

# A GUIDE FOR MUNICIPAL OFFICIALS ON LICENSING THE STORAGE OF FLAMMABLES, COMBUSTIBLE and EXPLOSIVES

## Licenses, Registrations and Permits

The purpose of this document is to provide guidance to fire departments, local licensing authorities, and municipal clerks on licenses, registrations and permits for the storage of flammable, combustible, or explosive materials in accordance with Massachusetts General Law (MGL) Chapter 148 and the Board of Fire Prevention Regulations, Code of Massachusetts Regulation (CMR), 527 CMR 2.00, 527 CMR 6.00, 527 CMR 9.00, 527 CMR 13.00, 527 CMR 14.00.

- A *license* is the permission by competent authority to do an act which, without such permission, would be unlawful, a trespass, or a tort. A storage license is applied for and granted by the local licensing authority. The license is granted to the land and not to an individual. Only one license may be issued to a parcel of land. This license may be amended to reflect changes in quantity, conditions or restrictions. The license may be revoked or suspended for cause by the issuing authority. Information pertaining to the license and the license shall be maintained by the city or town clerk.
- A *registration* is the acknowledgement by competent authority of the act of recording a formal or official record. A storage registration is filed annually with the local city or town clerk. The registration serves solely to notify the community of the present license holders name and address. Only one registration may be granted for each license. Records of registration shall be maintained by the city or town clerk.
- A *permit* is a written authority or warrant, issued by a person in authority, empowering a person to do some act not forbidden by law but not allowable without such grant of authority. The law allows certain small quantities of flammable and combustibles to be kept or stored on the land without a license, but with a permit granted by the head of the fire department. 527 CMR 14 requires a permit in addition to the license.

The following are definitions related to the terms “flammable or combustible”. <sup>1</sup>

*Combustible liquid:* Any liquid having a flash point at or above 100°F shall be known as a Class II or Class III Liquid. Combustible liquids shall be divided into the following classifications:

- Class II: Liquids having flash points at or above 100° and below 140°F.
- Class IIIA: Liquids having a flash point at or above 140°F and below 200°F.
- Class IIIB: Liquids having a flash point at or above 200°F.

*Flammable Liquids:* Any liquid having a flash point below 100° F and having a vapor pressure not exceeding 40 psia at 100°F. Flammable liquids shall be known as Class I liquids and shall be divided into the following classifications.

- Class IA: Liquids having flash points below 73°F and having a boiling point below 100°F.
- Class IB: Liquids having flash points below 73°F and having a boiling point at or above 100°F.
- Class IC: Liquids having flash points at or above 73°F and below 100°F.

The authority for the keeping and storage of flammables, combustibles, and explosives, is section 13, of Chapter 148, M.G.L. This General Law is rather lengthy; this document references only the relevant sections. In order to apply for a new license or to change the conditions or restrictions of an existing license, the applicant must apply for approval or disapproval from the head of the local fire department. Whether the local fire official approves or disapproves the application, the next step is a public hearing on the application. Not less than seven days prior to a public hearing it must be advertised in a newspaper published in the English language. At the applicants expense, all abutters and owners of real estate must be notified by registered mail not less than seven days prior to the hearing at which the licensing authority acts on the license application.

A licensing authority may prescribe conditions or restrictions to a license.

Any such license granted hereunder shall be subject to such conditions and restrictions as may be prescribed in the license by the local licensing authority, which may include a condition that the license be exercised to such extent and within such period as may be fixed by such authority. <sup>2</sup>

A certificate of registration must be filed annually on or before April thirtieth by the owner/occupant of the land who holds (exercises) the license. This informs the licensing authority that the license is still being exercised, and the name of the person or entity exercising the license.

The Board of Fire Prevention Regulations has been granted the authority to exempt certain quantities of the articles (flammables, combustibles, and explosives), articulated in section 9 of Chapter 148, from licensing, and registration.<sup>3</sup> These exemptions may be found in the relevant sections of 527 CMR governing the articles to be stored.

Every license granted, and every certificate of registration filed under Section 13, is deemed to be granted or filed upon condition that if the land described in the license ceases to be used for the aforementioned uses, the holder of the license shall within three weeks after such cessation eliminate, in accordance with rules and regulations of the board, all hazardous conditions incident to cessation.<sup>4</sup>

Massachusetts Code of Regulations 527 CMR 9.00, Tanks and Containers, uses the definitions “abandoned” and “out of service”, to further categorize storage containers subject to cessation of use. As defined:

*“Abandoned*, in the case of underground storage tanks, shall mean out of service for a continuous period in excess of six months where a license from the licensing authority is required under the provisions of M.G.L. c.148, s. 13, and for a period in excess of 24 months in the case of any other underground storage facility or an aboveground tank of 10,000 gallons capacity or less; and in the case of aboveground storage of any fluid other than water, where a permit is required from the Marshal under provisions of M.G.L. c. 148, s. 37, it shall mean out of service for a continuous period in excess of 60 months and it has been deemed to be unsafe and a threat to the public safety by the head of the fire department and by the Department of Fire Services.”<sup>5</sup>

*“Out of service*, not in use in that no filling or withdrawal is occurring.”<sup>6</sup>

Once the tank is abandoned or out of service it must be removed. (With the exception of certain double wall underground storage tanks)

If it is determined that a fire or explosion hazard exists or is likely to exist as the result of the continued exercise of a license, the local fire chief may issue a cease and desist order.

The fire chief shall order reasonable measures to protect the safety of the public from the hazards of a fire or explosion. Any measures so ordered are at the expense of the license holder.

“When a fire or explosion hazard exists or is liable to exist due to the exercise of such license, the marshal or head of the fire department, shall issue an order to the licensee to cease and desist in the exercise of such license and said marshal or said head of the fire department shall direct that reasonable measures to insure safety to the public be undertaken at the expense of the holder of such license.”<sup>7</sup>

The first paragraph of section 13, Chapter 148, speaks of certain articles named in section 9 of Chapter 148, that are subject to regulation. Section 9, names the articles subject to regulation by license or permit.

“The board shall make rules and regulations for the keeping, storing, use, manufacture, sale, handling, transportation or other disposition of gunpowder, dynamite, crude petroleum or any of its products, or explosive or inflammable fluids or compounds, tablets, torpedoes or any explosives of a like nature, or any other explosives, fireworks, firecrackers, or any substance having such properties that it may spontaneously, or acting under the influence of any contiguous substance, or of any chemical or physical agency, ignite, or inflame or generate inflammable or explosive vapors or gases to a dangerous extent, and may prescribe the location, materials and construction of buildings to be used for any of the said purposes. Such rules and regulations shall require persons keeping, storing, using, selling, manufacturing, handling or transporting dynamite or other high explosives to make reports to the department in such particulars and in such detail that the quantity and location thereof will always be a matter of authentic record in the department...”<sup>8</sup>

The first paragraph of section 9 of Chapter 148, states that the Board of Fire Prevention Regulations shall make rules and regulations for the keeping, storing, use, manufacture, sale, handling, transportation or other disposition of the articles name. The Board has made these Rules and Regulations with the Code of Massachusetts Regulations (CMR) 527 CMR 2.00 (Fireworks), 527 CMR 4.00 (Oil Burning Equipment) 527 CMR 6.00 (LP-gas), 527 CMR 9.00, (Tanks and Containers), 527 CMR 13.00 (Explosives) and 527 CMR 14.00, (Flammable Fluids, Solids, or Gases). These regulations allow the storage of certain quantities of materials to stored without a license, but subject to permit issued by the head of the fire department.

Regulation 527 CMR 14.03 section (2), requires a permit for the storage of any flammable fluid, solid or gas. This permit is to be obtained from the head of the fire department, as provided by M.G.L. c.148, s.10A and 23. The head of the fire department may restrict the quantities to be stored under the permit.

What this means is that a permit **in addition to a license**, a permit is required from the head of the fire department for the storage of flammable and combustible fluids. The head of the fire department may reduce the quantity of product allowed by permit but may not increase the quantity beyond that allowed by the regulation.

Exceptions to the permit process are granted to certain persons for the storage and use of and use of limited quantities of flammables, combustible. These exemptions may be found in the relevant sections of 527 CMR governing the articles to be stored.

### **Important Points**

- A license for the storage of flammable or combustible fluids in quantities in excess of those allowed by regulation is granted by the local licensing authority after approval or disapproval by the head of the fire department and after a public hearing. A permit is granted by the head of the fire department.
- A license is not owned by an individual as a personal privilege. A license once exercised is a grant which runs with the land. The permanent record of a license is to be recorded and maintained by the city or town clerk.
- A permit from the head of the fire department is required in addition to a license for the storage of materials regulated under 527 CMR 14.00 (Flammable or Combustible Liquids, Flammable Solids or Flammable Gases).
- A certificate of registration is annually filed by the holder or occupant of licensed land to inform the city or town clerk to record (register) the license as still active and being exercised.
- A city or town may develop its own form for the actual license and registration. The form of the license and registration must contain, as a minimum, that information contained in Department of Fire Services Fire Prevention Forms, FP-2, License and FP-5, Registration respectively.
- A license, when exercised, is a grant running with the land. A parcel of land may only have one license for the storage of flammable or combustible fluids.
- If the conditions, capacities or restrictions authorized by a license are changed, an amended license must be obtained. A new application must be submitted to the local licensing authority, the head of the local fire department must approve or disapprove, and a public hearing must be held. If granted, the amended license supersedes and replaces the old license, and will show the aggregate total capacities allowed under the grant. The terms and conditions of the new license now prevail. The license must be plainly posted on the premises.
- A certificate of registration is the vehicle used by the license holder or occupant of licensed land to notify the city or town town clerk annually, before April thirtieth, that a license is in use and currently being exercised. If a registration is not applied for and issued, after three weeks, it may be viewed as cessation and cause for review of the license. A registration must be plainly posted on the premises.

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<sup>1</sup> 527 CMR 14.02

<sup>2</sup> Massachusetts General Law, Chapter 148 § 13, Paragraph 3

<sup>3</sup> Massachusetts General Law, Chapter 148 § 13, Sentence 2

<sup>4</sup> Massachusetts General Law, Chapter 148 § 13, Paragraph 3

<sup>5</sup> 527 CMR 9.02

<sup>6</sup> 527 CMR 9.02

<sup>7</sup> Massachusetts General Law, Chapter 148 § 13, Paragraph 6

<sup>8</sup> Massachusetts General Law, Chapter 148 § 9