounds, institutions, hotels, motels, schools, retail food store, mobile food units and pushcarts, etc., 105 CMR 590.052.

2. Enforce Chapter X of the State Sanitary Code: Minimum Sanitation Standards for Food Establishments, 105 CMR 590.000. Enforcement includes conducting inspections, issuing orders, suspending or revoking permits where necessary.

3. Issue permits for plants which break and can eggs. M.G.L. c.94, s.89.

4. License milk pasteurization plants. M.G.L. c.94, s.48A.

5. City health departments shall have milk inspectors. Town boards may appoint milk inspector.

Inspectors must inspect and license milk producers and dealers. M.G.L. c.94, s.33 and s.40.

6. Issue permits for plants that bottle carbonated non-alcoholic beverages. M.G.L. c.94, s.10A; inspect such plants, and revoke permits where plants are found to be unsanitary or otherwise in violation of public health rules and regulations, M.G.L. 94 s.10C; 105 CMR 570 et. Seq. Send to the Department of Public Health copies of all licenses, applications and half the license fees, 105 CMR 570.002. Notify each owner prior to the expiration

date of each permit and close plants that fail to renew such permits, 105 CMR 570.002. M.G.L. c.94, s.10C.

7. Register and inspect bakeries and enforce State Bakery Regulations. M.G.L. c.94, s.94F; 105 CMR 550.000; 105 CMR 551.000. Furnish DPH with monthly reports of inspections, 105 CMR 550.001.

8. License plants that manufacture frozen desserts, M.G.L. c.94, s.65H; 105 CMR 561.000.

9. Inspect cold storage and refrigerated warehouses, M.G.L. c.94, s.67.

10. Enforce M.G.L. c.130, s.81 which prohibits importation of shellfish which have not been certified by a United States or foreign shellfish regulating agency.

11. Enforce statutes and regulations relative to the adulteration and misbranding of food. M.G.L. c.94, ss.186-195.

I. Pools and Beaches:

1. Enforcement Chapter V of the State Sanitary Code: Minimum Standards for Swimming Pools, 105 CMR 435.000. Enforcement includes issuing annual permits, conducting examinations, issuing orders, holding hearings, granting variances, taking water samples.

2. Enforce Chapter VII of the State Sanitary Code: Minimum Standards for Bathing Beaches, 105 CMR 445.000. Enforcement includes issuing annual licenses, approving plans for new or altered beaches, issuing orders, holding hearings, granting variances, receiving reports of accidents, taking water samples.

3. Prohibit swimming in water that fails to meet proscribed standards for bathing, 105 CMR 445.10 (-3).

4. Review plans for new or altered bathing beaches, 105 CMR 445.16.

J. Camps, Motels and Mobile Home Parks:

1. Inspect all recreational camps for children and family style campgrounds, motels, mobile home parks and cabins; and annually issue licenses for these facilities, M.G.L. c.140, ss.32B and 32C. Send copies of family style campground permits to the Department of Environmental Protection.
2. Enforce Chapter VI of the State Sanitary Code: Minimum Standards for Developed Family type Campgrounds, 105 CMR 440.000. Enforcement includes conducting examination; issuing orders; issuing, suspending and revoking licenses; holding hearings; granting variances.

3. Enforce Chapter IV of the State Sanitary Code: Sanitary Standards for Recreational Camps for Children, 105 CMR 430.000. Enforcement includes inspection, issuing orders and licenses, conducting hearings, granting variances.

K. Miscellaneous:

1. Pesticides

a) Local boards may make reasonable health regulations regarding pesticides provided such regulations are not inconsistent with the Massachusetts Pesticide Control Act, M.G.L. c.132B or state regulations, 333 CMR 2.00. Wendell v. Attorney General, 476 NE 2nd 585, 394 Mass 518 (1985). For example, a city or town may want to give its board of health an opportunity to determine whether the proposed application of pesticides in particular locations would be consistent with the products labeling or other restrictions imposed by the Department, Wendell v. Attorney General, supra, 394 Mass at 528.

b) Receive public notice of the application of herbides from applicants that intend to maintain a right of way by the application of herbides. 333 CMR 11.07.

2. Nominate animal inspectors, M.G.L. c.129, s.15.

3. License massage parlors, M.G.L. c.140, s.51.

4. Issue burial permits, M.G.L. c.14, s.45.

5. License and if necessary revoke licenses for funeral directors. Transmit to the board of registration in embalming names and addresses of all licensees, M.G.L. c.114, s.49.

6. Approve location of cemeteries, M.G.L. c.114. s.34.

7. Retain charge of any case arising under M.G.L. c.111 in which the board has acted. M.G.L. c.111, s.32.

8. Enforce all local health regulations promulgated pursuant to M.G.L. c.111, s.31.

J. Smoking

1. Receive written complaints regarding the willful failure or refusal to comply with the Indoor Clean Air Act regarding restaurants, supermarkets or retail food outlets. M.G.L. c.270 s.22.

2. Inspect the area described in the complaint and enforce no-smoking laws. M.G.L. c.270 s.22.

3. Provide written response to complainant within 15 days and send copies of the complaint and response to DPH. M.G.L. c.270 s.22.

ADDITIONAL POWERS AND AUTHORITY OF LOCAL BOARDS OF HEALTH IN MASSACHUSETTS

Local boards of health in Massachusetts have historically played a crucial role in the protection of public health, promotion of sanitary living conditions and protection of the environment. In recognition of the importance of local leadership and action in these areas, the legislature has enacted over the years numerous statutes which authorize and thereby encourage local boards to be responsible for dealing with the broad range of health, sanitation and environmental problems at the local community level.

The following is a list of statutes which grant additional powers and authority to local boards of health. Each time includes a citation to the appropriate statute. The items have been grouped under general subject categories which parallel, where possible, the categories in the prior lists of required local activities.

A. General Health Protection and Regulation:

1. Adopt and enforce any reasonable health regulations. M.G.L. c.111, s.31.

2. Issue an order reciting the existence of an emergency and requiring that such action be taken as the board deems necessary to meet the emergency. State Sanitary Code, Chapter 1, 105 CMR 400.200(B), pursuant to M.G.L. c.111, s.127A; and State Environmental Code, Title I, 310 CMR 11.05(1).

B. Health Care and Disease Control:

1. Direct the operation of and adopt rules for city and town medical dental and health clinics, M.G.L. c.111, s.50 and hospitals, M.G.L. c.111, s.92.

2. Require vaccination of inhabitants of the city or town. M.G.L. c.111, s.181.

3. Order the fluoridation of public water supplies. (This order may be overturned by a referendum vote.) M.G.L. c.111, s.8C.

4. Appoint school physicians. M.G.L. c.71, s.53.

5. In cities, and in towns with a population greater than ten thousand, establish public sanitary stations. M.G.L. c.111, s.33.

6. Isolation and quarantine of individuals and property relative to communicable disease Chapter 111 sections 92-121A

C. Housing and Dwellings:

1. Condemn a dwelling which is unfit for human habitation, order the occupants to vacate, order the owner to clean the dwelling or tear it down (or the board may itself clean or tear down). M.G.L. c.111, s.127B.

D. Nuisances:

1. Condemn all nuisances; clean or tear down a nuisance. M.G.L. c.111, s.128.

E. Food:

1. Inspect and condemn all unfit meat, fish vegetables, produce, fruit or provisions of any kind. M.G.L.. c.94, s.146; 105 CMR 590.059.

2. Adopt and enforce regulations relative to the keeping and exposure of food for sale. M.G.L. c.94, 2.146.

3. Adopt and enforce regulations for bakeries and close bakeries found unfit for the production of handling of food or dangerous to the health of its employees. M.G.L. c.94 s.9D-9M, 105 CMR 550.14.

4. In towns, appoint milk inspectors. (City boards of health are required to appoint milk inspectors.) M.G.L. c.94, s.33.

5. Adopt bacterial standards for milk which are stricter than the standards adopted by the Department of Public Health M.G.L. c.94, s.13E.

6. Upon determination that drinking water in a dwelling or food service establishment is unsafe, order discontinuance of use or order provisions of a new source. M.G.L. c.111, s.122A.

F. Miscellaneous:

1. Adopt and enforce regulations to control air pollution. M.G.L. c.111, s.31C.

INSPECTION TIMETABLE FOR BOARDS OF HEALTH

The following list describes the majority of inspections Boards of Health are required to perform. It is not intended to be a comprehensive formal listing of all inspection requirements.

1) Food Establishments 105 CMR 590.000, State Sanitary Code Chapter X
-Inspect food establishments every six months.

2) Bathing Beaches 105 CMR 445.000, State Sanitary Code Chapter VII
-Inspect accredited bathing beaches twice during operating season.
-Take water samples twice monthly from accredited bathing beaches during bathing season.
-Periodically inspect no accredited beaches to determine compliance with physical and bacteriological water quality standards.

3) Swimming Pools 105 CMR 435.000, State Sanitary Code Chapter V
-Inspect periodically and before issuing annual permit.
-Take samples of swimming, wading or special purpose pool water for bacteriological analysis prior to its opening.

4) Family Type Campgrounds 105 CMR 440.000, State Sanitary Code Chapter VI
-Inspect periodically with the exception of those operated by the Commonwealth.
-Renew license annually if inspection reveals compliance with the provisions of the code.

5) Recreational Camps for Children 105 CMR 430.000, State Sanitary Code Chapter IV
-Inspect yearly and issue license annually if found to be in compliance with requirements of the code. Other town inspectors also must approve for license. Board of Health may also inspect at any time if there is reason to believe that a violation or violations of this chapter exist or upon request or complaint for any reason.

6) Subsurface Disposal of Sanitary Sewage 105 CMR 15.00, State Environmental Code Title 5,
-Inspect the installation of all sewage disposal systems.
-Witness percolation tests, deep observation holes, and perform site examinations for each system.

7) Housing (Human Habitation) 105 CMR 410.000, State Sanitary Code Chapter II
–Inspect a dwelling or dwelling unit upon receipt of a written, oral or telephone request. Refer to code for specific timetable requirements.

8) Cabins, Motels and Mobile Home Parks M.G.L. Chapter 140, Section 32B, 32C
-Inspect periodically and renew licenses annually, of inspection reveals compliance with applicable regulations.

9) Disposal of Solid Waste by Landfill 310 CMR 19.00, State Environmental Code
-Periodically examine and evaluate sanitary landfills.

STATE REGULATIONS COMMONLY USED BY LOCAL BOARDS OF HEALTH

MASS. DEPT. OF PUBLIC HEALTH: THE STATE SANITARY CODE

105 CMR 300.00 Reportable Diseases and Isolation and Quarantine Requirements

105 CMR 400.000 General Administrative Procedures

105 CMR 410.000 Minimum Standards of Fitness for Human Habitation

105 CMR 430.000 Minimum Sanitation and Safety Standards for Recreational Camps for Children

105 CMR 435.000 Minimum Standards for Swimming Pools
*(310 CMR 12.00)

105 CMR 440.000 Minimum Standards for Developed Family type Camp Grounds
*(310 CMR 14.00)

105 CMR 445.000 Minimum Standard for Bathing Beaches
*(310 CMR 17.00

105 CMR 460.000 Regulations for Lead Poisoning Prevention and Control

105 CMR 590.000 Minimum Sanitation Standards For Food Establishments

*Regulations which were previously available under asterisked D.E.P. CMR numbers. (State Legislature transferred to MDPH FY87)

310 CMR 15.00Title 5 Minimum Requirements for Subsurface Disposal of Sanitary Sewage

310 CMR 19.00Disposal of Solid Waste by Sanitary Landfill

PRICE LIST

105 CMR 400.000 through 419.000 (in one publication)	$	plus postage
105 CMR 420.000 through 499.000 (in one publication)	$	plus postage
105 CMR 590.000 through 595.000	$	plus postage
310 CMR 11.00 through 17.00	$	plus postage
310 CMR 18.00 through 21.00	$	plus postage

NOTE: Any single regulation may be purchased separately.

ABOVE ARE AVAILABLE FROM: Secretary of State Bookstore at these locations:

State House	State House West
First Floor, Room 116	436 Dwight Street
Boston, MA 02133	Springfield, MA 01103
1-617-727-2834	1-413-784-1376 check number

THIS IS A GUIDE ONLY…

Update: Mar. 2003

Charlie Kaniecki, M.D.P.H. District Health Officer

MASSACHUSETTS GENERAL LAWS FREQUENTLY USED BY LOCAL HEALTH OFFICIALS

The following are cited in the Manual of Laws Relating to Public Health:

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41	23	Rescission of vote by selectmen; election of other officers, tenure, etc.	367
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79A	13	Enforcement of state sanitary code; displacement of persons; moving expenses; state financial assistance; reports	507
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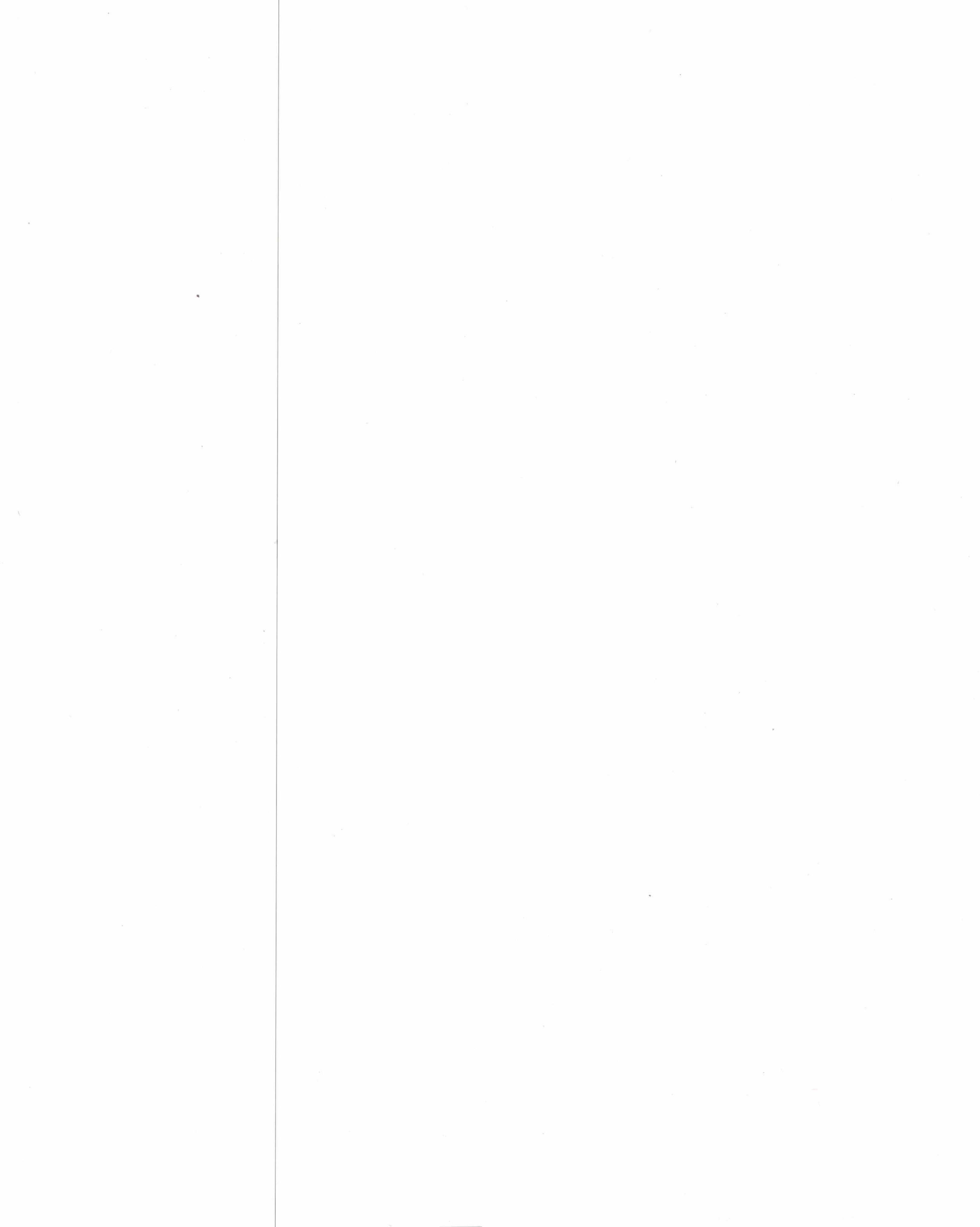
111	125A	Review of order adjudging the operation of a farm to be a nuisance	949
111	127B	Dwellings unfit for human habitation; order to vacate or to abate nuisance; removal of occupants; demolition expense, lien; inspection reports, code violations; notices, enforcement proceedings, jurisdiction; appeal	951
111	131	Compulsory examination of premises; complaint; warrant	963
111	141	Application to county commissioners from refusal or neglect of board to abate nuisance; hearing notice	966

111	993n	188	Disposition of fines and forfeitures	
129	1315	14B	Feeding garbage to swine; definitions; permit; application; revocation; processing of garbage; inspection of premises; entry; record	
140		51	Massage; baths	1422
148	1481	25B	Buildings used for human habitation; use of space heaters	
188		14	Wrongful acts of lessor or landlord of buildings or premises occupied for dwelling or residential purposes; criminal penalties; civil remedies; jurisdiction; sections applicable to acts of reprisal, waiver in leases or rental agreements prohibited.	1563
218	1576	26	District Courts – Criminal Jurisdiction (General Provisions)	

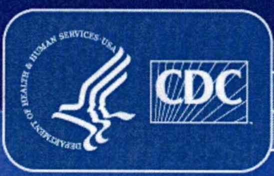


II-B.

The 10 Essential Public Health Services

An Overview

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention
March 2014



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II-B.

Objectives

- Describe the 10 Essential Public Health Services
- Review the history of the development of the 10 Essential Public Health Services
- Explain the use of the 10 Essential Public Health Services as a framework for public health initiatives

Core Functions of Public Health Steering Committee: "Public Health in America"

- **Core Functions of Public Health**
  - Assessment
  - Policy development
  - Assurance
- **Purpose of Public Health**
  - Prevent epidemics and spread of disease
  - Protect against environmental hazards
  - Prevent injuries
  - Promote and encourage healthy behaviors
  - Respond to disasters and assist communities in recovery
  - Assure the quality and accessibility of services

http://iom.edu/Reports/1988/The-Future-of-Public-Health.aspx

http://www.health.gov/phfunctions/public.htm

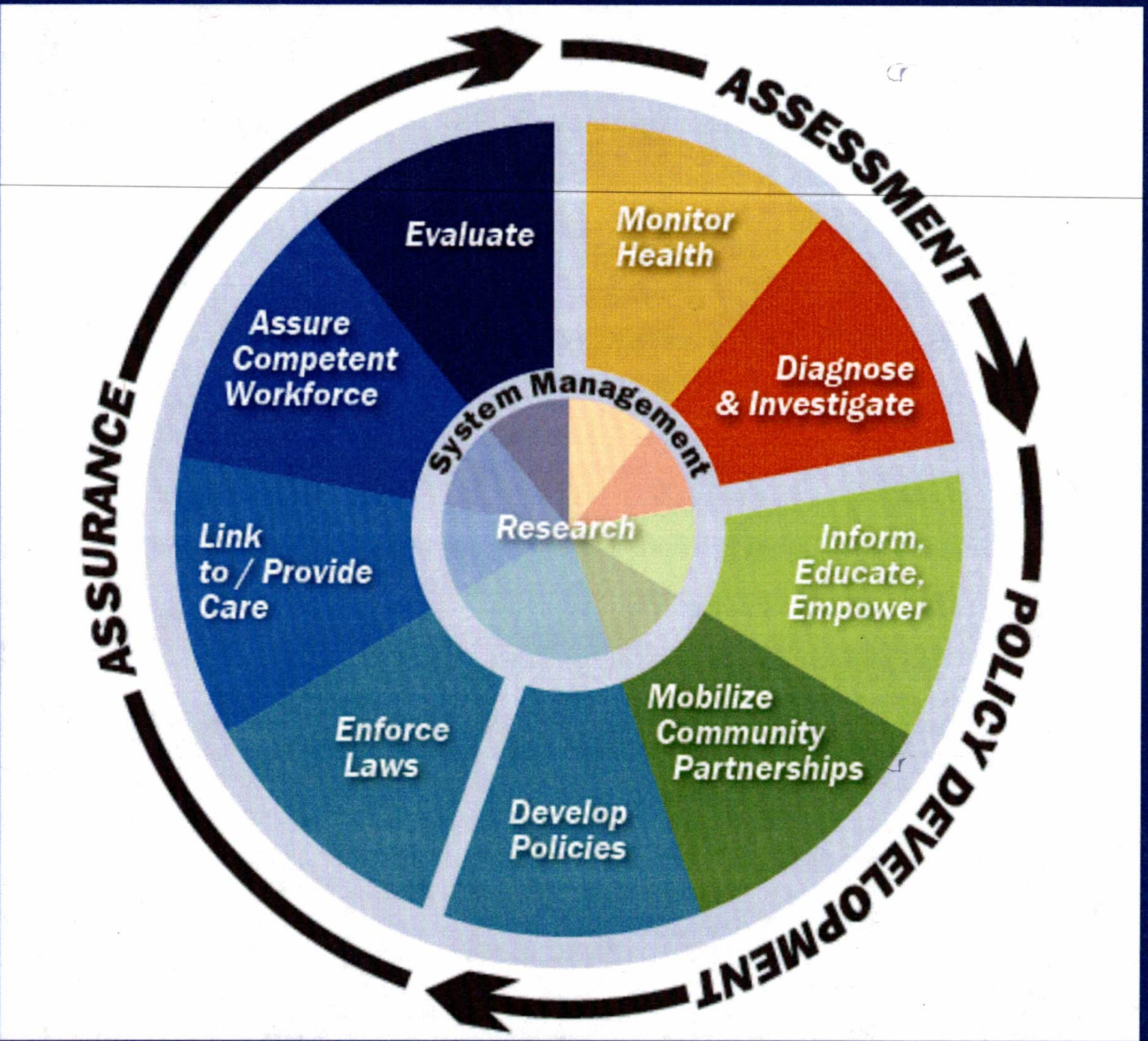
The 10 Essential Public Health Services

1. **Monitor health status** to identify and solve community health problems
2. **Diagnose and investigate** health problems and health hazards in the community
3. **Inform, educate, and empower** people about health issues
4. **Mobilize community partnerships** to identify and solve health problems
5. **Develop policies and plans** that support individual and community health efforts

The 10 Essential Public Health Services

6. **Enforce laws and regulations** that protect health and ensure safety
7. **Link people to needed personal health services** and assure the provision of health **care** when otherwise unavailable
8. **Assure a competent** public and personal health care **workforce**
9. **Evaluate** effectiveness, accessibility, and quality of personal and population-based health services
10. **Research** for new insights and innovative solutions to health problems

Essential Public Health Services



The 10 Essential Services as a Framework

- Provide a foundation for any public health activity
- Describe public health at the state, tribal, local, and territorial levels
- Used as a foundation for the National Public Health Performance Standards (NPHPS)
  - NPHPS provides a description of the essential service at an optimal level that public health systems can use to assess their performance
- Provided structure for national voluntary public health accreditation

http://www.cdc.gov/nphpsp/
http://www.phaboard.org/accreditation-overview/what-is-accreditation/

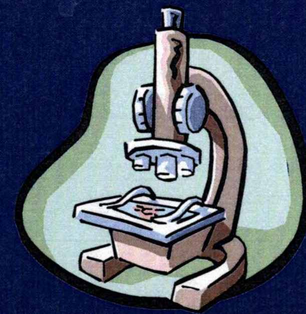
Essential Service (ES) 1 – Monitor Health to Identify and Solve Community Health Problems

- Accurate, periodic assessment of the community's health status
    - Identification of health risks
    - Attention to vital statistics and disparities
    - Identification of assets and resources

- Use of methods and technology (e.g., mapping technology) to interpret and communicate data
- Maintenance of population health registries

ES 2 – Diagnose and Investigate Health Problems and Hazards in the Community

- Timely identification and investigation of health threats
- Availability of diagnostic services, including laboratory capacity
- Response plans to address major health threats



ES 3 – Inform, Educate, and Empower People About Health Issues

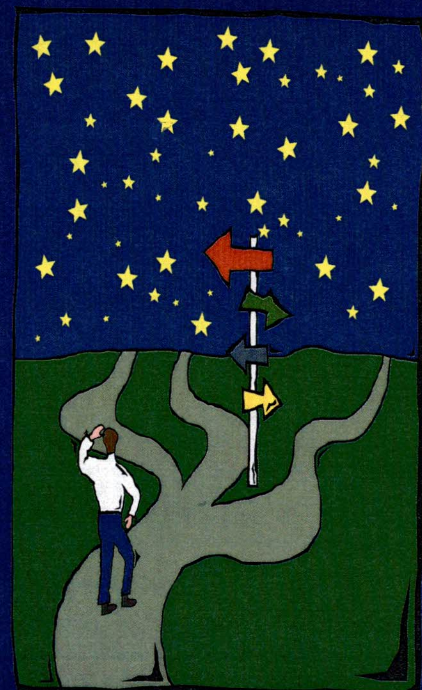
- **Initiatives using health education and communication sciences to**
  - Build knowledge and shape attitudes
  - Inform decision-making choices
  - Develop skills and behaviors for healthy living
- **Health education and health promotion partnerships within the community to support healthy living**
- **Media advocacy and social marketing**

ES 4 – Mobilize Community Partnerships to Identify and Solve Health Problems

- Constituency development
- Identification of system partners and stakeholders
- Coalition development
- Formal and informal partnerships to promote health improvement

ES 5 – Develop Policies and Plans That Support Individual and Community Health Efforts

- Policy development to protect health and guide public health practice
- Community and state improvement planning
- Emergency response planning
- Alignment of resources to assure successful planning



ES 6 – Enforce Laws and Regulations That Protect Health and Ensure Safety

- Review, evaluation, and revision of legal authority, laws, and regulations
- Education about laws and regulations
- Advocating for regulations needed to protect and promote health
- Support of compliance efforts and enforcement as needed

ES 7 – Link People to Needed Personal Health Services and Assure the Provision of Health Care When Otherwise Unavailable

- Identification of populations with barriers to care
- Effective entry into a coordinated system of clinical care
- Ongoing care management
- Culturally appropriate and targeted health information for at risk population groups
- Transportation and other enabling services

ES 8 – Assure a Competent Public and Personal Healthcare Workforce

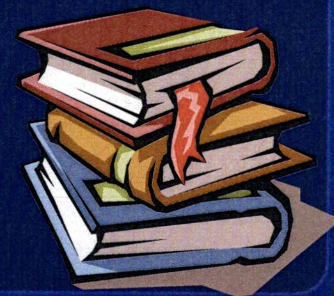
- **Assessing the public health and personal health workforce**
- **Maintaining public health workforce standards**
  - Efficient processes for licensing /credentialing requirements
  - Use of public health competencies
- **Continuing education and life-long learning**
  - Leadership development
  - Cultural competence

ES 9 – Evaluate Effectiveness, Accessibility, and Quality of Personal and Population-Based Health Services

- **Evaluation must be ongoing and should examine:**
  - Personal health services
  - Population based services
  - The public health system
- **Quality Improvement**
- **Performance Management**

ES 10 – Research for New Insights and Innovative Solutions to Health Problems

- Identification and monitoring of innovative solutions and cutting-edge research to advance public health
- Linkages between public health practice and academic/research settings
- Epidemiological studies, health policy analyses and public health systems research



For More Information

- 10 Essential Public Health Services and the Public Health in America Statement
  www.health.gov/phfunctions/public.htm
- Mobilizing for Action through Planning and Partnerships
  www.naccho.org/topics/infrastructure/mapp/index.cfm
- National Public Health Performance Standards
  www.cdc.gov/nphpsp
- Public Health Accreditation Board
  www.phaboard.org

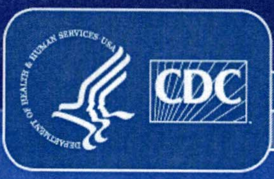
For more information, please contact CDC's Office for State, Tribal, Local and Territorial Support

4770 Buford Highway NE, Mailstop E-70, Atlanta, GA 30341

Telephone: 1-800-CDC-INFO (232-4636)/TTY: 1-888-232-6348

E-mail: OSTLTSfeedback@cdc.gov Web: http://www.cdc.gov/stltpublichealth

The findings and conclusions in this presentation are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.



Centers for Disease Control and Prevention

Office for State, Tribal, Local and Territorial Support

II-B.

CHAPTER 1
PUBLIC HEALTH SYSTEM: GOALS, ESSENTIAL FUNCTIONS, DUTIES, and POWERS

THE PUBLIC HEALTH SYSTEM - VISION AND PRINCIPLES

The public health vision of healthy people and healthy communities guides all public health systems, whether they be local, regional, state or nation-wide. This vision is based on three key principles:

- The purpose of public health systems is to preserve and protect the health of entire populations and promote health status improvement for all;
- Prevention of illness, injury, and disability is paramount; and
- Prevention improves health status while being cost-effective.

Healthy People 2000 Goals
The goals of the American Public Health Association's Healthy People 2000 Initiative echo these principles:

- increase health life span;
- reduce health disparities; and
- achieve universal access to preventive services.

Public Health Challenges and the Determination of Good Health
As we head toward the twenty-first century, public health systems are facing a range of new and continuing challenges including the re-emergence of once rare communicable diseases, new types of illness, injury, and disease, new social problems that affect health, and changing definitions of health. But the basic health determinations remain the same:

- nutritious food;
- access to health care;
- basic education;
- safe water and air;
- decent housing;
- secure employment;
- adequate income;
- peace.

The Charge to Public Health Systems
Public health systems are typically charged with:

- preventing epidemics and the spread of disease;
- protecting the public against environmental hazards;

- preventing injuries;
- promoting and encouraging healthy behaviors;
- responding to disasters and assisting communities in recovery; and
- assuring the quality and accessibility of health services.

RESPONSIBILITIES OF PUBLIC HEALTH SYSTEMS

Public health systems typically are expected to:

- monitor health status of community;
- investigate and diagnose health problems and health hazards;
- inform, educate, and involve residents in health problems;
- mobilize community partnerships to solve health problems;
- develop policies that support community health efforts;
- assure access to health care services;
- assure an expert public health work force;
- evaluate effectiveness, accessibility, and quality of health services; and
- develop new insights and innovative solutions to health problems.

Essential Functions of Public Health Systems
In its 1988 report, "The Future of Public Health", the Institute of Medicine identified three essential functions of public health systems:

ASSESSMENT	monitoring health status conducting needs assessments health surveillance investigation and diagnosis program monitoring and evaluation

One significant assessment strategy currently sponsored by the Massachusetts Department of Public Health (in partnership with a statewide network of local health departments, other state agencies and private providers) is the annual distribution of data on deaths, births, cancer incidence, behavioral risk factors, smoking prevalence, adolescent health, etc., through the Massachusetts Community Health Information Project (MassCHIP) and the 27 Community Health Networks.

POLICY DEVELOPMENT

leadership and advocacy
planning
collaborative health partnership
adequate financing
public participation
legislation
innovation

The Massachusetts Department of Public Health currently collaborates with numerous state agencies, service providers, and community and advocacy groups. The Department develops regulations, both sponsors and implements legislation, organizes numerous advisory groups, develops new program models.

ASSURANCE

education and training
early identification of problems
information and referral
direct services
public information
community mobilization
licensing, regulation, certification
standards and guidelines
program monitoring and evaluation

The Massachusetts Department of Public Health operates four public health hospitals, provides training and information on a myriad of public health issues, licenses hospitals and clinics, sets standards and guidelines for a wide range of programs and services, conducts public information campaigns, finances over $400 million worth of local and regional public health services annually, and monitors and evaluates public health programs statewide.

Characteristics of a Basic System of Care

A full-service system of care is characterized by public health policies, programs, and services that are characterized by being:

- community-based;
- family-centered; coordinated;
- comprehensive;
- prevention oriented;
- sensitive to cultural, linguistic, and socioeconomic factors;
- flexible and adaptable to meet health needs;
- oriented toward health improvement, not categorical illness;
- early, easy, and regular access to needed services;
- consumers engaged with professionals as partners in care;
- standards for quality care; and
- integration of health, education, social service, and justice systems.

System Development

The key to public health system development as we approach the twenty-first century is to understand several significant paradigm shifts currently underway.

Old Paradigm	New Paradigm
Program orientation	System orientation
Disease orientation	Health improvement orientation
Professionals have authority	Consumers are partners
Treatment orientation	Prevention orientation
Emphasis on medical model	Emphasis on community health
Separate public/ private sectors	Partnerships
Individual responsibility for health	System-supported responsibility

System Integration

System integration in the public health arena entails:

- Focusing on the health of entire populations (as opposed to individual clients or patients) such as residents of geographic or political divisions or members of various racial, ethnic, age, or gender groups;
- Linking payers, providers, and consumers;
- Promoting public/ private partnerships
- Locally and regionally linking health, education, and human services; and
- Strengthening and enhancing the relationship between community, service providers, and the family.

Special Characteristics of the Massachusetts Health System

The health care and public health systems in Massachusetts are somewhat unique in the national in several aspects:

- 351 local health departments that are governed and organized separately and differently and variously handle responsibilities ranging from community sanitation to school health;
- at risk populations served by both public and private providers;
- few health departments fund clinical service;
- generous Medicaid program that covers most optional services, sets reasonable provider rates, has maximum eligibility criteria, and P.C. and HMO managed care options;
- world class specialty health services available in cities;
- extensive HMO penetration; and state and federal public health funds that support state contracts with:
  - community health centers and other non-profit providers for primary care and enabling services, and

- community-based organizations for technical assistance, coalition building, and community outreach and education.

IN CLOSING ... THE PUBLIC HEALTH ROLE IN HEALTH CARE REFORM
With interest in the reform of our system of financing health care increasing, many public health officials have cautioned that while reform of health care financing may be imperative, it alone is not sufficient to guarantee the protection of the public health.

A key public health role is promoting the interest of the public in new and developing systems of health care to assure that they are high quality, cost effective and integrated with the myriad of other institutions of society that affect our health and quality of life.

Public health services provide the foundation for the health care system, prevent erosion in health status of the population, and help control the rising costs of health care.

DUTIES AND POWERS

Local Health Department Introduction
Some Boards of Health organize orientation materials into a notebook. Here is a suggested list of information to provide new board members:

- Current list of all board members: names, addresses, phone numbers, position,
- service on the board and on other town offices
- Short history of the local health board/department
- Description of local health services
- Budget and actuals for present and previous year
- Department finances, fees and other income sources
- Summary of recent local public and environmental health issues
- Description of department or board policy
- Mission and goal statements, and long range plans
- Policies of the board
- Minutes of the past 2 years
- Local health regulations or pertinent bylaws
- Job descriptions for board, board members, director, and staff
- Evaluation plan for Health Director or Agent and Public Health Nurse
- Board Evaluation Plan
- Local town government Roster
- Board of Health regular meeting schedule and location
- Compensation rates for members and chair
- Length of chair term, when elected, how nominated
- Massachusetts Guidebook for Boards of Health (Available from MAHB)
- Legal Handbook for MA Board of Health (Available from MAHB)

adapted partly from Address, Assess, Assure; Association of N. Carolina Boards of Health

Required Duties Local Boards of Health in Massachusetts

Local boards of health in Massachusetts are required by state statutes and regulations to perform many important and crucial duties relative to the protection of public health, the control of disease, the promotion of sanitary living conditions, and the protection of the environment from damage and pollution. These requirements reflect the legislature's understanding that many critical health problems are best handled by the involvement of local community officials familiar with local conditions.

The following is a list of duties and responsibilities of local boards of health in Massachusetts. Each item includes a citation to the statute or regulation which imposes the duty or responsibility. The items have been grouped under general subject categories.

Following this listing of Required Duties is a list of Additional Powers of local boards of health which extend the local board's authority over the broad range of health, sanitation and environmental problems.

A. Records, Record keeping and Reports

1. In cities, submit an annual report to the city council concerning the board's activities during the preceding year and concerning the sanitary condition of the city. M.G.L. c.111, s.28.
2. Maintain numerous records and retain them for required minimum retention periods.
3. Process numerous types of reports of cases of diseases. These reports are detailed in part B, below.
4. Process of death certificates. M.G.L. c.46, s.11.

B. Health Care and Disease Control

1. Upon request, telephone to a gas and electric utility company and certify in writing within seven (7) days of said telephone call that there is a serious illness in a residence such that n, gas or electric company shall shut off or fail to restore gas or electric service in any residence during such time as there is a serious illness. M.G.L. c.164 s.124A; 220 CMR 25.03 (2).
2. Receive reports of cases of disease dangerous to public health. Keep records of these reports and also forward copies of these reports to the local school committee; and to other local boards in whose jurisdiction the patient resides, or may have contracted the disease, or may have exposed others. M.G.L. c.111, s.111. See 105 CMR 300 10 for list of diseases required to be reported.

3. Report cases of dangerous diseases to the Department of Public Health within twenty-four hours. M.G.L, c.111, s.112. See 105 CMR 300.100 for a list of diseases required to be reported.
4. Consult with the Department of Public Health regarding the prevention of dangerous diseases. M.G.L. c.111, s.7.
5. Send to the Department of Public Health weekly reports of deaths due to dangerous diseases. MG.L. c.111, s.29.
6. Receive notices of school children sent home because of dangerous disease. M.G.L.. c.71, s.55A.
7. Report to the Department of Public Health cases of a certain contagious disease occurring at dairy farms. See 105 CMR 310.100-110 for list of such diseases required to be reported.
8. Receive reports of any inflammation, swelling, redness or unnatural discharge from the eyes of an infant less than two weeks old, and take immediate action to prevent blindness. M.G.L. c.111, s.110.
9. Receive reports of persons afflicted with cerebral palsy, and submit an annual report of these cases to the Department of Public Health. M.G.L. c.111, s.111A.
10. Provide anti-rabies vaccine and treatment. M.G.L. c.140, s.145A; 105 CMR 335.
11. Supervise or carry out the disinfection of dwellings which have housed a person who has suffered from or died of a disease dangerous to the public health. M.G.L. c.1111 s.109.
12. Receive reports of food poisoning and send these reports to the State Department of Public Health, 105 CMR 300.000.
13. Receive notices from inspectors of the Department of Labor and Industries regarding violations of health laws or nuisances in industrial establishments; investigate these reports, and enforce appropriate laws. M.G.L. c.149, s.136.

C. Housing and Dwellings

1. Enforce Chapter II of the State Sanitary Code: Minimum Standards of Fitness for Human Habitation, M.G.L. c.111, ss.127A and 127B: 105 CMR 410.000. Enforcement of Chapter II includes inspecting dwellings (upon request or upon the Board's initiative) for compliance with the minimum standards, certifying violations, issuing orders, holding hearings, granting variances and instituting court proceedings...if necessary to enforce such orders.
2. Enforce the State Lead Poisoning Prevention regulations. M.G.L. c.111, s.1981 105 CMR 460.000. Enforcement of these regulations includes inspecting dwellings (upon request or upon the board's initiative) for lead paint, issuing orders for removal of lead paint, and instituting court proceedings to enforce such orders if necessary.
3. BOH has 45 days to review and approve, approve with conditions, or disapprove preliminary and definitive plans for the subdivision of land. M.G.L. c.41, ss.81S-81V. Failure to act is deemed an approval. BOH should consider drainage and water pollution, sewage, potential damage to well fields.
4. Inspect and certify public lodging houses for water closets, urinals, ventilation and cleaning. M.G.L. c.140, s.36.

D. Hazardous Wastes

1. Assign the site for a hazardous waste disposal facility as follows. (M.G.L. c.111, s.150B):
    a. Notify the Department of Environmental Protection (DEP) of the receipt of an application to assign a site.
    b. Assess significance and degree of danger to public health and consider and evaluate any evidence submitted.
    c. Give public notice and hold a public hearing.
    d. Every decision of the board in assigning or refusing to assign a site must be in writing and include a statement of reasons and facts relied on.
2. Notify the mayor and city council or board of selectmen of the following (M.G.L. c.21C, s.4):
    a. Pending applications for licenses for the collection, storage, treatment, or disposal of hazardous waste, upon notification from DEP.
    b. Information supplied annually by DEP identifying types and quantities of hazardous waste generated, stored, treated or disposed of within the city or town.

E. Solid Waste

1. Assign sites of sanitary landfills, refuse incinerators, waste storage or treatment plants, and refuse transfer stations, after a public hearing. Ensure that these do not present a danger to public health. M.G.L. C.111, S.150A.
2. Consider and act on applications for permits for the disposal of special wastes. 310 CMR 19.16.
3. Consider and act on applications for special permits for salvaging or recycling materials from sanitary llandfill sites or refuse transfer stations. 310 CMR 19.18; 18.15(l).
4. Periodically inspect sanitary landfill sites, and provide written notice of deficiencies. 310 CMR 19.25
5. Periodically examine and evaluate refuse transfer stations. 310 CMR 18.00.
6. Inspect and verify satisfactory completion of all corrective work to sanitary landfill projects. 310 CMR 19.26(3).
7. Handle requests for variances of regulations governing sanitary landfills and refuse transfer stations (forward these to DEP); keep notices of the grants of these variances. 310 CMR 19.32; 18.27.
8. Keep on file an emergency plan governing emergencies occurring at a refuse transfer station. 310 CMR 18.21.

F. Septage and Garbage

1. Enforce Title 5 of the State Environmental Code; Minimum Requirements for the Subsurface Disposal of Sewage. 310 CMR 15.00.
2. Make rules and regulations for the removal, transportation and disposal of garbage, offal and other offensive substances. M.G.L. C.111, s.31B.
3. Issue permits for the removal or transportation of garbage, offal or offensive substances when such refuse has been collected in the city or town. Keep registry of all transporters of refuse through the city or town, and enforce local rules and regulations regarding such transport. M.G.L. c111, s.31A.

G. Nuisances

1. Investigate nuisances which in the board's opinion may be injurious to health. The board shall destroy, prevent or remove such nuisances and make regulations relative to nuisances. M.G.L. c.111, s.122.
2. License noisome trades. M.G.L. c.111, s.151.
3. Assign location for slaughter houses or other noxious or offensive trade. M.G.L. c.111, s.143.

H. Food

1. Issue permits for all food service establishments, including restaurants and food service facilities in stores, recreational camps for children, family style campgrounds, institutions, hotels, motels, schools, retail food store, mobile food units and pushcarts, etc., 105 CMR 590.052.
2. Enforce Chapter X of the State Sanitary Code: Minimum Sanitation Standards for Food Establishments, 105 CMR 590.000. Enforcement includes conducting inspections, issuing orders, suspending or revoking permits where necessary.
3. Issue permits for plants which break and can eggs. M.G.L. c.94, s.89.
4. License milk pasteurization plants. M.G.L. c.94, s.48A.
5. City health departments shall have milk inspectors. Town boards may appoint milk inspector. Inspectors must inspect and license milk producers and dealers. M.G.L. C.94, s.33 and s.40.
6. Issue permits for plants that bottle carbonated non-alcoholic beverages. M.G.L. c.94, s.10A; inspect such plants, and revoke permits where plants are found to be unsanitary or otherwise in violation of public health rules and regulations, MG.L. 94 s.10C; 105 CMR 570 et. seq. Send to the Department of Public Health copies of all licenses, applications and half the license fees, 105 CMR 570.002. Notify each owner prior to the expiration date of each permit and close plants that fail to renew such permits, 105 CMR 570.002. M.G.L. c.94, s.10C.
7. Register and inspect bakeries and enforce State Bakery Regulations. M.G.L. c.94, s.94F; 105 CMR 550.000; 105 CMR 551.000. Furnish DPH with monthly reports of inspections, 105 CMR 550 . 001.
8. License plants that manufacture frozen desserts. M.G.L. c.94, s.65H; 105 CMR 561.000.
9. Inspect cold storage and refrigerated warehouses. M.G.L. c.94, s. 6 7.
10. Enforce M.G.L. c.130, S.81 which prohibits importation of shell-fish which have not been certified by a United States or foreign shellfish regulating agency.
11. Enforce statutes and regulations relative to the adulteration and misbranding of food. M.G.L. c.94, ss.186-95.

I. Pools and Beaches

1. Enforce Chapter V of the State Sanitary Code: Minimum Standards for swimming Pools, 105 CMR 435.000. Enforcement includes issuing annual permits, conducting examinations

issuing orders, holding hearings, granting variances, taking water samples.

2. Enforce Chapter VII of the State Sanitary Code: Minimum Standards for Bathing Beaches, 105 CMR 445.000. Enforcement includes issuing annual licenses, approving plans for new or altered beaches, issuing orders, holding hearings, granting variances, receiving reports of accidents, taking water samples.
3. Prohibit swimming in water that fails to meet proscribed standards for bathing, 105 CMR 445.10(1-3).
4. Review plans for new or altered bathing beaches. 105 CMR 445.16.

J. Camps. Motels and Mobile Home Parks

1. Inspect all recreational camps for children and family style camp-grounds., motels, mobile home parks and cabins; and annually issue licenses for these facilities, M.G.L. C.140, ss.32B and 32C. Send copies of family style campground permits to the Department of Environmental Protection.
2. Enforce Chapter VI of the State Sanitary Code: Minimum Standards for Developed Family Type Campgrounds. 105 CMR 440.000. Enforcement includes conducting examination; issuing orders; issuing, suspending and revoking licenses; holding hearings; granting variances.
3. Enforce Chapter IV of the State Sanitary Code: Sanitary Standards for Recreational Camps for Children. 105 CMR 430.000. Enforcement includes inspection, issuing orders and licenses, conducting hearings, granting variances.

K. Miscellaneous

1. Certify group care (residential) facilities for children, temporary shelter facilities for children, and day care centers all of which require such certification pursuant to Office for Children regulations. 102 CMR 3.06(l)(d); 102 CMR 6.08(3); 102 CMR 7.11 (2)
2. Pesticides
    a) Local boards may make reasonable health regulations regarding pesticides provided such regulations are not inconsistent with the Massachusetts Pesticide Control Act, M.G.L. c.132B or state regulations, 333 CMR 2.00. Wendell v. Attorney General, 476 NE 2nd 585, 394 Mass 518 (1985). For example, a city or town may want to give its board of health an opportunity to determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling or other restrictions imposed by the Department, Wendell v. Attorney General, supra, 394 Mass at 528,
    b) Receive public notice of the application of herbicides from applicants that intend to maintain a right of way by the application of herbicides. 333 CMR 11.07.

3. Nominate animal inspectors. M.G.L. c.129, s.15.
4. License massage parlors. M.G.L. c.140, s.51.
5. Issue burial permits. M.G.L, c.114, s.45.

6. License and if necessary revoke licenses for funeral directors. Transmit to the board of registration in embalming names and addresses of all licensees. M.G.L. c.114, s.49.
7. Approve location of cemeteries. M.G.L. c.114. s.34.
8. Retain charge of any case arising under M.G.L. c.111 in which the board has acted. M.G.L. c.111, s.32.
9. Enforce all local health regulations promulgated pursuant to M.G.L. c.111, s.31.

J. Smoking

1. Receive written complaints regarding the willful failure or refusal to comply with the Indoor Clean Air Act regarding restaurants, supermarkets or retail food outlets. M.G.L. c.270 s.22.
2. Inspect the area described in the complaint and enforce no-smoking laws. M.G.L. c.270 s.22.
3. Provide written response to complainant within 15 days and send copies of the complaint and response to DPH. M.G.L. c.270 s.22.

Additional Powers and Authority of Local Boards of Health in Massachusetts

Local boards of health in Massachusetts have historically played a crucial role in the protection of public health, promotion of sanitary living conditions and the protection of the environment In recognition of the importance of local leadership and action in these areas, the legislature has enacted over the years numerous statutes which authorize and thereby encourage local boards to be responsible for dealing with the broad range of health, sanitation and environmental problems at the local community level.

The following is a list of statutes which grant additional powers and authority to local boards of health. Each item includes a citation to the appropriate statute. The items have been grouped under general subject categories which parallel, where possible, the categories in the prior list of required local board activities.

A. General Health Protection and Regulation:

1. Adopt and enforce any reasonable health regulations. M.G.L. c.111, s.31.
2. Issue an order reciting the existence of an emergency and requiring that such action be taken as the board deems necessary to meet the emergency. State Sanitary Code, chapter I, 105 CMR 400.200(B), pursuant to M.G.L. c.111, s.127A; and State Environmental Code, Title I, 310 CMR 11.05(l),

B. Health Care and Disease Control:

1. Direct the operation of and adopt rules for city and town medical dental and health clinics, M.G.L. c.111, s.50 and hospitals, M.G.L. c.111, s.92.
2. Require vaccination of inhabitants of the city or town. M.G.L. c.111, s.181.
3. Order the fluoridation of public water supplies. (This order may be overturned by a referendum vote.) M.G.L. c.111, s8C.

4. Appoint school physicians. M.G.L. c.71, s.53.
5. In cities, and in towns with a population greater than ten thousand, establish public sanitary stations. M.G.L. c.111, s.33.

C. Housing and Dwellings:

1. Condemn a dwelling which is unfit for human habitation, order the occupants to vacate, order the owner to clean the dwelling or tear it down (or the board may itself clean or tear down). M.G.L. c.lll, s.127B.

D. Nuisances:

1. Condemn all nuisances; clean or tear down a nuisance. M.G.L. c.111, s.128.

E. Food:

1. Inspect and condemn all unfit meat, fish, vegetables, produce, fruit or provisions of any kind. M.G.L. c.94, s.1461 105 CMR 590.059.
2. Adopt and enforce regulations relative to the keeping and exposure of food for sale. M.G.L. c.94, s.146.
3. Adopt and enforce regulations for bakeries and close bakeries found unfit for the production or handling of food or dangerous to the health of its employees. M.G.L. c.94 8.9D-9M, 105 CMR 5 50 .1 4 .
4. In towns, appoint milk inspectors. (City boards of health are required to appoint milk inspectors.) M.G.L. c.94, s.33.
5. Adopt bacterial standards for milk which are stricter than the standards adopted by the Department of Public Health M.G.L. c.94, s.13E.
6. Upon determination that drinking water in a dwelling or food service establishment is unsafe, order discontinuance of use or order provision of a new source. M.G.L. c.111, s.122A.

F. Miscellaneous:

1. Adopt and enforce regulations to control air pollution. M.G.L. c.111, s.31C.

Massachusetts General Laws Frequently Used By Local Health Officials

The following are cited in the Manual of Laws Relating to Public Health:

Chapter	Section	Description	Page
40	54	Restrictions on Issuance of Building Permits Availability of Water Supply	347

41	23	Recission of vote by selectmen; election of other officers, tenure, etc.	367
41	81U	Subdivision Control Act: Board of Health authority	389
79A	13	Enforcement of state sanitary code; displacement of persons; moving expenses; state financial assistance, reports	507
111	31	Health regulations; publication; violation	881
111	122	Regulations relative to nuisances; examinations	947
111	125A	Review of order adjudging the operation of a farm to be a nuisance	949
111	127B	Dwellings unfit for human habitation; order to vacate or to abate nuisance, removal of occupants, demolition expense, lien; inspection reports, code violations; notices, enforcement proceedings jurisdiction; appeal	951
111	131	Compulsory examination of premises; complaint, warrant	963
111	141	Application to county commissioners from refusal or neglect of board to abate nuisance; hearing notice	966
111	188	Disposition of fines and forfeitures	
993n			
129	14B	Feeding garbage to swine, definitions; permit;	
1315			
		application; revocation; processing of garbage; inspection of premises; entry, record	
140	51	Massage; baths	
1422			
148	25B	Buildings used for human habitation; use of	
1481			
		space heaters	
188	14	Wrongful acts of lessor or landlord of buildings	
1563			
		or premises occupied for dwelling or residential purposes; criminal penalties; civil remedies, jurisdiction; sections applicable to acts of reprisal, waiver in leases or rental agreements prohibited.	
218	26	District Courts - Criminal Jurisdiction	
1576			
		(General Provisions)	

Administrative Evaluation for the Chief Administrator

Duties of the Chairperson

- Chair all meetings
- Facilitate discussion and decision making
- Work with health director to set an agenda for meetings

- Speak for the board as delegated by the board (respond to reporters)
- Represent the board to other groups
- Consult with board members who are not fulfilling their responsibilities, or are violating law, policy or practice
- Initiate yearly evaluation of health director, or agent
- Initiate yearly evaluation of the board
- Counsel and consult with the health director or agent

Process of Evaluation

The evaluation is divided into seven (7) categories. The initial six (6) categories will be rated by each board member, placing the numerical rating, ranging one (1) through four (4) in the space provided, while the last category will allow the board members to articulate their responses in an open-ended question format. The rating system utilized in the first six 6) categories is the following:

4 - Always True - 90-100% of the time
3 - True most of the time - 70%-89% of the time
2 - True from 51 to 69% of the time
1 - True less than half (50%) of the time
N/A - Not enough information to formalize opinion

Tabulation of the numerical observations will be aver-aged into a final score. A summation report and recommendations will be presented in at a regular monthly board meeting, no later than December 31st of each year. It is recommended that the board of health obtain an opinion from town counsel as to whether an executive session is appropriate for this review. Recommendations of finding will be considered by the full board and utilized as benchmark information in the development of a specific work plan for the administrator.

Before the administrative evaluation is complete, the administrator will have an opportunity to respond in writing to further clarify any misunderstandings or assumptions crucial to the evaluation. Written administrative responses will be a part of the final evaluation and included in the official personnel record of the administrator.

Section One - Rating

Relationship with the Board

- Keeps board informed of organization activities, progress and problems.
- Is receptive to board member ideas and suggestions
- Makes sound recommendations for board action.
- Facilitates the decision-making process for the board.
- Accepts board criticism as constructive suggestion for improvement.
- Gives constructive criticism in a friendly, firm and positive way
- Follows up on all problems and issues brought to his/her attention.

Effective Leadership of Staff

- Encourages staff development.
- Deals with staff honestly and fairly.
- Maintains open, concerned and congenial relations with staff.
- Delegates effectively.
- Involves staff in appropriate decision-making.
- Appears to communicate well with staff.
- Assesses the performance of employees fairly and reasonably.

Management Skill and Abilities

- Prepares all necessary reports and keeps accurate records.
- Speaks and writes acceptably.
- Plans well in advance.
- Is progressive in attitude and action.
- Ability to take on tasks/issues presented by board, staff and community and find successful resolution.

Personal and Professional Attributes

- Displays good grooming.
- Projects professional demeanor.
- Participates in professional activities such as association activities.
- Ability to work with different groups in local government and the community.
- Participates in events, activities, organizations, etc., after hours for the benefit of the department.

Fiscal Management

- Prepares a balanced budget.
- Completes the year with a balanced budget.
- Displays common sense and good judgement in business transactions.
- Involves administrative team in active participation in the budget formulation process.
- Is conscientious of the fiscal condition of the department.
- Explains the budgeting process, reports, etc., to the board

Community and Public Relations

- Represents the department in a positive, professional manner.
- Actively promotes the goals and policies of the board of health to the public.
- Accepts public criticism and responds appropriately.

Section Two - Open-Ended Discussion

1) What specific recommendations do you have for the administrator to improve performance?
2) What impressed you the most about the administrator's performance this year?
3) What should be the priorities for the administrator during the next year?
4) In what areas has the administrator shown exceptional improvement?
5) Do you have any additional comments regarding the administrator that have a bearing on this evaluation?
6) How can this evaluation process be improved?

Section Three - Administrator's Comments

Adapted from a form developed by the Zanesville-Muskingum (Ohio) County Health Department

Internet Links

MAHB Website http://www.mahb.org
DPH home page http://www.state.ma.us/dph/dphhome.htm
DEP home page http://www.state.ma.us/dep/dephome.htm
CDC health links by topic http://www.cdc.gov/health/default.htm

Essential Services for Local Public Health
http://www.phppo.cdc.gov/nphpsp/10EssentialPHServices.asp
Massachusetts General Laws
http://www.state.ma.us/legis/laws/mgl/index.htm
Massachusetts Regulations
http://www.lawlib.state.ma.us/100-199cmr.html

II-B.

CHAPTER 2
LEGAL AUTHORITY AND PROCEDURES

SOURCES AND SCOPE OF LEGAL AUTHORITY

In the area of public health, there are three primary repositories of authority: the federal government, the state government, and local authorities. Examination of the constitutional basis of power at each level of government helps one understand the role of local official health agencies.

The Federal Government: The powers of the federal government are limited to those functions explicitly delegated by the Constitution. All other powers are reserved for the states or the people. Although powers delegated to the federal government are limited, and although health and safety matters have traditionally been considered matters properly regulated by state and local governments, federal regulatory action derived from the powers to regulate interstate commerce and to levy taxes for the general welfare has considerable impact on state and local health programs and enforcement.

The State Government: In contrast to the defined powers of the federal government, state governments have broad powers. These include "powers to prescribe, within the limits of the state and federal constitutions, reasonable regulations necessary to preserve the public health, safety, and welfare." These powers are commonly referred to as "police powers" and are derived from the nature of state government.

While there is no specific definition of the states' police powers, the courts have historically found two basic purposes that justify a state's actions with regard to the public health:

- actions for the protection of a given individual; and
- actions for the protection of society at large.

It is a widely accepted function of government to protect the health of society, even at the expense of the individual's freedom.

Although the state government is the primary repository of authority in public health matters, there are constraints on this authority. In some cases, these may be explicit powers granted to the federal government, or prohibited to the states by the federal constitution or federal laws. In other cases, individual rights of citizens, as they are expressly enumerated in the federal and state constitutions, may take precedence over the state's authority. In public health, policies such as requiring adequate sewage systems and performing inspections of private dwellings depend on a balance between the individual's right to privacy and the governing agency's overall concern with the health of the individual involved and society at large.

State governments are clearly the primary authority in the field of public health and possess the power to make laws for the public health. This power consists, in part, of being able to delegate authority. It is from this power that state agencies and local boards of health derive most of their authority. State agencies derive virtually all of their powers from laws enacted by the state legislature and approved by the Governor. Local governments also derive most (but not all) of their authority from such state laws.

Local Authorities: Local public health departments and agencies derive their authority primarily through explicit and specific delegation of power from the state legislature. This authority includes both the powers that are expressly granted by state statutes and those powers that are necessarily implied from those statutes. In delegating power, the state legislature places limits on the exercise of that power. In this way the state specifies the manner in which the power is to be exercised, the consequences of failure to exercise it, and the consequences of improper exercise of that power.

The extent of the state's delegation of power varies from designating the board of health as the primary enforcement agent of the state's regulations (as is the case with the housing section of the Sanitary Code) to authorizing the board of health to draft its own regulations regarding public health matters (see M.G.L. c. 111 §31). The only absolute restraint is that such regulations must be consistent with state law. In certain cases, statutes specify that local regulations must be approved by a state regulatory agency before they may become effective (e.g. air pollution, food service, radiation control, etc.). Local regulations may be more stringent than existing state mandates, but in no case may they be inconsistent with state regulations. In addition, regulations must be "reasonable" solutions to the problems they address. "Reasonableness" may be tested in court.

It should also be recognized, however, that local governments may also act without delegation of authority from the state, under their own ordinances or bylaws, subject to certain limitations. Under an amendment to the Massachusetts Constitution promulgated in 1986 (the "Home Rule Amendment"), local governments have the power, through their own ordinances and bylaws and without specific authorization by the state, to regulate in areas in which state law does not prohibit them from regulating. Cities and towns may, under this "home rule" power, (by approval of the city council and mayor in cities or by approval from the board of selectmen and town meeting in a town) promulgate general ordinances and bylaws relating to health matters (e.g. rubbish storage and collection, insecticide spraying, etc.). These ordinances and bylaws may, by their terms, be enforceable by the local board of health or some other public board or official (e.g. building inspector, police, etc.). They may also grant rule making authority to the local board of health. In short, cities and towns are free to promulgate health related bylaws and ordinances governing all subjects that are not prohibited (by state or federal law) from being regulated. However, such ordinances and regulations are not enforceable if they conflict with applicable federal or state law or if they are unconstitutional (because they are not reasonably related to legitimate local government interest, or some other reason).

To effect enforcement of the health regulations or ordinances promulgated by the local board or the city or town, and those regulations and statutes promulgated by the state but enforceable by the local board, the local boards are sometimes granted the power (in those regulations, statutes and ordinances) to make inspections and examinations, to issue, revoke or suspend licenses and permits, and to issue orders to any individual or business which is in violation of the regulations or standards. The local boards are directly responsible for the enforcement of these standards. Failure of a board of health to enforce the Sanitary Code or the Environmental Code may result in the state re-assuming its power to enforce state laws and regulations.

If it is determined by the Commissioner of the Department of Public Health (DPH), the Commissioner of the Department of Environmental Protection (DEP) or their designees that the local board of health has failed after a reasonable time to enforce the Sanitary or Environmental Code, DPH or DEP may assume enforcement powers to effect compliance with the Code (see M.G.L. c. 111 §127A and 105 CMR 400.300 as well as M.G.L. c. 21A §13 and 310 CMR 11.00).

Determination by the Commissioner is made in the following manner:

If, as a result of a study, inspection, or survey, the DPH or DEP determines that the board of health has not effected compliance with the Sanitary or Environmental Code, DPH or DEP will send a notice to the board of health.

The notice gives the board of health a reasonable amount of time to effect compliance, and requests the board to notify the DPH or DEP as to what action has been taken to effect compliance with the Code.

If the board of health fails to provide this information, or if DPH or DEP decides that insufficient action has been taken to effect compliance, it will be deemed that the board of health has failed in its duties, and DPH or DEP may assume the board's power to effect compliance.

Certain statutes provide for "coordinate powers" of DPH with local boards of health (e.g. M.G.L.c.111 §7 concerning the investigation of contagious or infectious diseases), or "concurrent responsibility and authority" (e.g. M.G.L. c. 111 §198 concerning enforcement of lead poisoning prevention and control statutes).

RULE MAKING: PROCEDURES FOR MAKING LOCAL REGULATIONS

Historically, legislation and regulation have been tools for translating knowledge of causes of disease and ill-health into programs for the protection of public health.

Boards of health may determine that regulations are necessary to control the causes or to outline methods of dealing with a public health problem. Local regulations may not be inconsistent with state or federal regulations, but may be more stringent. Most state regulations are called "minimum standards" and local boards are authorized to make stricter standards.

The process of drafting regulations usually requires collaboration between the board of health and the town counsel or city solicitor who provides or coordinates the legal expertise necessary for the proper drafting of the regulations.

If the town or city employs a health officer, he/she may be asked to assume responsibility for defining and documenting the problem and drafting a proposed regulation (with the assistance of the city or town's attorney) for presentation to the board. The board then considers the issues, holds hearings as necessary, and makes the final decision.

Regulations may be prospective in nature. That is, boards of health may require precautions to avoid potential dangers as well as to restrict conditions proven to be harmful. (Benes et. al.1995).

M.G.L. c. 111 §31 is an unusually broad grant of authority which empowers boards of health to adopt "reasonable health regulations." The power of boards of health to adopt regulations under section 31 is extensive and "provides a comprehensive, separate, additional source of authority for health regulations" (Benes et. al.1995).

The following section is intended to assist the board in drafting regulations. Note that the first step in this process is developing and checking the rationale - the nature, documentation, extent and impact of the problem or need - before the board of health proceeds to the rule making stage. It may be that health problems or needs can be addressed through the use of existing state law, thus making new regulations unnecessary.

Guidelines for Drafting and Promulgating Regulations

I. RATIONALE AND CONSENSUS OF BOARD

A. define problem
B. demonstrate need for regulation
C. get "go ahead" from the entire board prior to drafting
D. hold public meeting or hearing on the problem if desired or required by general laws regulating the overall activity (e.g. assignment of sanitary landfill site)

II. CONTENT

A. Title and table of contents of regulation(s)
B. Define terms
C. Designate individual or agency responsible for enforcement
D. Establish standards
E. Describe duties and procedures
F. Describe enforcement and sanctions
  - nature of sanctions
  - conditions warranting sanctions
  - process for applying sanctions
G. Indicate the specific sections of the general laws under which the regulations are adopted
H. Specify by what authority the regulations are adopted (M.G.L. c. 111 §31 and other relevant sections of the general laws)
I. Indicate the effective date of the regulations
J. Indicate the relationship of the new regulation(s) to any relevant existing regulations(s), including specific provision for regulation(s) to be repealed by acceptance of the new regulation(s)

III. STYLE/ FORMAT

A. Be brief
B. Follow conventional numbering system for regulation(s), as defined by general laws or local regulations
C. Express regulations in the present tense
D. Use active voice
E. Use third person singular to the extent possible
F. Follow accepted punctuation form
  - the meaning of the regulations should not depend solely on the punctuation
  - if a minor change in punctuation changes the meaning of the regulations, they should be rewritten

IV. PROMULGATION

A. For Title V (septic system) regulations, hold a public hearing on regulations, with notice of hearing published twice and the first notice published 14 days prior to the hearing. For other regulations, a public hearing is not required.
B. Approve regulations by a majority vote of the board
C. Publish a summary of the regulations in the newspaper
D. File attested copies of all regulations with DEP

V. LANGUAGE: Use clear and consistent definitions that are substantially consistent with traditional meaning. (For a good example of locally drafted regulations, see

the Dumpster Regulations of the Town of Winchester in the Appendix).

PERMITS AND FEES

A board of health can require a permit, set a fee, or set out substantive performance standards as a part of a regulation. Boards may regulate by describing in a regulation all possible conditions under which an activity can be conducted without substantial injury to the public health and without a permit. In some instances, it would be difficult, if not impossible, to specify in a regulation conditions under which a person could conduct an activity without board of health review. The board may instead require a permit, whereby the board makes a decision based upon evidence presented on a case by case basis (Benes et. al. 1995).

Permits and fees may be authorized by a state statute or regulation, such as a permit for the transportation of garbage or refuse required by M.G.L. c.111 §31B. Boards of health may also require permits and set fees where there is no direct statutory authorization for a specific type of permit, such as the above, but is a necessary part of their general regulatory power. For instance, boards of health could adopt regulations, pursuant to their general regulatory powers under M.G.L. c. 111 §31, to require every person who owns or operates a genetic engineering facility to register and receive a permit prior to operation (Benes et. al.1995).

Boards of health may also be authorized to require permits and set fees pursuant to a town bylaw or city ordinance. If the amount of the fee is not determined by state statute or by a general town bylaw or ordinance, then boards may set the fee (Benes et.al.1995). However, the amount of the fee must be reasonably related to the administrative costs expected to be incurred by the board in connection with the board's regulation of the activity (i.e. the costs of board inspections, administrative and record keeping duties, etc.).

Fees: Fees imposed by the municipality tend to fall into one of two categories: user fees, based on the rights of the municipality as proprietor of the instrumentalities used; or regulatory fees (including licensing and inspection fees), founded on the police power to regulate particular businesses or activities (Benes et.al.1995).

Such fees are distinguishable from taxes in that:

- they are charges in exchange for a particular governmental service which benefits the party paying the fee in a manner "not shared by other members of society"
- they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service
- the charges are collected, not to raise revenues, but to compensate the governmental entity providing the services for its expenses (Benes et.al.1995).

Permits: If the board of health requires a permit as part of the regulatory process, it should set out standards on which it will rely in reaching a decision. It is not necessary for those standards to be excessively detailed, for it may be impossible "to specify in what circumstances permits should be granted and in what circumstances denied. Each case must depend upon its particular facts." Nonetheless, the board is obligated in its regulation to provide standard or guidelines that the board will use in exercising its permit-granting authority (Benes et.al.1995).

If a permit is required for an activity, then the board of health, which has the power to grant or to

withhold the permit, must decide what action to take "in a fair, judicial and reasonable manner upon the evidence as presented ... keeping in mind the object of the applicable regulation" (Benes et. al. 1995).

INFLUENCING STATE ADOPTION OF REGULATIONS:

If the board of health wishes to influence or change state regulations, or to call attention to a regional problem, it can follow several courses of action:

- contact relevant committees or boards
- discuss the issues with DPH or DEP and other regional officials
- contact DPH, DEP or other state agencies
- attend, and testify at, hearings held by DPH or DEP on proposed regulations.

The executive departments of the state government have rules of procedure and rules for adopting administrative regulations (e.g. 310 CMR 2.00, Rules for Adopting Administrative Regulations). It may be useful for you to review these rules to help you understand how state regulations are adopted.

ENFORCEMENT AND DUE PROCESS

Local boards of health have the power and responsibility to enforce regulations made under the State Sanitary Code and Environmental Code (see M.G.L. c. 111 §§127A and 127B and 105 CMR 400.000 and other chapters of the State Sanitary Code. See also M.G.L. c. 21A §13, 310 CMR 11.00 and 310 CMR 15.0).

M.G.L. c. 111 §187 specifically authorizes boards of health to apply to the Supreme Judicial Court or Superior Court for enforcement of its orders relative to the public health, and specifies the applicability of M.G.L. c. 214 §§11-12. Jurisdiction over certain civil actions (such as actions for injunctions and actions for receiverships) brought by local boards of health to enforce Chapter II of the State Sanitary Code (Housing) is vested in the Superior Court, District Court and/or Housing Court under various provisions of M.G.L. c. 111 §§127A-127I.

Jurisdiction over criminal actions to enforce state and local regulations and ordinances and any other misdemeanors established by law is vested in the district courts, the Boston Municipal Court and the Superior Court under M.G.L. c. 218 §26. It should be stated that a criminal proceeding can only be commenced if there is a specific state statute which makes the public health violation a criminal offense. A board cannot proceed against a violator criminally in the absence of such a statute. In trying to determine whether a state statute is a criminal statute, the most relevant question is: Does the statute say that violators may be punished by a "fine" or "penalty" or by "imprisonment?" If the statute contains no such language, it is very unlikely that the board can commence any criminal proceeding.

To effect the enforcement of the Sanitary and Environmental Codes, local boards of health are encouraged to exhaust all administrative enforcement actions before pursuing court action. The procedural provisions of these codes are quite specific and should be referred to and followed exactly in each instance. The following outline suggests general strategies for the enforcement of the Sanitary Code and Environmental Code.

A. Make an inspection
   1. routine, or
   2. upon request or complaint.

B. If you anticipate enforcement problems, you may want to take photographs of violations and, if court action is contemplated, take samples as necessary and observe procedure if specified in regulation.

C. Serve notice of the violation(s) and/or serve a copy of any orders; indicate statutory or regulatory basis for your enforcement action in the notice or order.

D. Determine whether the violation or condition constitutes an "emergency" or "imminent health threat."

1. If the violation or condition constitutes an "emergency" or "imminent health threat," the board should consider whether you can/should either order the owner to correct the violation immediately (e.g. within 24 or 48 hours) or to cease operations completely until the violation has been corrected (which may require a suspension of the owner's permit without a prior hearing).

2. If the violation or condition does not constitute an emergency, the board should issue an order allowing a reasonable time for correction (Note: the specific code chapter under which the board is acting may specify a "standard" time for correction, such as 10 days).

E. Make a re-inspection on or soon after the deadline for correction (or, if the facility is closed due to an emergency permit suspension by the board, upon receipt from the owner of a verbal or written assertion that the violation leading to the suspension has been corrected).

F. If correction has not been achieved, issue a notice of non-compliance which states the grounds for the finding of noncompliance and lists what actions the board is taking (i.e. license or permit revocation or suspension or administrative penalty assessment) and which advises the owner of his right to a hearing before the board concerning that administrative action. If no license or permit suspension or revocation action or administrative penalty imposition is involved, skip below to item J; otherwise, go to item G.

G. Arrange hearing, if appropriate.

H. Hold hearing before the full board; board to issue decision after hearing.

I. Serve notice of imposition or penalty or revocation of license or permit, if applicable, after holding any hearings required by law and serving adequate notice.

J. In cases where no administrative action is to be taken, you may go directly to court and file a criminal or civil action, depending on the circumstances. Generally, criminal actions in the district court are appropriate for seeking payment of fines or penalties and civil actions in the Superior Court are appropriate when you are seeking injunctions (i.e. court orders to enforce a Board of Health order or decision).

K. Proceed with civil or criminal process.

Since legal action can be expensive, time-consuming and exhausting, especially for a small staff, it is important for the board to use administrative sanctions at its disposal, such as revocation of licenses and permits and imposition of administrative penalties, where possible. When administrative sanctions are not available, a criminal complaint may be required to obtain compliance.

Inspections: Numerous provisions of the General Laws as well as Chapter I of the Sanitary Code and Title 1 of the Environmental Code authorize local boards of health to enter and examine certain premises or facilities either upon complaint or according to a local plan for systematic, periodic area inspection. Inspections are to be conducted in the manner described in the relevant statute or the relevant provision or article of the Sanitary or Environmental Code. Generally, the statutes and regulations allow such inspections to be performed, without prior notice to the facility owner, at any "reasonable time." (See sections below, items in Appendices, and subsequent chapters for additional information).

Periodic Area Inspections: Periodic area inspections serve to determine whether conditions exist that are deleterious to the health and well-being of the public. These may be regular (i.e. once a year, twice a year, etc.) or periodic "monitoring" inspections intended to make sure that the regulated facility is in compliance.

Inspections Upon Request or Complaint: Inspections may be performed upon the request or complaint of a person that credibly appears to have reason to believe that a facility is out of compliance with applicable regulations. These inspections typically involve the examination of premises for specific alleged conditions that may constitute violations of law, rather than a comprehensive examination of the entire premises.

If an occupant or owner objects to such an inspection, it is necessary to obtain a warrant to conduct the inspection. Chapter I of the Sanitary Code authorizes local boards of health to obtain a search warrant to conduct an inspection, "if any owner, occupant, or other person refuses, impedes, inhibits, interferes with, restricts or obstructs entry or free access to every part of the structure, operation or premises where inspection authorized by (the) Code is sought." The board should have substantial evidence indicating that a search is necessary. If cause for a search is judged to be warranted, officials of the district court, with the help of the board or health officer, will develop an affidavit recommending that the court magistrate issue a search warrant (M.G.L. c. 111 §5(1)). The warrant apprises the owner, occupant or other person of the nature of and justification for the inspection. The board may seek police assistance in presenting the warrant.

If efforts to conduct an inspection are impeded by an owner, occupant or other person, the board of health may revoke or suspend any license, permit or other permission regulated by the board. This power should provide considerable leverage to the board to obtain compliance.

Suggestions for Conducting an Inspection:

Routine inspection of housing units should take place at a mutually convenient time. Establishments such as catering services, recreational camps, refuse disposal facilities and food manufacturing plants should be inspected at times when they are operating, when possible problems can be observed.

The inspector should identify him/herself, show his/her credentials, and state his/her intent to inspect the premises and the nature of the inspection.

If entry is refused, the inspector should leave and report the refusal to the board of health for further action, such as approval of obtaining a search warrant for the inspection.

At the time of inspection, the inspector should note all violations and complete the appropriate inspection forms.

If expert assistance is deemed necessary but is not available at the time of the inspection,

the inspector should complete the form to the best of his/her ability, indicating areas that require a separate inspection with expert assistance. The board should promptly schedule the expert inspection.

At the conclusion of an inspection, the inspector should report all violations to the owner or occupant of the premises, the operator of the establishment, or some other responsible person as may be specified in statutes and regulations.

Orders: Public health officials may issue an order for compliance with the Sanitary or Environmental Codes whenever a violation is found. Such an order gives notice to the violator that a violation exists and serves notice upon him/her to correct it within a specified time. Failure to comply with an order may result in other legally sanctioned procedures, such as commencement of civil proceedings or criminal prosecution in court.

In enforcing local regulations and the Sanitary and Environmental Codes, local boards have the authority to serve orders on all persons in violation of regulations.

Orders are served in the following manner:

- personally, by any person authorized to serve civil process, or
  by any person authorized to serve civil process, by leaving a copy of the order at the individual's last and usual place of abode, or
- by sending the individual a copy of the order by registered or certified mail, return receipt requested, if the individual is within the Commonwealth, or
- by posting a copy of the order in a conspicuous place on or about the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality where the building or premises affected is situated, if the individual's last and usual place of abode is unknown or outside the Commonwealth.

Emergency Powers: In addition, local boards possess enforcement powers for emergency situations. Regulations 105 CMR 400.000 (Chapter I of the Sanitary Code) and 310 CMR 11.00 (Title I of the Environmental Code) grant local boards the authority, in accordance with the provisions of M.G.L. c. 111 §30, to dispense with ordinary enforcement procedures in the interest of protecting the public health in emergency situations. The board may, without notice or hearing, issue an order citing the existence of an emergency and requiring that such action be taken as the board of health deems necessary.

The agent of the board of health, or director or commissioner of the health department, as the case may be, is authorized to act for the board in cases of emergency or in cases when the board cannot conveniently meet. She/he has all the authority that the board has, but must report emergency actions to the board for approval within two days, and must be directly responsible to and under the control of the board (M.G.L. c. 111 §30).

Hearings: Boards of health may hold hearings upon their own initiative, or upon petition by any party wishing to be heard concerning a public health matter. Usually hearings are requested by people who wish to contest an order issued by the board of health for correction of a violation of state or local regulations. Hearings typically provide opportunities for individuals to show why an order should be modified or withdrawn. In addition, hearings may serve as a forum for the discussion of proposed or existing local or state regulations.

In certain cases specified in statutes or regulations, the board may be required to hold a public

hearing before granting a license, before making local regulations, or before revoking a license or permit. For example, a hearing must be held before the board grants variances under the Sanitary or Environmental Codes.

Unless it is specifically prohibited by an article of the Sanitary or Environmental Codes (in which case an appeals process is outlined), any person or group of people may request a hearing following an order served on that individual or group by the board of health.

- The petition must be in writing and received by the board within seven days after the order was served, unless differently specified by local regulation. If the petition is not received within seven days, each day's violation constitutes a separate offense.

- The board must arrange the hearings within 30 days after the order was served and must inform the petitioner of the time and place of the hearing under provisions of the Code.

- The hearing may be postponed if the petitioner supplies sufficient reason.

- After the hearing, the board sustains, modifies, or withdraws the order and informs the petitioner of the decision in writing.

- If the order is sustained or modified, it must be carried out within the time period designated in the original order or in the modification. Each day's failure to comply constitutes a separate offense.

- The board of health must make every notice, order and other documentation of the hearing a matter of public record in the office of the town or city clerk, or in the office of the board of health.

Boards of health conduct hearings that are either quasi-judicial (concerning orders, licenses, permits or other such matters) or quasi-legislative in nature (involving debate of new or existing local regulations). The following outlines suggest practices for each type of hearing:

Quasi-Judicial Hearings:

- The hearing officer should be impartial and yet familiar with the particular case and the laws and regulations pertinent to the case (M.G.L. c. 30A §1A _).
- Hearings must be public unless permitted by the open meeting law to be closed according to the procedure outlined in M.G.L. c. 30A §11A _.
- The parties involved may be represented by counsel. The counsel may be either a lawyer or non-lawyer.
- The names of all parties, counsel and witnesses (and on whose behalf they are appearing) should be included in the hearing records.
- The health officer should introduce him/herself and direct the hearing by stating the purpose of the hearing and highlighting the main issues of the case.
- Although agencies need not observe the rules of evidence observed by courts, evidence may be admitted "only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs" (M.G.L. c. 30A §11). Evidence may be taken in any order.
- The petitioner has the burden of proof and should proceed first.
- Both parties should be allowed sufficient time to state their cases. Any witness may be cross-examined by either party.

- In very informal hearings, it may be appropriate for the hearing officer to help the party present his/her full case and offer advice as to his/her legal rights.
- In minor matters, the hearing officer may announce the decision immediately. The decision should be immediately noted on the record. In lengthy or complex hearings, it is better to reserve the decision and render a determination in writing with a well-reasoned opinion in support of the decision. The decision must be served on the party and the party's counsel. Decisions may be delivered by mail. Information describing procedures for appeal should be included in the decision.

Quasi-Legislative Hearings: Quasi-legislative hearings are usually held before the board of health promulgates rules, regulations or standards. The participation of interested groups in quasi-legislative hearings provides local boards with a basis of information for the development of effective regulations and may help secure voluntary compliance with new or existing regulations.

- Hearings should be scheduled far enough in advance for the parties involved to arrange their representation and to prepare their testimony.
- Notice of the hearing may be made by publication in a local newspaper and through letters to interested groups and corporations.
- When a new regulation is proposed, a preliminary draft ought to be available in advance of the hearing.
- All parties should be given equal time to present their case.
- Only hearing officers may ask questions of either party. Cross-examination is not allowed in quasi-legislative hearings.
- Each group should be given the opportunity to submit a supplementary written statement.
- Participation of parties is voluntary. Only in very rare instances is specific information subpoenaed for quasi-legislative hearings.

Appeals: After the hearing, any individual not satisfied with the final decision of the board may appeal the decision to a court of competent jurisdiction to the extent allowed by law. The right of the aggrieved party to appeal the board's decision is not automatic. There is no statute giving an aggrieved party the right to challenge any final administrative decision of a local board of health, as there is with final state agency administrative decisions (see M.G.L. c. 30A). However, aggrieved parties may bring an action under M.G.L. c. 12 §11I alleging that their civil rights were violated. Alternatively, an aggrieved party could bring "an action in the nature of certiorari" in Superior Court under M.G.L. c. 249 §4 seeking to "correct errors" in the administrative proceedings before the board of health.

Penalties: The local board of health may revoke or suspend permits and licenses it has granted, with or without a hearing, as specified in the applicable laws and regulations. It is also authorized to seek in court to impose penalties on any individuals who violate provisions of the Sanitary or Environment Codes in any or all of the three following ways:

- Anyone who impedes inspection of any structure, operation or premises after a search warrant has been presented shall be fined not less than $10 nor more than $500.

- Anyone who fails to comply with an order issued by the board of health shall be fined, upon conviction in court, not less than $10 nor more than $500. Each day's failure to comply with an order is considered to be a separate violation.

- Anyone who violates any provision of the Sanitary or Environmental Codes for which no penalty is provided in the code or in the General Laws shall be fined upon

conviction in court, not less than $10 nor more than $500 (see M.G.L. c. 111 §127A, and the Sanitary and Environmental Codes: 105 CMR 400.700; 310 CMR 11.10).

Variances: The board of health may grant a variance to the application of any provision of the Sanitary or Environmental Code (except provisions regarding conditions deemed to endanger or impair health or safety, and those regarding solid waste disposal facilities which may only be granted by DEP) when, in the opinion of the board, the enforcement would do a manifest injustice, **provided** that the variance:

(1) does not conflict with the spirit of the minimum standards,
(2) all affected parties have been notified, and
(3) a hearing has been held.

Variances granted by the board of health must be in writing. A copy of each variance must be kept in the office of the board of health. Notice of the grant of variance must be filed with the Commissioner of Public Health, or with the Commissioner of Department of Environmental Protection, in a case in which a variance to a provision of the Environmental Code is granted.

The board may limit the variance by whatever qualifications or conditions (including time limitations) it deems necessary. The board may also revoke, modify or suspend the variance, in whole or in part, by notifying the holder in writing. If this happens, the holder of the variance in question may request a hearing in accordance with 105 CMR 400.800(B) (Chapter I of the Sanitary Code) and 310 CMR 11.12 (Title 1 of the Environmental Code).

Court Procedures: The board of health may commence a court action when other efforts to obtain compliance with local or state laws or regulations have failed. There are two basic types of action - civil and criminal. An example of a civil action is an action in Superior Court under M.G.L. c. 111 §127A to "enjoin" (i.e. stop) a violation of the State Sanitary Code. An example of a criminal action is an action in the District Court seeking monetary penalties for violations of the Sanitary Code.

In a civil action, the town attorney must file a complaint in court and serve a copy of it to the defendant. To start a criminal action to enforce compliance with the law, the health officer (or member of the board of health or an agent of the board) signs and files, with the court having jurisdiction, an application for a complaint, sometimes called an "information," setting forth completely and precisely the violations. The city or town attorney may file the application. A clerk in the court will serve the complaint on the defendant. The parties will then be required to appear at a show cause hearing before a magistrate. If the magistrate finds just cause, a complaint will be issued and a trial will be scheduled.

Civil Proceedings: Civil proceedings usually follow this pattern:
Complaint by board
Answer to complaint by defendant
Period of "discovery"
Trial
If the board prevails, court will "execute judgment": judge may make appropriate order to correct violation (injunction) impose fine or other penalty, and/or may attach the property or garnish wages of the violator.

Criminal Proceedings: In criminal proceedings, the sequence of events is approximately as follows:

• Board or its agent files complaint/application in court (usually in the district court)
• Clerk of court issues summons (upon application by board of health or other applicant)
• Show cause hearing is held to determine whether a complaint should be issued by the court
• Court issues complaint, if clerk decides there is cause
• Defendant answers or files motion to dismiss complaint for lack of cause
• If complaint is not dismissed, case proceeds to trial
• If board prevails at trial, court will "execute judgment": judge sets fine, prison term, or other penalty.

Boards of health also have recourse to the courts for other actions, such as a petition to establish a rent receivership, to obtain a cease and desist order, to recover expenses incurred in removing a nuisance, or to obtain a search warrant. Persons upon whom the board of health have served an order may appeal, or in certain cases (i.e. those involving a board's order to abate certain nuisances), "file a petition for review of such order in the district court" as provided in specific statutes (see M.G.L. c. 111 §§125A, and 143). The statute and regulations describe more fully the alternative enforcement methods available to boards of health.

Community Awareness of Public Health Standards: Frequent campaigns to remind the public and commercial and industrial establishments about minimum standards for housing, sewage and waste disposal, water, food, and other areas under board of health jurisdiction may help the board reduce the burden of enforcement. Public education, combined with regular inspections and constructive approaches to resolving problems can mobilize community awareness of public health mandates.

The board of health can establish and maintain its credibility and community visibility by sending press releases to the local paper on current activities and on local and state regulations affecting seasonal activities (such as community fairs or bake sales, percolation tests, campgrounds and camps, flu immunizations, etc.). (See Guidebook chapter on media relations). Public hearings and notices about such things as landfill use, availability of recycling, housing conditions, and other problems and concerns will also increase public awareness of the board's function in town government.

LIABILITY ISSUES

Liability for Negligence: The Massachusetts Tort Claims Act (M.G.L. c. 258) makes public employers liable for the negligent acts or omissions of public employees and immunizes those employees from personal liability for negligence. "Public employee" is broadly defined in the Act to include officers and employees of any public employer. "Public employer" includes any county, city, town, public health district or joint district or regional health board established pursuant to the provisions of M.G.L. c. 111 §§27A or 27B.

Discretionary Acts: The Tort Claims Act exempts public employers from liability for any claim based on the employer or employee's performance (or failure to perform) a discretionary function, whether or not the discretion is abused. At the same time, a public employee is immune from personal liability for discretionary decision-making as long as he acts in good faith and without malice or corruption. The courts have defined a discretionary function as one characterized by a high degree of discretion and judgment invoked in weighing alternatives and making choices with respect to public policy and planning. Therefore, health officials will generally not be liable for mistakes or errors of judgment in the performance of duties where they are empowered to exercise judgment or discretion.

Intentional Torts/Civil Rights Violations: Under the Tort Claims Act, the public employer does not assume liability for civil rights violations or for intentional torts committed by public employees during the course of their employment. Instead, the employee remains personally liable for civil rights violations and for intentional torts, such as assault, battery, false imprisonment, false arrest, intentional infliction of emotional distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations.

However, an employee will not be liable for an intentional tort arising out of a discretionary act. For instance, a board of health member could not be held liable for slander based on statements made during deliberations over adoption of policy provided that he acted in good faith and without malice or corruption.

It should be noted that although the public employer is not liable for a civil rights violation or an intentional tort committed by a public employee, the employer is authorized by the Tort Claims Act to indemnify the employee in an amount up to $1 million, except that a public employer is not allowed to indemnify an employee for violation of civil rights if the employee acted in a "grossly negligent, willful, or malicious manner."

Medical Treatment of Minors: As a general rule, parents retain the legal authority to make decisions concerning a minor's medical care. However, statutes and case law have carved out significant exceptions to the general rule and a few of these exceptions are outlined below:

M.G.L. c. 112 §12F permits emergency examination and treatment, including blood transfusions, when delay will endanger the life, limb or mental well-being of a so-called "emancipated minor,"(i.e. a minor who is married, the parent of a child, pregnant, a member of the armed forces, living apart from his parents and supporting himself financially, or reasonably believes he is suffering from or been in contact with a disease dangerous to the public health).

M.G.L. c. 112 §12E provides that a minor 12 years of age or older may consent to hospital and medical care related to the diagnosis and treatment of drug dependency.

M.G.L. c. 112 §12S authorizes an abortion if the pregnant woman is less than 18 years old and both she and her parents or legal guardian consent. If the minor chooses not to seek parental consent, she can seek authorization in Superior Court.

The courts in Massachusetts have recognized a general right of "mature minors" to make decisions about medical treatment.

As a general rule, physicians have a duty not to disclose medical information about a patient without consent. The sole exception is where there is a serious danger to the patient or others.

Reporting Child Abuse and Neglect. M.G.L. c. 119 §51A mandates certain categories of professionals who come in contact with children to report suspected abuse or neglect to the Massachusetts Department of Social Services. Mandated reporters include such individuals as physicians, medical interns, hospital personnel, medical examiners, psychologists, emergency medical technicians, dentists, nurses, chiropractors, podiatrists, public or private school teachers, educational administrators, guidance or family counselors, probation officers, social workers, foster parents, fire fighters, police officers as well as administrators of child centers and licensed family day care providers and all their employees.

A mandated reporter must file a report if he/she has reasonable cause to believe that:

- a child is suffering from physical or emotional injury resulting from abuse, including sexual abuse;
- a child is suffering from neglect, including malnutrition; or
- a child is physically dependent upon an addictive drug at birth.

There is no category of mandated reporter specifically for board of health members or agents. However, board of health members or agents may, because of their professional status, such as nurses, fall within one of these categories. Board of health members or agents may file a report if he/she has reasonable cause to believe that a child is suffering from, or has died as a result of, abuse or neglect.

Information on how and where to report abuse and neglect is included at the end of this chapter.

THE CONFLICT OF INTEREST LAW (taken from MHAB Legal Handbook for Boards of Health, June 1995).

The Conflict of Interest Law, M.G.L. c. 268A, sets minimum standards of ethical conduct for all municipal employees and officials. Board of health members are municipal employees and are bound by this law. All municipal employees, whether elected or appointed, full or part-time, paid or unpaid, must abide by the law's restrictions. The purpose of the law is to ensure that a municipal official or employee's private financial interests and relationships do not conflict with his/her official municipal responsibilities. The law is written broadly in order to prevent a municipal official from becoming involved in a situation which could result in a conflict or even give the appearance of a conflict.

Some municipal employees may be designated as special municipal employees.
A municipal employee may be given special employee status by a vote of the board of selectmen or city council, provided that the employee:

- is not paid; or
- holds a part-time position which allows them to work at another job during normal work hours; or
- they were not paid by the city or town for more than 800 working hours during the preceding 365 days.

Certain sections of the law apply less restrictively to special employees. It should be noted that a municipal position is designated as having a special status, not an individual. Therefore, all employees holding the same office or position must have the same classification as special municipal employees.

Activities Covered by the Law: The Conflict of Interest Law applies to a variety of activities. For example, Section 2 prohibits bribes. If a board member seeks payment to perform or not perform official duties in a certain manner, the law imposes penalties upon the member seeking to receive the payment as well as the party who offers the payment.

Section 3 of the law applies to the acceptance of gifts. You may not accept a gift or anything of substantial value ($50 or more) given to you because of the position you hold on the board, or in return for work you performed that was part of your job responsibilities. Even if a person gives you this gift simply to thank you for doing a good job, you as a board member may not accept the gift. You may accept a gift valued at less than $50 provided that it is not intended as a

bribe. **Any bribe**, however, no matter how little its value, will violate the conflict of interest law.

Section 17 pertains to outside activities of municipal officials. Generally, a regular municipal employee cannot be compensated by anyone other than the municipality in relation to any particular matter in which the municipality is a party or has a direct and substantial interest. Even if the interest is held by another agency in the municipality, other than the board of health, you cannot be compensated by another party in relation to the issue. If you are a regular municipal employee, you may not act as an agent or attorney for a private party before city or town boards. This restriction applies whether you are paid or not.

If you are a "special" municipal employee, you may represent private parties before town boards other than the board of health, unless your representation pertains to a matter in which you participated or which is now or within the past year was within your official responsibility as a member of the board of health. If your representation would involve matters reviewed by the board of health, you cannot represent a private party before any municipal board.

Section 18 deals with the activities of former municipal employees. It prohibits a former municipal employee from using the relationships which they develop during their employment, and the confidential information which they were privy to, to gain unfair advantages. If you participated in a particular matter as a municipal employee, you can never become involved in that same particular matter after you leave municipal service. Partners of a former municipal employee are bound by the same restriction for one year. If you had official responsibility for a particular matter as a member of the board, you may not appear personally before any agency of your city or town on behalf of a private party in connection with this matter, for a period of one year after leaving the municipal position.

Under Section 19, you may not act as a board of health member on a matter that affects your own financial interest or that of your immediate family, or that of a business or organization in which you serve as an officer, director, partner or trustee. You must also refrain from acting on matters that affect your business competitors.

This section is also referred to as the "anti-nepotism" provision. As a member of the board of health, you may not have any significant involvement in the hiring of an immediate family member, or in decisions relating to pay raises, promotions, etc. You also may not have day-to-day supervision of an immediate family member.

There are two possible exceptions to this rule.

Appointed board members may act on matters involving their financial interest if they obtain prior written permission from their appointing authority.

The second exception allows members of the board to act on any matter of general policy that affects a substantial segment of the community's population in the same way.

In addition, the rule of necessity allows a member with a conflict to act if the board cannot otherwise obtain a quorum. You should obtain advice from counsel or the State Ethics Commission prior to invoking the rule of necessity.

Section 20 concerns municipal contracts. A member of the board of health is prohibited from having a direct or indirect financial interest in a contract made by any municipal agency. If you discover that you have a financial interest in a contract made by a municipal agency, you must fully disclose your financial interest to the agency and terminate or dispose of your interest within 30 days. There are a number of exceptions which allow you to contract with **other** town

agencies, such as where it is publicly bid. There are very few instances where you may contract with the board of health, however. You should consult with your city solicitor or town counsel, or the State Ethics Commission for specific questions.

A contract includes a salary from the city or town. Accordingly, holding more than one position where at least one is paid could be a conflict of interest. There are numerous exceptions to this rule, also, which are beyond the scope of this book. Consult with your city solicitor or town counsel or the State Ethics Commission for specifics.

Section 23 provides the general standards of conduct that are required of municipal employees. A municipal employee may not:

- accept other employment involving compensation of substantial value if the responsibilities of the other employment conflict directly with the responsibilities of his public office;
- use his public position to obtain unfair privileges and advantages that are of substantial value and not available to others;
- act in such a way that reasonable people would believe that he could be improperly influenced or act in violation of his public duties.

A municipal employee can avoid the appearance of a conflict by disclosing, in writing, to his appointing authority, or if an elected official, by disclosing in writing and filing this disclosure with the city or town clerk, any facts or information which might cause a reasonable person to believe that he was being unduly influenced or might be obtaining unfair privileges for himself or others.

Enforcement: The State Ethics Commission was established by the Legislature to enforce the conflict of interest law. District attorneys and municipal officials also have a responsibility to enforce the law at the municipal level. Anyone can file a complaint if they have reason to believe that the conflict of interest law has been violated. You may file a complaint by writing, calling or visiting the State Ethics Commission, 617-727-0060. The commission is required by law to keep the identity of all complainants confidential (M.G.L. c. 268B §4). Also, M.G.L. c. 268B §8 shields complainants from retribution if they file a complaint with the Commission.

Board members may call the State Ethics Commission Legal Division for informal advice regarding the Conflict of Interest Law. You may also seek written advisory opinions from your town counsel, city solicitor or the State Ethics Commission if you have any questions about the law or about any of your own actions. It is extremely important that you, as a member of the board of health, become familiar with this law, and that you seek advice prior to committing any actions which may be a violation of the law.

PRECEDENCE OF LAW

The various written (or statutory) laws in this country are in order of diminishing precedence as follows:
The Federal Constitution
Acts of Congress and treaties
Rules and regulations of certain executive departments
State Constitutions
Laws enacted by state legislatures
Rules and regulations of state agencies
Municipal charters granted by states

Municipal legislation
Rules and regulations of local boards of health.

AREAS OF JURISDICTION: STATE, LOCAL, FEDERAL

In general, local board of health responsibilities for enforcement of state and local regulations extend to privately owned or municipally owned or operated facilities, buildings, or programs, within the boundaries of the municipality. Privately owned or operated concessions, camps, schools or other facilities are subject to applicable local licenses and inspections whether located on public or private land. For example, ice cream vendors on public beaches, private day camps in state parks, private concession snack bars in federal office buildings and other such program and services must obtain local licenses and comply with state and local minimum standards and regulations.

When programs, facilities or services involve more than one town (such as recreational camps, beaches or private schools on land in two adjoining towns), statutes and regulations usually specify that the boards of health of the towns involved "may coordinate activities in effecting compliance" with regulations. In practice, there may be a division of responsibility according to where the structures, headquarters or facilities are in fact located. For instance, a camp whose buildings are in one town will probably seek its camp license from that town, but if its swimming pool is in another town's boundaries, it may seek its swimming pool permit from the town in which the pool is located. In any case, it is important that each town be sure that the camp is appropriately licensed and inspected and that state officials check water sources and sewage disposal facilities.

Homeowners and others who happen to be located on town lines do frequently have to obtain permits from both towns for such things as individual sewage disposal system and private wells. If local regulations in the towns differ, the owner/operator will typically be requested to comply with the more stringent regulations.

When sanitary or health problems arise in state or federally owned facilities over which the board of health has little or no jurisdiction, the board may wish to send a formal notice or complaint to the responsible agency, and investigate various alternatives for obtaining proper enforcement of the Sanitary or Environmental Codes or other regulations. For example, a board of health may receive a complaint regarding conditions in state-owned housing units at a state college or university, or the board might be aware of unsanitary conditions in a state-operated food service establishment. If a direct complaint to the agency involved does not get results, the local board of health should request advice and assistance from DPH or DEP, as appropriate. The board of health may also assist tenants and other affected persons in determining their rights to petition state agencies or the courts to seek enforcement of minimum standards. Checking with DPH or DEP regional offices, legal departments, and with town counsel may provide the board with a sound basis for following a particular course of action. In some cases, however, where jurisdictional boundaries are unclear, the board of health may find that a court test is the most satisfactory way to obtain clarification.

When the source of a problem affecting a town is located in a different town, the board of health may seek to have the board of health in the town where the source is located take necessary action to remedy the situation. If the matter cannot be resolved locally, the town may request DPH or DEP to take action, especially if violation of state regulations is involved. Regional authorities may also be involved, especially if air or water pollution or other problems dealt with on a regional basis are the cause of concern.

State and federal authorities regulate intrastate and interstate commerce, respectively, and provide or help to finance a wide variety of programs to promote the general health and welfare. State or federally funded programs may finance, through grants or contracts, services and facilities that are subject to local inspections and permit requirements. Unless the state specifically provides for enforcement of the Sanitary and Environmental Codes by a state agency in such facilities as halfway houses for de-institutionalized patients, the local board of health should assume that it has the same authority and responsibility as it has over any other private facility. The board may wish to notify the state contracting agency as well as the facility itself of any problems or violations or regulations. The board may find that a constructive approach to follow with any program for special population groups is to inform the program about board of health services and responsibilities, and request that the program provide the board with a full description of its services, clientele, special needs, problems and administration. The board of health may also initiate communications with relevant state agencies to be kept informed so that it can anticipate and plan for substantial changes that have an impact on need for nursing services, sanitarian's services or other board of health involvement.

Checking the sanitary conditions of jails, lockups, prisons, houses of correction and reformatories is the explicit responsibility of the Department of Public Health, as specified in M.G.L. c. 111 §§20 and 21. If any problems come to the attention of the local board of health, it should notify the Regional Office of DPH so that the district health officer can investigate.

Appendices

Legal Authority and Procedures

Examples:

Local Regulation	Dumpster Regulation	A
Local Permit	Application for a Dumpster Permit	B
Local Permit	Application for permit to operate dumpster service	C

PPENDIX A EXAMPLE OF LOCAL REGULATION

TOWN
SEAL
BOARD OF HEALTH NOTICE

The Board of Health, Town of______________________ Massachusetts in accordance with, and under the authority granted by Sections 31 A and 31 B of Chapter 111 of the General Laws of the Commonwealth of Massachusetts hereby adopted the following rules and regulations at a meeting of the Board held on September 17, 1979.

All other regulations of the Board of Health inconsistent with these regulations are repealed as of October 15, 1979.

Effective date: These regulations shall take effect on ________________

DUMPSTER REGULATIONS AND FOR THE REMOVAL AND TRANSPORTATION OF GARBAGE, RUBBISH, OFFAL OR OTHER OFFENSIVE SUBSTANCES.

I. Each dumpster must be located at a distance from the lot line as not to interfere with the safety, convenience or health of abutters or residents. Dumpster location must be approved by the Board of Health.

2. When deemed necessary by the Board of Health, it may be required that a dumpster site be enclosed or screened by the property owner or authorized agent.

3. Dumpster is not to be filled between the hours of 11:00p.m. and 7:00 a.m. for residential property and at the close of the business day for commercial property, at which time the lids are to be locked. The lids must be closed when dumpster is not in use during all other times.

4. Each dumpster must be of sufficient size and capacity to eliminate overflowing, and the property owner or authorized agent of the premises utilizing the service must take appropriate action immediately to empty contents when full.

5. Each dumpster must be situated so as not to obstruct the view of flowing traffic.

6. It shall be the responsibility of the property owner or agent being serviced to maintain the dumpster area free of odors, scattered debris, overflowing, and all other nuisances.

7. The property owner or authorized agent responsible for maintaining the dumpster service is required to have a permit from the Board of Health foreach dumpster. All permits shall expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. There shall be a fee of $10.00 for each dumpster payable yearly for said permit.

8. No contractor, firm or person shall supply a dumpster service in the Town of______________ , for the purpose of storage, removal or transporting of garbage, rubbish, offal or other offensive substances without first obtaining a permit from the Board of Health. All permits shall expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. There shall he a fee of $10.00 payable for said permit.

9. Temporary dumpster permits (roll-off or gondola type) will be issued to a property o authorized agent for a period of time not to exceed 30 days, in connection with construction, dem fairs, carnivals or for other similar temporary needs. Said permit may be renewed for additional 30 days upon application. The property owner or authorized agent shall comply with all the provisions of these regulations which are applicable to the operation of the dumpster. There shall be a fee of $5.00 payable for each temporary dumpster permit.

10. The contractor shall have his/her name and business telephone number conspicuously displayed on the dumpster.

11. The emptying of the dumpster contents by the contractor shall not commence before 7:00 a.m. and not continue after 11:00 p.m.

12. The dumpster contractor shall have the dumpster deodorized when emptied or if necessary, washed or sanitized as directed by order of the Board of Health.

13. These regulations apply to all dumpsters in the Town of______ whether for residential, commercial or industrial use.

14. Permits may be suspended or revoked by the Board of Health for failure of the dumpster contractor or the property owner/his authorized agent to comply with the requirements of these regulations.

By the Board of Health

APPENDIX B

EXAMPLE OF LOCAL PERMIT

APPLICATION FOR DUMPSTER PERMIT

(Pursuant to Section 31 A, Chapter 111 of the General Laws, and
Rules and Regulations
of the ___________________ Board of Health)

Print in ink or type

TO BOARD OF HEALTH,

Application is hereby made for a permit to maintain a dumpster on property, as listed below, in accordance with the Rules and Regulations of the Board of Health.

Check whether permit is for:
( ) Residential use ( ) Commercial use ( ) 30 day temporary ( ) 1 year

Name and residence of:

Owner of property
Applicant for dumpster permit Tel. No.

On bottom half of this form, please sketch an outline of property, showing thereon the proposed location of dumpster. Give distancce from dumpster to other buildings and lot lines or boundaries. Use back side of this application if additional space is needed.

Return this application with fee of $10.00 to: Board of Health,
Town Hall.

C EXAMPLE OF LOCAL PERMIT

APPLICATION FOR PERMIT TO OPERATE DUMPSTER SERVICE, ETC.

(Pursuant to Section 31 A, Chapter 111 of the General Laws, and
Rules and Regulations
of the Board of the ____________________________Health)

Print in ink or type

TO BOARD OF HEALTH:

Application is hereby made for a permit to operate a DUMPSTER
SERVICE and for the REMOVAL OR
TRANSPORTATION OF GARBAGE, RUBBISH, OFFAL OR OTHER OFFENSIVE
SUBSTANCES in the Town of _____________________ in accordance with
Section 31 A, Chapter 111 of
the General Laws of the Commonwealth of Massachusetts and the
Rules and Regulations of the Board of
Health.

Check whether applicant is:
( ) individual ( ) Corporation ( ) Partnership ( ) Other

Print complete name of organization____

Address of main office Tel. No.

Names of partners or officers of organization:_____________________________
I

Name____________________ Title____________ Address_________ Tel. No.

Name___________________ Title____________ Address_________ Tel. No.

Name___________________ Title____________ Address__________ Tel. No.

Signature of applicant or authorized officer

Address

Please list, on the attached form, the names and addresses of locations (residential or commercial) that are serviced by you in _______________________________________

Return this application and attached form with fee of $10.00 to:
Board of Health.

II-B.

CHAPTER 3
ORGANIZATIONAL OPTIONS

OVERVIEW

The administrative structures of Massachusetts cities and towns vary depending upon municipal size and local tradition. In some small towns, the board of selectmen retains all public health responsibility, while many larger cities support complex city health departments with highly specialized staff. Regardless of size and structure, each local public health entity is responsible for enforcing the State Sanitary and Environmental Codes and for protecting the public health of each city or town by enforcing state laws, adopting reasonable local health ordinances, and by carrying out preventive programs.

Throughout this Guidebook the term "board of health" is used (as it is in state statutes and regulations) to mean "the appropriate and legally designated health authority of the city, town, county, or other legally constituted governmental unit within the Commonwealth having the usual power and duties of the board of health of a city or town or its authorized agent or representative". The composition and structure of boards of health in Massachusetts vary greatly, depending upon how the town or city charter and bylaws establish the "legally designated health authority"

ORGANIZATION OF BOARDS OF HEALTH AND HEALTH DEPARTMENTS

Statutory authority for boards of health includes the following variations:

- Towns may elect the board of health (usually three members for three-year staggered terms, as provided in M.G.L. c.41 §1).

- If the town does not provide for a board of health, the selectmen shall act as the board of health (M.G.L. c.41 §1).

- Towns may vote to have the selectmen act as a board of health, or to have the selectmen appoint a board of health (M.G.L. c.41 §21).

- Towns adopting a town manager form of government may include in the town charter, as one of the duties and powers of the town manager, the duty and power to appoint the board of health. An increase or decrease in the size of the boards may also be included in the town manager's powers (Town Manager's Act, Chapter 11, Acts of 1951 and Chapter 512, Acts of 1972; M.G.L. c.43 §103).

- In cities, the mayor appoints the board of health (three members including one physician, provided that none is a member of the city council), unless the city charter provides otherwise (M.G.L. c. 111 §26).

- Cities or towns may vote to accept M.G.L. c.111 §§26A-26E and establish a health department with a commissioner of health and a mandatory advisory council of nine members including two physicians and five non-professionals. The advisory council is appointed by the mayor (city) or board of selectmen (town).

- Municipalities may enter into agreements with other towns or cities to obtain services on a regional basis. Two or more towns may jointly appoint a health officer to be responsible to the regularly constituted boards of health of those towns. A joint committee composed of the board of health of the member towns appoints and determine components and duties of the health officer (M.G.L. c.111 §27A).

- Two or more towns or cities may form a regional health district with a regional board of health to takes the place of the local towns' boards of health except insofar as the regional health district may, by majority vote, delegate certain powers and duties to the constituent municipalities. In this instance a regional board of health hires a full-time director of health who is either a physician or lay person with professional academic training and experience in public health administration (M.G.L. c.111 §27B). Such regional health districts may apply to the Commissioner of the Massachusetts Department of Public Health for partial reimbursement of initial capital outlays for establishing a regional district (M.G.L. c.111 §27C).

- Towns may vote to increase the size of the board of health according to procedures outlined in M.G.L. c.41 §2.

ORGANIZING STAFF

There is considerable variation from town to town in the mix of tasks performed by health department staff depending on the size, composition, and environment of the community. Health departments and boards of health employ physicians, public health nurses, sanitary inspectors, food inspectors, health officers, clerks and other specialized personnel depending on the needs of the community. Where there are no staff, responsibilities are assumed by board members or other town officials such as the town clerk.

M.G.L. c.111 §27 provides in general for the governance of boards of health:

> "*Every such board shall organize annually by the choice of one of its members as chairman. It may make rules and regulations for its own and for the government of its officers agents and assistants. It may appoint a physician to the board who shall hold his office during its pleasure, may choose a clerk, who in a city shall not be a member of the board, and may employ the necessary officers, agents and assistants to execute the health laws and its regulations. It may fix the salary or other compensation of such physician and its clerks and other agents and assistants.*"

Staff may be full-time and have responsibilities in specific program or specialty areas or may be part-time and have limited responsibilities in specific program or specialty areas or may be part- time and

have limited responsibilities. Several titles are commonly used to identify the administrative officer of a local health department:

- Commissioner of Health (M.G.L. c.111 §26A)
- Agent and/or Director of Public Health (M.G.L. c.111 §30)
- Inspector of Health or Sanitarian (M.G.L. c.41 §102 and M.G.L. c.111 §27).

Many boards find it useful to prepare an outline of responsibilities and draw up an organizational chart for the health department. Lines of authority and responsibility should be established but be flexible in order to accommodate the skills and personalities of staff, the needs of the community, and functions to be performed. A typical community is continually changing; the structure and staff of the health department must be adaptable. A board of health may appoint a health officer, part- or full-time, who is responsible for the employment of all other personnel and the assignment of tasks. Members of the staff, in this case, are ultimately responsible to the health officer who, in turn, is responsible to the board.

The board of health may appoint an agent who may be one of its members or the administrative officer of the board or of an association of boards of health subject to its direction and control to act on its behalf in case of emergency, or if the board cannot conveniently meet. Such an agent has all the authority of the board, but is required to report emergency actions to the members within two days for their approval.

ADVISORY COUNCILS AND COMMITTEES

Cities with a commissioner of health and a health department are required to have a health advisory council (as defined in M.G.L. c.111 §26C) which advises and assists the commissioner of health. In addition, boards of health providing home health services certified by the Medicare and Medicaid programs have professional advisory committees to advise them on services, procedures, and evaluation.

In addition to such mandated advisory groups, boards of health may establish either standing or ad hoc advisory committees to assist them in evaluating services, planning to meet anticipated needs, or providing ideas and recommendations regarding policy issues. Other chapters in this Guidebook, such as "Outreach and Education", suggest additional ways the board of health may involve the community in discussion of public health issues and how they can best be addressed.

SHARING STAFF

The inter-municipal employment of qualified health personnel may provide professional health expertise at a reasonable cost to constituent towns while retaining the autonomy of local boards of health. Commonly, in arrangements like this, staff implement public health programs and routine enforcement tasks and rely on each local health board when key policy decisions must be made. Under the authority of M.G.L. c.111 §27A, two or more towns (not cities) may form a district for the purpose of employing health agents.

The association is completely voluntary and non-binding and staff employed by such an association are considered employees of each cooperating community and under their joint jurisdiction. The joint committee:

- appoints personnel and sets compensation;
- determines the relative amount of service which employees will render to each town;
- estimates, each June, the amount of funds needed to operate the district for the coming fiscal year; and
- determines the proportion of costs and expenses to be paid by each town.

Any constituent town may withdraw from the district association by vote before December 1st. Formal withdrawal takes place on January 1st following a vote of the Town Meeting.

Each town retains the authority for making "reasonable health regulations" which are then enforced by the association's employees acting as the town's agents. (M.G.L. c.111 §31).

Local boards can and do charge their own fees for certain local board services. In towns that follow this procedure, the rationale is that local services (particularly administrative support) justify the fees. As with most fees, however, a fee must be used to support a specific service; it cannot be used for raising general revenue or it may be challenged in court.

EXAMPLES OF INTER-MUNICIPAL COOPERATION

The Nashoba Example: Nashoba Associated Boards of Health (NABH) was created in 1931 as a result of a provision in M.G.L. c.111 §27A which permits towns to formally join together to provide health services. Its membership includes the towns of: Ashburnham, Ashby, Ayer, Berlin, Bolton, Boxborough, Dunstable, Groton, Harvard, Lancaster, Littleton, Lunenburg, Shirley, and Townsend. Under this provision of the law, Nashoba functions as the agent for the elected boards of health in its member communities. The fourteen member towns elect an Executive Committee under mutually agreed upon bylaws. Meetings of both the Executive Committee and full Association are held quarterly.

While the local boards of health retain their autonomy and full authority, the Nashoba organization conducts the day-to-day inspections and provides the boards with its findings and recommendations. Nashoba is a public non-profit agency that derives its support from funds assessed from its member towns and fees charged to users of the agency's services. The assessments and fees are established by vote of the members of the association. In the past decade there has been a concerted effort to reduce assessments and rely increasingly on user fees to support specific services.

The following sections describe in detail the broad range of services that Nashoba Associated Boards of Health continues to provide on a daily basis.

Nashoba services include nursing, social work, dental and environmental programs designed to protect and improve public health in the Nashoba service area. Since its founding in 1931, the Nashoba Associated Boards of Health has expanded its range of service from traditional tasks such as social work, nursing visits and disease prevention to increasingly contemporary needs such as AIDS education, well permitting, and general environmental protection. As the Agency has worked to provide this wider range of services, its staff has grown to over 175 individuals reflecting an increasing degree of expertise and sophistication. To meet the challenge, Nashoba staff includes registered

sanitarians, certified health officers, registered nurses, registered physical therapists, registered social workers, registered dental hygienists, and certified home health aides.

Nashoba's Environmental Health Department enforces state regulations governing safe and sanitary housing, swimming pools, bathing beaches, and recreation camps for children and families. They inspect restaurants and retail food stores, and enforce laws which prevent health hazards and nuisance conditions. The staff also provides information and consultation to residents of the 14 communities regarding a variety of environmental and public health issues such as water quality protection, pollution abatement, and incident response.

The Nashoba Nursing Service provides medical services funded by local boards of health and available to area residents. It also provides fee-for-service visiting nurse care both on a private pay and third-party insurance reimbursement basis. In 1966, NABH was certified by the Federal Health Care and Finance Administration and the Massachusetts Department of Public Health (DPH) to provide home health care to Medicaid and Medicare eligible patients. This fee-for-service program, delivered by the agency's non-profit Nashoba Nursing Service, is a natural extension of Nashoba's public health tradition. This program includes visiting nurses, physical, occupational, and speech therapists, certified home health aides, and medical social services.

Nashoba also acts as a distribution station for vaccines and immunizations provided by DPH. Area physicians look to Nashoba as the source for critical supplies of tetanus/pertussis, diphtheria, polio, measles, mumps, rubella, flu and pneumonia vaccines and TB screening materials.

Nashoba Nursing and Dental Programs, funded through local boards of health, are designed to promote good health and prevent the spread of disease. These programs include work site, well adult, and senior clinics to screen for diabetes and to monitor blood pressure and cholesterol levels. The NABH nurses also administer flu immunizations and conduct preventive health education workshops. Acting as "town nurses," Nashoba nurses visit people at home during illnesses, provide help with newborns and prenatal care, and teach general health procedures and preventive measures for communicable diseases.

NABH has long provided basic preventive dental health services to its member towns through its School Dental Program. Funded solely through the local assessment to the towns, Nashoba's registered dental hygienists provide oral screening, chair-side dental instruction, dental cleaning, and fluoride treatment (with parental permission) for grades 2 and 4, and classroom dental health education in grades K, 1 and 3. Children with dental problems are referred to their own dentists for follow-up. Nashoba's school dental program has also secured state grants for materials used in an optional fluoride rinse program which has been made possible in many Nashoba communities through the generous cooperation of local teachers and parent volunteers. Nashoba's dental program directly services over two thousand school children in its member towns.

Other Examples of Inter-municipal Cooperation:

- Two or more cities or towns may form a regional health district with a regional board of health, a director of health, and staff (M.G.L. c.111 §27B). The regional board must be composed of at least one representative from each constituent municipality, or more depending upon population size. Unless certain powers are specifically delegated to constituent municipalities, a regional health district has all the powers normally held by boards of health or health departments.

- A county-wide health department may be formed. Barnstable County, a county-wide system was established in 1926 by a special legislative act. While there is no specific enabling legislation to permit the formation of a county system, special legislation may be introduced. Under Barnstable County's system, the Health Department is funded through the County Commissioners and acts to supplement and coordinate activities of individual boards of health within the county.

REMOVAL, RESIGNATION OF MEMBERS

A municipality is prohibited from removing members of a board established under state law, even where there is cause for removal, unless there is statutory or charter authorization for removal. Since there are no statutory provisions for the removal of members of a town board of health, they cannot be dismissed or removed in mid-term unless a charter provision or special legislation so provides. A mayor, however, may remove a member of a city board of health for cause and fill the vacancy by appointment (M.G.L. c.111 §26) (Benes et.al.1995).

No resignation of a town official is effective until it is filed with the town clerk or until such later time as specified in the resignation (M.G.L. c.41 §109). An appointed board member may resign by voluntarily tendering his or her resignation and having it accepted by the appointing authority (Benes et.al.1995).

FILLING A VACANCY

Elected Boards: If there is a vacancy on an elected town board of health, the selectmen, along with the remaining members of the board of health, shall fill such vacancy. The board of health must notify the selectmen in writing within one month of the vacancy. In the case of a resignation, the town clerk must notify the executive officers of the town. The selectmen must give one week's notice of the meeting at which the vacancy will be filled. A roll call majority vote of the combined boards is required for appointment. If the board of health fails to notify the selectmen within one month of the vacancy, the vacancy shall be filled by the board of selectmen (see M.G.L. c.41 §11).

Appointed Boards: If the board is appointed, any vacancy will be filled by the appointing authority (Benes et.al.1995).

CHARTER PROVISIONS

M.G.L. c.43B, as well as the Home Rule Amendment, permits municipalities to adopt home rule charters governing their form of government. A charter may establish a unique blend of appointed and elected boards for a particular municipality, may determine the number of members of a board, the term of office, and may merge or divide the responsibilities of local offices. A town charter is the functional equivalent of law. A town charter may make other provisions for the election or appointment of a board of health. A town charter supersedes any General Laws to the contrary regarding whether a local board (such as the board of health) is to be appointed or elected, and regarding its make-up and appointing authority, and the appointing authority for town officers and employees (M.G.L. c.43B §20) (Benes et.al.1995).

CONTRACTING FOR PROFESSIONAL SERVICES

Boards of health may provide or expand services by entering into contractual agreements with other agencies and organizations. Such agreements may be designed specifically to help a board of health meet its needs, and can be incorporated in the overall program planning process. Authority to contract for services provides a board of health with a broad base of resources to draw on including:

- increased flexibility in meeting changing needs;
- access to specialized community, district, regional or other services, in proportion to town needs;
- saved administrative time, as well as reduced overhead and start-up costs;
- reduced duplication of services and need for staff development;
- strengthened capacity of community agencies to provide comprehensive services; and
- increased opportunity to devote time to other public health duties.

Examples of types of services that boards of health in Massachusetts have purchased by contract include:

- nursing services;
- environmental sanitation inspections;
- home health services for premature infants and other high-risk infants, children, or adults;
- Clinics - well baby, well adult, screening for selected problems, immunization, dental, etc.;
- school health services; and
- health education programs.

Legal Authority to Enter Service Contracts: No bylaw or ordinance can be passed that would conflict with a law established by the general court (Massachusetts Constitutional Amendment Article II, Section 1). Due to the expressed legislative mandate in M.G.L. c.111 §27, giving boards of health power of appointment, removal, and the ability to fix the salary and compensation of its agents, a bylaw or ordinance establishing a practice otherwise would be in conflict with an act of the legislature.

Town governments and/or boards of health have the authority to contract for services for the exercise of their corporate powers. Towns may appropriate funds to meet needs, including those related to public health and the performance of the duties of the board of health (M.G.L. c.40 §5[19]). "Contracts for health services may be made by the board of health or any legally constituted board performing the powers and duties of a board of health" (M.G.L. c.40 §4).

Towns may also make contractual arrangements for such services as public health nursing services, homemaker services, sanitation, waste disposal, and such services may be managed by the selectmen, board of health, or other officers having charge thereof (M.G.L. c.40 §4). Greater flexibility is further provided through M.G.L. c.40 §4A which provides that any government unit may enter into a contractual agreement with one or more other government units to perform jointly, or for the other unit, or units, any service which each contracting unit is authorized by law to perform.

Procedures for contracting for professional services may differ among towns because boards of health differ in their relationships with their local governments, and because towns may have bylaws regulating contracting for services.

Local boards can, and do, charge their own fees for certain local board services. In towns that follow this procedure, the rationale is that local services (particularly administrative support) justify the fees. As with most fees, however, a fee must be used to support a specific service. It cannot be used for raising general revenue or it may be challenged in court.

Notes on Contracting for Professional Services: While contracted services may be, in certain circumstances, more feasible than additional staff, the expense should be justified with a cost-benefit analysis. Foresight is needed in planning for contracted professional services, and board of health budgets should anticipate the need for contractual agreements when appropriate. In order to retain authority and responsibility for services a board must make its goals clear, and require periodic reporting on services rendered from contracted service providers.

In order for boards of health to meet growing demand for public health services on the local level, alternatives to direct service (such as contracting for professional services) may help boards take advantage of resources already available in the community in a cost-effective manner. For example, while retaining full authority for licensing and monitoring standards , DPH successfully provides millions of dollars worth of public health services through private contracts in local communities statewide.

STAFF EVALUATION AND EDUCATION

It is key that a board of health specify, in writing, the expected duties of staff (including both general and specific responsibilities). Commonly, a board of health will prepare a job description for the administrator, who in turn will be responsible for the preparation of other job descriptions and standards.

Professional associations may also be able to suggest guidelines or performance standards for a particular profession, such as nursing or sanitary engineering. Formal accreditation, certification, and registration mechanisms exist in many health fields to ensure minimum levels of competence.

Continuing education opportunities in universities and colleges provide a means for board of health staff to refresh or broaden their knowledge. In-service education programs, arranged by the board of health staff, also can be used to upgrade the quality of staff.

II-C.

Mission Statement:

The Chatham Health Division and Board of Health enforce Massachusetts General Laws, State Environmental and Sanitary Codes, and Town of Chatham Bylaws and Regulations. The Health Division has the primary responsibility of protecting and improving the public health and well-being of the Chatham community. The enforcement and inspection activities ensure a safe and healthy environment in which to live and work.

The Health Division and Board of Health accomplishes this through the following key activities:

- Researching, planning, evaluating, and developing programs, policies and procedures
- Permitting and inspection of septic systems
- Licensing and inspection of restaurants, inns, motels, pools, beaches, recreational camps
- Education and consultation
- Sponsoring Public Health Clinics such as vaccines and blood pressure
- Environmental compliance Investigation and enforcement
- Communicable disease reporting and follow up
- Public health emergency planning
- Food safety investigation and enforcement
- Housing code inspection and enforcement
- Tobacco Control
- Animal control and inspections
- Building, Zoning, and Planning Board application review and comment

Overview

The Acton Public Health Department is the facilitator for the Board of Health and the Town in safeguarding the public health of the people living and working in the Town of Acton. This is accomplished by protecting and enhancing the environment and public health through education and enforcement of environmental and public health regulations.

Services include:

- Supervising and directing the Acton Public Health Nursing Service and the Community Services Coordinator
- Responding to public health nuisance complaints
- Performing inspections to ensure safe and sanitary housing
- Operating the Pre-Occupancy Housing Inspection program.
- Reviewing, permitting, and inspecting food service facilities, tanning facilities, body art facilities, public swimming pools, beaches, and camps for children
- Providing public and environmental health emergency response capabilities
- Reporting and recording communicable disease information
- Overseeing the activities of the Central Massachusetts Mosquito Control Project
- Monitoring and directing the activities of the Animal Inspector and the Sealer of Weights and Measures

Health Department

Mission Statement

To protect and promote the health, the environment and the well being of the Town of Natick residents and visitors.

Services

The Natick Health Department offers a wide variety of services for the Town of Natick. The main purpose of public health is prevention and the services provided by this department are prevention oriented. The services range from a multitude of various inspections, vaccinations, communicable disease investigations, educational materials, training opportunities, emergency preparedness and staff assistance.

Responsibilities

The Health Department runs the day-to-day operations of the office, while the Board of Health acts as the policy makers. Under the guidance of the board, the department is responsible to carry out and enforce public health policies; local, state and federal laws and regulations in order to protect the health, safety and well-being of our residents, visitors and the environment.

Call the Natick Board of Health for information on the following:

- Flu Clinics
- Food Establishments
- Household Hazardous Waste
- Livestock and Beekeeping
- Septic System Information
- Swimming Pools
- Tobacco Control
- Underground Storage Tank - installation, removal, inspection
- Wells, including Irrigation and Geothermal

Mission Statement

The mission of the Arlington Board of Health is to protect the public health of the Town of Arlington through enforcement of health codes and regulations while promoting a healthy community.

What is the Board of Health and what is the Health Department?

The Board of Health and Health Department, two distinct but inter-connected entities, are charged with protecting and safeguarding the public and environmental health of the Town of Arlington. The Board of Health is a statutory board comprised of three community members at large appointed by the Town Manager for three year terms. One member of the Board of Health must be a physician, and a chairperson is elected annually. The Health Department is a professionally staffed office within the Town of Arlington's Department of Health and Human Services consisting of a Director, administrative staff, and health inspectors (Health Compliance Officers).

The Board of Health holds monthly public meetings and conducts public hearings as necessary; often times the Board functions in a quasi-judicial manner to adjudicate hearings for health code violations. Generally speaking, the Board adopts Regulations that provide protections beyond the minimum standards outlined in the Massachusetts General Laws (M.G.L.)and State Sanitary Code (codified in the Code of Massachusetts Regulations, C.M.R.) and sets town-wide policy related to important health issues, while the Health Department handles day-to-day procedural operations, administrative duties, and executes the various health laws and regulations. The Health Department may also be delegated as the enforcing authority for Town bylaws passed by Town Meeting, the municipal equivalent of the legislature. The Health Department, in broad terms, also works to prevent and control communicable diseases and promote a healthy community, among other things.

What services does the Board of Health provide in the community?

The Board, through the Health Department, provides inspectional services aimed at protecting the public and environmental health. Such inspectional service resources are directed at retail food safety, safe and sanitary housing, recreational camps for children, bathing beaches, public and semi-public swimming pools, tanning facilities, bodyart, bodywork, hazardous waste disposal etc. The Board, also through its Health Department, provides various vaccinations to the community, the most popular of which are flu and pneumonia vaccines.

How are the Board of Health and the Health Department funded?

The Board of Health and Health Department are funded primarily by the Town of Arlington's operating budget, which is comprised mainly of funds obtained from local property taxes, but is augmented by local aid from the State of Massachusetts. The Health Department also periodically receives grant funding, mostly from the Federal government, for specific projects or topics of interest. In addition to the funding sources described above, the Health Department generates revenue by charging permit fees which offset the cost of delivering the aforementioned inspectional services.

The Board of Health is responsible for the protection and promotion of the public's health, control of disease, protection of the environment, and promotion of sanitary living conditions. There are five elected members of the Board of Health who serve three-year terms. The Board is represented in its daily business activities by a full-time Health Director and an Assistant Health Director.
Under Massachusetts General Law and state and local regulations and policies, the Board of Health has the authority to adopt health regulations and address concerns about issues that affect the public's health.

The Brewster Board of Health, and all Massachusetts' boards of health, are required by state and local laws and regulations to perform many critical duties related to the protection of public health. To fulfill their duties, for example, the Board of Health:

- Develops, implements, and enforces health regulations
- Oversees inspections to maintain minimum standards for sanitation in housing, food service, and septic systems
- Works with the Department of Public Works to regulate the Town's waste transfer station
- Investigates nuisances which may be injurious to the public's health
- Enforces Title 5 of the State Environmental Code (Minimum Requirements for the Subsurface Disposal of Sewage, 310 CMR 15.00)
- Responds to health complaints
- Conducts disease surveillance
- Promotes sanitary conditions in housing, recreational facilities, and food establishments
- Protects the environment

The Health Department issues permits and licenses for, and conducts inspections of, the following:

- Bathing Beaches
- Bed and Breakfasts
- Cabins, Motels & Mobile Home Parks
- Children's Recreational Camps
- Food Service Establishments
- Housing
- Tanning and Body Art
- Mobile Food and Ice Cream Trucks
- Private Drinking Water Wells
- Public Swimming Pools
- Septic Systems
- Septage Haulers
- Solid Waster Haulers
- Stables

The Health Departments issues permits and licenses for the following:

- Burial Permits
- Private Wells
- Septic Installers

Vision Statement:

HEALTHY PEOPLE, HEALTHY ENVIRONMENT, HEALTHY COMMUNITY

Mission Statement:

WE STRIVE TO PROMOTE OPTIMAL HEALTH FOR INDIVIDUALS AND FAMILIES OF THE ASHLAND COMMUNITY THROUGH PUBLIC HEALTH EDUCATIONS, PREVENTION OF DISEASE AND INJURY, AND RESPONSE TO PUBLIC HEALTH CHALLENGES.