PUBLIC HEALTH ORDINANCE FOR McHENRY COUNTY ILLINOIS

McHENRY COUNTY DEPARTMENT OF HEALTH

ARTICLE III
FOOD

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PUBLIC HEALTH
ORDINANCE FOR

McHENRY COUNTY ILLINOIS

McHENRY COUNTY DEPARTMENT OF HEALTH
ARTICLE III – FOOD

Purpose See § 8.04.010 of Article I.

§ 8.04.120 INCORPORATED MATERIALS

The Illinois Food Code, (Title 77, Illinois Administrative Code, Chapter I, Subchapter m, Part 750), effective March 22, 2024 and as amended from time to time, is adopted and incorporated by reference with the following additions, insertions, deletions and changes as approved by the McHenry County Board.

Definitions See § 8.04.010 of Article I.

§ 8.04.140 PERMIT REQUIREMENTS:

A.

1. No person, firm or corporation shall operate a food establishment or operate one or more food vending machines in McHenry County, unless they hold a valid operator's permit issued by the Health Authority in their name for the specific food establishment or vending machine. Category B vending machines and Category III Temporary Food Establishments are exempt from the permit and fee requirements; however, all other requirements of this Ordinance must be met. Operators of businesses, who invite or allow food establishments to operate at their site, are responsible to ensure that the food establishment is permitted per this section.

2. Food prepared for human consumption outside of McHenry County and transported into McHenry County shall conform to the standards and provisions of this Ordinance. To determine the extent of compliance with such provisions, the Health Authority may require/accept reports from responsible authorities where such establishments are located.

B. **Permit Renewal:** Every operating permit shall be issued for the period May 1 – April 30, unless sooner revoked or suspended and may be renewed for successive periods not to exceed 1 year. Any operating permit not renewed within five (5) business days after April 30, shall be considered delinquent. A single conditional permit may be issued within five (5) business days after April 30 provided that the request for the conditional permit is accompanied by the conditional permit fee specified in the Public Health Fee Ordinance. The conditional permit fee is in addition to the full permit renewal fee. Failure to obtain a conditional permit within 5 working days after April 30 will result in suspension of the permit until the permit renewal and permit reinstatement fees are paid. Any operating permit not renewed by the expiration of the conditional permit (May 31), will result in suspension of the permit until the permit renewal and permit reinstatement fees are paid.

C. **Condition for Permits:** The Health Authority is hereby authorized upon application thereof, to issue new operating permits and renewals in the names of the applicant, owners or operators of food establishments. Within thirty (30) days of receipt of the permit application, the Health Authority shall either issue the permit or provide written justification for the denial of the permit. No permit shall be issued unless said establishment is found upon inspection to be in substantial compliance with all the requirements of this Ordinance. When conditions exist that a regular permit cannot be issued a conditional permit may be issued. A conditional permit suspends the regular health permit. A conditional permit is not intended for new food establishments or for food establishments under new ownership.

D. **Conditional Permit:** A conditional permit is issued for a period not to exceed 30 days at which time either the regular permit is issued, or another conditional permit is issued if the conditions causing the conditional permit are not corrected. The cost of the conditional permit is due at the Health Department within 5 working days of receipt or the permit is suspended until such time that the fees have been received. A maximum of three (3) consecutive conditional permits will be issued in a permit year (May 1 – April 30.) A conditional permit suspends the regular health permit.

E. **Application for Permit:** No operating permit shall be issued or renewed unless the applicant, owner or operator has first made application therefore on an application form provided by the Health Authority. The Health Authority shall develop such forms and make them available to the public. Such application shall include:

1. Applicant's full name and post office address.

2. Whether applicant is an individual, firm or corporation, and if a corporation or partnership, the legal name of the business entity and the names of the officers or partners, together with their addresses.

3. Location of the commissary or commissaries where mobile units are supplied and cleaned or where vending machines are repaired or renovated.

4. Type of Establishment.

5. The identity and form of the products to be dispensed through Category A vending machines and the location and number of Category A vending machines operated in McHenry County, Illinois.

6. Signature of the applicant or applicants.

7. The name of the Certified Food Protection Manager.

F. **Permit Fee:** No operating permit shall be issued or renewed unless the completed application form is accompanied by a payment in accordance with the approved fee schedule contained in the Public Health Fee Ordinance approved by the McHenry County Board. The temporary food permit fee, and late fee, if applicable, must be submitted simultaneously with the permit application. Failure to do so shall prevent issuance of the temporary food permit to operate. A fee as contained in the Public Health Fee Ordinance shall be required for all replacement permits (i.e. due to loss, name changes, etc.).

G. **Permit Display:** The operator's permit, as provided by the Health Authority, shall be displayed and be readily visible in each food establishment, vending machine location or on each Category A vending machine operated by them.

H. Variations: When circumstances exist, which make impractical full compliance with the requirements of this Ordinance, as listed in this paragraph, an applicant may request that the Public Health Administrator grant a variance. Such request shall be made in writing, shall cite the relevant Section numbers, and shall accompany any other pertinent data which might support the request or which the Public Health Administrator may require. An explanation of how the potential public health hazards and nuisances addressed by the relevant Sections of this Ordinance will be alternatively addressed shall be included. A Hazard Analysis Critical Control Point (HACCP) Plan shall be included if required by the Code for the specific procedure or process for which the variance is being requested. The Public Health Administrator may grant the request for variance provided the variance does not conflict with the stated purpose of this Ordinance. Variations will be considered for items in this Ordinance that do not compromise the wholesomeness, storage, handling, or service of foods. The Public Health Administrator or their designated representative shall respond to all variation requests, in writing, within thirty (30) calendar days of receipt of the request. The Department may attach conditions to a variance to ensure that a variance does not result in creating a public health hazard or nuisance condition. Failure to continue to meet the conditions of a variance is a violation of this Ordinance and may result in the variance being rescinded.

I. Outdoor Cooking: Beer Gardens, pig roasts, fish boils, outdoor grilling, outdoor bars and other outdoor food service events that are held in conjunction with permitted establishments shall only be allowed with a valid Supplemental Health Permit or Temporary Food Permit issued by the Health Authority.

§ 8.04.150 INSPECTION OF FOOD ESTABLISHMENTS

A. The Health Authority shall inspect each food establishment located in the County of McHenry as follows:

1. Category I Facilities: three times annually
2. Category II Facilities: one time annually
3. Category III Facilities: one time annually

B. A HACCP training exercise, in-service training or virtual training session in another food service sanitation area provided to the Person-In-Charge at a Category I facility may be substituted for one routine inspection. It is the Department's intention to have at least two (2) separate contacts (i.e. 2 routine inspections or 1 routine inspection and 1 onsite training) with Category II food establishments per calendar year dependent upon staff resources.

C. The Health Authority shall inspect each food and/or beverage vending machine located in the County of McHenry as follows:

1. Category A Vending Machines: one annual inspection
2. Category B Vending Machines: no annual inspections

D. The Health Authority shall make as many additional inspections as are necessary for the enforcement of this Ordinance. The Health Authority reserves the right to change the risk classification and thus increase or decrease the frequency for Category II and III operations.

E. Access to Establishments: The Health Authority, after proper identification, shall be permitted to enter, at any reasonable time, any food establishment, or upon any private or

public property where vending machines or commissaries are operated, or from which such machines are otherwise serviced, within the County of McHenry, Illinois, for the purpose of making inspections to determine compliance with this Ordinance. They shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or sold, and persons employed. The operator shall make provisions for the Health Authority to have access, either in company with an employee or otherwise, to the interior of all Category A or Category B vending machines operated by them.

F. Inspection Reports: Whenever an inspection of a food establishment, vending machine, or commissary is made, the findings shall be recorded on an approved inspection report form. This inspection report form shall summarize the requirements of this Ordinance and shall delineate Core item, Priority Foundation item, Priority Item and Hazard Analysis Critical Control Point (HACCP) Plan deviations. Inspectional remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The procedure for review or appeal of any alleged deviation or violation shall be provided. A copy of the completed inspection report form shall be furnished to the person in charge of the establishment in person, via electronic mail, or regular mail at the conclusion of the inspection. The report form shall establish a specific and reasonable period of time for the correction of the violations found, in accordance with the following provisions:

a. Priority items should be corrected immediately if possible, and shall be corrected in a time period not to exceed 72 hours.

b. Priority Foundation or Hazard Analysis Critical Control Point (HACCP) Plan deviations shall be corrected within ten (10) calendar days.

c. Core items shall be corrected by the next routine inspection.

d. The Health Authority may approve a compliance schedule that extends beyond the time limits specified in Paragraph a through Paragraph c if a written schedule of compliance is submitted by the permit holder at least one business day prior to the scheduled reinspection date and no health hazard exists or will result from allowing an extended schedule for compliance.

e. In the case of temporary food establishments, violations must typically be corrected prior to receiving the approval to operate, but within a specific period of time not to exceed 24 hours. Failure to comply with such notice shall result in immediate suspension of the permit.

f. Second and subsequent re-inspections for the same violation will require a re-inspection fee specified in the Public Health Fee Ordinance. Whenever a permit to operate is suspended or revoked, a reinstatement fee specified in the Public Health Fee Ordinance shall be incurred by the permit holder.

g. Re-inspection fees must be paid within fifteen (15) days of notice by the Department. Failure to pay will result in suspension of the permit to operate and an additional fee to reinstate the permit.

h. The Health Authority may issue a Conditional Permit to operate when an inspection results in seven (7) or more Foodborne Illness Risk Factor item numbers with Priority or Priority Foundation violations; and/or when four (4) or

more Foodborne Illness Risk Factor item numbers with Priority or Priority Foundation violations remain uncorrected at the conclusion of an inspection.

G. Service of Notices: Notices under this Section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered to the permit holder or licensee or person - in - charge, or when such notice has been posted to the front door of the permit holder's establishment, or by leaving such notice at their residence with some person of the family of the age of ten (10) years or upwards.

H. Examination and Condemnation of Food: Food may be examined or sampled by the Health Authority as often as may be necessary to determine freedom from adulteration or misbranding. The Health Authority may, upon written notice to the owner or person in charge, place a hold order on any food which they determine or has probable cause to believe to be unwholesome or otherwise adulterated, or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order notice, or tag placed on food by the Health Authority, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Health Authority except on order by a court of competent jurisdiction. The Health Authority may vacate the hold order, or may by written order direct the owner or person in charge of the food which was placed under the hold order to denature or destroy such food or to bring it into compliance with the provisions of this Ordinance: Provided, that such order of the Health Authority to denature or destroy such food or bring it into compliance with the provisions of this Ordinance shall be stayed if the order is appealed to a court of competent jurisdiction within three (3) days of the issuance of such order. Samples for the determination of adulteration and misbranding shall be taken and examined in accordance with the methods prescribed by the Association of Official Agricultural Chemists, the Food and Drug Administration, or by other standard methods, at the expense of the food establishment.

I. Food-borne Illness Investigation: When cases of food-borne illness are reported, an immediate epidemiological and laboratory investigation shall be made by the McHenry County Department of Health in an effort to determine the vehicle and the source, so as to prevent a recurrence. Any food suspected of being a vehicle in a food-borne disease outbreak shall be placed under a hold order pending laboratory examination.

§ 8.04.155 SUSPENSION OF PERMIT TO OPERATE: The Health Authority may suspend a permit to operate a food establishment if it determines through inspection, or examination of employees, food, records or other means, that an imminent health hazard exists. The Health Authority may suspend a permit to operate a food establishment for serious or repeated violations of this Ordinance or for interference with the Health Authority in the performance of their duties. Any person whose permit has been suspended may request a review of that permit suspension by the Health Authority consistent with § 8.04.030 ¶ E3 of Article I and seek a hearing before the Board of Health Hearing Committee consistent with § 8.04.040 of Article I. Upon reinstatement of the permit, a conditional permit will be issued. A conditional permit suspends the regular health permit. See § 8.04.140 ¶ D.

§ 8.04.160 PLAN REVIEW OF FUTURE CONSTRUCTION:

A. When a food establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food establishment, properly prepared plans and specifications for such construction, remodeling or alteration, showing layout, arrangement, and construction materials of work areas, and the location, size, and type of fixed equipment

and facilities, shall be submitted to the Health Authority for approval before such work is begun.

B. Whenever plans and specifications are required to be submitted to the Health authority under § 8.04.160 of this Ordinance, the Health Authority shall inspect the food establishment prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of this Ordinance.

C. A review fee shall be charged for all new or extensively remodeled food establishment(s). The review fee is specified in the Public Health Fee Ordinance. All work that starts without written approval of the Department shall have the review fee doubled.

D. The plan review shall be valid for a period of two (2) years from the date of approval. If construction has not commenced and significant progress is not achieved, the plan review shall expire unless an extension is granted by the Health Authority. Pending plan review applications that have been inactive for six (6) months shall be subject to cancellation after notification to the applicant.

§ 8.04.170 EMERGENCY OCCURRENCES: In the event of a situation that might result in the contamination of food, or that might prevent the safe handling of food, the person in charge shall immediately contact the health authority. These events shall include but are not limited to fire, flood, power outage, lack of potable water under pressure, lack of hot water, inability to clean and sanitize utensils and equipment, boil order, coliform bacteria positive water sample results, back up of sewage and malfunctioning private sewage disposal systems, and interruption to plumbed toilet/handwashing facilities for food employees. Upon receiving notice of this occurrence, the health authority shall take whatever action it deems necessary to protect the public health, including but not limited to immediate suspension of the health permit.

§ 8.04.180 FOOD SAMPLE DEMONSTRATIONS AND FOOD PROMOTIONS: Food sample demonstrations and food promotions shall comply with the applicable sanitation provisions of this Ordinance.

§ 8.04.190 CHANGE IN OWNERSHIP: When a food establishment undergoes a change in ownership, the lavatory facilities shall be brought into compliance with Section 5-203.11 of the US Public Health Services Food and Drug Administration (FDA) 2022 Food Code if they are not already, whether or not the facility will be extensively remodeled.

§ 8.04.210 TOILET FACILITIES (Replaces Section 6-202.14 of the 2022 US Public Health Services FDA Food Code.) Toilet rooms located in kitchen, food service, food preparation, ware washing, or food storage areas shall be completely enclosed and shall have tight fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance.

§ 8.04.220 MOBILE FOOD UNITS

A. Routes: Mobile food operators shall provide a copy of their mobile routes to the Department upon request.

B. Base of Operations: When not in use, mobile food establishments shall be stored at a location where the mobile unit will be protected from contamination and the wholesomeness of the food products will not be compromised.

C. Prior to Operation: Prior to operation, an inspection of the mobile unit must be conducted by a licensed plumbing inspector, and the inspection report must be submitted to the Department. The operator of the mobile unit must provide copies of the report of the most recent inspection of the approved commissary, and the commissary agreement.

§ 8.04.230 TEMPORARY FOOD ESTABLISHMENTS:

A. Restricted Operations

1. All foods sold or handled by a temporary food establishment shall meet the requirements of this Ordinance for preparation, packaging, display, service, storage and transportation. Foods will be classified as to their relative risk to cause a food-borne illness.

2. Certain high-risk foods may be prohibited or may require that a food preparation plan be provided and approved. Foods shall be prepared and cooked on-site on the day of the event unless prior approval is provided in writing from the Department.

3. One temporary food event is allowed per sponsor per single location per calendar year unless the requirements of Paragraph B below are met.

4. All temporary food establishments shall provide only single-service articles for use by the consumer unless prior approval is provided in writing from the Department.

B. Renewals of Temporary Food Permits: Temporary food permits may be renewed and seasonal temporary food permits may be issued at a single location provided that all of the following requirements are met:

1. The temporary food establishment shall be under the operational supervision of a certified food protection manager during all times that the temporary food establishment is operating.

2. Past temporary food events by the same sponsor must have been in substantial compliance with Ordinance requirements; and

3. The appropriate application and fee must be submitted to the Department.

4. Seasonal temporary food permits are not renewable in a permit year (May 1- April 30).

C. Facilities at Temporary Food Establishments:

1. Enough refrigeration and hot holding facilities must be provided to maintain time/temperature control for safety foods at required temperatures.

2. For other than mechanical refrigeration or hot holding facilities, prior approval of the Department is required.

D. Handwashing at Temporary Food Establishments: A facility shall be provided for employee handwashing. Where water under pressure is unavailable, such facility shall consist of at least a food grade container of potable water, soap and individual paper towels. The container shall have a spigot at the bottom to allow a flow of water into a receiving container below.

E. Warewashing: Where warewashing is not easily accessible or available, a warewashing station shall be provided consisting of three basins for cleaning and sanitizing equipment and utensils. The basins shall be large enough to fully immerse the largest piece of equipment used by the temporary food establishment.

§ 8.04.240 CATERING FOOD SERVICE OPERATIONS

A. A catering food service operation shall comply with the requirements of this Ordinance. The Health Authority may impose additional requirements to protect against health hazards relating to the conduct of catering food service operations.

B. Catering food service operations whose base of operations is located outside of McHenry County must hold a valid Health Permit to operate from the appropriate regulatory authority. If the regulatory authority does not issue health permits, alternative documentation (i.e. inspection report) from that regulatory authority shall be provided.

C. Catering food service operations, that cater events which are open to the public, must obtain a valid Health Permit from the McHenry County Department of Health prior to operating.

§ 8.04.250 DELIVERY SERVICES: Delivery services shall be limited to prepackaged food items obtained from an approved location with proper equipment to maintain product temperature and maintain food in a sanitary manner.

§ 8.04.260 OUTDOOR GRILLING AT FIXED FOOD ESTABLISHMENTS

A. Cooking must be done on the premises immediately adjacent to the permitted fixed food establishment. All other food preparation and food service must be done within the facility, except that patrons or cooks may apply condiments and sauces from approved dispensers to immediate servings.

B. The grill and any other cooking equipment must meet the published standards of an American National Standards Institute (ANSI) accredited equipment certification program, or be approved by the Department.

C. The grill and any other cooking equipment must be located on a smooth and easily cleanable surface during use. Sealed concrete, mortared non-textured brick, commercially designed synthetic floor material, and asphalt are some recommended surface materials.

D. Grills and any other cooking equipment shall be effectively separated from public access and not in close proximity to waste receptacles or dumpsters.

E. At least one (1) hand washing lavatory with hot and cold water under pressure, and plumbed to an approved wastewater disposal system, shall be provided. The hand washing station

may be located inside the facility if it is easily accessible to the grilling area. Portable hand washing stations, which provide hot and cold running water under pressure, and meet the published standards of an American National Standards Institute (ANSI) accredited equipment certification program, may be utilized in lieu of a permanently plumbed hand sink. If a portable hand washing station is to be utilized, a procedure must be established by the food operator and accepted by the Department which assures that hot and cold running water will be available at all hours of operation, and the filling of the unit with potable water and emptying the domestic wastewater will be done in a sanitary manner.

F. Products being grilled or cooked shall be protected from contamination. Acceptable protection shall include a closed grill cover, a canopy or a roofed area.

G. Approved mechanical refrigeration must be provided if raw product is not immediately brought from inside the approved kitchen facility to the grill or other cooking equipment.

H. All cooked time/temperature control for safety food products must be held and served inside the facility at 135 degrees F or above if not immediately consumed.

I. A certified food protection manager shall be onsite at all times that foods are being grilled or cooked.

J. Use of portable or chemical toilets is limited to the provisions of § 8.04.580 of Article IV.

§ 8.04.265 OUTDOOR BARS AT FIXED FOOD ESTABLISHMENTS.

A. The outside bar shall be located under a roof or canopy and be located on a smooth and easily cleanable surface.

B. The bar service and food (beverages, condiments, snacks, ice, etc.) storage areas must be located under the canopy or roof.

C. Only beverages and pre-packaged, non-TCS foods shall be provided from the outside bar. The non-TCS foods may be dispensed from larger commercially prepackaged containers into individual portions. This does not preclude outdoor service of foods prepared inside the food establishment and served directly to the consumer.

D. Liquor bottles shall have insect proof screen tops.

E. Condiments shall be prepared inside the food establishment.

F. A permanently plumbed foodservice hand sink or portable hand washing station which meets the published standards of an American National Standards Institute (ANSI) accredited equipment certification program, must be provided in the outdoor bar. Hot and cold running water must be available at the hand sink during all hours of operation of the outside bar. Filling the portable unit with potable water and emptying the unit of wastewater must be done in a sanitary manner. A portable hand washing station will not be considered without the approval of the local building authority.

G. Warewashing of glassware (beverage containers), drink mixers, soda dispenser component parts, ice scoops and liquor bottle tops or similar may take place at the bar consistent with §4-401, §4-501, §4-602, §4-603, §4-701 of the FDA Retail Food Code. Glassware (beverage containers) must be stored in a way that protects against contamination, consistent with §4-903 of the FDA Retail Food Code.

H. The three-compartment sink or dishwasher must be permanently plumbed to the approved wastewater disposal system.

I. The ice bin must have a lid, and the lid must be closed between uses.

J. If not permanent, the ice bin must be returned daily to the fixed food establishment for cleaning and sanitizing.

K. An adequate number of covered garbage/refuse containers must be provided in and around the bar to prevent litter.

L. Waste drains of tap coolers are to be plumbed to the wastewater system or go directly to a covered container that is emptied daily into the facility's wastewater disposal system.

M. Utilization of a covered container in lieu of a direct connection cannot be considered without the approval of the local building authority.

N. If the facility is served by a private sewage disposal system, the entire facility, including the outside bar, must be operated within the design capacity of the private sewage disposal system. Portable toilets may be utilized consistent with §8.04.580 of Article IV. If portable toilets are provided, a portable hand washing station must be provided for customers within 20 feet of the portable toilets.

O. The bar must be constructed of smooth and easily cleanable surfaces.

P. The outside bar must meet all other applicable sections of this Article.