

TOWN of NORTH ATTLEBORO • BOARD of HEALTH  
**FOOD ESTABLISHMENT REGULATION**

Effective August 27, 2019

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**ARTICLE I. PURPOSE and SCOPE:**

The purpose of this regulation is to protect the health of the general public and provide consumers with food that is safe, unadulterated, and to prevent the spread of disease by promoting good health through education and prevention in food establishments in the Town of North Attleborough. The DEPARTMENT hereby adopts the MA Retail Food Code 105 CMR 590.00 in its entirety along with the additions contained within this document;

Whereas a written employee health policy promotes a system of employing healthy employees, and identifies employees who present a risk of transmitting foodborne pathogens to food or to other employees, therefore, requiring a written employee health policy provides managers guidance and evidence that the employees are knowledgeable and understand their reporting responsibilities;

Whereas submitting a written time as a public health control plan for review and approval will identify specific food items that will be held without temperature control, and the procedures that will be in place to prevent pathogen growth and possible toxin production. Thereby, approving the submitted plan and procedures will provide the DEPARTMENT critical information to properly evaluate using time as a public health control when performing

inspections at the food establishment. By approving plans prior to inspection, the agent can focus their attention on corrective actions and other risk factors;

Whereas requiring the person-in-charge (PIC) to be a certified food protection manager ensures the continuous presence of someone who is knowledgeable and responsible for monitoring and managing all food establishment operations and who is authorized to take action, thereby the certified PIC is accountable for developing, carrying out, and enforcing procedures aimed at preventing foodborne illness;

Whereas restaurants have a duty to provide a safe environment for their customers, and if vomiting or diarrheal events occur in a food establishment, there is a real potential for the spread of harmful pathogens in the establishment, proper and timely action in response can reduce the likelihood that food may become contaminated and that others may become ill as a result of the incident. Thereby having written procedures and a clean-up kit will address the specific actions that employees must take to minimize the spread of contamination and exposure to employees, consumers, food and surfaces.

Whereas, choking on food is the fourth leading cause of accidental death in the United States according to the National Safety Council<sup>1</sup>; a choking individual can suffer brain damage if the body is deprived of air for three minutes and death can result if breathing is not restored in six to eight minutes; thereby having an employee trained in choke saving may be critical.

Therefore, it is the intention of the North Attleboro Board of Health to regulate food establishments in North Attleboro.

## **ARTICLE II. AUTHORITY:**

This regulation is promulgated under the authority granted to the North Attleborough Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “Boards of health may make reasonable health regulations.”

## **ARTICLE III. DEFINITIONS:**

For the purpose of this regulation, the following words shall have the following meanings:

Accredited Program: means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

Department: The North Attleboro Board of Health

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of North Attleborough.

Food: means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, including chewing gum.

Food Establishment: as defined in accordance with 2013 Food Code (FC) section FC 1-201.10 and 105 CMR 590.001 (C) and shall include an establishment that offers only prepackaged foods that are not time/temperature control for safety foods.

FC: FDA 2013 Food Code

Massachusetts General Laws: M.G.L.

Person: any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the business agents or designee of the foregoing.

Regulatory Authority: North Attleboro Board of Health

#### **ARTICLE IV EMPLOYEE HEALTH WRITTEN POLICY:**

In addition to the requirements listed in FC 2-201.11 and 105 CMR 590.002 (E), all FOOD ESTABLISHMENTS shall maintain a written employee health policy that is maintained and accessible at the FOOD ESTABLISHMENT at all times.

#### **ARTICLE V TIME AS A PUBLIC HEALTH CONTROL:**

FC 3-501.19 and 105 CMR 590.003 (D) Time as a Public Health Control Paragraph (A) (1) is amended to read: "written procedures shall be prepared in advance, submitted to the REGULATORY AUTHORITY for review and approval, maintained in the FOOD ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request".

## **ARTICLE VI CERTIFIED FOOD PROTECTION MANAGER:**

The PERSON-IN-CHARGE shall be a certified FOOD safety/protection manager who has shown proficiency of required information through passing a test that is part of an ACCREDITED PROGRAM.

## **ARTICLE VII CLEAN-UP OF VOMITING OR DIARRHEAL EVENTS**

Fc 2-501.11 a FOOD ESTABLISHMENT shall have written procedures for EMPLOYEES to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the FOOD ESTABLISHMENT. The procedures shall address the specific actions EMPLOYEES must take to minimize the spread of contamination and the exposure of EMPLOYEES, consumers, FOOD, and surfaces to vomitus or fecal matter.

## **ARTICLE VIII ANTI-CHOKING PROCEDURES IN FOOD SERVICE ESTABLISHMENTS**

Having personnel trained in choke saving procedures at all times is mandated according to M.G.L. c.94, §305D in establishments with twenty-five seats or greater. Knowing that choking can occur anytime and at any place including food establishments with less than twenty-five seats,

Therefore, every FOOD ESTABLISHMENT with **any amount of seating** shall have on its premises, when food is being served, an employee trained in manual procedures approved by the state department of public health to remove food lodged in a person's throat. (such as Choke Saver or Heimlich Maneuver). This will not apply to FOOD ESTABLISHMENTS without seating such as to-go facilities.

## **ARTICLE IX CATEGORIZATION OF FOOD ESTABLISHMENTS**

FOOD ESTABLISHMENTS shall be categorized by the DEPARTMENT. The risk categories are based on potential and inherent food safety risks. The inspection frequency will correspond to the assigned risk categories allowing the DEPARTMENT to focus resources on food operations with the greatest food safety risk. Risk category Provisional-1 (P-1) was added for establishments that offer only prepackaged foods that are not time/temperature control for safety foods. The DEPARTMENT will issue permits to these low risk operations, however, they will be inspected based on complaints, and/or if operations have changed, and at the discretion of the DEPARTMENT. All FOOD ESTABLISHMENTS risk categorization are subject to change based on inspections and active managerial control of foodborne illness risk factors.

## **ARTICLE X ENFORCEMENT:**

- a) An owner, manager, or other person in control of a FOOD ESTABLISHMENT who violates any provision of this regulation, shall be penalized by a noncriminal disposition process as provided in M.G.L. c.40, §21D. If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to the following penalties:
  - 1. Written warning for the First Offense;
  - 2. \$100 for a Second Offense occurring within two (2) years of the date of the first offense; and
  - 3. \$200 for a Third Offense occurring within two (2) years of the date of the first offense; and
  - 4. \$300 for a Fourth or subsequent Offense occurring within two (2) years of the second violation.
  - 5.
- b) Each calendar day on which a violation occurs shall be considered a separate offense.
- c) This Regulation shall be enforced by the Board of Health, any Town enforcement officers, and agents of the Town's Board of Health.
- d) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of M.G.L. without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- e) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- f) If an owner, manager or other person in control of a FOOD ESTABLISHMENT violates this Regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- g) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

## **ARTICLE XI VARIANCES**

- A. The Board may vary the application of any provision of this regulation, unless otherwise prohibited by state law or regulation, in any case when, in the opinion of the Board making enforcement of the provision impractical or, the Owner has

demonstrated that enforcement will do manifest injustice or impose financial hardship, and in addition can demonstrate that enforcement of the provision will impose an unreasonable burden.

- B. Every request for a variance shall be made in writing and shall be subject to a public hearing before the Board.
- C. Any variance granted by the Board shall be in writing. Any denial of a variance by the Board shall also be in writing and shall contain a brief statement of the reasons for such a denial.

**ARTICLE XII SEVERABILITY:**

If any paragraph or provision of this Regulation is found to be illegal, unenforceable, against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions and shall continue in full force and effect.

**ARTICLE VIII EFFECTIVE DATE:**

This Regulation shall take effect on August 27, 2019 following its adoption by the North Attleborough Board of Health at its regularly scheduled meeting of August 27, 2019.

By the North Attleborough Board of Health:

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John J. Donohue, Jr., Chairman

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Donald M. Bates, Member

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Jonathan D. Maslen, Member