

Montgomery County Resolution/Ord. 2018-  
FOOD SERVICE SANITATION ORDINANCE  
FOR  
MONTGOMERY COUNTY HEALTH DEPARTMENT

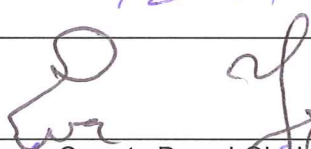
This Ordinance rescinds the August 14, 2018 Montgomery County Food Service Sanitation Ordinance.

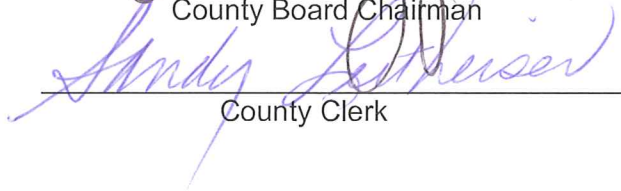
An ordinance defining adequate, approved, authorized representatives, board of health, county board, Health Authority, etc. Providing for the sale and service of only unadulterated, wholesome, properly labeled/branded food; regulating the source of food; establishing sanitation standards for food, food protection, food service personnel, food service operations, food equipment and utensils, sanitary facilities and controls; and retail food stores. Regulating the inspection of food establishments, retail food stores, taverns, and other such establishments which provide food or drink for the public's consumption. Providing for examination and condemnation of food. Providing for the enforcement of the current Illinois Food Code of the Illinois Department of Public Health, Division of Food, Drugs and Dairies and any subsequent revisions. Providing for the enforcement of this ordinance and the fixing of penalties.

Be it ordained by the County Board of the County of Montgomery, State of Illinois, as follows:

Adopted: 12-11-18 2018

Effective: 12-11-18 2019

Approved:   
County Board Chairman

Attest:   
County Clerk

## SECTION 1 DEFINITIONS

The following definitions shall apply to the interpretation of the enforcement of this ordinance along with definitions set forth in the current, unabridged, Illinois Department of Public Health, Food Code.

1. ADEQUATE shall mean acceptable to the Health Authority based on its determination as to conformance with appropriate standards and good health practices.
2. APPROVED shall mean acceptable to the Health Authority based on its determination as to conformance with appropriate standards and good health practices.
3. AUTHORIZED REPRESENTATIVE shall mean the legally designated Health Authority of the Montgomery County Health Department and shall include those persons designated by the Health Authority to enforce the provisions of this ordinance.
4. BOARD OF HEALTH shall mean the Montgomery County, Illinois, Board of Health or its authorized representative(s).
5. COTTAGE FOOD OPERATION shall mean a person who produces or packages non-potentially hazardous food in compliance with Section 4 of the Food Handling Regulation Enforcement Act.
6. EXTENSIVELY REMODELED means conversion of an existing structure for use as a food service establishment or retail food store; any structural additions or alterations to existing establishments; changes, modifications and extensions of plumbing systems, excluding routine maintenance.
7. FOOD ESTABLISHMENT shall mean any place which meets the definition in Section 1-201.10 of the FDA Food Code 2013.
8. HEALTH AUTHORITY shall mean person(s) who have been designated by the Board of Health to administer the affairs of the Montgomery County Health Department.
9. SEASONAL FOOD ESTABLISHMENT means a food service establishment that operates at a fixed location for no more than 180 days within a calendar year.
10. TEMPORARY FOOD ESTABLISHMENT means a food service establishment that operates at a fixed location for a period of time not to exceed 14 consecutive days in conjunction with a single event or celebration.
11. VARIANCE means a written document, issued by the Health Authority upon written request of the facility operator, that authorizes a modification or waiver of one or more requirements of the "Food Code" if, in the opinion of the Health Authority, a health hazard or nuisance will not result from the modification or waiver.

SECTION 2 COMPLIANCE PROVISIONS AND ADOPTION BY REFERENCE:

1. In addition to those provisions set forth in Section 1 through 3, this ordinance shall be interpreted and enforced in accordance with provisions set forth in the following statutes, rules, regulations, and publications:

State of Illinois, Department of Public Health, Division of Food, Drugs, and Dairies, Rules and Regulations titled "Food Code" and any subsequent revisions.

U.S Public Health Service, Food and Drug Administration (FDA), "Food Code 2013, Chapter 8 (except Sections 8-101.10(B), 8-302.14(C) and (E), 8-304.11, 8-401.10, 8-401.20, 8-403.10 (B)(2), and 8-406.11.

"Local Health Protection Grant Code" (77 Ill. Adm. Code 615.310)

2. No person holding a permit issued by the Montgomery County Health Department shall in the conduct of the permitted business or upon the permitted premises:
  - A. Violate any Federal law or State statute.
  - B. Violate any city, village, town or county ordinance or resolution regulating the preparation, handling, service, or storage of food items.
  - C. Suffer or permit a violation of any Federal law or law of the State of Illinois, or of any rule of the Montgomery County Health Department.
  - D. Suffer or permit a violation of the city, village, town or county ordinance or resolution regulating the preparation, handling, service, or storage of food items.

SECTION 3 ENFORCEMENT PROVISIONS:

1. PERMIT: It shall be unlawful for any person to operate a food establishment within the County of Montgomery, State of Illinois, who does not possess a valid permit issued by the Health Authority. 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 or place or address. A valid permit shall be posted in a conspicuous place in every food establishment.

A. ISSUANCE OF ANNUAL PERMITS: Any person(s) desiring to operate a food establishment as defined or to renew a permit shall make written application for a permit on forms provided by the Health Authority

- 1) Upon receipt of an application accompanied by the applicable fee(s), a permit shall be issued and inspections shall be conducted as outlined in the "Illinois Local Health Protection Grant Rules."

- 2) The annual permit term shall be January 1 through December 31 of each calendar year. All permits granted hereunder shall expire on December 31<sup>st</sup> of the year of issuance, except temporary permits, which are valid for no longer than fourteen (14) days and seasonal permits that shall expire no later than 180 days after issuance

B. ISSUANCE OF TEMPORARY FOOD PERMITS: If the application is for a temporary food service vendor, the applicant shall include dates of the proposed operation, name of organization, name of responsible party, location of event, phone number of responsible party and a proposed menu. Temporary food service permit applications shall be requested and approved three (3) days prior to the event. When a temporary permit is not pre-approved and issued in advance, then a \$50 non-compliance fee shall be paid to the local Health Authority. Food served at temporary food stands shall be limited to those food products defined in the Illinois Food Code, and/or potentially hazardous foods that require only limited preparation. Foods that require combinations of potentially hazardous foods or complex preparations are restricted and may only be authorized if pre-approved 30 days in advance by the local Health Authority.

- 1) A temporary food permit may be issued to a permitted food establishment, provided foods are completely prepared on the premises with minimal preparation or obtained from an approved source. A maximum of one (1) permit may be issued to a permitted food establishment per month not to exceed 14 days of operation per calendar year.

C. REFUSAL OF PERMIT RENEWAL: Whenever inspections reveal serious or repeated violations of this ordinance and/or the Illinois Food Code, the permit for renewal will not be issued and the Health Authority shall notify the applicant immediately thereof. Such notice shall state the reasons for not renewing the permit. Such notice shall also state that an opportunity for a hearing shall be provided for the applicant at a time and place designated by the Health Authority. Such hearing shall be scheduled not later than ten (10) days from the date of the notice. The notice referred to in this paragraph shall be delivered to the applicant in person by the Health Authority or may be sent by certified mail, return receipt requested.

D. SUSPENSION OF PERMITS: Permits may be suspended temporarily by the Health Authority for failure of the holder of the permit to comply with requirements of this ordinance and/or the Illinois Food Code. Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of SECTION 3, of this ordinance, 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. Upon suspension of the permit, the permit shall be removed from the establishment by the Health Authority and returned to the health department. Notwithstanding the other provisions of this ordinance, whenever the Health Authority finds unsanitary food establishments which, in its judgment, constitute a substantial hazard to the public health, the Health Authority without warning, notice or hearing, shall issue a written notice to the permit holder or operator citing such conditions, specifying the time period within which such action shall be taken; and if deemed necessary, such order shall state that the permit is immediately suspended and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition within five (5) days to the Health Authority shall be afforded a hearing as soon as possible.

- E. REINSTATEMENT OF SUSPENDED PERMIT: 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. Within ten (10) days following the receipt of a written request, including a statement signed by the applicant that the conditions causing suspension of the permit have been corrected, the Health Authority shall make a re-inspection. If the applicant has completed the required corrections, reinstatement of the suspended permit, on a provisional basis, shall be reviewed for consideration by the local Health Authority. The provisional restriction shall be removed when the facility demonstrates consistent compliance with the requirements of the food code, this ordinance and other food safety stipulations agreed upon by the department and the facility may be reinstated for the remainder of the calendar year.
- F. REVOCATION OF PERMIT: For serious or repeated violations of any of the requirements of this ordinance, or for interference with the Health Authority in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Health Authority. Prior to such action, the Health Authority shall notify the permit holder in writing, stating the reason for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five (5) days following service of such notice, unless a request for a hearing is filed with the Health Authority by the permit holder within such five (5) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

- G. APPLICATION FOR PERMIT AFTER REVOCATION: Whenever revocation of a permit is final, the holder of the revoked permit may make written application for a new permit. Application shall be made on forms provided by the Health Authority.
- H. HEARING: The hearing provided for in this section shall be conducted by the Health Authority at a time and place designated by it. Based on the record of such hearing, the Health Authority shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the Health Authority. The Regulatory Authority may, according to law, petition a court of competent jurisdiction for temporary or permanent injunctive relief to achieve compliance with the provisions of this Ordinance or its orders.
- I. A response to a hearing notice or a request for a hearing shall be in written form and include the following:
- 1) If a response to notice of hearing:
    - (a) An admission or denial of each allegation;
    - (b) A statement as to whether the respondent waives the right to a hearing and may also contain a statement of defense, mitigation, or explanation concerning allegations; and
    - (c) A request to the Regulatory Authority for a settlement of the proceeding by a consent agreement, if the Regulatory Authority will provide this opportunity.
  - 2) If a request for hearing:
    - (a) A statement of the issue for which the hearing is requested; and
    - (b) A statement of defense, mitigation, denial, or explanation concerning each allegation.
  - 3) If either a response to notice of hearing or a request for a hearing:
    - (a) A statement indicating whether the presence of witnesses for the Regulatory Authority is requested; and
    - (b) The name and address of the respondent's or requester's legal counsel, if any.
- J. FOOD HANDLERS CLASS: The Regulatory Authority may order any food employee to immediately attend a food training course when, in the judgment of the Regulatory Authority, the work habits of said food employee constitute a hazard to public health. Fees may be charged by the Regulatory Authority to offset the cost of the course.
- K. FEES: Fees shall be charged by the Regulatory Authority for permits to recover a portion of the cost and resources for regulation, education and inspection for the food safety program.

Fees for various categories of food service establishments may be established by the joint agreement of the Board of Health and the County Board. Fees shall be collected by the Montgomery County Health Department and deposited into the Health Department Fund.

Persons requesting a permit shall pay a permit fee as follows:

1) For Profit Organizations

(a) Permanent Food Establishments with Annual Permit

- I. Category 1 Facilities (High Risk), as defined in the "Food Code" \$100.00
- II. Category 2 Facilities (Medium Risk), as defined in the "Food Code" \$75.00
- III. Category 3 Facilities (Low Risk), as defined in the "Food Code" \$50.00
- IV. Seasonal Food Establishments open less than 180 days annually. \$25.00

(b) Temporary food service vendors, mobile units and functions including;

homecoming, carnivals, civic gatherings and other gatherings where food will be prepared and served to the public.

- I. Issued prior to the day of the event \$10.00
- II. Issued day of the event (Non-Compliance Fee) \$50.00

2) Not-For-Profit Organizations

(a) Food Service Establishments operated by religious, voluntary, or not-for profit community service organizations operating less than 24 times per calendar year no fee

(b) Day care centers and schools no fee

(c) Temporary food functions in direct association with religious, voluntary or non-profit community service organizations when the food is offered with no monetary gain. no fee

(d) Temporary food functions in direct association with religious, voluntary or non-profit community service organizations when there is a monetary gain. \$10.00

3) Late Application Fees

(a) All permitted food establishments who fail to renew the annual food permit prior to December 1st shall be assessed an additional late fee of:

- I. High risk category 1 (1) late fee \$75.00
- II. Medium risk category 2 (2) late fee \$50.00
- III. Low risk category 3 (3) late fee \$25.00
- IV. Seasonal late fee \$25.00

(b) Temporary food service vendors who fail to submit an application to apply for a temporary food permit three (3) working days prior to the scheduled event shall be assessed a non-compliance fee \$50.00

4) Invalid and Revoked Permit Fees

(a) Establishments conducting food operations not within the acceptable limits of the permit category assigned by the local Health Authority in accordance with the Illinois Food Code are therefore operating without a valid permit.

Therefore, the applicant shall make appropriate changes to operate within the assigned permit category, and are subject to the following fine \$200.00

(b) If a permit is revoked by the Health Authority due to but not limited to the following issues: non-compliance with terms or conditions of the permit, an imminent health risk issue, food-borne illness, repeated critical violations or other critical issues, or if the facility is requesting a change in permit status; then a new permit application shall be completed and accompanied by the renewal fee for the status change.

(c) Temporary establishments, special events, organizations, and/or persons serving food to the public without first obtaining a temporary food permit from the local Health Authority shall be subject to a fine for each day of operation, in addition to their applicable fee. \$25.00

2. INSPECTION OF FOOD ESTABLISHMENTS: The Health Authority shall inspect each food service establishment located in the County of Montgomery, State of Illinois, as determined by the Local Health Protection Grant Rules (77 ILL. Adm. Code 615.310), and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this ordinance

A. ACCESS TO ESTABLISHMENTS: The Health Authority, after proper identification, shall be permitted to enter, at any reasonable time, any food establishment within the County of Montgomery, State of Illinois, for the purpose of making inspections to determine



compliance with this ordinance. The inspector 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.

- B. INSPECTION RECORDS: Whenever the Health Authority makes an inspection of a food establishment he/she shall record the findings on an inspection report form approved by the Illinois Department of Public Health and provided by the Health Authority and shall furnish a copy of such inspection report to the permit holder or operator at the time of inspection.
- 1) Priority items and Priority Foundations item shall be corrected as outlined in the FDA Food Code 2013 Section 8-405.11.
  - 2) Core items shall be corrected at the time of inspection or in the amount of time designated by the Health Authority on the inspection sheet but no later than the next routine inspection.
  - 3) Any violation documented on 4 consecutive inspections shall result in suspension of the food permit.
- C. FACILITY GRADING: At the time of each routine inspection a grade shall be placed by the Health Authority which is determined by the number of risk factors. The grade shall be placed in a conspicuous location determined by the inspector who conducts the inspection and shall not be removed except by the Health Authority.
- 1) The grading scale shall be determined by the Health Authority and shall be incorporated herein by reference.
  - 2) Any facility receiving more than 3 Priority or Priority Foundation items at an inspection shall have their permit suspended immediately at the discretion of the Health Authority until re-inspection can be made to show acceptable compliance.
  - 3) Re-inspection shall be conducted within three (3) working days of permit suspension to verify that compliance has been achieved.
  - 4) Upon reinstatement of facility's operating permit a new grade shall be placed which is determined by the number of risk factors found during re-inspection.
  - 5) A follow-up inspection shall be conducted within thirty (30) days to ensure compliance is maintained.
- D. POSTING OF INSPECTION RECORDS: Inspection sheets shall be made available to the public through local media, social media, and/or the department web site.
- E. ISSUANCE OF NOTICE: When the Health Authority makes an inspection of a food establishment, and discovers that any of the requirements of SECTION 2 or SECTION 3 of this ordinance have been violated, it shall notify the permit holder or operator of such

violations by means of an inspection form or other written notice. In such notification, the Health Authority shall:

- 1) Set forth the specific violation(s) found.
- 2) Establish a specific and reasonable period of time for the correction of the violation(s) found.
- 3) State that failure to comply with any notice issued in accordance with the provisions of this ordinance may result in immediate suspension of the permit.
- 4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Health Authority within the period of time established in the notice of correction.

F. SERVICE OF NOTICE: Notice provided for 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 personally to the permit holder or person in charge or such notice has been sent certified mail, return receipt requested. A copy of such notice shall be filed with the records of the Health Authority.

3. 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 permit holder or person in charge, place a hold order on any food when he determines, or has probable cause to believe to be unwholesome, or otherwise adulterated or misbranded. The hold order notice shall state the reason for placing the food under the hold order, referencing the applicable provisions or potential adverse effects created and completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, and the location of the item. Under a hold order, food shall be permitted to be suitably stored. If the Health Authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the food may be removed to a safe location. It shall be unlawful for any person to remove or alter a hold order notice tag placed on food by the Health Authority, and neither 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. After the permit holder or person in charge has had a hearing as provided for in SECTION 3, Subsection 1 (H), and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received, within ten (10) days, the Health Authority may vacate the hold order, direct the permit holder or person in charge, of the food which was placed under the hold order, to denature or destroy such food or 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.

4. **FOOD ESTABLISHMENTS OUTSIDE JURISDICTION OF THE HEALTH AUTHORITY:** Food from food establishments outside the jurisdiction of the Health Authority of the County of Montgomery, State of Illinois, may be sold within said County, if such food establishment conforms to the provisions of this ordinance or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Health Authority may accept reports from responsible authorities in other jurisdictions where such food establishments are located.
5. **PLAN REVIEW OF FUTURE CONSTRUCTION & RE-OPENING EXISTING FACILITIES:** 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 alterations, shall be submitted to the Health Authority for approval before such work begins and shall receive a preoperational inspection. When a facility has closed for more than 30 days because of ownership transfer or other reasons, then a pre-opening inspection, by the Health Authority, and a plumbing inspection, by the state plumbing inspector, shall be conducted. Any violations documented by these inspections shall be corrected to bring the facility into compliance with the "Illinois Food Code" and this ordinance prior to being permitted to operate unless a variance is requested and approved by the Health Authority.
6. **ENFORCEMENT INTERPRETATION – FOOD ESTABLISHMENTS:** This ordinance shall be enforced by the Health Authority in accordance with this Ordinance and the current "Illinois Food Code", as amended. Proceedings to enforce this ordinance may be instituted by the Regulatory Authority by issuing a citation or summons, by filing a misdemeanor complaint affidavit and request for a warrant of arrest with the court of competent jurisdiction, or by referring the complaint to a grand jury for indictment, as appropriate.
7. **PENALTIES:** Any person who shall violate any of the provisions of this ordinance shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed \$500.00, or imprisonment of not to exceed six (6) months, as may be deemed necessary. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such a violation occurs shall constitute a separate violation.
8. **REPEAL AND DATE OF EFFECT:** This ordinance repeals the 2018 Food Service Sanitation Ordinance for the Montgomery County Health Department, and shall be in full force and in effect immediately after its adoption and publication as provided by law; and, at that time, all ordinances in conflict with this ordinance are hereby repealed.

9. CONFLICT OF ORDINANCE, EFFECT ON PARTIAL INVALIDITY:

- A. In any case where a provision of this ordinance is found to be in conflict with a provision of any zoning, building, fire, safety, or health ordinance or law or code of Montgomery County existing on the effective date of this ordinance, the provision which, in the judgment of the Health Authority, establishes the higher standard for promotion of the health and safety of the people shall prevail. In any case, where a provision of this ordinance is found to be in conflict with a provision of any other ordinance or code of Montgomery County existing on the effective date of this ordinance which establishes a lower standard for the promotion and protection of the health and safety of the people, the provision of this ordinance shall prevail, and such other ordinance or codes are hereby declared to be repealed to the extent that they may be found in conflict with this ordinance.
- B. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and, to this end, the provisions of this ordinance are hereby declared to be severable.