

Ordinance No.

**A Resolution Enacting a 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 Sanitation and Retail Food Store Sanitation Codes; 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 service establishments, retail food stores, 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 following:

"Illinois Department of Public Health Food Service Sanitation Code," 77 Ill. Adm. code 750

"Illinois Department of Public Health Retail Food Store Sanitation Code," 77 Ill. Adm. code 760

"Bed and Breakfast Act," 50 ILCS 820/1 et. seq.

"Pot Luck Event Act," 410 ILCS 625/3.1

Three copies of each shall be on file with the office of the Fayette 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:

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

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

if it consists in whole or in part of any filthy, putrid or decomposed substance or it is otherwise unfit for human consumption; or

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

if it is in whole or in part the product of a diseased animal or animal which has died otherwise than by slaughter; or

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.).

**Certified Food Service Manager or Supervisor** means a person certified in compliance with Section 750.540 of the Illinois Food Service Sanitation Code. All food service establishments except Category III facilities shall be under the operational supervision of a certified food service sanitation manager. Category I facilities shall have a certified food service sanitation manager on the premises at all times that potentially hazardous food is being handled, except as specified in Section 750.540 (a)(1)(A) and (B)

**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, (77 Ill. Adm. Code 750 & 760).

**Food Service Establishment** shall mean any place where food is prepared and intended or, though not limited to, individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen type operations that prepare foods intended for individual portion service. The term does not include lodging facilities serving only a continental breakfast, (a continental breakfast is one limited to only coffee, tea, and/or juice and commercially prepared sweet baked goods), private homes or a closed family function where food is prepared or served for individual family consumption, retail food stores or the location of food vending machines (77 Ill. Adm. Code 750 & 760).

**Health Department** shall mean the Fayette County Health Department.

**Health Officer** shall mean the Administrator of the Fayette County Health Department 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.

**Potentially Hazardous Food (PHF)** shall mean any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less (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, 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.

**Retail Food Store** means any establishment or section of an establishment where food and food products, some of which are PHF, are offered to the consumer and intended for, though not limited to, off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged spirits; roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments; or food and beverage vending machines, (77 Ill. Adm. Code 750 & 760).

**Seasonal Food Establishment** shall mean a food service establishment or retail food store 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.

**Temporary Food Establishment** shall mean a food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with less than 3 single events or celebrations (77 Ill. Adm. Code 750).

## **PERMITS**

**Sect. 03 Permit Required** - It shall be unlawful for any person to operate a food service establishment, retail food store, 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 or revoked.

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

1. Establishments which have only non-perishable and/or non-potentially hazardous food and whose principle order of business is not to sell food for human consumption.
2. Facilities licensed and inspected by the Illinois Department of Corrections.
3. Facilities licensed and inspected by the Illinois Department of Public Health.
4. Pot Luck Events; however they are required to indicate by signage that the event is not inspected by the Health Department.

**Sect. 04 Permit Issuance** - Any person desiring to operate a food service establishment or retail food store must first:

1. comply with any existing county or city zoning provisions,
2. must have all plumbing installed by a licensed plumber, subject to approval by a state plumbing inspector,
3. make written application for a permit on forms provided by the Health Department,
4. submit a detailed drawing plan of a new or major renovated food service establishment or retail food store,

5. and, receive and pass a pre-opening inspection by the Health Department.

**Sect. 05 Permit Length** - The permit for food service establishments and retail food stores shall be issued upon final approval by the Health Department and should be displayed in the establishment in public view. The permit is issued only once and is valid as long as the establishment is in compliance with this ordinance. 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 service establishments and retail food stores shall be required for continued operation of the establishment. The permit year is from December 1st to November 30th of the following year.

All permit fees for the annual renewal of a permit are due no later than (15) days after the permit year expiration date. Persons failing to submit the appropriate fee by the grace period due date 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 service establishments, retail food stores, 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:

failure to comply with the provisions of this Ordinance;

failure to comply with the provisions of this Ordinance after notification by the Health Officer;

failure to comply with the provisions of this Ordinance within the time established by the Health Officer;

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;  
failure to update information on the application, as required by this Ordinance; or,  
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 service establishments, retail food stores 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 service establishments, retail food stores, 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:

serious violations of the provisions of this Ordinance;

repeatedly failing to comply with the provisions of this Ordinance;

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;

failure to update the original and renewal applications, as required by this Ordinance;

knowingly furnishing false information on the original or renewal applications;

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 service establishment and retail food store operating in Fayette County, pursuant to the Local Health Protection Grant Rules established by the Illinois Department of Public Health. This assessment will result in the facility being placed into the appropriate category as it relates to food handling operations.

The following criteria as prescribed in 77 Ill. Adm. Code Ch. 1, Sec. 615, will be utilized to classify establishments in Fayette County, to wit:

**Category 1**

whenever cooling of potentially hazardous foods occurs as part of the food handling operations at the facility;

when potentially hazardous foods are prepared hot or cold and held hot or cold for more than 12 hours before serving;

if potentially hazardous foods which have been previously cooked and cooled must be reheated;

when preparing potentially hazardous food for off-premises service for which time-temperature requirements during transportation, holding and service are relevant;

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;

if vacuum packaging and/or other forms of reduced oxygen packaging are performed at the retail level; or

whenever serving immunocompromised individuals, where individuals comprise the majority of the consuming population.

**Category 2**

if hot or cold foods are held at required temperatures for no more than 12 hours and are restricted to the same day service;

if preparing food from raw ingredients using only minimal assembly and;

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

### **Category 3**

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;

only limited preparation of non-potentially hazardous foods and beverages, such as snack foods and carbonated beverages, occurs at the facility; or

only beverages (alcoholic or non-alcoholic) are served at the facility.

**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 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:

food that has been adulterated,

food that has been misbranded,

any potentially hazardous food with an internal temperature found to be in the optimal temperature range of 42 to 139 degrees F for the growth of pathogenic food-borne bacteria,

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,

in the event that food is contaminated as a result of fire, flood, sewage backup, power outage, cockroach or rodent 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 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 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. 14 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.

**Sect. 15 Ready-to-Eat Foods** - No food preparation will use bare hand contact with ready-to-eat foods, unless the preparation would be otherwise considered dangerous (i.e., cutting a slippery fruit or vegetable with plastic gloves on). In this case only, the food establishment will have a written procedure highly stressing hand washing procedures. This procedure must be read and signed off on for all employees at this food preparation station.

In all other cases, gloves, deli tissues, tongs, spoons or other clean utensils will be used.

## **ADMINISTRATION AND ENFORCEMENT**

**Sect. 16 Inspection Schedule** - The Health Department shall conduct unannounced, routine onsite inspections for each food service establishment, retail food store, 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 Ch. 1, Sec. 615 as follows:

**Category 1 Facilities** shall receive three (3) inspections per year, or at least two (2) inspections per year if one of the following conditions is met:

a certified food service manager is present at all times the facility is in operation; or

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.

**Category 2 Facilities** shall receive at least one (1) inspection per year.

**Category 3 Facilities** shall receive at least one (1) inspection per year.

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

**All Food Establishments** may receive more than the number of inspections listed above if the Health Department considers it necessary.

**Sect. 17 Inspection Report** - Whenever an inspection of an establishment is made, the findings shall be recorded on a standardized inspection report form pursuant to 77 Ill. Adm. Code 750 and 760. 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. 18 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:

If an imminent health hazard exists, such as lack of potable water supply, complete lack of refrigeration, sewage backup into the establishment, major cockroach or rodent 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.

All violations of 4- or -5 point weighted items shall be corrected as soon as possible or at a time designated by the Health Officer. A follow-up inspection shall be conducted to confirm correction.

All 1- or -2 point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

In the case of a temporary food service 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.

When a rating score of a food service establishment is less than sixty-five (65), the permit will be temporarily suspended and the establishment will cease operations until such time that it is shown on re-inspection that conditions responsible for the order to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.

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. 19 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 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 or records.

**Sect. 20 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 Board of Health.

**Sect. 21 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 Health Department Committee 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 Health Department Committee 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. 22 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 of Health this \_\_\_\_ day of \_\_\_\_\_, 2008.