

Original

COUNTY OF FAYETTE, ILLINOIS

ORDINANCE NUMBER 2018-12-11-M

AN ORDINANCE APPROVING THE FAYETTE COUNTY
FOOD SANITATION ORDINANCE

ADOPTED BY THE FAYETTE COUNTY BOARD
OF THE COUNTY OF FAYETTE, ILLINOIS

THIS 11th DAY OF DECEMBER, 2018

PUBLISHED BY THE AUTHORITY OF
THE COUNTY BOARD OF FAYETTE COUNTY

THIS _____ DAY OF DECEMBER, 2018

Ordinance No. 2018-12-11-M

An Ordinance Approving the Fayette County Food Sanitation Ordinance

WHEREAS, the Fayette County Health Department was established in accordance with Illinois State statute, 55 ILCS 5/5 as amended; and,

WHEREAS, local health departments are subject to the provisions of 77 Illinois Administrative Code, Part 615; and,

WHEREAS, said Administrative Code allows local health departments to conduct a food sanitation program in accordance with a local ordinance that incorporates by reference or includes provisions at least as stringent as the Illinois Department of Public Health Food Code; and,

WHEREAS, the Fayette County Board desires to enact ordinances, in accordance with State statutes that regulate the activities of its local health department; and,

WHEREAS, it is the desire of the Fayette County Board to protect the citizens of Fayette County from transmitting or contracting foodborne disease;

NOW THEREFORE, BE IT RESOLVED by the Fayette County Board that the following ordinance defining, permitting, and regulating food establishments, seasonal, and temporary food establishments within the county townships served by the Fayette County Health Department, whether or not said establishments are located within the corporate limits of any municipality, be hereby adopted.

GENERAL PROVISIONS

Sect. 01 Adoption by Reference - In addition to those provisions set forth herein, this Ordinance hereby adopts by reference the current edition and subsequent revisions of the "Illinois Department of Public Health Food Code"

Sect. 02 Definitions - Words and phrases shall be taken in their plain, or ordinary and usual sense, except where used in a technical sense or where context or the intent of the County Board of Health indicates or requires a different meaning.

Adulterated shall mean the condition of any food:

- a) If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; or

- b) If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation or in excess of such tolerance if one has been established; or
- c) If it consists in whole or in part of any filthy, putrid or decomposed substance or it is otherwise unfit for human consumption; or
- d) If it has been processed, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
- e) If it is in whole or in part the product of a diseased animal or animal which has died otherwise than by slaughter; or
- f) If its containers are composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health, (410 ILCS 620/10).

Core Item shall mean a provision in the Code that is not designated as a priority item or a priority foundation item. Core item includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

Food shall mean any raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

Food Establishment shall mean an operation that stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or food pantry, and relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

Food establishment includes:

An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

Food establishment does not include:

An establishment that offers only prepackaged foods that are not time/temperature controlled for safety;

A produce stand that only offers whole, uncut fresh fruits and vegetables;

A food processing plant; including those that are located on the premises of a food establishment;

A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation as defined in the Bed and Breakfast Act that prepares and offers food to guests;

A private home that receives catered or home-delivered food; a closed family function where food is prepared or served for individual family consumption; or

A cottage food operation.

Health Department shall mean the Fayette County Health Department.

Health Officer shall mean the Administrator of the Fayette County Health Department or the Director of Environmental Health or their authorized representative.

Misbranded shall mean the presence of any written, printed, or graphic matter upon or accompanying food or containers of food which is false or misleading.

Permit Holder shall mean any person or his agent who makes application for a permit to operate a food establishment, seasonal, or temporary food establishment pursuant to this Ordinance.

Person shall mean an individual, firm, partnership, co-partnership, company, corporation, trustee, lessee, receiver, association, municipality, or any political subdivision or department thereof, or any other entity, or its agent.

Priority Foundation Item shall mean a provision in the Code whose application supports, facilitates or enables one or more priority items. Priority foundation item includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

Priority Item shall mean a provision in the Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. Priority item includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, or handwashing.

Seasonal Food Establishment shall mean a food establishment which operates less than 6

months (183 days/year) at a fixed location or for more than 2 single events of 14 or less consecutive days.

Time/Temperature Control for Safety Food (formerly “potentially hazardous food”) shall mean a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

Temporary Food Establishment shall mean a food establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

PERMITS

Sect. 03 Permit Required - It shall be unlawful for any person to operate a food establishment, seasonal, or temporary food establishment, within the County of Fayette, State of Illinois, who does not possess a valid permit issued by the Fayette County Health Department. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person to another person nor shall said permit be transferable to any location, building, or place other than that which it was originally issued. A valid permit shall be posted in every food establishment so as to be clearly visible to all customers. A valid permit is one that is not suspended, revoked or expired.

Sect. 04 Permit Issuance - Any person desiring to operate a food establishment must first:

- a) Comply with any existing county or city zoning provisions;
- b) Must have all plumbing installed by a licensed plumber, subject to approval by a state plumbing inspector;
- c) Make written application for a permit on forms provided by the Health Department;
- d) Submit a detailed drawing plan of a new or majorly renovated food establishment and;
- e) Receive and pass a pre-opening inspection by the Health Department.

Sect. 05 Permit Length - The permit for food establishments shall be issued annually by the Health Department and should be displayed in the establishment in public view. Temporary establishment permits shall be for a period of no longer than fourteen (14) days, at any given location and will be issued at time of inspection.

Sect. 06 Permit Renewal - Annual renewal of a permit for food establishments shall be required for continued operation of the establishment. The permit year is from April 1st to March 31st of

the following year.

All permit fees for the annual renewal of a permit are due no later than fifteen (15) days prior to the permit expiration date. Persons failing to submit the appropriate fee by April 1st shall be assessed a late payment penalty fee of \$50.00 in addition to the appropriate permit fee. Failure to submit the fee may result in suspension or revocation of the permit.

Sect. 07 Permit Update - The permit holder has an affirmative and continuing requirement to update any changes to the application. As a result, the permit holder must inform the Health Officer of any changes in the information listed in the application within thirty (30) days.

Failure to comply with the requirements of this section, or knowingly furnishing false information on the application may be grounds for immediate suspension or revocation of any permit issued pursuant to this Ordinance.

Sect. 08 Permit Suspension - Permits for food establishments, seasonal, or temporary food establishments may be temporarily suspended by the Health Officer upon notice to the permit holder of same. Reasons for suspending the permit include, but are not limited to, the following:

- a) Failure to comply with the provisions of this Ordinance;
- b) Failure to comply with the provisions of this Ordinance after notification by the Health Officer;
- c) Failure to comply with the provisions of this Ordinance within the time established by the Health Officer;
- d) Interference with the performance of duties conducted by the Health Officer, including, but not limited to, failure to allow the Health Officer access to the permit holder's building or records;
- e) Failure to update information on the application, as required by this Ordinance; or,
- f) Knowingly furnishing false information on the application.

Upon making a determination that a suspension is appropriate, the Health Officer shall advise the permit holder, or his managing or registered agent, in writing of the intended suspension. The notice shall be delivered in person by the Health Officer or sent via certified mail. The permit holder may make a written request for a hearing with the Health Officer before imposition of the period of suspension according to the procedures set out in the Hearing Procedure section.

Permits for food establishments, seasonal or temporary food establishments may be suspended by the Health Officer without notice to the permit holder when, in the judgment of the Health Officer, a condition exists that will result in an imminent health hazard to the public.

Upon making a determination that a suspension without notice is appropriate, the Health Officer shall immediately, without warning or notice notify the permit holder, or his managing or registered agent, of said condition and all food service operation shall be immediately discontinued.

Sect. 09 Permit Revocation - Permits for food establishments, seasonal, or temporary food establishments may be revoked by the Health Officer upon notice to the permit holder of same. Reasons for revoking the permit include, but are not limited to, the following:

- a) Serious violations of the provisions of this Ordinance;
- b) Repeatedly failing to comply with the provisions of this Ordinance;
- c) Interference with the performance of duties conducted by the Health Officer, including, but not limited to, failure to allow the Health Officer access to the permit holder's building or records;
- d) Failure to update the original and renewal applications, as required by this Ordinance;
- e) Knowingly furnishing false information on the original or renewal applications;
- f) Failure to apply for re-inspection within 30 days of the end of a suspension period imposed for violations of the provisions of this Ordinance.

Upon making a determination that a revocation is appropriate, the Health Officer shall advise the permit holder, or his managing or registered agent, in writing of the intended revocation. The notice shall be delivered in person by the Health Officer or sent via certified mail. The permit holder may make a written request for a hearing with the Health Officer before imposition of the period of revocation according to the procedures set out in the Hearing Procedure section.

Whenever a permit is removed, revoked, or suspended; the establishment shall be posted as "Closed by Order of the Fayette County Health Department". Only the Regulating Authority can remove such sign. Removal of any posted signs other than by the Regulating Authority is a violation of this Ordinance.

Sect. 10 Permit Classification – The Fayette County Health Department shall annually conduct a category assessment for every food establishment operating in Fayette County, pursuant to the Local Health Protection Grant Rules established by the Illinois Department of Public Health.

Sect. 11 Permit Fees - The Board of Health shall have the authority to establish and determine permit fees. Annual permit fees shall be assessed for each permitted establishment and collected by the Health Department and deposited into the Health Department fund.

STANDARDS OF OPERATION

Sect. 12 Embargo and Condemnation - Food may be examined or sampled by the Health Officer to determine freedom from adulteration or misbranding. The Health Officer may condemn or embargo (detain) equipment or food when there is probable cause to believe that any food or piece of equipment may be unwholesome or unfit for use. Such conditions include but are not limited to:

- a) Food that has been adulterated,
- b) Food that has been misbranded,
- c) Any time/temperature control for safety food with an internal temperature found to be in the optimal temperature range for the growth of pathogenic food-borne bacteria as defined in the Illinois Food Code,
- d) Where equipment used in the preparation of food products is found to be in a state of disrepair, unsafe, unsanitary, or unsuitable for use in the preparation, display or service of food,
- e) In the event that food is contaminated as a result of fire, flood, sewage backup, power outage, insect or animal infestation, or similar events,

Condemned or embargoed food, food containers, or equipment may be suitably stored by the permit holder unless said storage would pose a risk to the public health. If a risk exists, immediate destruction shall be ordered by the Health Officer, or voluntary destruction may be accomplished by the permit holder. If the permit holder refuses to voluntarily destroy the condemned food, food containers, or equipment, same shall be held under embargo until they have been proved satisfactory for human consumption or use by a certified laboratory at the expense of the permit holder.

No person shall remove or alter a condemnation or embargo order, notice, or tag placed on food, food containers or equipment by the Health Officer. Said food, food containers or equipment shall not be relabeled, replaced, reprocessed, repackaged, altered, disposed of, destroyed, or placed back in service without the permission of the Health Officer, except on order by a Court of competent jurisdiction. The permit holder may make a written request for a hearing with the Health Officer before imposition of condemnation according to the procedures set out in the Hearing Procedure section.

Sect. 13 Construction and Remodeling - Whenever any establishment regulated by the provisions of this Ordinance is constructed or remodeled, or whenever an existing structure is converted to use as an establishment to be regulated by this Ordinance, plans and specifications

for such construction, remodeling, or conversion shall be submitted to the Health Officer for review and approval before construction, remodeling, or conversion may begin.

ADMINISTRATION AND ENFORCEMENT

Sect. 14 Inspection Schedule - The Health Department shall conduct unannounced, routine onsite inspections for each food establishment, seasonal, and temporary food establishment operation in Fayette County in accordance with the guidelines established by the Illinois Department of Public Health, 77 Ill. Adm. Code, Part 615.

Sect. 15 Inspection Report - Whenever an inspection of an establishment is made, the findings shall be recorded on an inspection report approved by the Illinois Department of Public Health. One copy of the completed inspection report form will be furnished to the permit holder or his agent at the time of inspection. If violations of this Ordinance exist, the inspection report shall serve as official notice to the permit holder that the establishment is in violation of the provisions of this Ordinance. The completed inspection report form shall specify the violations found by the Health Officer, and shall establish a reasonable time period within which said violations must be corrected.

Sect. 16 Correction of Violations - The completed inspection report form shall establish a specific and reasonable period of time for the corrections of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

- a) If an imminent health hazard exists, such as lack of potable water supply, complete lack of refrigeration, sewage backup into the establishment, major insect or animal infestation, or a foodborne illness suspected to have originated from the establishment, the operations shall immediately cease. Operations shall not be resumed until authorized by the Health Officer.
- b) All violations designated as Priority, or Priority Foundation items shall be corrected immediately or at a time designated by the Health Officer. A follow-up inspection shall be conducted to confirm correction.
- c) All violations designated as Core items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.
- d) In the case of a temporary food establishment, all violations shall be corrected within 24 hours. If violations are not so corrected, the establishment shall immediately cease food service operations until authorized to resume by the Health Officer.

The inspection report shall state that failure to comply with any time limits for correction may

result in permit suspension. An opportunity for appeal from the inspection findings will be provided if a request for a hearing is filed with the Health Officer within five (5) days. The permit holder may make a written request for a hearing with the Health Officer according to the procedures set out in the Hearing Procedure section.

Sect. 17 Right of Entry - The Health Officer, after proper identification, shall have access at any reasonable time to any establishment regulated by this Ordinance. Reasonable time for the purposes of this section shall mean at all times the establishment is open to the public, food preparation, or when food contact utensils are being cleaned. The Health Officer shall be permitted to examine all areas and records of the establishment which are reasonably necessary to the inspection or investigation. Denial of access as herein provided shall be deemed as interference with the performance of duties of the Health Officer, including but not limited to denial of access to the permit holder's building or records.

Sect. 18 Hearings before the Health Officer - Any person affected by any order or notice issued by the Health Department in connection with the enforcement of any section of this Ordinance, may file in the office of the Health Department written request for a hearing before the Health Officer. Unless stated elsewhere in this Ordinance, the Health Officer shall hold the hearing at a time and place designated by him within fourteen (14) days from the date on which the written request was filed.

The petitioner for the hearing shall be notified of the time and place of hearing not less than five (5) days prior to the date on which the hearing is to be held.

If, as a result of the hearing, the Health Officer finds that strict compliance with the order or notice would cause undue hardship on the petitioner, and that the public health would be adequately protected and substantial justice done by varying or withdrawing the order of notice, the Health Officer may modify or withdraw the order or notice as a condition for such action may, where deemed necessary, make requirements which are additional to those prescribed in this Ordinance for the purpose of properly protecting the public health.

The Health Officer shall render a decision within ten (10) days after the date of the hearing which shall be reduced to writing and placed on file in the office of the authorized representative as a matter of public record. Any person aggrieved by the decision of the Health Officer may seek relief wherefrom through a hearing before the Fayette County Board of Health.

Sect. 19 Hearing before the Board of Health - Any person aggrieved by the decision of the Health Officer as the result of a hearing held in accordance with this Section may file in the office of the Health Officer a written request for a hearing at a time and place designated by the Chairperson of the Board of Health within thirty (30) days of the date on which the written request was filed. The petitioner for the hearing shall be notified of the time and place of the hearing not less than five (5) days prior to the date on which the hearing is to be held.

If, as a result of facts elicited as a result of the hearing, the Board of Health finds that strict

compliance with the decision of the Health Officer would cause undue hardship on the petitioner, and that the public health would be adequately protected and substantial justice done by granting a variance from the decision of the Health Officer, the Board of Health may grant a variance and as a condition for such variance, may, where it deems necessary, make requirements which are additional to those prescribed by this Ordinance.

The Board of Health shall render a decision within thirty (30) days after the date of the hearing which shall be reduced to writing and placed on file in the office of the Health Officer and a copy thereof shall be served on the petitioner personally or by delivery to the petitioner by certified mail. A certified transcript of the record shall be provided at the expense of the person requesting the hearing. All witnesses called shall be required to testify under oath. An appeal from a decision of the Board of Health may be made to the Circuit Court of Fayette County, pursuant to the Illinois Administrative Review Act, 735 ILCS 5/3-101 et seq., as amended.

Sect. 20 Severability - If any provision of this Ordinance is declared unconstitutional or invalid by a Court of competent jurisdiction, that decision shall not affect the validity of the remainder of the Ordinance.

PASSED AND ADOPTED

by the Fayette County Board this 11th day of December, 2018, upon yea and nay vote as follows:


Ayes 12


Nays 0

Absent 2

Effective January 1, 2019

Attest:

X 
Vicky Conder
Fayette County Clerk

X 
Jeffrey Beckman
Fayette County Board Chairman