

Article IV: FOOD PROTECTION

1.0 Regulation Governing Food Service Establishments

[Regulation Adopted February 21, 2003, as Amended January 11, 2005; August 27, 2013]

1.1 Purpose

These regulations are intended to protect the public health and prevent foodborne illness by establishing a requirement that all Food Establishments employ and have present during all hours of operation a person in charge certified as a food protection manager, recognized by the MA Department of Public Health. A certificate implies that a person has knowledge of food safety and the prevention of foodborne illness through the control of risk factors. The certified person must be able to apply this knowledge in day-to-day operations in order to provide consumers with safe food. This requirement is intended to be additional and supplemental to the minimum requirements for a certified food protection manager as set forth in the Massachusetts Food Establishment Regulations, 105 CMR, 590.003(A)(2).

1.2 Person in Charge

In addition to the requirements set forth in 105 CMR 590.000, et seq (the “Food Code”), and any other federal, state or local law, all Food Establishments, as defined in 105 CMR 590.002, holding permits and/or licenses issued by the Board of Health pursuant to 105 CMR 590.014, shall comply with the following requirement:

- A. there shall be at least one (1) person who shall be the person in charge, who shall be at least eighteen (18) years of age, and being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program recognized by the Massachusetts Department of Health on duty; and
- B. at least one (1) such person in charge meeting the above-referenced criteria shall be on duty and present at the establishment at all times that the establishment is open to the public and in operation.

1.3 Penalties

Whoever violates any provision of this regulation may be penalized by a non-criminal disposition process as provided in M.G.L. c.40, § 21D and Burlington’s non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall, in accordance with Section Article 1, Section 4.0, be subject to a penalty in the amount of fifty dollars (\$50.00) per day for each day of violation. Each day or portion thereof shall constitute a separate offense. In the alternative, or in addition to the above, these regulations may be enforced through any other means available at law as deemed appropriate by the Board of Health, including, but not limited to, civil enforcement for injunctive relief, and or the suspension or revocation of any current permits and/or licenses issued by the Board of Health in accordance with applicable law.

1.4 Hearing

Any food establishment that has received an Order or notice issued pursuant to this regulation may request a hearing before the Board of Health. Such request shall be in writing and shall be submitted to the office of the Board of Health in writing so as to be received by the Board of Health within ten (10) days after receipt of the Order or notice. After said hearing, the Board of Health may affirm, modify or rescind said Order or notice or take any other action it deems warranted and appropriate.

1.5 Variance

Upon application, the Board of Health may issue a variance to any permit holder that can demonstrate to the reasonable satisfaction of the Board of Health that appropriate, alternative, on-site procedures are in place to ensure proper food handling procedures at all times that the establishment is open to the public and in operation.