

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. "Illinois Department of Public Health Retail Food Store Sanitation Code," 77 Ill. Adm. Code 760
- c. "Bed and Breakfast Act," 50 ILCS 820/1 et seq.

Three copies of each 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.).

**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 for, 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 Madison County Health Department.

**Health Officer** shall mean the Administrator of the Madison County Health Department or his 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.

**Multiple Temporary Food Establishment Permit** is a permit valid for the Temporary Event Food Season of each year. This permit may be obtained for individual temporary food stands that operate at multiple temporary events in Madison County.

**Potentially Hazardous Food** shall mean any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, 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, 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 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).

**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 a single event or celebration (77 Ill. Adm. Code 750).

## *PERMITS*

Sect. 10 Permit Required - It shall be unlawful for any person to operate a food service establishment, retail food store, 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 so as to be clearly visible to all customers. A valid permit is one that is not suspended, revoked, or expired.

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

- a) 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.
- b) Facilities licensed and inspected by the Illinois Department of Corrections.
- c) Facilities licensed by the Illinois Department of Public Health as provided for in 210 ILCS 35 the Community Living Facilities Licensing Act and 210 ILCS 45 the Nursing Home Care Act.

Sect. 11 Permit Issuance - Any person desiring to operate a food service establishment, retail food store, 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.

Sect. 12 Permit Length - The permit for food service establishments and retail food stores shall be for a period of 12 months from the date of issuance. Multiple Temporary permits shall be valid from January 1 thru December 31 only. Temporary establishment permits shall be for a period of no longer than fourteen (14) days.

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

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 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 service establishments, retail food stores or temporary food

establishments 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 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, advise the permit holder, or his managing or registered agent, of said condition and all food service operation shall be immediately discontinued.

Sect. 16 Permit Revocation- Permits for food service establishments, retail food stores or temporary food establishments 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 reinspection 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 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 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 service establishment and retail food store operating in Madison 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. 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 as prescribed in 77 Ill. Adm. Code Ch. 1, Sec. 615, 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 and/or other forms of reduced oxygen packaging are performed at the retail level; or
- vii) whenever serving immunocompromised individuals, where these individuals comprise the majority of the consuming population.

b) **Category 1a**

- i) same criteria as Category 1. Permit Holder operates multiple facilities at the same location.

c) **Category 2**

- i) if hot or cold foods are not maintained at that temperature for 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 2a**

- i) same criteria as Category 2. Permit Holder operates multiple facilities at the same location.

e) **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.

a) Effective December 1, 2008, the fee schedule is as follows:

Renewal Permits

Category 1 and Category 2.....	\$350.00
Category 1a and 2a.....	\$650.00
Category 3.....	\$125.00

Initial Permits

Category 1 and Category 2.....	\$550.00
Category 1a and 2a.....	\$850.00
Category 3.....	\$325.00

Temporary Food Establishment.....	\$50.00
Temporary Food Establishment (day of event).....	\$ 75.00
Multiple Temporary Permit.....	\$125.00

Late Payment Penalty Fee.....	\$75.00
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b) Permit fees shall be non-refundable once a permit has been issued by the Health Department.

*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 potentially hazardous food found to be in the optimal temperature range of 42 to 139 degrees 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 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.

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 prior to the beginning or resumption of operations to determine compliance with the approved plans and specifications and the requirements of this Ordinance.

#### *ADMINISTRATION AND ENFORCEMENT*

Sect. 30 Inspection Schedule - The Health Department shall conduct unannounced, routine onsite inspections for each food service establishment, retail food store, 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 and 1a Facilities** 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 and 2a Facilities** shall receive one (1) inspection per year.
- c) **Category 3 Facilities** shall receive one (1) inspection every other 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 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. 32 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. 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. 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 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 there from through a hearing before the Health Department Committee.

Sect. 41 Hearing before the Health Department Committee - 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 Health Department Committee 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 Health Department Committee 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 be 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 Health Department Committee 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 \$500.00 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.

PASSED AND ADOPTED by the Madison County Board of Health this 19th day of November, 2008.

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Alan J. Dunstan, Chairman  
Madison County Board of Health

Attest: \_\_\_\_\_  
Mark VonNida, County Clerk