

Town of Stoughton

Board of Health

10 Pearl Street, Stoughton, MA 02072 – (781) 341-1300 – FAX (781) 341-1086
www.stoughton-ma.gov

Board of Health Regulation for Establishments Carrying Only Pre-Packaged/Non-TCS Foods

§1. Purpose and authority.

- a. Whereas, the minimum sanitation standards for food establishments provided in the revised State Sanitary Code Chapter X do not provide adequate protections for consumers against unsanitary or negligent business practices; and
- b. Whereas, establishments dealing with pre-packaged foods in the Town of Stoughton are reasonably expected by the Board of Health and residents to maintain sanitary conditions appropriate for the safe keeping of such goods, and
- c. Whereas, contamination of food and food goods from substances of a bacteriological, virological, chemical, or otherwise hazardous nature poses a foreseeable threat to residents and consumers that is significant enough to justify preventive action, and
- d. Whereas, the Board of Health requires for the health and safety of consumers that it be able to inspect sellers of various foods and food goods, as well as the locations selling and offering for sale the same,
- e. The Board of Health deems it necessary and proper to issue the following rule in exercise of its authority under Massachusetts General Laws (hereinafter “M.G.L.”) Ch. 94, § 146 and Ch. 111, § 31.

§2. Definitions.

- a. As used herein:
 - (i). The phrases “pre-packaged food”, “pre-packaged goods”, or “pre-packaged food goods” shall all refer to any food or drink intended for human consumption that is packaged by a bona fide source other than the selling establishment. Also referred to as “Non-TCS (Time/Temperature Control for Safety) Foods”
 - (ii). The phrase “food and food goods”, as used in §1, shall include all foods and drinks intended for human consumption.
 - (iii). The phrase “State Sanitary Code Chapter X” shall refer to Title 105 of the Code of Massachusetts Regulations (hereinafter “CMR”), § 590.000 et seq
 - (iv). The phrase “personal care or beauty products” shall include any chemical or substance intended for use to improve physical appearance or qualities, whether or not such chemical or substance is organic, inorganic, or some

combination thereof. This shall include any products intended for use as a fragrance, makeup, hair styling product, sanitizer, hair or body shampoo or gel, makeup or nail polish remover, or other product reasonably connected to uses understood to be for personal beauty or care.

§3. Incorporation.

- a. The provisions in the State Sanitary Code Chapter X shall govern, except where more stringent policies or regulations are duly promulgated by the Board of Health.

§4. General Requirements.

- a. Notwithstanding any provisions to the contrary enumerated in 105 CMR § 590.000 et seq., and notwithstanding any other non-preemptive state or federal provision to the contrary,
 - (i). The Town of Stoughton shall consider any of the types of establishments so defined in 105 CMR 590.001(C)(1)(2) to be Food Establishments, and shall require a retail food establishment permitting therefor; and
 - (ii). The Town of Stoughton shall consider any place selling, transferring, or offering for sale only pre-packaged or Non-TCS food goods to be Food Establishments, and shall require a retail pre-packaged food establishment permit therefor.
- b. Any food establishment seeking to sell pre-packaged goods shall apply to the Board of Health seeking a pre-packaged food establishment permit.
- c. Any food establishment as defined in this rule shall conform with the following:
 - (i). All pre-packaged foods shall be duly labeled to include accurate information in accordance with Massachusetts and federal labeling requirements 105 CMR 520.00 & 21 CFR 101.00
 - (ii). No pre-packaged foods shall be kept within five (5) feet of hazardous chemicals including pesticides, herbicides, fertilizers, poisons, or personal care or beauty products.
 - (iii). All pre-packaged foods shall be kept a minimum of six (6) inches off of the ground at all times.

§5. Application for Variance.

- a. Any affected person or entity shall be entitled to apply to the Board of Health seeking a variance, by which the Board may allow an exception to this rule.
- b. All variances shall be issued by the Board of Health, assuming the Board deems such variance necessary and proper in light of financial or otherwise unreasonable and disproportionate hardship.
- c. Any variance pertinent to health that is not issued by the Board of Health shall be presumed void unless otherwise provided by law.

§6. Fees.

- a. A fee of one-hundred (100) dollars shall be assessed for each permit issued under this rule, and for renewals every one (1) year thereafter.

§7. Violations.

- a. Any person or business who fails to comply this rule shall be fined:
 - (i). not less than fifty (50) dollars for the first offense; and
 - (ii). not less than one-hundred (100) dollars for the second offense; and
 - (iii). not less than one-hundred (100) dollars per day for each subsequent offense; or
 - (iv). by an amount deemed appropriate by the Board of Health, assuming such amount includes those minimum fines specified in §§7(a)(i) and 7(a)(ii) for first and second offenses.
- b. For the first and second violations of this rule, the violator shall have thirty (30) days to correct all violations and achieve compliance, except in such case where the Board of Health deems it necessary and appropriate to allow additional time not exceeding ninety (90) days.

§8. Duration of Permit; Removal of Privileges.

- a. Permits issued under this regulation shall expire on the 30th of June each year.
- b. Any permit granted under this regulation shall be subject to suspension or revocation by the Board of Health. If suspension or revocation is required, the Board of Health agent shall document the reason therefor, and the permit holder shall retain their right to appeal the decision as empowered under Section 9(a) of this document.

§9. Right to appeal.

- a. Any person aggrieved by enforcement of this rule is entitled to request a hearing in-writing before the Board of Health within one month of being notified of an enforcement. The Board may sustain, modify, or vacate the order and shall notify the appellant in writing of its decision within thirty (30) days of making such decision.

§10. Inspections.

- a. Any permit issued to a person or entity under this rule shall render the permit recipient subject to inspection, whereby an authorized town inspector shall be permitted to inspect any location, including its pre-packaged foods, their surrounding environment, and any other parameters determined to be necessary for the public health.
- b. When required for the prevention or destruction of a nuisance or cause of illness, any inspector acting on behalf of the Board of Health shall be empowered to inspect any licensee under this section, as well as persons in violation of this section for lack of obtaining a permit.
- c. In accordance with M.G.L. Ch. 111 § 131, any Board of Health agent unduly prevented from enforcing this rule shall be authorized to file a complaint to a justice of a court of record or applicable magistrate who, upon such complaint, may issue a warrant to a Sheriff, his deputies, an agent of the Board of Health, or to any

constable of the town of Stoughton, commanding that such person refusing inspection take sufficient aid, and repair, within a reasonable timeframe, any place, source, or cause of any nuisance or illness, which shall occur under the direction of the Board.

§11. Severability.

- a. If any provision in this document is found invalid, the remaining provisions shall stand unaffected and shall remain in full force and effect. It is the intent of the Board of Health that all provisions herein shall stand individually under scrutiny, and that some may be left in effect without others remaining.

§12. Applicability under state and federal law.

- a. Nothing in this rule shall be construed as being supreme to state or federal law.
- b. All residents shall comply with state and/or federal laws as so required.

§13. Date effective.

- a. This regulation shall take effect May 16, 2019.

§14. Attestation.

- a. The regulation described herein and attached hereto is a true copy of the regulation adopted by the Board of Health.

ATTESTS:

Bonnie Russell
Bonnie Russell

5/16/2019
Date

Richard Parolin
Richard Parolin

5/16/2019
Date

Ellen E. Epro
Ellen E. Epro

5/16/2019
Date

Steven Snyder, Vice Chairman

Date

Andrew Tibbs
Andrew Tibbs, Chairman

5/16/2019
Date

A True Copy

Attest:

Jenny Sakkell
Stoughton Town Clerk, 02072