

City of Manchester
New Hampshire

In the year Two Thousand and Twenty-Five

AN ORDINANCE

“Amending Chapter 117: Food Service Establishments of the Code of Ordinances of the City of Manchester by making changes to reflect the new food code and increasing various fees.”

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Be it Ordained, by the Board of Mayor and Aldermen of the City of Manchester, as follows:

- I. Amend the Code of Ordinances by adding new language as bolded (**bold**) and deleting existing language as stricken (—). Portions of the following sections that remain unchanged appear in regular type.

CHAPTER 117: FOOD SERVICE ESTABLISHMENTS

GENERAL PROVISIONS

§ 117.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FOOD-SERVICE ESTABLISHMENT. Any fixed or mobile restaurant; cafeteria; coffee shop; cocktail lounge; catering kitchen; sidewalk cafe; commissary; grille, luncheonette; short-order cafe; sandwich shop; soda fountain; tea-room; drive-in; nightclub; roadside stand; **food vending operations with Time Control for Safety (TCS) foods (whether attended or unattended)**; industrial feeding establishment; private, public, or nonprofit organization or institution serving the public; or similar place in which food or drink is prepared for sale for food service on the premises or elsewhere; and any other eating or drinking establishment where food is served or provided for the public with or without charge.

A **FOOD-SERVICE ESTABLISHMENT** also means a grocery store; meat market; bakery or any establishment where food is stored, manufactured, and/or processed, or packaged.

HEALTH AUTHORITY. The Health Officer of the city or his designated representatives.

SANITARY FOOD CODE. ~~The New Hampshire Rules for the Sanitary Production and Distribution of Food, part He P 2301, He P 2303 through He P 2326, He P 2329, and He P 2331 as in effect on December 1, 2010. Copies of the Sanitary Food Code are available at the Office of the City Clerk and the Manchester Health Department.~~ **The Food Code, 2017 Recommendations of the United States Public Health Service/Food and Drug Administration, as published by the U.S. Department of Health and Human Services, and successor publications that address ‘housekeeping items and errata, and as amended by this Article, is hereby adopted and, together with this Article, shall be known as the *Sanitary Food Code of the City of Manchester*. The annexes of the Food Code are excluded from adoption under this Article except if and when necessary to complete the requirements of this Article under specific reference. The annexes may, however, be used separately as a reference to understand the intent of the Code.**

All permittees shall comply with the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Food Code, 2017 Edition. The following amendments shall apply to *Sanitary Food Code of the City of Manchester*.

- 1) **Adopting subpart of the 2017 FDA Food Code §“1-201.10 (B) Terms Defined” by deleting definition “Food establishment” in its entirety and inserting in its place the following:
Food-Service Establishment as defined in the Chapter 117.01 Manchester Code of Ordinances.**
- 2) **Not adopt subpart of the 2017 FDA Food Code § “3-201.11 Compliance with Food Law” by not adapting paragraph (B) in its entirety.**

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3) Not adopt Chapter 8 Compliance and Enforcement –with the exception of §8-103.10 through § 8-103.12 and §8-201.13 through §8-201.14.

Priority Item shall mean a provision of the Food Code, marked with a superscript P,P, whose application contributes directly to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.

Priority Foundation Item .

- (1) "Priority foundation item" means a provision in this Code whose application supports, facilitates or enables one or more PRIORITY ITEMS.
- (2) "Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling; and
- (3) "Priority foundation item" is an item that is denoted in this Code with a superscript Pf.

Core Item.

- (1)"Core item" means a provision in this Code that is not designated as a PRIORITY ITEM or a PRIORITY FOUNDATION ITEM.
- (2) "Core item" includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

(71 Code, § 10-1) (Ord. passed 6-5-79; Am. Ord. passed 6-2-87; Am. Ord. passed 9-4-01; Am. Ord. passed 1-4-11)

§ 117.02 APPROVAL OF PLANS REQUIRED FOR BUILDING PERMIT.

When a food-service establishment is hereafter constructed, **changes ownership** or extensively remodeled, or when an existing structure is converted for use as a food-service 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 **with a completed Application for Plan Review**, for approval before such work is begun. No building permit shall be issued by the Building Inspector until such approval has been given by the Health Authority.

(71 Code, § 10-2) (Ord. passed 4-15-69 ; Am. Ord. passed 9-4-01) Penalty, see § 10.99

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§ 117.18 ISSUANCE OF PERMIT.

Upon receipt of ~~an~~ a **complete** application and the designated license fee, and after inspection reveals that the applicable requirements of this subchapter have been met, a permit shall be issued to the applicant by the Health Authority.

Prior to the issuance of any Food Service Establishment Permit, approvals from other City Departments must be obtained and documented on the Food Service Establishment Food Permit Sign-off Form.

(71 Code, § 10-17) (Ord. passed 4-15-69 ; Am. Ord. passed 9-4-01)

§ 117.19 PERMIT FEE.

The fee for any permit application pursuant to this subchapter shall be in accordance with the following schedule:

Class	Description of Establishment	Fee
Class I	Food-service establishments having a seating capacity of 100 persons or greater; supermarkets	\$550 \$600
Class I-A	Supermarket with bulk foods, salad bar, and/or food buffet	\$1,000 \$1,100
Class II	Food-service establishments having a seating capacity of greater than 25 but less than 100 persons; bakeries; warehouses; distributors; nursing homes; commissaries; food processors, markets with less than two prep areas, mobile food operations which cook or prepare foods.	\$330 \$365
Class III-A	Markets selling only prepackaged food products; mobile food operations selling packaged and unwrapped non-TCS foods only ; food service operations having a seating capacity of 25 persons or less; child day care facilities	\$200 \$220
Class III-B	Clubs incorporated under the laws of the State or which are affiliated with any national fraternal organization for the same members and bona fide guests of liquor	\$110 \$125
Class III-C	Vending Machines Serving TCS Food	\$25
Class IV	Temporary food-service establishments:	\$15 \$25/day/vendor + \$25 Late/expedite
Class V-A	Non-profit organizations not holding a liquor permit and not serving meals on a daily basis; parochial schools	No fee
Class V-B	Government facilities, public schools	No fee

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§ 117.20 EXPIRATION AND RENEWAL OF PERMIT.

Except as otherwise stipulated in this chapter, any permit issued pursuant to this section shall be valid for a one-year period and shall expire on the last day of the month in which it was first issued. There shall be a ~~\$40~~ **\$25** late application fee for any permit renewal application received more than ten days after its expiration **or date due**. **License renewal applications that are not received by the 20th day of the month following the expiration date of the license will be deemed suspended.**

(‘71 Code, § 10-18) (Ord. passed 6-5-79; Am. Ord. passed 6-19-84; Am. Ord. passed 6-2-87; Am. Ord. passed 6-5-90; Am. Ord. passed 6-4-96; Am. Ord. passed 9-4-01; Am. Ord. passed 11-14-06; Am. Ord. passed 7-5-11)

§ 117.21 PERMIT FOR TEMPORARY ESTABLISHMENT.

~~Any p~~Permits for temporary food-service establishments shall be issued for a period of ~~time not to exceed~~ 14 days. **Applications submitted less than 14 days before the intended operation date may not be accepted. An additional expenditure fee of \$25 shall apply to applications received and accepted after the deadline.**

(‘71 Code, § 10-20) (Ord. passed 4-15-69 Am. Ord. passed 9-4-01)

§ 117.23 TRANSFER OF PERMIT PROHIBITED.

Any permit issued pursuant to this chapter shall not be transferable from one person to another person; or from one place to another place; or from one vehicle to another vehicle; **or from one entity to another entity.**

(‘71 Code, § 10-22) (Ord. passed 4-15-69; Am. Ord. passed 6-2-87 ; Am. Ord. passed 9-4-01) Penalty, see § 10.99

§ 117.24 SUSPENSION OF PERMIT; REINSTATEMENT.

(A) Any permit issued pursuant to this subchapter may be suspended by the Health Authority for failure of the holder to comply with the requirements of this chapter.

(B) Whenever a permit holder or operator has failed to comply with any notice under the provisions of this chapter, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Health Authority by the permit holder.

(C) Notwithstanding the other provisions of this chapter, whenever the Health Authority finds unsanitary or other conditions in the operation of a food-service establishment which, in his judgment, constitute a substantial hazard to the public health, ~~he~~ **they** may issue a written notice to the permit holder or operator citing such condition, the corrective action to be taken, and specifying the time period

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within which such action shall be taken. If it is deemed necessary, the Health Officer may order that the permit be immediately suspended and all food-service operations will be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the Health Authority, shall be afforded a hearing as soon as possible.

(D) Any person whose permit has been suspended may, at any time, make application for a re-inspection for the purpose of reinstatement of the permit accompanied by a re-inspection fee which shall be equal to cost of the annual permit. Within five days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Health Authority shall make a re-inspection. If the applicant is complying with the requirements of this chapter, the permit shall be reinstated.

(E) **Any permit holder who continues to operate a food-service establishment after the suspension of their permit shall be in violation of this chapter. Each day of operation while under suspension shall constitute a separate offense subject to the penalties established in §10.99. In addition to any penalties imposed, continued operation while under suspension may be grounds for immediate revocation of the permit in accordance with §117.25.**

(71 Code, § 10-23) (Ord. passed 4-15-69; Am. Ord. passed 3-1-83 ; Am. Ord. passed 9-4-01)

§ 117.27 INSPECTION REQUIRED.

~~At least once every six months, the~~ The Health Authority shall inspect each food-service establishment located in the city, or its police jurisdiction, **at a frequency determined by the Health Authority as established in policy**, and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this chapter, ~~in any case, not less than once annually.~~ To assist the Health Department in making inspections, mobile caterers, canteen trucks, and other readily moveable food establishments shall submit accurate route schedules identifying location and time of stops. Non-mobile food service establishments shall submit normal days and times of operation on forms provided by the Health Authority.

(71 Code, § 10-26) (Ord. passed 4-15-69; Am. Ord. passed 6-19-84 ; Am. Ord. passed 9-4-01)

§ 117.28 ACCESS; EXAMINATION OF RECORDS.

The Health Authority, after proper identification, shall be permitted to enter, at any reasonable time, any food-service establishment within the city, or its police jurisdiction, for the purpose of making inspections to determine compliance with this chapter. ~~He~~ **They** shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

(71 Code, § 10-27) (Ord. passed 4-15-69 ; Am. Ord. passed 9-4-01) Penalty, see § 10.99

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§ 117.29 REPORT; RATING SCORE.

(A) Whenever the Health Authority makes an inspection of a food-service establishment, ~~he~~ **they** shall record ~~his~~ **their** findings on an inspection report form provided for this purpose, and shall **contain specific factual observations of deficiencies which violate the *SANITARY FOOD CODE* and which require correction; and** furnish the original, **or a digital electronic copy** of such inspection report form to the permit holder or person in charge at the conclusion of the inspection. Such form shall **designate a color designation, described in (B) below, based on the results of the inspection findings.** ~~summarize the requirements of the New Hampshire Rules for the Sanitary Production and Distribution of Food and shall set forth a weighted point value for each requirement. Inspection remarks shall be written to reference, by section number, and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations subtracted from 100.~~ The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

(B) Color designations shall be as follows:

- (1) Green if there are no priority item violations identified or if all priority item violations identified are corrected immediately and permanently at the time of the inspection;**
- (2) Yellow if there are priority item violations identified that are not corrected immediately and permanently at the time of the inspection, and**
- (3) Red if it is determined that an imminent health hazard exists at the time of the inspection, or if the food establishment is found to be operating without a current, valid, or suspended permit.**

(C) The applicant, owner or person in charge shall acknowledge receipt of the inspection report by signing the inspection report.

§ 117.30 CORRECTION OF VIOLATIONS.

(A) The completed inspection report form shall specify a reasonable period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

- (1) If an imminent health hazard exists, such as lack of hot water, loss of power, fire, flood, complete lack of refrigeration or sewage backup into the establishment, the establishment shall immediately cease food service operations and notify the Health Authority. Operations shall not be resumed until authorized by the Health Authority.
- (2) ~~All violations of four or five point weighted~~ **Priority (P) or Priority foundation (Pf) violation** items shall be corrected as soon as possible **and within the time specified by the Health Authority**, but in any event, within ten days following inspection. A follow-up inspection shall be conducted to confirm correction.

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(3) All one- or two-point Core weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection not to exceed 90 days.

(4) When the rating score of the an establishment is less than 60, accumulates a combination of 6 or more Priority (P) or Priority foundation (Pf) items during the course of an inspection, the establishment shall initiate corrective action on all identified violations within 48

hours. One or more re-inspections will be conducted at reasonable time intervals **as determined by the Health Authority** to assure correction.

(5) In the case of temporary food service establishments, all **P, Pf** violations shall be corrected within 24 hours **immediately**. If violations are not corrected within 24 hours **unable to do so**, the establishment shall immediately cease food service operations until authorized to resume by the Health Authority.

(B) The inspection report shall state that failure to comply with any time limits for corrections may result in **the issuance of a summons, or** suspension of the permit to operate.

(1) An opportunity for appeal from the inspection findings and time limitations will be provided if a written request for a hearing is filed with the regulatory authority within ten days following cessation of operation. If a request for a hearing is received, a hearing shall be held within 20 days of receipt of that request.

(C) Whenever a food-service establishment is required under the provisions of this section to cease operations, it shall not resume operations until such time as a re-inspection determines that conditions responsible for the order to cease operations no longer exist. Opportunity for re-inspection shall be offered within a reasonable time.

(71 Code, § 10-29) (Ord. passed 6-5-79; Am. Ord. passed 9-4-01) Penalty, see § 10.99

§ 117.31 SERVICE OF NOTICE.

All notices provided for under § 117.30 shall be deemed to have been properly served when the original **or electronic copy** of the inspection report form or other notice has been delivered **either electronically or** personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the Health Authority.

(71 Code, § 10-30) (Ord. passed 4-15-69; Am. Ord. passed 9-4-01)

II. This ordinance shall take effect upon passage.