

**CITY OF BOSTON
IN CITY COUNCIL**

CITY OF BOSTON

IN THE YEAR TWO THOUSAND AND SIX

AN ORDINANCE

**AUTHORIZING THE COMMISSIONER OF BOSTON INSPECTIONAL
SERVICES TO ISSUE AUTO SHOP LICENSES**

WHEREAS;

The unregulated maintenance and operation of automotive establishments presents a threat to the public health, safety, environment and general welfare;

Therefore, Be it ordained by the City Council of Boston as follows:

Chapter IX of the City of Boston Code Ordinances, is hereby amended to add the following new section:

Section 9-9.9 Auto Shops Licenses

No person shall operate or maintain an automotive establishment without first obtaining the Auto Shops License required by this Ordinance or unless the same is maintained in accordance with said license and any regulation promulgated hereunder.

- a. *Definitions.* As used in this subsection, the following words and phrases shall have the meanings given in the following clauses. Where words and phrases are not defined in the following clauses such words and phrases shall have their ordinarily accepted meanings such as the context implies.
 1. *Automotive Establishments.* Auto body shop, car wash, garage, gasoline station, motor vehicle repair garage or lot, retail business establishment or other place for the sale, service, repair or installation of new or used motor vehicles, new or used motor vehicle parts, new or used tires or new or used motor vehicle accessories, whether or not

the vehicles are serviced or parts or accessories are installed or used on or off the premises.

2. *Cease and Desist Order.* A serious enforcement action, which requires the wrongful party to halt production, service or a particular practice at its facility.
3. *Class I, II, and III Liquids.* The Massachusetts State Board of Building Regulations and Standards has classified flammable and combustible liquids as Class IA, IB, IC, II, and III based on the temperature at which the liquids give off enough vapors to cause a fire hazard. The Occupational Safety and Health Administration (OSHA) has developed specific regulations regarding the storage of these liquids.
4. *Combustible Liquid.* Any liquids having a flash point at or above 100 degrees Farenheit shall be known as 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 degrees Farenheit and below 140 degrees Farenheit.
 - Class IIIA:* Liquids having a flash point at or above 140 degrees Farenheit and below 200 degrees Farenheit.
 - Class IIIB:* Liquids having a flash point at or above 200 degrees Farenheit
5. *Contingency Plan.* A document setting out an organized, planned, and coordinated course of action to be followed in case of fire, explosion or other accident that releases toxic chemicals, hazardous waste or radioactive materials that threaten human health or the environment.
6. *Cutting and Welding.* An auto body repair activity that can create noxious fumes and potentially release metal fines and sparks to the environment.
7. *Engineering Controls.* Mechanical controls and equipment that are designed to protect worker health and safety (such as ventilation, alarms and filters).
8. *Environmental Liability.* The legal liability that a company or a person incurs if it owns or operates a shop that violates an

environmental law or causes damage to the surrounding environment as a result of the company's or person's operations.

9. *Environmental, Health, and Safety (EHS) Program.* A program developed by a workplace or business to protect the environment and worker safety. An EHS program incorporates and implements procedures that help ensure chemicals and activities are managed in a safe and environmentally sound manner.
10. *Flammable Liquid.* A liquid that has a flash point below 100 degrees Fahrenheit and has vapor pressure not exceeding 40 pounds per square inch (PSI) at 100 degrees Fahrenheit.
11. *Hazard Assessment.* The review and evaluation of a shop's operations for potential health injuries or disease that may be caused by a chemical, process, or facility design and the conditions of exposure under which such health effects are produced. This assessment is used to identify appropriate precautions that workers should take when performing certain shop activities.
12. *Hazardous Air Pollutant (HAP).* Air pollutants that are not covered by ambient air quality standards but which reasonably may be expected to cause or contribute to irreversible illness or death, according to the Clean Air Act Amendments. Such pollutants include: benzene, chromium compounds, hexane, methyl isocyanates, styrene, toluene, and vinyl chloride.
13. *Hazard Communication Program.* An OSHA-required program developed by a firm or workplace which identifies potential hazards associated with workplace activities and outlines procedures that will be undertaken by all employees to prevent injury and in the event of a chemical exposure or accident.
14. *Hazardous Waste.* Waste generated by a business or residence that can pose a substantial or potential hazard to human health or the environment when improperly managed. These are defined as wastes that possess at least one of the four characteristics (ignitability, corrosivity, reactivity or toxicity) or wastes that are determined to be hazardous by definition and are listed as such by EPA or states.
15. *Hazardous Waste Generator.* Any facility that generates waste. Generators are regulated based on how much waste they generate.
16. *Hazardous Waste Manifest.* A multi-part form that is used to track each hazardous waste shipment from its point of generation to its

ultimate disposal or treatment. The use of these forms is required under EPA or DEP hazardous waste requirements. These forms list the generator identification number, the name of the waste generator, all waste transporters, the name of the designated receiving facility, and the quality and type of hazardous waste being shipped.

17. *Imminent Threat or Hazard*. An activity or condition that poses an immediate danger to human health or the environment.
18. *Lot*. A parcel of land including land under water, whether or not platted, in single ownership, and not divided by a street.
19. *Material Safety Data Sheets (MSDS)*. Printed documents generated by chemical manufacturers that describe the contents of a material, its hazards, appropriate protection measures, and other health and safety and emergency information.
20. *Oil-water Separator*. Also called a grease trap or gas trap. Used to separate industrial wastewater before it is discharged to a floor drain, sanitary sewer, industrial septic system or the ground. The separator physically removes the oil and particles from the wastewater because floating oil and particles will separate from the water in the unit. The sludge and oil must be collected and managed as a hazardous waste or oil waste.
21. *Operation Hours*. The daily time period during which the licensed automotive establishment conducts and provides services to the public.
22. *Personal Protective Equipment (PPE)*. Any health and safety equipment used to protect workers from potentially harmful materials or activities. PPE includes goggles, gloves, respirators, steel-toed boots, earplugs, and more.
23. *Pollution Prevention (P2)*. The implementation of activities or practices that avoid the use and generation of environmentally harmful materials. Common P2 activities include reducing toxics use, using non-toxic alternatives, improving efficiency and therefore reducing waste, recycling or reusing materials and modifying operations to avoid the need for materials that are, or may become, environmentally harmful.
24. *Reactive Waste*. Waste that is capable of reacting with other chemicals, is normally unstable, and can undergo violent changes with or without exploding. A reactive waste may respond violently

with water and may generate toxic gas, vapor or fumes when mixed with water.

25. *Reportable Quantity (RQ)*. The amount of oil or hazardous material released to the environment that would require you to notify the proper authorities.
 26. *Satellite Accumulation Area*. Area where hazardous waste is accumulated in a container until the container becomes full and is moved to a hazardous waste storage/accumulation area. Waste in this area must be at, or near, the point of generation and under the control of the process operator at all times.
 27. *Spray Area*. Any area where dangerous quantities of flammable or combustible vapors, mists, residues, dusts, or deposits are present due to the operation of spray painting or coating processes. According to NFPA Code 33, the spray area includes areas inside the spray booth or spray room, as well as ducts exhausting from spray-painting process. When spray areas are not confined adequately, the "spray area" may extend out to the entire room.
 28. *Spray Booth*. A structure which encloses a spraying operation to limit the escape of spray, vapor, and residue, and which conducts these materials to an exhaust system. A spray booth is fully enclosed, ventilated, and equipped with fire prevention and safety equipment. Generally a spray booth has three walls and one open side.
 29. *Toxic Waste*. A waste that can produce injury if inhaled, swallowed, or absorbed through the skin.
 30. *Violation*. The operation or maintenance of any establishment governed by this Ordinance without an Auto Shops License; the failure to operate or maintain the same in accordance with a validly issued Auto Shops License; and the interference with an inspection conducted pursuant to a validly issued inspection warrant.
 31. *Volatile Organic Compounds (VOCs)*. Any organic compound that can alter the chemical makeup of the atmosphere through photochemical reactions. These compounds are called volatile because they can become a vapor at room temperature and pressure. Most paints and solvents used in auto body shops contain VOCs.
- b. *Applicability*. The Auto Shops License shall apply to all existing and future automotive establishments located within the City.

1. *Zoning Review.* After an Auto Shops License application has been submitted to the Inspectional Services Department, a complete plan review shall be conducted to ensure the establishment is in compliance with the zoning code. If proper zoning is not met the application must be submitted to the City of Boston Zoning Board of Appeal for a variance.

c. *License Required for Auto Shops Establishments.* No automotive establishment, shall operate without first obtaining an Auto Shops License from the Commissioner of Inspectional Services. If the Commissioner of Inspectional Services determines that a submitted Auto Shops License application is accurate and adequate to keep the site free of hazardous waste or like material that is injurious to the public health, safety and environment, the Commissioner shall issue an Auto Shops License for the establishment. Performance of the activities scheduled in the Auto Shops plan shall be a condition of the license and nonperformance of the activities scheduled in the Auto Shops plan shall be a violation of the license and conditions of this ordinance. All auto shops shall operate using best industry practices during the allowed hours of operation indicated in their licenses.

d. *Contents of License Application* A complete Auto Shops License application consists of a completed application form and an Auto Shops plan attached thereto. The Auto Shops application form shall be in a form approved by the Commissioner. An Auto Shops plan shall, at a minimum, include the following information:

- the address where the establishment is located;
- the name, address, and telephone number of the owner of the establishment;
- the name, address, and telephone number of the operator of the establishment;
- a weekly schedule detailing the time and days of the week of the Operation Hours for the automotive establishment;
- a weekly schedule detailing the times and days of the week for cleaning and maintaining the establishment free of waste and hazardous material;
- the name of a supervisor responsible for overseeing the cleaning and maintenance of the shop;
- the name and address of the waste hauling company responsible for servicing the establishment;
- the date, time, and frequency of service by the waste hauling company;
- any and all permits and/or licenses issued by the Department of Environmental Protection relating to the management, storage

and disposal of solid wastes and hazardous materials and hazardous wastes generated, stored, or disposed on site;

- any and all permits and/or licenses issued by the Public Safety Committee ;
- any and all permits and/or licenses issued by the Boston Police Department;
- any and all permits and/or licenses issued by the Inspectional Services Department;
- any and all permits and/or licenses issued by the Public Works Department;
- any other information required by the Inspectional Services Department to ensure the site is maintained in a sanitary condition free of solid waste, hazardous materials or like material that is injurious to the public health, safety, and environment; and
- Any and all permits and/or licenses issued by the Boston Public Health Commission.

e. *Posting Requirements.* The Auto Shops Plan and Auto Shops License shall be posted in a conspicuous place on the premises in public view.

f. *Inspections.*

1. *Authority.* In order to properly carry out their respective responsibilities under this Ordinance, and to ensure that the public health, safety and environment are protected from the hazards posed by unsanitary and unhealthy conditions, the Inspectional Services Department is authorized to enter, examine or survey at any reasonable time all establishments licensed hereunder.
2. *Systematic Area Inspections.* The Inspectional Services Department is authorized to develop and adopt plans for systematic, periodic area-wide inspections of establishments required to obtain an Auto Shops License.
3. *Interference With Inspector.* If any owner, occupant or person refuses, impedes, inhibits, interferes with, restricts, or obstructs entry and free access to the site, operation or premise where inspection is authorized by this Ordinance, the Inspectional Services Department may seek in a court of competent jurisdiction an inspection warrant that allows for the inspection of the site and surprises the owner, occupant or other person concerning the nature of the inspection, the scope of the inspection, and the justification for it and may seek the assistance of the police authorities in presenting said warrant.

g. *Violation.* The operation or maintenance of any establishment governed by this ordinance without an Auto Shops License; the failure to operate or maintain the same in accordance with a validly issued Auto Shops License and Auto Shops plan; and the interference with an inspection conducted pursuant to a validly issued inspection warrant.

1. *Regulation.* No fine shall be issued under the Auto Shops License but shall be issued under the State Sanitary Code G.L. c. 111, sections 122, 123 and 125.

2. *Timeframe* After an auto shops establishment has been cited, by the Commissioner of Inspectional Services or his designee, for failure to comply with a validly issued Auto Shops License the owner, occupant or person responsible for the operation or maintenance of the establishment shall have 7 days in which to comply, or, in an emergency, as determined by the inspector from Inspectional Services, twenty-four (24) hours.

3. *Fine Schedule.* Citations, for failure to comply with this ordinance, will be issued by ISD through a code enforcement ticket. A clearly defined and progressive fine schedule would result in the following:

1 st offense	\$100.00
2 nd offense	\$250.00
3 rd and subsequent offenses	\$500.00

h. *Service of Notice of Violation.* Notice of Violation shall be served on all owners, operators, and on all other persons responsible for the operation and maintenance of the establishment. The Notice of Violation 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 Notice of Violation at the last and usual place of abode of the violator; or
3. By sending a copy of the order by registered or certified mail, return receipt requested, if within the Commonwealth; or
4. If the last and usual place of abode of the violator is unknown or is outside the Commonwealth, by posting a copy of the Notice of Violation 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 City.

i. *Administrative Hearings.*

1. *Right to Hearing.* Any person upon whom a Notice of Violation has been served may request a hearing from the Inspectional Services Department by filing a written petition requesting a hearing on the matter within the Department within seven days after the day the Notice of Violation was served.
 2. *Hearing Notice.* Upon receipt of a petition, the Inspectional Services Department shall inform the petitioner of the date, time, and place of the hearing in writing.
 3. *Time for Hearing.* The hearing shall commence within thirty days after the day on which the Notice of Violation was served. The time period in which the cited violations must be remedied shall be stayed upon receipt of the petition for a hearing until such time as the hearing is held.
 4. *Hearing of Petitioner.* At the hearing, the petitioner shall be given an opportunity to be heard, to present witness or documentary evidence, and to show why the Notice of Violation should be modified or withdrawn. An official record shall be kept of the hearing proceedings and made available to the petitioner upon request. Failure to hold a hearing within the time period specified herein shall not affect the validity of any Notice of Violation.
 5. *Final Decision after Hearing; Failure to Comply with Final Order.*
 - a) Within seven days after the conclusion of the hearing, the Inspectional Services Department shall sustain, modify, or withdraw the Notice of Violation and shall inform the petitioner, in writing, of its decision and the reasons therefore. If the department sustains or modifies the Notice of Violation, said violation shall be remedied within the time period allotted as issued or in the modification.
 - b) If a written petition for a hearing is not filed with the Inspectional Services Department within seven days after the Notice of Violation has been served, or if, after a hearing, the Notice of Violation has been sustained in any part, each day's failure to comply with the Notice of Violation within the time allotted as issued or modified shall constitute an additional offense.
- j. *Judicial Appeals.* Any person aggrieved by a final decision of the Inspectional Services Department with respect to the denial of an Auto

Shops License, the revocation of an Auto Shops License, the issuance of a Notice of Violation, or any other order issued under this Ordinance by the Inspectional Services Department, may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the Commonwealth.

k. *Penalties.*

1. *Failure to Obtain an Auto Shops License.* If a person operates an automotive establishment without first obtaining an Auto Shops License, the Commissioner of Inspectional Services may seek an injunction from a court of competent jurisdiction prohibiting the operation of the establishment until an Auto Shops License is secured.
2. *Failure to Comply with Terms of the Auto Shops License.* If a licensee fails to comply with the terms of an Auto Shops License, the Commissioner of Inspectional Services may suspend the Auto Shops License, after an administrative hearing, and seek an injunction from a court of competent jurisdiction prohibiting the operation of the establishment until the licensee proves to the court its compliance with the Auto Shops License. If a Licensee fails to comply with the terms of the Auto Shops License three times in the proceeding year, the Commissioner of Inspectional Services may suspend, cancel or revoke the Auto Shops License after an administrative hearing. In the event of suspension or cancellation of the auto Shops License other municipal agencies issuing licenses will be so notified.
3. *Failure to Comply with Notice of Violation.* Any person who fails to comply with any Notice of Violation or other order issued pursuant to this Ordinance by the Inspectional Services Department, or its duly appointed agents or representatives, shall be fined one thousand (\$1,000) dollars per violation per day. Each day's failure to comply with a Notice of Violation or any other order shall constitute a separate violation.
4. *Interference After Inspection 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, site operation or premises where inspection is sought under this Ordinance after an inspection warrant has been obtained and presented in accordance with (3)(I) of this Ordinance, shall be fined one thousand (\$1,000) dollars.
5. *Fines.* All fines and penalties assessed and collected under this Ordinance may be enforced pursuant to G. L. c. 40, section 21D and will remain the property of ISD.

- l. *Auto Shops License Fee* The fee for the Auto Shops License shall be one hundred (\$100) dollars. It is renewable on an annual basis and requires a compliance inspection for the license to be issued.
- m. *Term of License*. The term of each license shall be one year. Annually on the date set by the Commissioner, all persons who operate or maintain automotive establishments shall file, renew or amend an Auto Shops plan and obtain a new Auto Shops License.
- n. *Severability*. If any section provided for under this Ordinance shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of this Ordinance, which shall remain in full force and effect; and to this end the provisions of this Ordinance are hereby declared severable.
- o. *Regulatory Authority*. The Commissioner of Inspectional Services shall have the authority to promulgate rules and regulations necessary to enforce this ordinance
- p. *Delegation of Authority*. The Commissioner of Inspectional Services may delegate enforcement of this Ordinance to any City Department authorized to enforce public safety, health, or environmental laws and regulations.
- q. *Effective Date*. This Ordinance shall take effect within ninety (90) days of passage.

In City Council

NOV 29 2006

Passed

Rosana Salerno

City Clerk

Approved

Romas M. Menino

Mayor

**I HEREBY CERTIFY THAT
THE FOREGOING, IF PASSED IN
THE ABOVE FORM, WILL BE IN
ACCORDANCE WITH LAW.**

W. F. Sinnott
**WILLIAM F. SINNOTT
CORPORATION COUNSEL** *DLS*