

MINIMUM SANITATION STANDARDS FOR FROZEN DESSERTS  
TOWN OF TEWKSBURY  
BOARD OF HEALTH

## 1. PURPOSE

- 1.1. The Tewksbury Board of Health is responsible for the protection of the public and environmental health and welfare within the Town of Tewksbury. In an effort to protect the public, the following regulations are promulgated to supplement those set forth in 105 CMR 500 *Good Manufacturing Practices for Food*, et. Seq.

## 2. AUTHORITY

- 2.1. The regulatory authority for inspection and licensing of frozen dessert establishments is stated in M.G.L. c.94, § 65G-U. The law states that frozen desserts manufacturers, *both retail and wholesale*, shall be licensed and inspected by local Boards of Health. Frozen desserts are further regulated in 105 CMR 500.000, *Good Manufacturing Practices for Food*. All wholesale or retail frozen dessert manufacturers require licensing by the local Board of Health.
- 2.2. These regulations are adopted under the authority of Massachusetts General Laws (M.G.L.) [Chapter 111, Section 31](#).

## 3. EXEMPTION FOR NON-MILK-BASED FROZEN DESSERTS

As per 105 CMR 500.080:

- 3.1. A person who operates a retail machine for the manufacture of non-milk-based frozen desserts only, including but not limited to so-called slush or water ice, shall obtain a permit pursuant to 105 CMR 590.000: State Sanitary Code Chapter X - Minimum Sanitation Standards for Food Establishments. Such a permit, when valid, shall be deemed to satisfy the requirements of 105 CMR 500.000, and no separate license pursuant to 105 CMR 500.000 shall be required.
- 3.2. If such person already has a valid permit pursuant to 105 CMR 590.000: State Sanitary Code Chapter X - Minimum Sanitation Standards for Food Establishments because he or she operates a food establishment, no separate permit for non-milk-based frozen desserts shall be required.

## 4. DEFINITIONS

Unless otherwise noted below, the following terms shall have the following definitions throughout this Regulation. The definition for any italicized word used in this Regulation can be found in this Section.

- 4.1. ***Board***: means the Tewksbury Board of Health.
- 4.2. ***Department***: means the Tewksbury Health Department.
- 4.3. ***Director***: means the Director of the Tewksbury Health Department.
- 4.4. ***Frozen Dessert***: includes but is not limited to ice cream, French ice cream, low fat ice cream, nonfat ice cream, frozen custard, gelato, ice milk, sherbet, sorbet, frozen yogurt, water ice, quiescently frozen confection, quiescently frozen dairy confection, frozen dietary dairy dessert, any soy-based frozen dessert, any rice-based frozen dessert, and any other similarly constituted product marketed as a

frozen dessert. *Frozen Dessert* includes products made from the milk of cows, sheep, goats, and other dairy animals.

- 4.5. **Frozen Dessert Mix:** means any unfrozen mixture to be used in the manufacture of frozen desserts or milk shakes.
- 4.6. **Soft-Serve Machine:** means any equipment used in the conversion of milk-based frozen dessert mix into frozen desserts for sale at retail.

## 5. GENERAL REQUIREMENTS

- 5.1. 105 CMR 500 GOOD MANUFACTURING PRACTICES FOR FOOD, Sections 500.001 through 500.008, Sections 500.080 through 500.083, and Sections 500.200 through 500.213 are hereby adopted as most recently amended as a local regulation for the Town of Tewksbury.
- 5.2. Amendments to these regulations shall take effect upon publication of a notice of their adoption in a local newspaper.
- 5.3. Permit holders shall follow the maintenance and operation guidelines provided by the manufacturer of their frozen dessert machine(s).
- 5.4. Permit holders shall notify the *Department* within five (5) business days that an existing frozen dessert machine has been taken out of service and that there will be no laboratory reports provided for that machine while it remains out of service.
- 5.5. Permit holders shall notify the *Department* within five (5) business days of a new frozen dessert machine going into operation or an out of service frozen dessert machine is going back into operation.
- 5.6. Initial tests for any new frozen dessert machine or an out of service frozen dessert machine going back into operation must be submitted to the *Department* within the timeframe recommended by the frozen dessert machine manufacturer, or within the first ten (10) business days of operation, whichever is sooner.
- 5.7. Permit holders shall maintain a cleaning and sanitizing log for each frozen dessert machine.
- 5.8. The *Board's* [Administrative and Organizational Regulations](#) shall apply unless specifically stated otherwise in these regulations.

## 6. PERMITS

- 6.1. No food establishment may operate a frozen dessert machine except with a valid permit from the *Department*.
- 6.2. Applications for a permit shall be made on forms prescribed by and available from the *Board*. An applicant shall submit all information required by the form and accompanying instructions. The term "application" as used herein shall include the original and renewal applications.
- 6.3. All seasonal and year-round food establishments shall apply for the annual renewal of their Frozen Dessert Permits in February.
- 6.4. The Frozen Dessert Permit is effective from March 1 through the end of February of the following year.

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**7. ENFORCEMENT**

- 7.1. If there is a violation of this Regulation, the *Department* will issue a written order to the *Permit Holder* to correct the offending deficiencies.
- 7.2. If the *Permit Holder* fails to comply with an *Order*, or if the *Department* or its authorized agent determines that the severity of the situation so warrants, the *Board* may schedule a Show-Cause hearing for the purpose of determining whether or not the permit should be suspended or revoked.
- 7.3. Critical Violations as defined by 105CMR 590.001B and adopted by the *Board* are considered to be those hazardous to the public health and shall be cause for the immediate issuance of a citation with a fine for \$100.00 or other action as authorized by state or local regulations.
- 7.4. If the *Director* determines that there is an immediate risk or threat to the public health, safety or welfare, the *Director* may order the immediate closure of the food establishment so that the offending conditions be immediately abated at the sole expense of the *Permit Holder*.

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**8. VARIANCE**

- 8.1. The *Board* may vary the application of any provision of this Regulation with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the *Board* shall not conflict with the purpose of this Regulation. The *Board* may place reasonable conditions on any variance.
- 8.2. Copies of all variances shall be available to the public.

**9. SEVERABILITY**

- 9.1. If any provision of this Regulation is declared by a court of competent jurisdiction to be invalid or not enforceable, the other provisions shall not be affected but shall continue in full force and effect.

Approved at the Tewksbury *Board* of Health Meeting held on April 21, 2022 and shall take effect immediately.

  
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Raymond Barry, Chair

  
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Robert Scarano, Vice-Chair

  
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Melissa Tavares Braga, Clerk

  
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Susan Amato, Member

  
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Charles Roux, Member

March 17, 2022 – Regulations adopted and shall take effect on April 15, 2022.

April 21, 2022 – Section 5.7 Amended.