

# ICE CREAM TRUCK VENDORS

<b>POLICY &amp; PROCEDURE NO.</b> 4.40	<b>ISSUE DATE:</b>
	<b>EFFECTIVE DATE:</b>
<b>MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED:</b> none	<b>REVISION DATE:</b>

## **BACKGROUND:**

The Chief of Police, as licensing authority, is responsible for administering a program involving the issuing, renewal and revocation of a permit to any person who owns, sells, displays, or offers to sell ice cream from an ice cream truck or any person who drives or operates such a vehicle.

520 CMR 15.00 has been promulgated by the Massachusetts Department of Public Safety pursuant to authority granted by MGL c. 270, s. 25 (a) and establishes uniform standards and requirements for the issuance of permits to engage in ice cream truck vending.

**Note:** All mobile food truck vendors, except ice cream truck vendors, wishing to conduct business within the Town of Wellesley must apply for and obtain all necessary licenses and permits from the Board of Selectmen and the Board of Health. These regulations pertain to ice cream truck vendors only for whom the licensing authority is the Chief of Police.

## **POLICY:**

It is the policy of this police department to fairly and impartially issue, revoke or deny permits, and to administer a program for persons engaged in ice cream truck vending.

## **DEFINITIONS:**

**Ice Cream:** Any frozen dairy or frozen water-based food product.

**Ice Cream Truck:** Any motor vehicle used for selling, displaying or offering to sell ice cream.

**Ice Cream Truck Vending:** The selling, displaying or offering to sell ice cream or any other prepackaged food product from an ice cream truck.

**Ice Cream Truck Vendor/Operator:** Any person who owns, sells, displays, or offers to sell ice cream from an ice cream truck or any person who drives or operates such a vehicle.

**Permitting Authority:** the Chief of Police or the board or officer having control of the police in a city or town, or person authorized by them.

### **PROCEDURES:**

Before granting a license, the Chief of Police will determine if the public good requires it. In making this determination, the Chief will consider the following:

1. Traffic and pedestrian safety issues;
2. Impact on nearby parking;
3. Sanitation arrangements and conditions (Health Department approval required);
4. Noise, odors or other disruptions to the surrounding neighborhood;
5. Hawker and Peddlers License;
6. Any other public safety issue, as identified by the Chief of Police; and
7. The number of Ice Cream Truck vendors.

### ***Maintenance of Order and Decorum and Cooperation with Town Officials***

Any person to whom a Ice Cream Truck Vendor License is issued under these regulations shall ensure that order and decorum are maintained in the licensed area and immediate vicinity at all times, and shall cooperate in every respect with town officials including, but not limited to the Fire Rescue and Police departments, the Board of Health, and the Building Department. The licensed area including any vehicles shall be available at all times for inspection by said officials or any other department or official of the town so directed by the Chief of Police.

### ***Licensing Process***

No person shall engage in ice cream truck vending (as defined in 520 C.M.R. 15.02) unless the applicant has been issued a valid permit to do so by the Chief of Police within the municipality where the permit applicant lives or intends to operate an ice cream truck.

A permit must be issued for every person who intends to engage in ice cream truck vending.

## ***Application***

In order to obtain a permit, the following information shall be submitted to the Chief of Police:

1. A completed uniform application for a Permit to Engage in Ice Cream Truck Vending, as set forth by the Massachusetts Department of Public Safety;
2. A copy of applicant's fingerprints; and
3. Two (2) current passport size photographs of the applicant.

## ***Fees***

The applicant shall submit a \$100 fee required by the Chief of Police for conducting the requisite criminal background check pursuant to 520 CMR 15.05(b) and Town By-law 49.36.

## ***Investigation***

Upon receipt of the permit application or application for renewal, the Chief of Police or his/her designee shall conduct an investigation into the criminal history of a permit applicant to determine eligibility.

The investigation shall include performing a state and national criminal history records check as authorized by M.G.L. c. 6, Section 172B 1/2. The investigation shall also include an inspection of the ice cream truck.

As part of this investigation, the Chief of Police shall ensure that the identity of the new/renewal applicant is true and accurate and in the case of a renewal, that the applicant is linked to the original permit number.

In no case, however, shall a permit be issued to any person who is a sex offender as defined by M.G.L. c. 6, §178C.

## ***Fines and Hearings***

The Chief of Police may suspend, revoke, or decline to renew an ice cream truck vendor license for cause, after reasonable notice to the licensee of the grounds for the proposed action and the time and place of the hearing regarding such proposed action.

The Chief of Police may issue an administrative fine of \$500.00 against any person who:

1. Engages in ice cream truck vending (as defined in 520 C.M.R. 15.02) unless the applicant has been issued a valid permit to do so by the Permitting Authority within the municipality where the permit applicant lives or intends to operate an ice cream truck. A permit must be issued for every person who intends to engage in ice cream truck vending;

2. Fails to provide that all required permits are conspicuously displayed and clearly visible on the windshield of any ice cream truck operated or from which ice cream or any other prepackaged food product is sold.

Each day that such person is in operation in violation of 15.03(1) and (2) may be considered a separate violation.

The Chief of Police shall send or cause to be sent written notice of alleged violation(s) and intent to impose administrative fines to the person. The notice shall specify:

1. The specific condition(s) which constitute the violation;
2. The provision(s) of the regulation which are alleged to have been violated;
3. The amount that is to be assessed for each alleged violation; and
4. The procedure for requesting an administrative hearing.

Written requests for a hearing must be filed with the Chief of Police within ten calendar days of receipt of the notice of violation issued pursuant to CMR 15.06(d).

The failure to make a timely request for a hearing shall constitute a waiver of the right to a hearing and warrant imposition of the fine set forth in the notice.

### ***License Maintenance***

No ice cream truck vendor licensee may transfer such license.

### ***Operating Requirements for Ice Cream Trucks***

1. Licensees shall not cause unnecessary operation of the engine of a motor vehicle while the vehicle is stopped for a foreseeable period of time in excess of five minutes. This section shall not apply to vehicles engaged in an operation for which the engine power is necessary for an associate power need other than movement and substitute alternate power means cannot be made available provided that such operation does not cause or contribute to a condition of air pollution.
2. Persons selling ice cream from trucks must equip such trucks with a flashing amber dome light and front and rear warning lights, which the vendor shall flash alternately and which shall be kept flashing when such vehicle is stopped for the purpose of selling ice cream.
3. All operators of a motor vehicle from which a licensee offers ice cream for sale within shall have a valid driver's license to drive such vehicle.
4. Licensees shall provide evidence of comprehensive liability insurance in

the amount of at least \$1 million (single claim), and listing the Town of Wellesley as an additional named insured.

5. Licensing permits must be conspicuously displayed and clearly visible on the windshield of the ice cream truck.
6. Licensees shall not provide any tables or chairs for patrons, unless specifically permitted by the Chief of Police or his designee.
7. Licensees shall not be positioned so as to expose clients to vehicular traffic, or otherwise in an unsafe manner. Any directive by a police officer in this regard shall be immediately complied with.
8. Licensees shall make specific provisions for the removal of trash and ensure that the surrounding area is kept clean, neat, and sanitary at all times. Reliance on the use of municipal trash receptacles is not considered acceptable or permitted.
9. A licensee who offers entertainment shall obtain a license from the Board of Selectmen pursuant to the Town's Entertainment Regulations.
10. No employee of the licensee shall consume any alcoholic beverage or unlawful controlled substance during the four (4) hours preceding or during operation.
11. No licensee or employee of the licensee shall permit a patron to bring into the surrounding area any alcoholic beverage for consumption in the area.
12. Operations are permitted between the hours of 9:00AM and dusk, but no later than 9:00PM unless otherwise specified. This guidance supersedes the permissible hours of operation for Hawkers and Peddlers.
13. Licensees are required to obtain a Hawkers and Peddlers License for each employee from the Wellesley Police Department or the Commonwealth of Massachusetts. As part of this process, a Personal Criminal Record Request Form (CORI), Sex Offender Registry Board (SORB) check, and fingerprints shall be obtained for each employee.
14. Licensees shall not sell non-food novelty items, noisemakers, or toys.