

A REGULATION TO RESTRICT FOODS CONTAINING ARTIFICIAL TRANS FAT IN THE CITY OF BOSTON

WHEREAS, heart disease is a leading cause of death in the United States;

WHEREAS, research concludes that there is no safe level of artificial trans fat consumption and there is a clear association between an increase in the intake of trans fat and the risk of heart disease;

WHEREAS, the major source of artificial trans fat is found in partially hydrogenated vegetable oil, which is used for frying and baking and is present in many processed foods;

WHEREAS, there are food service establishments and other food vendors in the City of Boston that prepare and serve food containing artificial trans fat for consumption by Boston residents, visitors and students;

NOW THEREFORE, the Boston Public Health Commission enacts the following regulation in furtherance of its mission to protect, promote and preserve the health and well-being of the citizens of Boston.

Section 1.00 Definitions

“artificial trans fat” - food or beverage that is labeled as, lists as an ingredient, contains or is prepared with vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. However, a food or beverage whose nutrition facts label or other suitable documentation lists the trans fat content of the food as less than 0.5 grams per serving shall not be deemed to contain artificial trans fat.

“food service establishment” - any entity that stores, prepares, packages, serves, sells or otherwise provides food or beverage for consumption in the City of Boston. Food service establishment includes, but shall not be limited to, restaurants, supermarkets, grocery stores, delis, sandwich shops, bakeries, convenience stores, ice cream shops, coffee shops, cafeterias in schools and businesses, caterers, senior-center meal programs, nursing homes, children’s institutions, school kitchens, school stores, soup kitchens and permanent or temporary concession stands. Food service establishment shall not include a fraternal, charitable, social, service club or similar organization that prepares, displays and sells home-made baked goods for a “neighborhood bake sale” so called.

“entity” - any single individual, group of individuals, corporation, partnership, hospital, academic institution, society, association, firm, sole proprietorship or any other legal entity whether public or private.

“vending machine” - any machine or device designated for or used for the vending of food products or beverages upon the insertion of coins, currency, swipe cards, or any other form of payment.

“mobile food vendor” - any person or operation that sells food or beverage from a mobile food unit. A mobile food vendor shall include, but not be limited to, sidewalk vendors, canteen trucks, and food trailers.

Section 2.00 Restriction on Artificial Trans Fat

No food service establishment, vending machine, or mobile food vendor shall store, prepare, distribute, hold for service or serve any food or beverage containing artificial trans fat in the City of Boston.

These prohibitions shall not include the sale of any food or beverage containing artificial trans fat that is in a manufacturer’s original sealed package and is required by federal and or state law to have nutrition labeling.

Section 3.00 Labels Required

All food service establishments, mobile food vendors and operators of vending machines shall maintain on-site original labels or other suitable documentation listing the ingredient and nutrient content of all food products such that the Boston Public Health Commission or its designees can determine whether they are in compliance with this regulation.

Section 4.00 Guidelines

The Executive Director of the Boston Public Health Commission shall issue guidelines for the implementation of this regulation, including but not limited to, definitions of terms as used in these regulations and in the guidelines. In the event of a conflict between these regulations and the guidelines, as either may be amended, the regulation shall control.

Section 5.00 Violations

1. A violator of this regulation may receive:
 - a. In the case of a first violation a fine of one hundred dollars (\$100.00);
 - b. In the case of a second violation within 24 months of the first violation a fine of five hundred dollars (\$500.00); and,
 - c. In the case of a three or more violations within 24 months of the second or current violation, a fine of one thousand dollars (\$1000.00) for each violation.
2. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

3. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Boston Public Health Commission or a City of Boston department or agency from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or agency for repeated violations of this regulation.

Section 6.00 Enforcement

1. Authority to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or designees; the City of Boston Inspectional Services Department; the City of Boston School Department and the City of Boston Police Department.
2. Any violation of this regulation may be enforced in the manner provided in M.G.L. c.111 §187, by the Boston Public Health Commission, its subsidiary programs or designees.
3. Any fines or fees collected under this regulation shall be used for the enforcement of these regulations and/or for educational programs on nutritional health.

Section 7.00 Non-retaliation

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

Section 8.00 Severability

If any provision, clause, sentence, paragraph or word of this regulation or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provisions or application and to this end the provisions of this regulation are declared severable.

Section 9.00 Effective Date

This regulation shall take effect within 180 days from the date of acceptance by the board of the Boston Public Health Commission with respect to cooking oils, shortening, and margarines containing artificial trans fat and within 360 days with respect to baked goods and all other foods containing artificial trans fat.

Authority: M.G.L. c. 111, §31; M.G.L. c. 111, App. §§2-6(b), 2-7(a)(1), and 2-7(a)(15).