

CHAPTER 2: FOOD SERVICE ESTABLISHMENTS

SECTION 1: DEFINITIONS

2.1.001 FOOD ESTABLISHMENT:

Shall mean any food service establishment where food is prepared for sale and consumed on the premises or retail food store which means any establishment where food and food products are offered to the consumer and intended for off-premises consumption or mobile food units, caterers, or residential kitchens. (105CMR590.000 State Sanitary Code Chapter X)

2.1.002 SPECIAL INSPECTIONS:

Shall include any inspections in excess of two (2) follow ups of a routine inspection and may be subject to special inspection fees in accordance with the current Board of Health fee schedule

SECTION 2: FATS, OIL, & GREASE (FOG) INTERCEPTOR/PRETREATMENT REQUIREMENTS FOR FOOD ESTABLISHMENTS AND INDUSTRIAL FACILITIES

2.2.001 AUTHORITY:

The City of Newburyport Health Department (BOH) acting under the authority of Chapter 111, Section 31 of the Massachusetts General Laws and any amendments and additions thereto, and by any other power thereto enabling, has adopted the following Rules and Regulations during its July 2012 meeting. All references to 248 CMR shall mean the Code of Massachusetts Regulation for the Massachusetts State Plumbing Code.

2.2.002 PURPOSE:

The purpose of this Regulation is to protect residents, businesses and the environment within the City of Newburyport from blockages of the City's Sanitary Sewer caused by Fats, Oils, and Grease (FOG) discharged from food service establishments and industrial facilities located within the City of Newburyport. All new and existing facilities that generate and discharge FOG in the wastewater flow shall install, operate, and maintain a FOG interceptor system, as further defined herein. The requirements of this Regulation shall supplement and be in addition to the requirements of the City of Newburyport Storm Water Management Regulations

2.2.003

DEFINITIONS:

City of Newburyport Officials:

Any representative from the City Health Department, Department of Public Services, Sewer or Building Department

Director:

Means the Director of Public Health for the City of Newburyport

Food Establishment

Any establishment issued a Permit to Operate a Food Establishment by the City of Newburyport Health Department under FC 1-201.10(B) (31), any facility that prepares or sells food and, as a byproduct, discharges Fats, Oils, or Grease into the Municipal Sewer System

Grease:

A material, either liquid or solid, composed primarily of fat, oil or grease (FOG) from animal and vegetable sources. In food service, there are two types of waste FOG generated during food preparation and the cleaning process: BROWN GREASE is grease that is recovered from grease traps and interceptors. YELLOW GREASE is inedible oil and grease that comes directly from fryers and other cooking equipment

Grease Trap:

Also referred to as a grease interceptor by the State Plumbing Code, is a device designed to remove undissolved and/or suspended waste grease and oil from entering the municipal wastewater system.

FOG:

Fats, Oils, and Grease

FOG Interceptor System:

Refers to one of the following grease removal systems:

1. Indoor Passive Grease Traps
2. Indoor Automatic Grease Traps
3. Outdoor/Underground Grease Interceptors

Indoor Automatic Grease Trap:

An active automatic grease trap which separates and removes fats, oils, and grease from effluent discharge, and cleans itself of accumulated grease, fats and oils at least once every twenty-four (24) hours utilizing electromechanical apparatus to accomplish removal

Indoor Passive Grease Trap:

A passive grease trap installed inside a building and designed to remove fats, oils and grease from flowing wastewater while allowing wastewater to flow through it. Also, known as an indoor grease trap

Industrial Pretreatment Program (IPP):

Is a federally mandated program required to oversee non-domestic discharges to a public owned treatment works (POTW)

Industrial Waste:

Shall mean the liquid waste from industrial manufacturing process, trades or businesses

Outdoor/Underground Grease Interceptor:

A passive grease trap with a capacity of 1500 gallons or more which is installed outside of a building and is designed to remove fats, oils and grease from flowing wastewater while allowing wastewater to flow through it. Also, known as an outside grease trap

Permitted Offal/Septage Hauler:

Means any hauler which is issued a permit to haul FOG and/or septage by the City of Newburyport Health Department pursuant to Chapter 2 the Health Department's Rules and Regulations.

Sewer Pipe:

Means any building or town sanitary sewer piping including but not limited to interior and exterior building sanitary sewer piping, any main, or lateral sanitary sewer piping regardless of whether it is located on private or municipal land

Substantial Renovations:

Means any renovation to a food service establishment that would increase the number of existing permitted seats or would alter in any way the kitchen facility

Waste Grease or Oil:

Means waste grease or oil generated by a food service establishment during the cooking process

2.2.004**GENERAL PROVISIONS:**

- A. In every case where a food establishment is preparing or selling food, or other business in which FOG is a byproduct, a suitable FOG interceptor system shall be installed to conform with the Massachusetts state plumbing code 248 CMR and said regulations
- B. In every case where there is an industrial pretreatment program or industrial facilities in which industrial waste is a FOG byproduct, a suitable FOG interceptor system shall be installed to conform with the Massachusetts State Plumbing Code 248 CMR and said regulations
- C. The City Health Department or the City Sewer Department City Sewer Department may at any time require existing food establishments and/or industrial facilities to install, upgrade, modify and/or relocate a FOG interceptor system as it may deem necessary or when the following occur:
 - a. when the City Health Department or City Sewer Department determines that a food establishment or industrial facility is discharging waste or grease in quantities sufficient to cause sanitary sewer line blockages or to cause increased levels of maintenance of sanitary sewer lines required to reduce or prevent main line blockages; or
 - b. when the City Health Department, City Sewer or City Plumbing Inspector determines that the existing FOG interceptor system is undersized, nonfunctional, or not properly plumbed to all internal fixtures that generate grease or oil; or
 - c. to maintain any particular building pipe, any lateral sewer pipe or sewer main pipe free from obstructions caused by waste grease or oil emanating from a food establishment or industrial facility
- D. Each establishment must pay all costs for installing and maintaining the systems.

- E. Any new, remodeled or change of ownership of a food service establishment that contains seating of 150 seats or more must install an exterior FOG interceptor system with a minimum 1500 gallon capacity. If City Officials determine that sufficient exterior space is not available, an indoor FOG interceptor system (approved by City Officials) must be installed. Both must be sized according to the manufacturer and in compliance with Massachusetts State Plumbing Code, CMR 248.
- F. Any new, remodeled or change of ownership of an industrial facility that discharges FOG or industrial waste as a byproduct must install an exterior (if applicable based on exterior space availability) and interior FOG interceptor system. Both interior and exterior FOG interceptor must be properly sized and meet the requirements of the Massachusetts State Plumbing Code, CMR 248 and the City Sewer Department.

2.2.005 MAINTENANCE, RECORDS, REMOVAL & RESTRICTIONS:

- A. All FOG interceptor systems (both interior and exterior) must be inspected and cleaned monthly (unless a variance is given by the Director of Public Health or by the Director of Sewer.) Cleaning may only be performed by a grease/offal/septage hauler permitted by the City.
- B. All food establishments and industrial facilities must maintain an onsite FOG interceptor system maintenance log which must be kept onsite to monitor any cleaning or maintenance to FOG interceptor systems. Logs must always be readily accessible for City Health Department and Sewer Department officials to review.
- C. All records pertaining to pumping and removal of FOG shall be retained by the food establishment and industrial facility for no less than two (2) years. The food establishment or industrial facility shall furnish, upon request by city officials, all pumping and removal records required to enforce and monitor compliance with this regulation.
- D. Waste grease and oil shall not be disposed into any City sanitary sewer. All waste grease and oil must be collected in an appropriate container provided by a vendor permitted by the City Health Department. The container must be capable of being sealed and must be stored in a location on the premises that has been approved by the City Health Department. The location must have an impervious surface such as concrete, or pavement and must be in a sheltered area which prevents entry of precipitation and vermin. All grease containers and surrounding areas must be kept in a clean and sanitary condition at all times. All waste grease and oil shall be removed from the premises by a City permitted Grease/Offal/Septage Hauler as needed or as directed by the City Health Department.
- E. Food grinders are not allowed to be discharged through grease traps or FOG interceptor systems.
- F. The use of emulsifying agents with degreaser properties, such as; solvents, acids, caustics, enzymes, other hazardous chemicals or petroleum products is prohibited.

2.2.006 SAMPLING:

- A. A separate suitable sampling location as approved by the Director or his/her designee shall be provided for sampling the discharge from any FOG interceptor system. The

sampling valve must be installed on the discharge piping with a minimum clearance of eight (8) inches to allow samples to be taken by the City Health Officials.

- B. The City Sewer Department may use oil-sortable dyes to identify (by color) the FOG of any given food establishment or industrial facility in order to determine if said establishment or facility is a cause of failure or obstruction in a city sewer lateral or main.

2.2.007 ENFORCEMENT AND INSPECTION:

- A. It shall be the responsibility of the City Health Department and City Sewer Department to review cleaning and maintenance records for all FOG waste as part of regular routine food service and/or industrial facility inspection or complaint.
- B. The City Sewer Department may inspect any food establishment or industrial facility if, in its judgment, it feels that there has been an infraction of the discharge limits to the wastewater. For example; if the city of Newburyport sewer data indicates a violation of local sewer regulations of a discharge that exceeds the 200mg/l limit for fats, oils and grease discharged into the city sewer
- C. The Director of Public Health may order the suspension of a permit to operate a food establishment or the termination of one or more particular operations for:
- Serious or repeated violations of this regulation.
 - Interference with a City official in the performance of their duty
 - Failure to maintain required records or the keeping or submitting of any misleading or false records or documents required by this regulation.

The effective date and length of a suspension will be determined by the Director of Public Health.

2.2.008 VIOLATION:

Written notice of any violation of this regulation shall be given to the owner and operator of the food establishment or industrial facility by the City Health or Sewer Department. The violation will specify the nature, time and date of the violation and any preventative measures required to avoid future violations, and a correction time frame.

2.2.009 VARIANCES:

The City Director of Health/City Sewer Director may issue variances from the requirements of this regulation for:

1. The Operation and maintenance (O&M) frequencies (Requests for variances for cleaning frequency must be accompanied by a written letter from the food establishment's permitted grease hauler.
2. The type of FOG interceptor system required
3. Timelines for connection

Any requests for a variance must be submitted in writing to the City Health Department. The reasons for the request must be clear and specific. Financial hardship will not be grounds for a variance.

Any request for a variance for a food establishment to use an alternative method, system or product that does not comply with CMR 248 3.00 through 10.00 must apply for the variance in writing to the state board for plumbers and gas fitters per CMR 248 3.04(2).

2.2.010

HEARING:

- A. Any food service establishment that receives an order or notice pursuant to this regulation, may request a hearing before the Director of Public Health. Such request must be in writing and be filed in the office of the City Health Department within seven (7) days after receipt of said order
- B. Any industrial facility that receives an order or notice pursuant to this regulation, may request a hearing before the Director of the City Sewer Department. Such request must be in writing and be filed in the office of the Sewer Department within seven(7) days after receipt of said order

2.2.011

PENALTY:

Any food establishment or industrial facility that violates any provision of this regulation within a 24 month period may be punished, under chapter 111 section 31 of the Massachusetts General Laws as a criminal offense or chapter 40 section 21d of the Massachusetts General Laws as a noncriminal offense, by fines of:

- 1. First offense -warning & education
- 2. Second offense \$1000.00 & education
- 3. Third offense \$5,000.00 & education
- 4. Fourth offense \$10,000 and suspension of permit (food establishment)

Or by criminal complaint at the appropriate venue. Each day or portion thereof during which a violation continues shall constitute a separate offense. Failure to correct violations of any Provision of this regulation may result in the suspension or revocation of a Permit to Operate a Food Establishment as provided in 105 CMR 590.12 or 105 CMR 590.014. Any person violating the provisions of this chapter shall be liable to the City of Newburyport for any loss, expense or damage, including consequential damage, caused by such violation. The City of Newburyport may enforce the provisions of this regulation by any and all civil and equitable procedures.

2.2.012

SEVERABILITY:

If any word, clause, phrase, sentence, paragraph, or section of this regulation shall be declared invalid for any reason whatsoever, that portion shall be severed and all other provisions of the Regulation shall remain in full force and effect.

2.2.013

TIMELINE FOR CONNECTION:

- A. If any food establishment or industrial facility is found to be causing blockage to the city municipal sewer system, the City Health Department or City Sewer Department may order the installation of additional FOG interceptors systems
- B. Any new, remodeled or change of ownership of a food establishments or industrial facility must install the appropriate FOG interceptor system according to this regulation as part of the application for plan review. Locations of grease traps and interceptors must comply with 248 CMR 10.09 (2) (a) (b) (c).
- C. All other food establishments and industrial facilities that discharge FOG as a byproduct into the municipal system must install a FOG interceptor system within one

(1) year of adoption of this regulation unless a variance is granted by the director of health or director of the sewer department.

SECTION 3: MINIMUM PLAN REQUIREMENTS

2.3.001 PLAN REVIEW:

All food service establishments shall be subject to Plan Review whether it be for new construction, rehabilitation, renovation, remodeling, changes in use, etc. Plans shall identify the facility and layout. All its equipment must be appropriately labeled, and identify its designated location within the facility plan layout. Equipment must be commercial grade and have National Sanitation Foundation (NSF) or equivalent rating. If equipment is used or aged it must state the name, age, and condition of such equipment.

2.3.002 EMPLOYEE TOILETS:

Employee toilet facilities that are adequate and conveniently located shall be provided by all food service establishments. Each food service establishment with a seating capacity of over fifty (50) patrons shall provide toilet facilities for employees that are separate from the toilet facilities provided for patrons. Separate facilities must be provided for male and female patrons and at least one (1) unisex toilet facility for male and female employees, if allowed by law. This regulation shall apply to all newly constructed facilities and significantly renovated facilities.

2.3.003 HAND WASHING FACILITIES:

Each food service establishment shall be provided with adequate and conveniently located hand washing facilities for its employees. Hand washing units shall be equipped with hot and cold or tempered running water, hand cleansing soap or detergent from a dispensing unit, and sanitary towels from a dispensing unit or other hand drying devices. Common towels are prohibited. Hand washing facilities shall be located in the food preparation area and other areas as deemed necessary and in sufficient quantity as determined by the Board of Health. These hand washing facilities must be clearly identified as "Food Handler Hand Washing Facility Only".

The hand wash sinks in the common restrooms designed for use by patrons, or employees, cannot be considered as hand washing facilities for food preparation areas to be used by food handlers.

2.3.004 FLOOR DRAINS:

Floor drains must be installed in a number and in locations sufficient for ease of cleaning, and to prevent puddling.

2.3.005 EXTERIOR DUMPSTERS:

Exterior dumpster facilities must be identified on all plans and must be constructed on a level four (4) inch thick minimum, concrete surface large enough to fit all dumpsters and grease dumpsters and enclosed so as to not create an offensive nuisance to abutters and the general public. Enclosures must be not less than six (6) feet in height. In cases where

enclosure is not possible, dumpsters must be properly maintained so as to not create a nuisance or become offensive to the public.

2.3.006 ACCESSORY EXTERIOR FACILITIES:

Any accessory exterior facilities utilized by the establishment in any manner, must be identified on the facility layout plan.

2.3.007 PROFESSIONALLY STAMPED PLANS:

All facility layout plans for newly constructed facilities must be professionally prepared, drawn to scale, and stamped by a qualified individual. No work may commence until an approval is granted by the Health Department. Existing facilities may prepare renovation plans that can be easily read and understood, however, a professional prepared plan may be requested by the Health Department.

2.3.008 All current food service establishments shall provide an up to date facility layout plan to the Health Department prior to the issuance of the establishments next permit renewal, if required by the Health Department.

2.3.009 These requirements shall apply to those facilities currently under review or proposed, and shall be required of facilities that expand, remodel, or renovate, as determined by the Health Department.

SECTION 4: TRANSIENT VENDORS / FESTIVAL VENDORS / TEMPORARY VENDORS

2.4.001 Any hawker, peddler, or transient vendor who offers food or drink for sale as defined by Chapter X of the Massachusetts Sanitary Code shall obtain a permit from the Board of Health and said permit shall identify the food items allowed for sale and shall identify the person as defined in Chapter 1 Section 1.006 responsible for preparation of food items allowed for sale. All applicable regulations shall be complied with.

Any hawker, peddler, or transient vendor who fails to obtain a valid permit from the Board of Health shall be ordered to immediately cease and desist the operation of food sales. Failure to comply with a valid order by the Health Department could necessitate police assistance to terminate the non-permitted vendor activities, and may cause further legal action, as deemed appropriate.

Massachusetts issued Hawker and Peddlers permits do not supersede any required city permits including but not limited to Board of Health permits. It is the responsibility of the person obtaining a permit to comply with any applicable laws, rules, regulations in force from the City of Newburyport.

Health permits must be obtained by the vendor prior to any vendor activity at least 10 days in advance. Payment of the required fees must be by check to the City of Newburyport.

2.4.001 (A) Any policies, guidelines, or other requirements adopted by the Board of Health or implemented pursuant to Chapter 1 Section, 1.2001, or Chapter 1 Section 1.6.001 shall be applicable to all vendors.

2.4.002 PLAN REQUIREMENTS FOR TRANSIENT VENDORS / FESTIVAL VENDORS / TEMPORARY VENDORS:

1. Each vendor shall be required to complete an application and file said application with applicable fees to the Board of Health at least 10 days in advance.
2. Each vendor must provide a layout plan of all equipment to be used, a menu of food items to be served, copies of permits from other cities/towns, provide location of operations, ground cover mats to be used, at least 2 fire extinguisher locations, food source locations (i.e.: ice, prepared foods, etc.), Food safety manager certifications, identify the person in charge, and certified food safety manager to be in charge and on site.
3. All vendors must provide adequate cold and hot storage units appropriate for food items offered for sale. The Board of Health may determine that some food items may not be allowed and may issue a restricted permit.

2.4.003 PRE OPERATION INSPECTION:

All transient vendors / Festival vendors / Temporary vendors shall obtain a pre operation inspection before the start of operations. At that time the Board of Health agent will determine if a permit will be issued. Failure to comply with applicable laws, rules, or regulations may be cause to deny issuance of a permit. In that case any fee's submitted for permits, plans, reviews etc. shall be considered forfeited.

SECTION 5: IDENTIFICATION OF PREPARED FOODS/TEMPORARY CATERING

2.5.001 Food item(s) offered for sale in the City of Newburyport which are prepared in a central location other than at the place so offered for sale, or consumption, whether it be inter or intra state, shall be labeled with the date of preparation, expiration sale date, ingredients, and the name and address of the person responsible for food item(s) preparation.

2.5.002 Permit required: Any caterer performing service in the City of Newburyport, unless currently permitted by the Board of Health, for such operation shall be required to obtain a permit from the Board of Health prior to conducting a catering operation in the City of Newburyport. A proper application and fee must be submitted to obtain a permit. A permit may be issued if the Health Department deems it appropriate.

2.5.003 CONSUMER ADVISORY NOTICE REQUIREMENT:

All establishments if required to provide a Consumer Advisory Notice, shall post the following notice on all menus, in not less than an 11 font size.

CONSUMER ADVISORY NOTICE:

"Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

SECTION 6: ESTABLISHMENT OWNERSHIP

- 2.6.001** Food service establishments owned by a person as defined in Chapter 1, Section 1.006 shall be required to demonstrate proper ownership of the facility to the Board of Health.
- 2.6.002** Food service establishments operated by a person that is not the owner of the facility shall be required to submit to the Board of Health a copy of their rental or leasing agreement if requested. Permit holders are solely responsible for maintaining compliance with all applicable laws, rules, and regulations, a lease or rental agreement may not supercede the permit holders responsibility for maintaining compliance with all applicable laws, rules, or regulations whether they are Board of Health regulations or, other ordinances, rules, or regulations.

SECTION 7: INSURANCE REQUIREMENTS

- 2.7.001** All food service establishments shall be required to obtain and maintain insurance for the purpose of emergency abatement action that may be deemed necessary by the Board of Health to prevent nuisances, sources of filth, and causes of sickness which may, in its opinion, be injurious to the public health, and safety. Such insurance shall be in the minimum amount of one hundred thousand (\$100,000) dollars.

SECTION 8: ADMINISTRATIVE PROCEDURES FOR FOOD SERVICE ESTABLISHMENTS

- 2.8.001** All permits for food service establishments shall expire June 30th of each year and are “NON-TRANSFERABLE”, “NON-ASSIGNABLE”, and “NOT FOR SALE”. All permits must be renewed thirty (30) days prior to expiration. It is the permit holders responsibility to obtain a proper renewal application and submit it for review and approval.
- 2.8.002** Consultant’s services may be employed by the Board of Health as deemed necessary and in the best interest of public health protection. The Board may engage consultant services to assist the Board of Health in reviewing, assessing, training, or evaluating any project, proposal, activity or function which is subject to the authority, approval or other review of the Board of Health pursuant to any statute or regulation. The selection of such consultant services shall be determined by the Board of Health. Any fees for services shall be the responsibility of the licensee(s), applicants, or persons, in accordance with Chapter 1, Section 4.001.
- 2.8.003** **SPECIAL INSPECTIONS:** shall mean any inspection conducted which is not routine, and is out of the ordinary. This shall include but not be limited to inspections to resolve court cases, inspections of code violations in Food Establishments, Markets, Restaurants, etc. or any inspection conducted after normal working hours of the Health Department. In the case of Food Service Establishments, Special Inspections shall be any inspection as defined

by Chapter 1, Section 1.1.009 of these regulations. Special inspections are subject to special inspection fees.

2.8.004 MINIMUM FOOD PROTECTION/TRAINING CERTIFICATION: All food service establishments must assign a Person In Charge (PIC) that must be knowledgeable about food safety and the prevention of food borne illness. Each establishment must also have at least one (1) person who is eighteen (18) years of age who has passed a recognized food safety exam. This person must be responsible for overseeing the day to day preparation of food. The following exemptions apply to this section:

- 1) Daycare operations which prepare and/or serve only snacks.
- 2) Food establishments which sell only pre-packaged foods.
- 3) Food establishments which prepare and serve USDA meat and poultry products containing 120 PPM nitrite level, 3.5% brine concentration such as frankfurters.
- 4) Or other establishments with limited food sales and preparation as determined by the Board of Health.

SECTION 9: ADOPTION OF STATE AND FEDERAL FOOD CODE

2.9.001 The Board of Health adopts the Massachusetts State Sanitary Code 105CMR590.000 and the 1999 Federal Food Code by reference, and any revisions now or in the future, as a local regulation. Said Sanitary code and Federal food code may be enforced by the Board of Health and violations of said codes are subject to penalties as described in Chapter 1, section 19 of the Newburyport Board of Health rules and regulations.

SECTION 10: PENALTIES

2.10.001 Any person holding a permit for an establishment or individual permit may be subject to penalties and enforcement action in accordance with Chapter 1, Section 19 of the Newburyport Board of Health Rules and Regulations.

SECTION 11: CAPITAL IMPROVEMENTS

2.11.001 CAPITAL IMPROVEMENTS:

The Board of Health may from time to time require any establishment to make capital improvements if it deems necessary for compliance with rules and regulations or is deemed to be in the best interest of public health protection.

SECTION 12 THROUGH 21

Reserved for future regulations, amendments, etc.

SECTION 22: SEVERABILITY

- 2.22.001** If any paragraph, sentence, phrase or word of these rules and regulations shall be declared invalid for any reason whatsoever, the decision shall not affect any other portion of these rules and regulations which shall remain in full force and effect and to this end the provisions of these rules and regulations are hereby declared severable. Notwithstanding the provisions that may be in conflict with the Massachusetts General Laws, the revised by-laws, or ordinances of the City of Newburyport, these rules and regulations will be binding upon all parties concerned.