

CHARTER AND BY-LAW REVIEW COMMITTEE MEETING
February 1, 2010

The Charter and By-law Review Committee (CBRC) held a meeting on February 1st, 2010 at 7:30 a.m. in the Retirement Board Meeting Room, Town Hall. The meeting had been posted by Carol Gloff, chair, for the Community Development Meeting Room, but that room was locked when the committee arrived. The chair therefore left a note on the door of the Community Development Meeting Room and the CBRC convened in the Retirement Board Meeting Room. Ms. Gloff called the meeting to order at 7:45 a.m.

Members present: Karen Adelman Foster, Barbara Chinetti, Carol Gloff, Robert Healey, Tony Lista, Richard Sidney

Members absent: Jay Ball

Attachment A: Email from Mr. James White, Director of Public Health, "Art 81.doc"

Attachment B: Edited version of Article 83 from Mr. James White, Director of Public Health

DISCUSSION OF THE CHARTER

A discussion was held about Special Town Meeting #1. There is new information: Charter changes must be approved by the Attorney General's office at least two months before the changes appear before the voters. Therefore, the CBRC's suggested Charter changes, if approved, would appear on the March, 2011 ballot.

In light of this, Mr. Sidney moved that the CBRC reconsider its recommendation for positive action on Special Town Meeting #1 Warrant Article 5 (regarding Charter Article 2, Legislative Branch). Ms. Adelman Foster seconded, and the motion carried unanimously. Mr. Sidney moved that the CBRC recommend no action on Warrant Article 5. Ms. Adelman Foster seconded, and the motion carried unanimously.

Mr. Sidney moved that the CBRC reconsider its recommendation for positive action on Special Town Meeting #1 Warrant Article 9 (regarding Charter Article 5, Fiscal Procedures). Ms. Adelman Foster seconded, and the motion carried unanimously. Mr. Sidney moved that the CBRC recommend no action on Warrant Article 9. Ms. Adelman Foster seconded, and the motion carried unanimously.

DISCUSSION OF THE BY-LAWS

Ms. Gloff gave the CBRC an update regarding the status of our work.

By-Law Article 81, section 8b (see Attachment A)

The CBRC discussed proposed edits from Mr. James White, Director of Public Health, and Mr. Robert Bois, Environmental Compliance Officer. Mr. Sidney moved that the CBRC recommend edits to By-Law, section 8B as shown in Attachment A with the following modifications:

- Line three: Remove quotation marks from around "best available technology."
- Line five: Replace colon after the word "tank" with a period. Capitalize the initial "a" in "Additional." Insert period after "required." Delete "with." Capitalize the 't' in 'the.'
- Line six: restore "of devices" and insert "said" between "of" and "devices."

By-Law Article 83 (see Attachment B)

The CBRC discussed Mr. White's proposed edits of the article, and discussed potential edits to Mr. White's edits. It was determined that Ms. Adelman Foster would consolidate the comments into one document for subsequent distribution.

APPROVAL OF MINUTES

The minutes of 8-19-09 were discussed and minor errors corrected. Mr. Healey moved approval, Ms. Adelman Foster seconded, and the minutes were approved by a vote of 4-0-1

The minutes of 1-13-10 were discussed and minor errors corrected. Mr. Sidney moved approval of the minutes of 1-13-10 as amended. Mr. Healey seconded the motion, and the minutes were approved by a vote of 3-0-2.

The minutes of 1-20-10 were discussed and minor errors corrected. Mr. Sidney moved approval of the minutes of as amended. Ms. Adelman Foster seconded the motion, and the minutes were approved by a vote of 4-0-1.

CONCLUSION AND ADJOURNMENT

It was mentioned that it might be advisable for the CBRC to place an article on the spring Town Meeting warrant to request the extension of our terms. No action could be requested on the article if we are done with CBRC business.

Adjournment was moved by Mr. Sidney and seconded by Ms. Adelman Foster. Ms. Gloff adjourned the meeting at 9:35 a.m.

Respectfully submitted by Karen Adelman Foster, CBRC member

Minutes approved on March 15, 2010 by a vote of 5-0-1.

Attachment A

From: James White [JWhite@natickma.org]
Sent: Wednesday, January 20, 2010 11:51 AM
To: Carol Gloff
Subject: By-Law 81 Changes

Attachments: ART_81.doc

Carol,

I have made a few changes to the UST by-law to bring it closer to todays technology/requirements. As is with Bob Bois' changes referencing the Aquifer Protection District mine are also in red. See if you and the committee agrees or if there are questions please let me know.

Thanks, Jim White BOH

ARTICLE 81

CHEMICAL STORAGE TANKS AND SYSTEMS

Section 1 Purpose

a. The purpose of this By-Law is to protect the public health, groundwater and surface water of the Town from contamination with liquid fuels, chemicals or hazardous materials from leaking underground fuel or chemical storage tanks and systems.

Section 2 Applicability

- a. This By-Law shall apply to all underground fuel or chemical storage tanks and systems.
- b. Storage systems in service at the time of the approval of this By-Law shall be brought into compliance with the terms of this By-Law within ninety days of its approval.

Section 3 Administrative and Enforcement Agent

- a. The administrative and enforcement agent of the provisions of this By-Law shall be the Board of Health. Approval of this By-Law shall not be deemed a waiver of the rights of any other Town entity, including, but not limited to: Public Works Department, Fire Department, Building Department, Conservation Commission or other Town entities having concurrent jurisdiction or licensing authority.
- b. The provisions of this By-Law are not intended to relieve compliance with any applicable state or federal law or regulation.

Section 4 Definitions

For the purpose of this By-Law, the following terms shall have the following meanings:

C.M.R. shall mean the Code of Massachusetts Regulations.

Hazardous material shall mean material, including but limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed.

Owner shall mean every person who alone or severally with others

- (1) has legal title to any property on which is located an underground fuel or chemical storage tank and system subject to this By-Law; or
- (2) has care, charge or control of any such property, in any capacity including without limitation agent executor, administrator, trustee or guardian of the estate of the holder of legal title, or agent, trustee or a person appointed by a court of competent jurisdiction; or
- (3) is a mortgagee in possession of such property. Each such person is bound to comply with the provisions of this By-Law as if he were an owner.

Person shall mean every individual, partnership, corporation, firm, association, group or entity owning property or carrying on an activity regulated by this By-Law.

Underground tank shall mean any fuel storage or chemical storage containment system, the top of which is located below the ground.

Where applicable, other terms used in this By-Law are as defined in 527 C.M.R., Sections 5 and 9 of the Massachusetts Board of Fire Prevention Regulations.

Section 5 Tank Regulations

a. Every owner of an underground fuel or chemical storage tank and system shall file with the Board of Health, the size, type, age and location of each tank and/or system and the type of material stored, on or before ninety days after the approval of this By-Law.

(1) Thereafter, every owner of a tank and system installation shall comply with the provisions of Section 5A, hereof on or before January 1st of each succeeding year.

b. Owners of tanks for which evidence of installation date is not available shall at the order of the Board of Health have such tanks or systems tested or uncovered for inspection.

(1) Tanks or systems which fail to meet the test standards set forth in Section 9 below or are not air tight shall be removed.

Section 6 Inventory Control

a. Every underground storage tank and system shall have a method of accurately gauging the volume contained in the tank and a method of accurately metering the quantity of product removed during service. The metering device shall at all times be properly maintained in accurate calibration.

b. For tanks containing fuel, chemical or hazardous material for resale accurate daily inventories and records thereof shall be based on actual daily measurement and recording of actual sales, use and receipts of tank products and water levels as required by Massachusetts Fire Prevention Regulations 527 C.M.R. 5.05 (3).

- (1) Inventory records shall include a daily computation of gain or loss.
 - (2) Recording of pump meter readings and product delivery shall not constitute adequate inventory records for the purposes of this By-Law.
- c. For all tanks containing fuel, chemical or hazardous material not for re-sale a quarterly inventory and reconciliation is required. Such reconciliation shall include records of delivery, volume contained in the tank and flow through the metering device.
- d. The owner and operator shall participate in a program of regularly scheduled inventory verification, said method to be determined by the Board of Health as follows:
- (1) For systems for which less than 25,000 gallons per month of product is used or sold, annually.
 - (2) For systems from which 25,000-100,000 gallons per month of product is used or sold, semi-annually.
 - (3) For systems from which more than 100,000 gallons per month is used or sold, quarterly.
- e. Owners shall submit annually to the Board of Health a certified statement that inventory records have been maintained and reconciled as required in subsection b, c and d of Section 6 and such records shall be made available to the Board of Health upon its request. Inventory verification of tanks shall be performed annually by a certified auditor or other independent qualified person approved by the Board of Health.

Section 7 Report of Leaks and Spills

- a. Any owner or operator or his agent who is aware of a spill or abnormal loss of product stored shall report such spill or loss immediately to the head of the Fire Department and within two hours of leak detection to the Board of Health.
- b. All leaking tanks must be emptied within twenty-four hours of leak detection and either repaired or removed within a time specified by the Board of Health and under the direction of the Fire Department.
- c. Service companies shall report to tank owners and the Board of Health any unexplained increase in consumption of heating fuel, other fuel, chemicals or hazardous materials.

Section 8 New or Replacement Tank Selection and Installation

- a. All tanks installed after the effective date of the By-Law shall be approved design and protected from internal and external corrosion.

All tanks shall be made of the following materials:

- (1) All fiberglass construction **shall be double-walled** (equipped with a striker plate); steel with bonded fiberglass or enamel coating and noncorrosive lining; the Steel Tank Institute 3-Way Protective System; any other system which can be shown to provide equivalent protection at the discretion of the Board of Health.
- (2) All other underground storage of chemicals, or hazardous materials other than gasoline and fuels, shall be contained in tanks approved by the Board of Health as "best available technology".

b. All tanks shall be properly installed as per Massachusetts Fire Prevention Regulations in force at the time of installation and according to manufacturers' specifications.

(1) Installation shall be under the direction of the head of the Fire Department or his duly-appointed designee within said Department.

c. All tank installation within four (4) feet of high water table or within one hundred feet of a surface-water body shall be of **double-walled** fiberglass construction and located in a water-tight vault, **impervious membrane liner or the "best available technology" as approved by the Board of Health**. Tanks so located shall be monitored by an approved leak detection system **within the interstitial space of the tank; additional devices may be required with** the design and number of devices subject to Board of Health approval.

d.

(1) The owner or operator shall notify the Fire Department to the commencement of any tank installation.

(2) Upon the receipt of said notice of installation, the head of the Fire Department or the Board of Health may require repair of protective coatings prior to installation or final cover, and additional requirements may be required to satisfy terms of "best available technology".

e. When it is necessary to replace or interior coat an underground steel tank which has developed a corrosion-induced leak, all other steel tanks at the facility of the same age or older shall be interior coated or replaced with tanks that meet the requirements of Section 8b.1.

f. Where a cathodic protection system is installed, an ongoing monitory and maintenance program shall be conducted.

(1) Where sacrificial anodes have been installed, their proper operation shall be confirmed by a qualified person at least once a year.

g. If a tank is taken out of service temporarily or permanently, the Board of Health shall be notified. The final disposition of the tank and produce shall be in accordance with Massachusetts Board of Fire Prevention Regulations, 525 C.M.R., and as approved by the Board of Health.

h. Any existing tank may be replaced subject to the provisions of Section 8.

Section 9 Tank Testing and Removal

a. All steel fuel or chemical storage tanks and systems shall be subject to a Petro-Tite (Kent-Moore) Pressure Test or any other acceptable pressure test providing equivalent safety and effectiveness fifteen years after installation and annually thereafter.

(1) No test shall be conducted by the PSI air pressure test for leak detection. This By-Law recognizes that this test is a method of leak detection but specifically excludes it as a method because of a probability that such test can cause an explosion.

b. All tanks not in conformance with Section 8 supra and 527 C.M.R. 9.04, installed prior to the effective date of this By-Law shall be removed when twenty years old or shall be tested by a method to be determined by the Board of Health and shall be removed upon failure to meet such testing standards.

(1) At such time that a tank is exhumed for removal, it shall be examined for leaks by the Board of Health. If a leak exists, the Board of Health shall immediately cause an investigation to be made of the

amount and the location of spilled substance, the same to be undertaken at the expense of the owner. The spilled substance shall be removed immediately by the owner.

Section 10 Proximity to Water Supplies and Other Sensitive Areas

- a. No new installation of underground fuel or chemical storage tanks and systems shall be allowed within Aquifer Protection District as described in Zoning By-Laws Section III. Use Regulations except as provided in Section 13 below and the Issuance of Special Permit requirements found in Section III-A.5. Aquifer Protection District of the Use Regulations Zoning By-Laws.
- b. Where fuel, gasoline or other chemicals stored underground are located within the Aquifer Protection District or other sensitive areas, the Board of Health may **or (shall)?** require the installation of an approved leak detection system, the design and number of devices to be subject to the Board of Health approval.

Section 11 Costs

- a. The owner shall assume all costs incurred to comply with this By-Law.

Section 12 Penalties

- a. Whoever violates any provision of this By-Law shall be subject to a fine of two hundred dollars (\$200.00) for each violation. Each day that such violation continues shall constitute a separate offense.

Section 13 Variances

- a. The Board of Health may grant a variance from the provisions of Section 10a herein upon the following conditions and in accordance with requirements of the Massachusetts Board of Fire Prevention Regulations, 527 C.M.R.
 - (1) At a public hearing the applicant shall establish that the proposed location of an underground storage tank will not threaten or adversely affect public or private water sources.
 - (2) In granting said variance the Board of Health shall take into consideration the direction of the groundwater flow, soil conditions, depth to groundwater, size, shape and slope of the lot and existing and known future water supplies.
 - (3) Notice of any public hearing shall be given by placing notification in a local newspaper regularly circulated within said Town of Natick, and at least fourteen (14) days before said hearing.
 - (4) The Board of Health shall refer the application for a variance to the Conservation Commission, Planning Board, Department of Public Works and Zoning Board of Appeals for their review and comments. No final decision of the Board of Health relative to such application shall be issued less than twenty-one (21) days following the receipt of such application by the aforementioned agencies.
 - (5) Persons aggrieved by a decision of the Board of Health as to the denial of a variance may appeal said decision under any applicable law.

Section 14 Severability

A conflict of one part or provision of this By-Law with any law shall not affect the validity or applicability of any other part or provision of this By-Law.

Attachment B

ARTICLE 83

NO SMOKING IN PUBLIC PLACES

Comment [CAG1]: Revised draft provided by J. White, Director of Health Department. A few format changes made by C. Gloff prior to distribution.

(a) It is hereby declared that smoking in public places is a public nuisance, dangerous and hazardous to the public health, and violates the rights of non-smokers to breathe air which is free of smoke contamination.

(b) As used in this section the following words shall have the following meanings unless otherwise required:

Business Agent: an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

Employee: an individual or person who performs a service for compensation for an employer at an employer's workplace, including temporary employee, contract employee and independent contractor.

Employer: an individual, person, partnership, association, corporation, trust, organization, school or educational institute whether public, private or non-profit which services 1 or more employees at 1 or more workplaces, at any 1 time.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors.

Lodging home: a dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons. The residential portion of boarding houses, rooming houses, dormitories and other similar dwelling places are included in this definition. Hospitals, jails, homeless shelters and assisted living homes are not included in this definition.

Membership association: a non-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

(i) a society, organization or association of a fraternal nature that operates under a lodge system with one or more affiliated chapters, a corporation organized under chapter 180, an established religious place of worship whose property is tax exempt in the commonwealth, a veterans' organization incorporated or chartered by the Congress of the United State having one or affiliated chapters or branches in any state.

Except for a religious place of worship, an entity shall not be a membership association for the purpose the this definition unless individual membership is required for all members of the association for a period of not less than 90 days.

Outdoor space: an outdoor area open to the air at all times and cannot be enclosed by a wall or side covering.

Public building: a building owned by the commonwealth or any political subdivision thereof, or the Town of Natick, or in an enclosed indoor space occupied by a state or local agency or department.

Residence: the part of a structure used as dwelling including but not limited to; a private home, townhouse, condominium, apartment, a residential unit in a governmental public housing facility, and the residential portions oaf school or educational institute dormitory or facility. For the purposes of this definition a hotel, motel, inn lodge, bed and breakfast or other similar accommodation, hospital, nursing home or assisted living facilities shall not be considered a residence.

Retail tobacco store: an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, not for resale, tobacco products and paraphernalia in which the sale of other products is

merely incidental, and which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for retail sale of tobacco products as required to be issued by the appropriate authorities in the Town of Natick.

Smoking or smoke: the lighting or possessing a lighted cigar, cigarette, pipe or other tobacco product or non-tobacco product designed to be combusted or inhaled.

Smoking bar: an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products; prohibits entry to a person under the age of 18 years of age at all times during which the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for retail sale of tobacco products as required issued by the appropriate authority in the Town of Natick and maintains a valid permit to operate a smoking bar issued by the department of revenue.

Workplace: an indoor area, structure or facility or a portion thereof at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public and where the employer has the right or authority to exercise control over the space.

Work space(s): an enclosed area occupied by an employee during the course of his employment.

(b)(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

Comment [CAG2]: It seems to me that this should be section (c) not (b)(1), but maybe there is a reason in state law?

(c) No person shall smoke nor shall any person, employee, employer, or other person having control of the premises upon which smoking is prohibited by this regulation, or the agent or designee of such person, permit a person to smoke in any room to which the public is invited or in which the public is permitted, including but not limited to, workplaces, work spaces, common work areas, conference and meeting rooms, offices, cafeterias, employee lounges, lobbies, elevators, hallways, waiting rooms, staircases, restrooms, restaurants, bars, taverns, cafes, or in any place where food or drink is sold for consumption on or off the premises, supermarket and retail food store, medical facility, health care facility, classroom, lecture hall, theater, motion picture theater, opera house, concert hall, arena, library, auditorium, school, municipal building, retail store, reception area, restroom or lavatory, waiting room, elevator, staircases, hallways or public area of a bank, in or upon any public transportation vehicle or facility including trains, taxis, buses, train stations, bus stations or enclosed outdoor platforms.

(d) Notwithstanding subsection (c), smoking may be permitted in the following places and circumstances:

(1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility;

(2) Premises occupied by a membership association, if the premises is owned or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is;

(A) open to the public; or

(B) occupied by a non-member who is not an invited guest of a member or an employee of the association; or

(C) rented from the association for fee or other agreement that compensates the association for the use of such space.

(2)(i) smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent

Comment [CAG3]: The numbering of this as (2)(i) seems wrong to me; it seems that this should be (3).

contractor shall not be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection.

(3) A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designated and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to paragraph (1) of subsection (g).

(4) By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production and if permission has been obtained from the appropriate local authority;

(5) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited school of higher education or in a professional testing laboratory as defined by regulation of the department of public health;

(6) Religious or cultural ceremonies where smoking is part of the ritual.

(e) If the outdoor space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed, when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed work space. If the windows, sliding or folding windows or doors or other fenestrations are open or otherwise do not prevent the migration of smoke into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.

(f)(1) A nursing home, licensed pursuant to section 71 of chapter 111 and any acute care substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence.

- (1) All applications shall designate the residential area of the facility. The residential area shall not contain an employee work space, such as offices, restrooms or other areas used primarily by employees.
- (2) The entire facility may not be designated as a residence.
- (3) The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility.
- (4) All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.
- (5) The facility shall provide suitable documentation, acceptable to the local board of health that the facility is the permanent domicile of the residents residing in that portion of the facility, that information on the hazards of smoking and second hand smoke have been provided to all residences and that smoking cessation aids are available to all residents who use tobacco products.
- (6) The designated residential area shall be in conformance with the smoking requirements of section 72X of chapter 111 and 105 CMR 150.015(D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express approval of the local board of health.
- (7) All areas of a nursing home not designated as a residence shall comply with this section.

- (8) The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to tobacco smoke.
- (9) Upon compliance with this section, submission of the required documentation and satisfactory inspection, the local board of health shall certify the designated portion of the facility as a residence. The certification shall be valid for one year from the date of issuance. No fewer than 30 days before the expiration of the certification, the facility may apply for re-certification. If the local board of health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time as the local board of health notifies the nursing home of its certification status.

(g)(1) A designated smoking room in a hotel, motel, inn bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces; and in the interior of the room. Instead of marking each room, an entranceway may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with the posting of "no smoking" signs in every area in which smoking is prohibited posted in a conspicuous location so the signs are clearly visible to all employees, customers or visitors while in the workplace.

(2) Additional signs may be posted in public areas such as lobbies, hallways, cafeterias, conference rooms, locker rooms, lounges, elevators and offices.

(3) Approved signs and templates for signage design may be obtained from the department of public health or the local board of health.

(4) It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.

(h)(1) Smoking shall not be permitted within any indoor enclosed portion of a retail tobacco store in the Town of Natick.

(2) Smoking bars shall not be permitted in the Town of Natick.

(h) Any person, owner, manager, or other person having control of a building or vehicle, who violates this Article in a place where smoking is prohibited shall be punished by a fine of \$100 for the first offense; \$200 for a second violation occurring within 2 years of the date of the first offense; and \$300 for a third or subsequent offense. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of a building or vehicle violates this Article repeatedly, the local board of health may revoke or suspend the license to operate and shall send notice of the suspension or revocation to the department of public health.

Comment [CAG4]: It seems to me that this should be (i) not (h).

(h)(1) The Natick Board of Health, the department of public health, other authorized local municipal government agencies or agents within the Town of Natick or the alcoholic beverage commission shall enforce this section.

(A) An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to fines according to the Natick Board of Health Non-Criminal Disposition Procedures of \$100 for the first offense; \$200 for the second offense; \$300 for the third and subsequent offense. Each calendar day a violation occurs shall be considered a separate offense.

(i)(1) The Natick Board of Health or other authorized local municipal agencies or agents of the Town of Natick shall enforce this section.

Comment [CAG5]: I think all of the subsequent section numbering may need to be changed, but maybe I just don't understand it.

Nothing in this By-law shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law. Nothing in this By-law shall preempt further limitations of smoking by the board of health or any other town departments.

(j) Any person may register a complaint to initiate an investigation and enforcement with the Natick Board of Health, the department of public health, or other authorized local municipal agencies or agents or equivalent.

(j)(1) An individual, person, entity or organization subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this By-Law or furnishing information concerning a violation to a person, entity or organization or to an enforcement authority.

(k) If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.