

ARTICLE 5 - Food Permit Regulation

Revised April 2, 2015; Public Hearing June 18, 2015; Board of Health Approved: June 18, 2015; Revised December 3, 2015, Public Hearing February 4, 2016, Board of Health Approved February 4, 2016; Revised February 25, 2019, Public Hearing February 25, 2019, Board of Health Approved; Effective Date February 25, 2019

Section I. Rationale

The following regulations were promulgated by the Town of Provincetown in accordance with the provisions of Chapter 111, section 31, as amended, of the Massachusetts General Laws and are being adopted to supplement, clarify and augment the provisions of 105 CMR 590.000.

Section II. Types of Food Service Operations

The following food service operations shall require a permit from the Board of Health and shall meet all applicable requirements set forth in these regulations and 105 CMR 590.000:

2.1 Food Establishment

Shall be as defined in 105 CMR 590.002 and shall include but not be limited to: restaurants, bars, taverns, cafés, coffee shops, delis, bakeries, and fast food/take-out establishments.

2.2 Food Establishment – Institution

A nonprofit (registered 501(c)(3) organization) or governmental entity that serves food. An applicant who qualifies for a Food Establishment – Institution permit shall not be required to pay a fee for such permit. All other requirements applicable to Food Establishments shall apply.

2.3 Food Establishment – Limited Facility

A food establishment whose ability to prepare foods is limited by either its equipment or other operational concerns, such as an inability to catch grease. Such limitations shall be included on and incorporated into the terms of the permit and the permit holder shall not exceed such limitations without authorization from the Board of Health.

2.4 Caterer

Shall be as defined in 105 CMR 590.002.

All caterers shall meet all of the requirements of 105 CMR 590.009(A) and these regulations.

The holder of one of the types of Food Establishment permits described in Article 5, Sections 2.1, 2.2 or 2.3 may also obtain a Caterer permit for an additional fee.

2.5 Mobile Food Operations

Shall be as defined in 105 CMR 590.002 and shall include food trucks, ice cream trucks and other mobile vendors.

All mobile food operations shall meet all of the requirements of 105 CMR 590.009(B) and these regulations.

The holder of a one of the types of Food Establishment permits described in Article 5, Sections 2.1, 2.2 or 2.3 may also obtain a Mobile Food Operations permit for an additional fee.

2.6 Residential Kitchens

There are three types of Residential Kitchens subject to these regulations:

Residential Kitchen – Full Breakfast – a “bed and breakfast establishment” or “bed and breakfast home” that serves a “full breakfast” as those terms are defined in 105 CMR 590.002.

Residential Kitchen – Continental Breakfast - a “bed and breakfast establishment” or “bed and breakfast home” that serves a “continental breakfast” as those terms are defined in 105 CMR 590.002.

Residential Kitchen – Retail Food Sales – a kitchen in a private home which prepares and sells non-potentially hazardous foods at retail as Massachusetts Department of Public Health.

All residential kitchens shall meet the requirements of 105 CMR 590.009(D) and these regulations.

2.7 Temporary Food Establishments

Shall be as defined in 105 CMR 590.002 and shall include farmer’s market and other special event vendors.

All Temporary Food Establishments shall require a permit from the Board of Health and shall meet all of the requirements of 105 CMR 590.009(C) and these regulations.

2.8 Retail Food Sales

Shall be defined as an establishment that sells only unopened, packaged food that is not prepared on site.

Retail Food Sales permits shall only be issued to businesses that are not permitted as another type of Food Service Operation.

Section III. Administration

3.1 Approval

A permit issued by the Provincetown Board of Health is required before operating any food service operation listed in Section II of these regulations.

For existing food service operations, a new permit and compliance with current regulations shall be required prior to any change in ownership, change in food service operation type or for adding additional services (such as a caterer or mobile food operation) not authorized by the existing permit.

3.2 Plan Approval

For any application requiring the submission of a plan in accordance with 105 CMR 590.0011, applications shall be submitted at least forty-five (45) days prior to appearing before the Board of health. All other applications shall be submitted at least fourteen (14) days prior to appearing before the Board of Health.

In addition to the requirements set forth in 105 CMR 590.11 and 590.12, all plans shall include: the address of the proposed establishment; the number of seats; a sample menu and floor plans indicating all equipment, shelving, storage areas and materials used for floors, floor coverings, walls, wall coverings.

Applicants shall provide such additional information as is deemed necessary by the Health Department.

Section IV. General Provisions

4.1 Grease Catchment Device

All food service operations (except Retail Food Sales) must install a proper grease catchment device as required by local, state, or federal regulations, including 248 CMR 10.000 and 310 CMR 15.000.

In addition to the monthly inspection and other requirements of 310 CMR 15.351(2), when applicable, all food service operations must have on file with the Board of Health a grease catchment system inspection report prepared by a Massachusetts licensed system inspector, plumber or engineer. This report must be on file with the Board of Health prior to licensure in 2016 and renewed every five years thereafter or whenever there is a change in food service operation; whichever occurs first.

Inspection reports shall include information on the functionality of all grease catchment device(s), an as-built drawing of the system including location, size and dimensions of all device(s) and all pipelines feeding into the device(s), specification sheets for manufactured devices, the capacity of each device, a copy of sample menus for each meal served at the establishment, the number of hours the establishment is open per day, and the number of months the establishment is open per year. The inspection report shall

include grease catchment sizing calculations to ensure that the system is adequately sized for operation during the establishment's peak seasonal flow, as well as provide operations and management recommendations for cleaning and pumping. The inspection report shall include a certification by a Massachusetts licensed plumber or engineer that the grease catchment system is properly sized and functioning to adequately reduce grease during the establishment's peak seasonal operation.

4.11 Mandatory External Grease Trap Pumping

All food service operations with an external grease trap shall pump and clean the grease trap completely between July 1st and August 31st of each year to assure prompt removal of peak-season accumulations. All food service operations with an external grease trap shall pump and clean the grease trap completely on the schedule required by the Provincetown Water and Sewer Board Regulations, or when grease accumulation has reached 25% of the tank's capacity, whichever is more frequent, or at any intervals specified in 'GREASE CATCHMENT DEVICE INSPECTION REPORT REVIEW' correspondence from the Health and Public Works departments.

4.12 Monitoring of External Grease Trap

Water and Sewer Board Regulations Section 7(C) require electronic monitoring of external grease traps. Food Establishment License Renewal applications will be assessed for adherence to these requirements, with non-compliance referred to the Water & Sewer Board for enforcement, and referral to the Board of Health for consideration of withholding of Health license.

4.2 Trash and Recycling Requirements

All food service operations shall provide and maintain adequate waste and recycling receptacles within five feet of all points of entrance or exit. If this is not feasible due to access issues, the location of all receptacles shall be approved by the Board of Health or its agent. The location of all waste and recycling receptacles shall be clearly visible from the service areas.

Covered trash and recycling receptacles shall be provided in close proximity to the dining area and must be emptied as needed to prevent overflowing.

4.3 Outdoor Dining

Outdoor dining areas shall be kept free of waste paper, garbage and other trash.

Outdoor dining areas must be contiguous to the food service operation facility and be within an area owned by the permit holder or within an area subject to a written agreement with the property owner.

4.4 Dog Dining

Live animals, including dogs and other pets shall be prohibited from all food service operations except as allowed in 105 CMR 590.007 (FC 6-501.115).

Food service operations with outside dining facilities may request a variance to allow dogs in the outdoor portion of their establishment. This request must be made in writing to the Board of Health.

This section shall not apply to service animals as defined by the American with Disabilities Act or regulations promulgated thereunder.

4.5 Shirts and Shoes Required

No person having bare feet or no shirt shall be allowed in any establishment that prepares, serves and sells food, including retail food sales permit holders.

4.6 Additional Requirements

The following items are required for all Food Service Operations (except Retail Food Sales), in addition to 105 CMR 590.000:

1. A separate hand-wash sink is required in a bar area.
2. Every food service operation with indoor seating where food or beverages are consumed shall have public restroom facilities accessible to the customer without passing through the kitchen. The number of toilets and lavatories shall be the number required by law.
3. The Board of Health or its agents may require a food service operation to contract with a Massachusetts licensed pesticide applicator for pest control services. Said contract shall specify monthly inspections of the establishment by the contractor and elimination of any infestation, if encountered, at a minimum. The establishment shall make available for review by the Board of Health or its agent a copy of said contract and all receipts of pesticide application undertaken by the licensed applicator.
4. Certificates for managers/handlers certified in food safety shall be prominently posted in the establishment, next to the permit(s) to operate.
5. Every food service operation that sells dairy-based frozen desserts as defined in 105 CMR 561.007 shall submit monthly bacteriological laboratory test results directly to the Board of Health.

Section V: Special Permits

5.6 Caterers

All caterers must maintain a record of catered functions to include the following for a minimum of 90 days: Date of function; contact information of the entity that contracted catering services; menu; service staff; and proximate number of persons served

All caterers must possess equipment that will maintain required temperatures for hot and cold holding during transportation of food.

5.7 Mobile Food Operations

Mobile Food Operations must have adequate facilities to safely prepare the types of food they intend to sell. Any changes to menu items must be approved by the Health Department.

All Mobile Food Operations must have access to proper hand-washing facilities.

5.8 Residential Kitchens

Residential Kitchens in bed and breakfast establishments and bed and breakfast homes shall not serve food to the general public.

Residential Kitchens in bed and breakfast establishments and bed and breakfast homes shall not serve full breakfast or continental breakfast after 3:00 pm.

Residential Kitchens authorized for retail sale must meet all product labeling requirements of 105 CMR 520.000. No other items may be prepared and sold to the public from a residential kitchen than those described in Massachusetts Department of Health regulations and guidelines.

Section VI – Enforcement

This regulation may be enforced by any agents of the Town’s Board of Health.

In addition to the enforcement procedures and penalties set forth in 105 CMR 590.013, whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town’s non-criminal disposition by-law. If noncriminal disposition is elected, then any person who violates any provision of this by-law shall be subject to the following penalties:

- First Offense: Written warning
- Second Offense: \$100 fine
- Third Offense: \$200 fine
- Fourth or
- Subsequent Offense: \$300 fine

Subsequent offenses shall be determined as offenses occurring within two years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

Section VII: Severability

If any provision or subpart thereof contained in this Food Permit Regulation is found to be invalid or unconstitutional by a court of competent jurisdiction, the validity of all remaining provisions or subpart thereof shall not be so affected but shall remain in full force and effect.