

PART VI

ARTICLE 8 – Nuisance Regulations

Public Hearing May 27, 2004

Section 1. AUTHORITY

This regulation is adopted under M.G.L. Chapter 111, Section 31, which gives the Provincetown Board of Health (hereinafter designated as "the Board") authority to make reasonable health regulations, violations for which shall be punished by a fine of not more than 1000 dollars. This regulation is also adopted under M.G.L. Chapter 111, Section 122, which directs the Board of Health to examine into all nuisances, sources of filth, and causes of sickness within its town, which may, in its opinion, be injurious to the public health and to destroy, remove, or prevent the same. This regulation is also adopted under M.G.L. Chapter 111, Section 143.

Section 2. PURPOSE

These rules and regulations are intended to protect the public health, safety, and the environment in the Town of Provincetown by regulating the disposal of solid waste, as defined in 310 CMR 18.00 – 21.00 of the State Environmental Code, and to ensure compliance with the provisions of C 111, sec 150A of the Commonwealth of Massachusetts; the Rules and Regulations stated in 310 CMR 18.0 – 21.00 of the State Environmental Code; 527 CMR 34.0 of the Board of Fire Prevention Regulations; and the zoning bylaws of the Town of Provincetown.

Section 3. GENERAL DEFINITIONS

For the purposes of this regulation, the following words and phrases shall have the following meanings:

BOARD OF HEALTH: the Provincetown Board of Health

ABATE: shall mean to repair, replace, remove, destroy or otherwise remedy a condition

DUMPSTER or DISPOSAL CONTAINER: shall mean any container, receptacle, compactor unit, trailer, roll-off, or other similar unit with or without wheels that is used for the temporary storage, containment, or transport of refuse, garbage, demolition debris, or other discarded materials. It shall not apply to the ordinary household trash can of a volume less than 50 gallons, to plastic bags storing these materials in compliance with the regulations of the Town of Provincetown, or to trash compactor trucks operated by a company duly licensed by the local Board of Health.

NUISANCE: an act or failure to perform legal duty which causes or permits a condition to exist which injures or endangers the public health, safety or welfare of the inhabitants of the Town of Provincetown.

PROHIBITED DISPOSAL: Placing, dumping, burying, burning, or disposing of any trash, bottles or cans, refuse, rubbish, garbage, debris, scraps, demolition or construction materials of any kind, hazardous waste, all wastes of any other material of any kind from any residential, commercial, industrial or municipal use is prohibited on any land or in any waters within the Town of Provincetown.

RUBBISH – means combustible and noncombustible waste materials, except garbage and approved compost containers, and includes but not limited to such material as paper, rags,

cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, grass clippings, tin cans, metals, glass, crockery, plastics, mineral matter, dust and the residue from the burning of wood, coal, coke or other combustibles.

VERMIN – means any invertebrate or vertebrae animals which may act as carriers or agents of infection and disease transmission.

Section 4. NUISANCES

This section of this regulation is intended to prevent all nuisances, sources of filth and causes of sickness which may be injurious to the public health, safety, or welfare of the inhabitants of the Town of Provincetown.

Section 5. EXAMINATION INTO NUISANCES

The Board of Health of the Town of Provincetown shall examine into all nuisances, sources of filth and causes of sickness within Provincetown which may, in its opinion, be injurious to the public health and shall destroy, remove or prevent the same as the case may require.

SPECIFIC NUISANCES:

1. any dumpster or disposal container to be left open or to overflow.
2. a hole over 4 feet in depth to be left open overnight, or left unattended for any amount of time, unless such holes need to be left open in order to comply with the requirements of these regulations or with Title 5, and in such cases, each hole must be adequately protected from entry by children, persons, or animals and must be made not to pose any risk of accident.
3. the discharge of liquids, household waste water or the wastewater from the cleaning of animal or bird cages, fish or reptile tanks onto public ways or streets.
4. the accumulation of material on a property including, but not limited to, animal feces, offal, brine, bones, decayed fruit and vegetables or other rubbish that are liable to produce offensive odors or attract vermin, excluding properly contained compost piles.
5. a swamp, swimming pool, pond (man-made or natural) ditch, gutter, watercourse, sanitary convenience, or other accumulation of water on land or a street or a receptacle holding water, in such a state as to be a breeding-ground for mosquitoes, not being a reservoir or other storage of water used in connection with manufacturing purposes; irrigation purposes.
6. the accumulation of rubbish, disused furniture, mattresses, appliances, machinery on a lot, yard or other property which may become a harborage to mice, rats, snakes, vermin or which may become conducive to fire.
7. dogs, cats, fowl, hogs, goats, cows, chickens, horses or other animals that are kept in a manner which creates a nuisance.

Section 6. ABATEMENT OF NUISANCE

The Board of Health of the Town of Provincetown shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, sources of filth or cause of sickness found thereon within twenty-four hours or such other time it considers reasonable.

If the owner or occupant fails to comply with such order the Board of Health of the Town of

Provincetown may cause the nuisances, sources of filth and cause of sickness to be removed, and all expenses incurred thereby shall constitute a debt due to the Town of Provincetown.

Section 7. ENFORCEMENT

The Board of Health, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties for the administration and review of this regulation, and may make or cause to be made such examinations, surveys, or samples the Board of Health or its agents deem necessary.

The Board or its agents shall have the authority to enforce these regulations and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Unless stated otherwise, any person who violates any provision of this regulation or permits issued hereunder, shall be subject to a fine of not more than one thousand dollars. Each day or portion thereof during which a violation occurs or continues shall constitute a separate offense, and each provision of the regulation or permit that is violated shall constitute a separate offense.

As an alternative to criminal prosecution in a special case, the Board may elect to utilize the non-criminal disposition procedure set forth in M.G.L. chapter 40 Section 21D. For the purpose of this provision, the penalty to apply in the event of a violation shall be as follows:

- \$100.00 for the first offense
- \$ 200 for the second offense
- \$ 300 for the third offense
- \$ 400 for the fourth offense and each subsequent offense.

Each day on which a violation exists shall be deemed a separate offense.

Section 8: PUBLIC HEARING

A. Procedure for Requesting and Holding Hearing

1. The person or persons to whom any Order has been served pursuant to these regulations may request a hearing before the Board of Health by filing with the Board of Health within seven (7) days after the Order was served a written petition requesting a hearing on the matter.
2. Upon receipt of such a written petition, the Board of Health shall set a time and place for the hearing and inform the petitioner in writing. The hearing shall be commenced no later than 45 days after the day on which the Order was served. The Board of Health, upon application of the petitioner, may postpone the date of the hearing for a reasonable period of time if in the judgment of the Board of Health the petitioner has submitted a good and sufficient reason for the postponement.

B. Hearing of the Petitioner

1. At the hearing, the petitioner shall be given the opportunity to be heard and to show cause why the Order should be modified or withdrawn.

C. Procedure After Hearing

1. After the hearing, the Board of Health shall sustain, modify or withdraw the Order and shall inform the petitioner in writing of its decision.
2. 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

1. 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 Board of Health.

E. Hearing Petition Not Submitter, Sustaining Order

1. If a written petition for a hearing has not been filed with the Board of Health within seven (7) days after the day the 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.

Section 9. APPEAL

Unless otherwise provided, any person aggrieved by the decision of the Board of Health or its agents may seek relief there from within thirty (30) days in any court of competent jurisdiction, as provided by the laws of the Commonwealth of Massachusetts.

Section 10. SEVERABILITY

If any portion, or sentence, clause or phrase of this regulation shall be invalid for any reason, the remainder of this regulation shall continue in full force and effect.