

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 400.000: STATE SANITARY CODE CHAPTER I: GENERAL ADMINISTRATIVE PROCEDURES

Section

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400.001: Purpose

The purpose of 105 CMR 400.000 is to set forth administrative procedures to be followed in enforcement of the State Sanitary Code established under M.G.L. c. 111, § 127A. It shall supplement procedures set forth in other chapters of the State Sanitary Code.

400.002: Authority

105 CMR 400.000 is adopted under authority of M.G.L. c. 111, § 3 and 127A.

400.003: Citation

105 CMR 400.000 shall be known, and may be cited as, 105 CMR 400.000: *State Sanitary Code, Chapter I: General Administrative Procedures.*

400.010: Scope of the State Sanitary Code

The State Sanitary Code, shall apply throughout the Commonwealth unless and to the extent the provisions of any chapter are expressly limited.

400.015: Effect of the State Sanitary Code on Local Regulations

Unless otherwise expressly provided in any other article, the legally designated health authority of any city, town, county, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health may, as it considers necessary to promote and protect the health and well being of the particular locality under its jurisdiction, adopt under its own legal power as exists in the General Laws any rules or regulations containing requirements stricter than those contained in the State Sanitary Code. Nor should the existence of the State Sanitary Code limit or otherwise affect the power of any health authority with respect to any matter for which the State Sanitary Code makes no provision.

400.100: Inspections

(A) Inspection Authority. In order to properly carry out their respective responsibilities under the State Sanitary Code and properly to protect the health and well-being of the people of the Commonwealth, the board of health and the Department of Public Health or the authorized agent or representative of either are authorized to enter, examine, or survey at any reasonable time such places as they consider necessary, and otherwise to conduct such examination or survey as is expressly provided in any other chapter of the State Sanitary Code.

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400.100: continued

(B) Systematic Area Inspections. The board of health and the Department of Public Health or the authorized agent or representative of either are authorized to develop and adopt plans for the systematic, periodic area inspection of dwellings, dwelling units, rooming houses, and rooming units.

(C) Interference. If any owner, occupant, or other person refuses, impedes, inhibits, interferes with, restricts, or obstructs entry and free access to every part of the structure, operation or premise where inspection authorized by the State Sanitary Code is sought, the board of health or the Commissioner of Public Health or the authorized agent or representative of either may:

- (1) seek in a court of competent jurisdiction a search warrant so as to apprise the owner, occupant or other person concerning the nature of the inspection and justification for it and may seek the assistance of police authorities in presenting said warrant and/or
- (2) revoke or suspend any license, permit or other permission regulated under the State Sanitary Code where inspection of the structure, operation or premises is sought to determine compliance with the State Sanitary Code.

400.200: Local Enforcement

(A) General Procedures. Unless otherwise expressly provided in any article of the State Sanitary Code, each board of health may enforce the State Sanitary Code by fine in accordance with 105 CMR 400.700, or otherwise at law or in equity in the same manner that local rules and regulations are enforced; except however, 105 CMR 400.000 does not authorize a bill in equity in lieu of 105 CMR 400.100(C).

(B) Emergency Procedures.

- (1) Whenever an emergency exists in which the interest of protecting the public health requires that ordinary procedures be dispensed with, the board of health or its authorized agent, acting in accordance with the provisions of M.G.L. c. 111, § 30, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as the board of health deems necessary to meet the emergency. Notwithstanding any other provision of the State Sanitary Code, any person to whom such order is directed shall comply therewith within the time specified in the order. Each day's failure to comply with the order shall constitute a separate offense. Upon compliance with the order and within seven days after the day the order has been served, he may file a written petition in the office of the board of health requesting a hearing. He shall be granted a hearing as soon as possible but not later than ten days after the filing of the petition. The procedures for such hearing shall otherwise conform with the hearing requirements which would have existed had the order been issued under non-emergency circumstances.
- (2) No provision of this subsection shall be construed as a limitation on the emergency powers of the Department of Public Health of the Commonwealth.

400.300: State Enforcement

(A) If as a result of any study, inspection, or survey made under 105 CMR 400.000 or under the provisions of any other chapter of the State Sanitary Code the Commissioner of Public Health or his authorized representative determines that compliance with the State Sanitary Code has not been effected, he shall, in writing, notify the appropriate board of health of such determination, allotting a reasonable time in which compliance shall be effected, and requesting that the board of health, in writing, notify the Commissioner of Public Health of what action it has taken, and what other action has been taken to effect compliance with the State Sanitary Code.

(B) If the commissioner is not so notified, or if after notification he determines that action sufficient to effect compliance with the provisions of the State Sanitary Code has not been taken, the local board of health shall be deemed to have failed to effect compliance with the State Sanitary Code.

400.300: continued

(C) Whenever any local board of health has failed after a reasonable length of time to enforce the State Sanitary Code, the Commissioner of Public Health of the Commonwealth or his designated representative may act for the Commonwealth in any way that the local board of health is authorized to act to effect compliance.

400.400: Service of Orders

(A) Unless otherwise stated in any chapter in the State Sanitary Code, orders issued under the provisions of the State Sanitary Code shall be served on all persons responsible for the violation of regulations.

(B) These orders shall be served in the following manner:

- (1) personally, by any person authorized to serve civil process, or
- (2) by any person authorized to serve civil process by leaving a copy of the order at his last and usual place of abode, or
- (3) by sending him a copy of the order by registered or certified mail, return receipt requested, if he is within the Commonwealth, or
- (4) if his last and usual place of abode is unknown or outside the Commonwealth, 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 wherein the building or premises affected is situated.

400.500: Hearings

(A) Procedure for Requesting and Holding Hearing. Unless otherwise specified in the State Sanitary Code, the person or persons to whom any order has been served pursuant to any regulation of the State Sanitary Code may request a hearing before the board of health by filing with the board of health within seven days after the day the order was served, a written petition requesting a hearing on the matter. Upon receipt of such petition, the board of health shall set a time and place for such hearing and shall inform the petitioner thereof in writing. The hearing shall be commenced not later than 30 days after the day on which the order was served. The board of health, upon application of the petitioner, may postpone the date of hearing for a reasonable time beyond such 30-day period if in the judgment of the board of health the petitioner has submitted a good and sufficient reason for such postponement.

(B) Hearing of Petitioner. At the hearing the petitioner shall be given an opportunity to be heard and to show why the order should be modified or withdrawn.

(C) Procedure by the Board After Hearing. After the hearing the board of health shall sustain, modify, or withdraw the order and shall inform the petitioner in writing of its decision. If the board of health sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.

(D) Public Record. Every notice, order, or other record prepared by the board of health in connection with the hearing shall be entered as a matter of public record in the office of the clerk of the city or town, or in the office of the board of health.

(E) Hearing Petition not Submitted, or Sustaining of Order. If a written petition for a hearing is not filed with the board of health within seven days after the day an order has been served or if after a hearing the order has been sustained in any part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

400.600: Judicial Appeals

Any person aggrieved by the final decision of the board of health with respect to the denial of plan approval, the denial of revocation or failure to renew a license, or with respect to any order issued under the provisions of the State Sanitary Code may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this Commonwealth.

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400.700: Penalties

(A) Interference After Search Warrant Presented. Any owner, occupant, or other person who refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to every part of the structure, operation or premises where inspection authorized by the State Sanitary Code is sought after a search warrant has been obtained and presented in accordance with 105 CMR 400.100(C), shall be fined not less than ten nor more than \$500.

(B) Failure to Comply With an Order. Any person who shall fail to comply with any order issued pursuant to the provisions of the State Sanitary Code shall upon conviction be fined not less than ten nor more than \$500. Each day's failure to comply with an order shall constitute a separate violation.

(C) Penalties not Otherwise Provided. Any person who shall violate any provision of the State Sanitary Code for which penalty is not otherwise provided in any of the General Laws or in any other provision of the State Sanitary Code shall upon conviction be fined not less than ten nor more than \$500.

400.800: Variance

(A) Variance Permitted. The board of health may vary the application of any provision of this article with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; *provided*, that the decision of the board of health shall not conflict with the spirit of any minimum standard established by the State Sanitary Code. Any variance granted by the board of health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the clerk of the city or town, or in the office of the board of health, and notice of the grant of variance shall be filed with the Commissioner of Public Health of the Commonwealth.

(B) Expiration, Modification, Suspension. Any variance or other modification authorized to be made by this article may be subject to such qualification, revocation, suspension, or expiration as the board of health expresses in its grant. A variance or other modification authorized to be made by this article may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard, in conformity with the requirements for an order and hearing of 105 CMR 400.400 and 400.500.

400.900: Severability

If any chapter, section, paragraph, sentence, clause, phrase, or word of the State Sanitary Code shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of the State Sanitary Code, which shall remain in full force and effect; and to this end the provisions of the State Sanitary Code are hereby declared severable.

REGULATORY AUTHORITY

105 CMR 400.000: M.G.L. c. 111, §§ 3 and 127A.