

An Ordinance Amending Chapter 55 Madison County Food Sanitation Ordinance

WHEREAS, the Madison County Board of Health may enact ordinances, and such rules and regulations as may be deemed necessary or desirable for the protection of health and control of disease; and,

WHEREAS, The Madison County Board of Health adopted a Food Sanitation Program Ordinance on May 1, 1996 which is codified as Chapter 55 Code of Ordinances, Madison County, Illinois and subsequently amended; and,

WHEREAS, amending said ordinance is necessary to conform with rule changes to Illinois Food Service Sanitation Code, 77 Ill. Adm. Code 750, and to revise fees in accordance with Schedule “A” of same; and

NOW, THEREFORE BE IT ORDAINED by the Madison County Board of Health that Chapter 55 of the Code of Ordinances, Madison County, Illinois, be amended and effective December 1, 2018.

Respectfully Submitted,

s/ Michael Holliday, Sr.
Michael Holliday, Sr.

Jack Minner

s/ Lisa Ciampoli
Lisa Ciampoli

Robert Pollard

Chrissy Dutton

Health Department Committee

CHAPTER 55
AMENDED MADISON COUNTY FOOD SANITATION ORDINANCE

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 following:

- a. "Illinois Department of Public Health Food Service Sanitation Code," 77 Ill. Adm. Code 750
- b. "Bed and Breakfast Act," 50 ILCS 820/1 et seq.

The original shall be on file with the office of the Madison County Clerk.

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).

Bed and Breakfast Establishment shall mean an operator-occupied residence providing accommodations for a charge to the public with no more than five (5) guest rooms for rent, in operation for more than ten (10) nights in a twelve month period; breakfast may be provided to the guests only; this term shall not include motels, hotels, boarding houses or food service establishments (50 ILCS 820/2.a.).

Commissary shall mean a local health department permitted food establishment that acts as a base of operations for a mobile food establishment. The commissary provides facilities for adequate storage of food, food containers, or food supplies; equipment for adequate washing and sanitizing of food equipment and utensils; a servicing area for the sanitary disposal of liquid waste; for handling and disposal of garbage, grease and rubbish originating from the mobile food establishment; facilities for filling a potable water holding tank in a sanitary manner.

Concession Stand shall mean a food establishment that is a permanent food service stand or building, operating in conjunction with an athletic or entertainment event operating no more than 100 days annually.

Extensive Remodel shall mean any structural additions or alterations to existing establishments; changes, modifications, and extensions of plumbing, excluding routine maintenance. Extensive remodeling does not include redecorating, altering seating design, or reducing seating capacity.

Food shall mean any raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum (77 Ill. Adm. Code 750).

Food Establishment Means 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 establishments includes an element of the operation such as a transportation vehicle or 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 control for safety foods; 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 daycare 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. (77 Ill. Adm. Code 750)

Food Pantry shall mean a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress. (7 USCS § 7501 (Title 7, Agriculture; Chapter 102, Emergency Food Assistance))

Health Department shall mean the Madison County Health Department.

Health Officer shall mean the Administrator of the Madison County Health Department or ~~his~~their authorized representative.

Imminent Health Hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on: 1) The number of potential injuries, and 2) The nature, severity, and duration of the anticipated injury (77 Ill. Adm. Code 750)

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.

Mobile food establishment is a vehicle-mounted food establishment designed and operated to be readily movable, e.g., mobile truck moving from location to location continuously. The unit shall not have permanent connections to water, wastewater, or electricity. This term includes trailer-mounted kitchens. The mobile food establishment shall not be used for any purpose other than a mobile food establishment. The mobile food establishment shall not be stored at a personal residence.

Mobile Food Establishment Annual Food Service Permit is intended for those who operate at approved locations within Madison County and have obtained the proper authorization from the county, and cities or municipalities to operate in accordance to their codes and ordinances. Mobile food establishments who wish to obtain a temporary food establishment permit and have not obtained an annual permit may only operate under a temporary food service permit at temporary events.

Potentially Hazardous Food shall mean any time/temperature control for food safety (77 Ill. Adm. Code 750).

Permit Holder shall mean any person or his agent who makes application for a permit to operate a food service establishment, retail food store, 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.

Special Event shall mean a unique event at a particular location, such as a celebration, festival or fundraiser that occurs no more than twice a year.

Temporary Food Establishment shall mean a food establishment that operates for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration (77 Ill. Adm. Code 750).

Time/Temperature Control for Safety Food means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

PERMIT

Sect. 10 Permit Required - It shall be unlawful for any person to operate a food establishment, mobile food establishment, commissary, or temporary food establishment, within the County of Madison, State of Illinois, who does not possess a valid permit issued by the Madison 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, temporary food establishment, or mobile food establishment so as to be clearly visible to all customers. A valid permit is one that is not suspended, revoked, or expired. Failure to possess a valid permit will result in immediate closure of a food establishment, mobile food establishment, commissary, or temporary food establishment within the County of Madison, State of Illinois.

The following establishments shall be exempt from the provisions of this Ordinance:

- a) An establishment that offers only prepackaged foods that are not time/temperature control for safety foods
- b) Facilities licensed and inspected by the Illinois Department of Corrections.

Sect. 11 Permit Issuance - Any person desiring to operate a food establishment, mobile food establishment, commissary, or temporary food establishment must comply with existing Madison County Zoning provisions, where applicable, and shall make written application for a permit on forms provided by the Health Department. Any applicant who is not a resident of Madison County must designate a managing agent or registered agent who is a resident, and upon whom service may be made.

Mobile food establishments seeking a permit shall provide the following information to the Health Department, in addition to a written application for a permit, prior to receiving permit:

- a) Proof of access to a permitted commissary. Food may not be prepared in a residence nor in any facility that is not permitted or licensed.
- b) Hours of access to the commissary;
- c) A list of all items to be prepared and served during the course of operation;
- d) Mobile food establishment itinerary and operating schedule;
- e) Proof of access to restrooms;
- f) Proof of approval from the local governing body to operate in the location for which they have applied;
- g) A completed plan review provided by the Health Department.

Sect. 12 Permit Length - The permit for food establishments, mobile food establishments, or commissaries, shall be for a period of 12 months from the date of issuance. Temporary establishment permits shall be for a period of no longer than fourteen (14) days in conjunction with a single event or celebration.

Sect. 13 Permit Renewal - Annual renewal of permits shall be required for continued operation of the establishment or commissary. Any person desiring to renew a permit shall make written application on forms provided by the Health Department.

Mobile food establishments seeking a permit renewal shall provide the following information to the Health Department, in addition to a written application for a permit, prior to renewal of licensure:

- a) Proof of access to a permitted commissary. Food may not be prepared in a residence nor in any facility that is not permitted or licensed
- b) Hours of access to the commissary;
- c) A list of all items to be prepared and served during the course of licensure;
- d) Mobile food establishment itinerary and operating schedule;
- e) Proof of access to restrooms;

- f) Proof of approval from the local governing body to operate in the location for which they have applied;

All permit fees for the annual renewal of permits are due fifteen (15) days prior to the permit expiration date. Persons failing to submit the appropriate fee and renewal application by the above stated renewal due date shall be assessed a late payment penalty fee in addition to the appropriate permit fee. Failure to submit the total fee and application by the above- described renewal date may result in a late fee assessment each month and a lapse in the permit.

Sect. 14 Permit Updates - The permit holder has an affirmative and continuing requirement to update the original and all renewal applications. As a result, the permit holder must inform the Health Officer of any changes in the information listed in these applications within thirty (30) days.

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

Sect. 15 Permit Suspension - Permits for food establishments, mobile food establishments, commissaries or may be 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 Health Officer in the performance of his duties, including, but not limited to, failure to allow the Health Officer access to the permit holder's building or records;
- e) failure to update the original and renewal applications, as required by this Ordinance; or,
- f) knowingly furnishing false information on the original or renewal applications.

Upon making a determination that a suspension is appropriate, the Health Officer shall advise the permit holder, or their 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, mobile food establishments, commissaries 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, advise the permit holder, or their managing or registered agent, of said condition and all food service operation shall be immediately discontinued.

Sect. 16 Permit Revocation- Permits for food establishments, mobile food establishments, commissaries or may be revoked 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) serious violations of the provisions of this Ordinance;
- b) repeatedly failing to comply with the provisions of this ordinance;
- c) interference with the Health Officer in the performance of his duties, 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; and,
- g) when the continuous operation of the business has lapsed for a period of more than 90 days.

Upon making a determination that a revocation is appropriate, the Health Officer shall advise the permit holder, or their 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 revocation according to the procedures set out in the Hearing Procedure section.

Sect. 17 Permit Classifications - The Madison County Health Department shall annually conduct a category assessment for every food establishment mobile food establishment, or commissary operating in Madison County, pursuant to the Local Health Protection Grant Rules established by the Illinois Department of Public Health (77 Ill. Adm. Code Ch. 1, Sec. 615). This assessment will result in the facility being placed into the appropriate category as it relates to food handling operations. A category shall be deemed an appropriate classification of an establishment when at least one criteria item describes that establishment's food handling operations, and in all cases, the highest appropriate category will apply.

The following criteria will be utilized to classify establishments within Madison County, to wit:

a) Category 1

- i) whenever cooling of potentially hazardous foods occurs as part of the food handling operations at the facility;
- ii) when potentially hazardous foods are prepared hot or cold and held hot or cold for more than 12 hours before serving;
- iii) if potentially hazardous foods which have been previously cooked and cooled must be reheated;
- iv) when preparing potentially hazardous food for off-premises service for which time-temperature requirements during transportation, holding and service are relevant;
- v) whenever complex preparation of foods, or extensive handling of raw ingredients with hand contact for ready-to-eat foods, occurs as part of the food handling operations at the facility;
- vi) if vacuum packaging, or other forms of reduced oxygen packaging, or other special processes that require HACCP plan; or
- vii) whenever serving immunocompromised individuals; such as the elderly, young children under age four and pregnant women are served, where these individuals compose the majority of the consuming population.

c) Category 2

- i) if hot or cold foods are not maintained at that temperature for no more than 12 hours and are restricted to the same day service;

- ii) if preparing foods for service from raw ingredients uses only minimal assembly and;
- iii) foods served at an establishment that require complex preparation (whether canned, frozen, or fresh prepared) are obtained from approved food processing plants, (high risk) food service establishments or retail food stores.

d) Category 3

- i) only pre-packaged foods are available or served in the facility, and any potentially hazardous food available are commercially pre-packaged in an approved processing plant;
- ii) only limited preparation of non-potentially hazardous foods and beverages, such as snack foods and carbonated beverages, occurs at the facility; or,
- iii) only beverages (alcoholic or non-alcoholic) are served at the facility.

Sect. 18 Permit Fees - Annual permit fees shall be assessed each permitted establishment and collected by the Health Department and deposited into the Health Department fund. Fees shall be based on the classification of the establishment. If the establishment falls under more than one fee category, then the higher fee category will apply. Fees will increase on odd numbered years at a rate of 5% rounded to the upper tenth dollar. See Schedule "A" for permit fees.

STANDARDS OF OPERATION

Sect. 20 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 he has 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 found to be in the optimal temperature range of 42 to 134 F without proper paperwork for the growth of pathogenic foodborne bacteria
- 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, 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 voluntarily 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 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. 21 Employee Health - When the Health Department has reasonable cause to suspect the possibility of disease transmission by an employee of any establishment regulated by this Ordinance, the Health Officer shall investigate the suspected employee and take appropriate action pursuant to this Ordinance and State Statutes.

Sect. 22 Construction and Remodeling - Whenever any establishment, mobile food establishment, or commissary regulated by the provisions of this Ordinance is constructed or extensively remodeled, or whenever an existing structure is converted to use as an establishment, mobile food establishment, or commissary 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.

The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Health Officer shall inspect the proposed establishment, mobile food establishment, or commissary prior to the beginning or resumption of operations to determine compliance with the approved plans and specifications and the requirements of this Ordinance.

Mobile food establishments must have a source of power to operate equipment such as cooking equipment, refrigerator units, and pumps. The mobile food establishment must also have the ability to power equipment while in motion to maintain minimum temperatures of Time/Temperature control for safety food.

If the mobile food establishment uses propane, natural gas, or has a fire suppression hood, proof of approval from the local governing body in the location for which they have applied shall be provided during the plan review process to the Health Department.

ADMINISTRATION AND ENFORCEMENT

Sect. 30 Inspection Schedule - The Health Department shall conduct unannounced, routine onsite inspections for each food establishment, mobile food establishment, commissary and temporary food establishment operating in Madison County in accordance with the guidelines established by the Illinois Department of Public Health , 77 Ill. Adm. Code Ch. 1, Sec. 615 as follows:

- a) **Category 1** shall receive three (3) inspections per year or two (2) inspections per year if one of the following conditions is met:
 - i) a certified food service manager is present at all times the facility is in operation; or
 - ii) employees involved in food operations receive HACCP training exercise, in-service training in another food service sanitation area, or attend an educational conference on food safety or sanitation.
- b) **Category 2** shall receive one (1) inspection per year.
- c) **Category 3 Facilities** shall receive one (1) inspection every two year.

- d) **Temporary Food Establishments** shall be provided consultation and/or an onsite inspection a minimum of one (1) time for each permit issued.

Sect. 31 Inspection Report - Whenever an inspection of an establishment, mobile food establishment, or commissary is made, the findings shall be recorded on a standardized inspection report form pursuant to 77 Ill. Adm. Code 750. 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, mobile food establishment, or commissary 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. 32 Right of Entry - The Health Officer, after proper identification, shall have access at any reasonable time to any establishment, mobile food establishment, commissary, or temporary event establishments regulated by this Ordinance. Reasonable time for the purposes of this section shall mean at all times the establishment is open to the public. The Health Officer shall be permitted to examine all areas and records of the establishment which are reasonably necessary to his inspection or investigation. Denial of access as herein provided shall be deemed as interference with the Health Officer in the performance of his duties, including but not limited to denial of access to the permit holder's building, mobile unit, temporary event stand or records.

Sect. 40 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 designate a place and hold the hearing at a time 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. An appeal from a decision of the Health Officer may be made to the Circuit Court of Madison County, pursuant to the Illinois Administrative Review Act, 735 ILCS 5/3-101 et seq., as amended.

Sect. 50 Penalties - Any permit holder who violates the provisions of this Ordinance or any of the regulations promulgated hereunder, shall be subject to prosecution for an offense for each and every day on which the violation continues and each day that the offense continues shall constitute a separate offense. The permit holder shall be subject to a fine of not more than \$1,000.00 for each offense. Further, the Health Officer, with the approval of the Board of Health, may seek injunctive relief and fines for non-compliance with the provisions of this Ordinance. The Madison County State's Attorney serves as legal counsel and prosecuting officer for the Board of Health and Health Department.

Sect. 60 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.

Schedule “A” Food Permit Fees

Permit fees shall be non-refundable once a permit has been issued by the Health Department.

Effective December 1, 2018 the fee schedule is as follows:

	<u>Amount</u>
Category 1 Annual Permit	\$ 375.00
Category 2 Annual Permit	\$ 375.00
Category 3 Annual Permit	\$ 150.00
Mobile Food Establishment Annual Service Permit	\$ 375.00
Temporary Permit	\$ 75.00
Temporary Permit Late Fee (48 hours before event)	\$ 75.00
Plan Review Fee	\$ 200.00
Concession Stand	\$ 150.00
Food Pantry	\$ 40.00
Cottage Food Vendor Registration	\$ 25.00
Annual Permit Late Payment Fee (accrues each month)	\$ 75.00
Enforcement Penalty Maximum Fine	\$1,000.00