

3.4 AN ORDINANCE REGULATING THE OPERATION OF FOOD ESTABLISHMENTS

3.4.1 PURPOSE

These regulations are enacted for the purpose of regulating the operation of all food establishments in Johnson County, Missouri as the term is defined in these regulations in order to protect and promote public health.

3.4.2 AUTHORITY

This ordinance is enacted pursuant to Section 192.300, RSMo 2007 (or the most current law), which provides, as follows: The county commissions and the county health center boards of the several counties may make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county, but any orders, ordinances, rules or regulations shall not be in conflict with any rules or regulations authorized and made by the department of health and senior services in accordance with this chapter or by the department of social services under chapter 198, RSMo. The county commissions and the county health center boards of the several counties may establish reasonable fees to pay for any costs incurred in carrying out such orders, ordinances, rules or regulations, however, the establishment of such fees shall not deny personal health services to those individuals who are unable to pay such fees or impede the prevention or control of communicable disease. Fees generated shall be deposited in the county treasury. All fees generated under the provisions of this section shall be used to support the public health activities for which they were generated. After the promulgation and adoption of such orders, ordinances, rules or regulations by such county commission or county health board, such commission or county health board shall make and enter an order or record declaring such orders, ordinances, rules or regulations to be printed and available for distribution to the public in the office of the county clerk, and shall require a copy of such order to be published in some newspaper in the county in three successive weeks, not later than thirty days after the entry of such order, ordinance, rule or regulation. Any person, firm, corporation or association which violates any of the orders or ordinances adopted, promulgated and published by such county commission is guilty of a misdemeanor and shall be prosecuted, tried and fined as otherwise provided by law. The county commission or county health board of any such county has full power and authority to initiate the prosecution of any action under this section.

3.4.3 SCOPE

This ordinance establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit revocation.

This ordinance applies to all incorporated and unincorporated areas of Johnson County, Missouri.

3.4.4 **ADOPTION**

The JCCHS Board of Health Trustees and the Johnson County Commissioners adopt by reference the most current version of Missouri Food Code, 19 CSR 20-1.025.

3.4.5 **DEFINITIONS**

3.4.5.1 APPROVED FOOD SAFETY PROGRAM

Food safety training program conducted by JCCHS, a nationally recognized program, that of another health department or that of a specific food establishment, which may be accepted upon review by the administrative authority.

3.4.5.2 BUSINESS HOURS

Johnson County Community Health Services' regularly scheduled hours of operation are Monday thru Friday, 8AM to 5PM, except holidays.

3.4.5.3 CODE

The most up to date version of any of the following legal references: Johnson County Code of Health Regulations, Missouri Food Law, RSMo 196.010 – 196.271, Missouri Food Code, 19 CSR 20-1.025, and U.S. Food and Drug Administration Model Food Code, which is a compilation of the general and permanent laws published in the Federal Register including FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.

3.4.5.4 CRITICAL VIOLATION

3.4.5.4.1 A provision of code that, if in non-compliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.

3.4.5.4.2 Is an item that is denoted in both the FDA and MO Food Codes with an asterisk (*) including items listed here:

3.4.5.4.2.1 Imminent health risk;

3.4.5.4.2.2 Hot water not in the facility;

3.4.5.4.2.3 Food employee working with communicable disease transmissible through food;

3.4.5.4.2.4 Food employee working with illness symptoms of vomiting or diarrhea;

3.4.5.4.2.5 Food establishments without facility covering or pest barriers;

3.4.5.4.2.6 Insufficient fulfillment of Food Safety Training/ Certification Permit Requirements;

3.4.5.4.2.7 Repeat non-critical violation identified in consecutive routine inspections.

3.4.5.5 FOOD

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A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

3.4.5.6 FOOD EMPLOYEES

Any individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

3.4.5.7 FOOD ESTABLISHMENT

3.4.5.7.1 “Food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

3.4.5.7.1.1 Such as a restaurant; satellite or central preparation facility; catered feeding location; catering operation if the operation provides food directly to a Consumer or to a conveyance used to transport people; market; vending (location) operation, if the operation provides potentially hazardous foods; conveyance used to transport people; institution; or food bank; and

3.4.5.7.1.2 That relinquishes possession of food to a Consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

3.4.5.7.2 “Food establishment” includes:

3.4.5.7.2.1 An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the administrative authority; or

3.4.5.7.2.2 An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

3.4.5.7.3 “Food establishment” does not include:

3.4.5.7.3.1 An establishment that offers only prepackaged foods that is not potentially hazardous;

3.4.5.7.3.2 A produce stand that only offers whole, uncut fresh fruits and vegetables;

3.4.5.7.3.3 A food processing plant;

3.4.5.7.3.4 A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a nonprofit organization’s bake sale if allowed by law and if the Consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the administrative authority;

3.4.5.7.3.5 An area where food that is prepared as specified in Subparagraph (3.4.5.7.3.4) of this definition is sold or offered for human consumption;

3.4.5.7.3.6 A kitchen in a private home, such as a small family daycare provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 4, breakfast is the only meal offered, the number of guests served does not exceed 12, and the Consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the administrative authority; or

3.4.5.7.3.7 A private home that receives catered or home-delivered food.

3.4.5.7.3.8 Where local codes allow, individual stands in which only foods meeting the following conditions are sold, sampled or served:

3.4.5.7.3.8.1 Non-potentially hazardous processed foods, except low acid canned and acidified foods as specified in 21 CFR 113 and 114 respectively, including, but not limited to breads, cookies, fruit pies, jams, jellies, preserves, fruit butters, honey, sorghum, cracked nuts, packaged spices and spice mixes, dry cookie, cake, bread, and soup mixes;

3.4.5.7.3.8.2 The seller is the individual actually producing the food or an immediate family member residing in the producer's household with extensive knowledge about the food;

3.4.5.7.3.8.3 The seller only sells, samples or serves the food directly to the end consumer;

3.4.5.7.3.8.4 All processed packaged foods bear a label stating the name and address of the manufacturer/processor preparing the food, common name of the food, name of all the ingredients in the food and a statement that the product is prepared in a kitchen that is not subject to inspection by the JCCHS. It is recommended that honey manufacturers/processors include this additional statement to its label, "Honey is not recommended for infants less than twelve (12) months of age."; and

3.4.5.7.3.8.5 The consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to inspection by the JCCHS if the foods specified in Subparagraph (3.4.5.7.3.8.1) are sold, sampled or served in unpackaged, individual portions. JCCHS shall have the final authority in determining whether a food is non-potentially hazardous and may enjoin individuals who violate the provisions of this section from selling, sampling or serving these foods.

3.4.5.8 FOOD ESTABLISHMENT PLANS

Plans must be submitted as part of the permit approval process for new construction, major modification and remodeled facilities regulated under this ordinance. Plans must include information on the intended menu, floor plan, equipment, process flow, mechanical plans, construction materials, facility design, interior finish schedule, and other information that may be required by the administrative authority for proper review to ensure compliance with the code.

3.4.5.9 IMMINENT HEALTH HAZARD

3.4.5.9.1 A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

3.4.5.9.1.1 The number of potential injuries;

3.4.5.9.1.2 The nature, severity, and duration of the anticipated injury;

3.4.5.9.1.3 May include but is not limited to the following:

- 3.4.5.9.1.3.1 Overflowing grease trap;
- 3.4.5.9.1.3.2 Any sewage issue with the facility;
- 3.4.5.9.1.3.3 Hand washing facility not available by end of inspection;
- 3.4.5.9.1.3.4 No means of sanitizing multi-service utensils;
- 3.4.5.9.1.3.5 Evidence of extreme pest infestation.

3.4.5.10 NON-PROFIT ORGANIZATION

“Nonprofit organization” means a corporation that is organized exclusively for charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501 (c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

3.4.5.11 OPERATOR

The entity that is legally responsible for the operation of the food establishment such as the owner, the owner’s agent or other person.

3.4.5.12 OPERATION

Any activity in which a food establishment person stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.

3.4.5.13 PERSON

An association, corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

3.4.5.14 POTENTIALLY HAZARDOUS FOOD

3.4.5.14.1 "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

- 3.4.5.14.1.1 The rapid and progressive growth of infectious or toxigenic microorganisms;
- 3.4.5.14.1.2 The growth and toxin production of *Clostridium botulinum*; or
- 3.4.5.14.1.3 In raw shell eggs, the growth of *Salmonella Enteritidis*.

3.4.5.14.2 "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

3.4.5.14.3 "Potentially hazardous food" does not include:

- 3.4.5.14.3.1 An air-cooled hard-boiled egg with shell intact;
- 3.4.5.14.3.2 A food with an a_w value of 0.85 or less;
- 3.4.5.14.3.3 A food with a pH level of 4.6 or below when measured at 24°C (75°F);

- 3.4.5.14.3.4 A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
- 3.4.5.14.3.5 A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. botulinum* can not occur, such as a food that has an a_w and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.
- 3.4.5.14.3.6 A food that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

3.4.5.15 PUBLIC HEALTH PRIORITY ASSESSMENT

Worksheet used to determine a priority rating (low, medium, high) for establishments, given past history of violations, types of food served, preparation requirements of foods served, number of meals served, and population served.

3.4.6 **PERMIT REQUIREMENTS**

- 3.4.6.1 All food establishments in Johnson County, Missouri must have a valid permit issued by the administrative authority prior to operation.
- 3.4.6.2 Only a person who complies with the requirements of this ordinance and the food code shall be entitled to acquire and retain such a permit.
- 3.4.6.3 The permit shall be obtained by the owner of the establishment or by an officer of the legal ownership. Permits are not transferable.
- 3.4.6.4 Permits shall be renewed annually and shall be valid from July 1 to June 30 each year. Permit applications must be submitted and approved before a permit is issued. Failure to renew a permit by July 1 may result in revocation of permit. A permit shall be valid from the date of issuance until June 30 of that year or until June 30 of the following year if the permit is issued after July 1st and before December 31st. There is no cost for a food establishment permit.
- 3.4.6.5 A valid permit shall be posted in the food establishment in a place immediately viewable by customers, protected from external weathering and within five feet (5') of all customer entrances of the food establishment along with most recent inspection report, scoring, closing order and/ or notice of violation placards.
- 3.4.6.6 New establishments must submit application, food establishment plans, design and specifications for regulatory approval no later than 30 business days (6 weeks) prior to opening for business. A pre-opening inspection will be conducted by the administrative authority, to determine if the establishment is in compliance with food code. Permits may be

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denied until code compliance is attained. New establishments are any food establishment not in operation prior to the effective date of this ordinance.

- 3.4.6.7 If an existing establishment voluntarily closes for a purpose other than holiday, vacation, or regular schedule; a re-opening inspection may be required.
- 3.4.6.8 A change in existing food establishments' ownership; design, layout or function as a result of construction or extensive remodeling; location; or menu to include potentially hazardous food or other extensive revision shall require renewal of the establishment's permit along with administrative authority review of food establishment plans.
- 3.4.6.9 Non-profit and temporary food establishments offering meal events to the public will require a permit. These establishments are expected to follow the rules and laws contained in the food code and may be inspected as determined by the administrative authority.

3.4.6.10 APPROVED FOOD SAFETY PROGRAM

- 3.4.6.10.1 Permit holders shall have, at all times of food establishment operation, all persons acting in a management or supervisory capacity and at least one-quarter (25%) of food employees on duty trained and certified in an approved food safety program.
- 3.4.6.10.2 At all times of food establishment operation, all persons acting in a management or supervisory capacity and at least one-quarter (25%) of food employees on duty must have documentation of approved food safety program certification available during working hours.
- 3.4.6.10.3 Annual certification of approved food safety program is required for persons acting in management or supervisory capacity and one-quarter (25%) of food employees.
- 3.4.6.10.3.1 Certifications of persons through ServSafe[®] or other nationally recognized food safety programs must be maintained every three (3) years in order to qualify for issuance of an annual food safety certification.
- 3.4.6.10.4 Recertification requirements shall be in effect one year from effective date of this ordinance or, if thereafter, three (3) months subsequent to hiring.
- 3.4.6.10.5 Temporary and non-profit food establishments are required to have at least one food employee certified in an approved food safety program with documentation available at all times of food establishment operation.
- 3.4.6.10.6 Non-compliance of approved food safety program certification and/ or documentation will result in a follow-up inspection.

3.4.7 **PERMIT COMPLIANCE**

3.4.7.1 FOOD ESTABLISHMENT INSPECTIONS

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- 3.4.7.1.1 Representatives of the administrative authority, upon identification, shall be permitted to enter any food establishment, have access to the entire facility, and take digital photos at any reasonable time for the purpose of making inspections to determine compliance with this ordinance and food code. The administrative authority shall be allowed to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used; pest control; cleaning; complaints; illness; and personnel.
- 3.4.7.1.2 The administrative authority shall perform an inspection of a food establishment at least once annually or more often as determined by the administrative authority, Public Health Priority Risk Assessment and availability of administrative authority personnel. Additional inspections including follow-up inspections may be performed as necessary for the enforcement of this ordinance, food code or other public health concern. Public Health Priority Risk Assessment shall be reviewed for each establishment annually.
- 3.4.7.1.3 Temporary food establishments shall have inspections conducted at the discretion of the administrative authority.
- 3.4.7.1.4 Inspection reports may be published by JCCHS as deemed appropriate. Inspections are public record and may be obtained from the administrative authority, within three (3) business days, upon written request.

3.4.7.2 VIOLATION CORRECTION

- 3.4.7.2.1 The completed inspection form shall specify a correct by date be set for each violation in accordance with the following provisions:
 - 3.4.7.2.1.1 All critical violations shall be corrected as soon as possible, but in any event, within seventy-two (72) business hours following inspection. The permit holder shall contact the administrative authority within three (3) days after the inspection to report correction status.
 - 3.4.7.2.1.2 All non-critical violations shall be corrected as soon as possible, but in any event, at least three-quarters (75%) shall be corrected within seventy-two (72) business hours following inspection. The remaining non-critical violation may be corrected by a time mutually agreed upon by person in charge at time of inspection and the administrative authority or next routine inspection. If a non-critical violation yet exists on more than two (2) consecutive routine inspections, the violation will be noted as a critical violation.
 - 3.4.7.2.1.3 In the case of a temporary food establishment, all violations shall be corrected by a time mutually agreed upon by the person in charge at time of inspection and the administrative authority. If violations are not corrected prior to the agreed upon time, the establishment shall cease operations until authorized to resume by the administrative authority.

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- 3.4.7.2.2 A Notice of Violation Placard will alert customers that the food establishment out of compliance with the code and may be issued at any food establishment until violations or non-compliance is corrected.
- 3.4.7.2.2.1 A Notice of Violation Placard will be issued to the food establishment by JCCHS and shall be posted in the food establishment in a place immediately viewable by customers, protected from external weathering and within five feet (5') of all customer entrances of the food establishment along with most recent inspection report, scoring, closing order and/ or notice of violation placards.
- 3.4.7.2.3 In the event that all critical violations and three-quarters (75%) of non-critical violations identified on the inspection report are not corrected by the end of the first follow-up inspection, the food establishment will be considered to remain in violation of this ordinance and food code.
- 3.4.7.2.3.1 A second follow-up inspection will be scheduled, fees will be assessed, and a Notice of Violation Placard will be issued for display in plain site at the primary customer entrance of the food establishment.
- 3.4.7.2.4 In the event that all critical violations and three-quarters (75%) of non-critical violations identified on the first follow-up inspection report are not corrected by the end of the second follow-up inspection, the food establishment will be considered to remain in violation of this ordinance and food code.
- 3.4.7.2.4.1 As a result of continued non-compliance with this ordinance and food code, the food establishment permit will be revoked, fees will be assessed, a Closing Order will be issued for display in plain site at the primary customer entrance of the food establishment, and media will be alerted.

3.4.7.3 CLOSING ORDER AND PERMIT REVOCATION

- 3.4.7.3.1 If a Closing Order is issued by the administrative authority, the establishment shall immediately cease all food operations until authorized by the administrative authority to resume.
- 3.4.7.3.2 A Closing Order will be issued when a permit is revoked. The person may apply for a new permit upon correction of all violations. While under revocation, a food establishment may not be open to the public. A permit may be revoked or a permit application denied if the permit holder or applicant has failed to comply with any part of this ordinance until such time that the administrative authority determines that compliance is attained.
- 3.4.7.3.2.1 A Closing Order will be issued to the food establishment by JCCHS and shall be posted in the food establishment in a place immediately viewable by customers, protected from external weathering and within five feet (5') of all customer entrances of the food establishment along with most recent inspection report, scoring, closing order and/ or notice of violation placards.

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- 3.4.7.3.3 A food establishment having received a Closing Order can reapply for a permit upon completion of all critical violations and all non-critical violations identified on the second follow-up inspection report, payment of assessed fees, compliance with all provisions of this ordinance, compliance with food code and completion of involuntary pre-opening inspection.
- 3.4.7.3.3.1 Re-opening inspections will be completed within twenty-four (24) business hours of having been notified that all violations are corrected. Additional fees may apply each time the administrative authority completes such a re-opening inspection without violations having been corrected.
- 3.4.7.3.4 It is unlawful for any food establishment to function as a food establishment while under a Closing Order.
- 3.4.7.3.5 A food establishment Permit may be revoked and a Closing Order may be issued for any violation of the food code including the following list of violations:
 - 3.4.7.3.5.1 Imminent Health Hazard found in food establishment.
 - 3.4.7.3.5.2 Failure to acquire and renew a food establishment permit
 - 3.4.7.3.5.3 Failure to secure an approved inspection prior to operating a food establishment
 - 3.4.7.3.5.4 Failure to allow administrative authority access to the entire food establishment and records
 - 3.4.7.3.5.5 Creating a hostile environment or attempting to discourage or prevent administrative authority from completing inspection of entire food establishment
 - 3.4.7.3.5.6 Failure to post JCCHS issued documentation such as permit, inspection report, score, and Notice of Violation placard in plain site of customers, protected from external weathering and within a ten foot (10') radius of all primary customer entrance of the food establishment
 - 3.4.7.3.5.7 Failure to comply with Food Safety Program requirements to have all managers and one-quarter (25%) of food employees on duty food safety trained and certified
 - 3.4.7.3.5.8 Failure to submit food establishment plans 6 weeks prior to opening a food establishment
 - 3.4.7.3.5.9 Failure to notify JCCHS of voluntary closing for purpose other than holiday, vacation or regular schedule in order that a re-opening inspection be completed
 - 3.4.7.3.5.10 Failure to notify JCCHS for change of ownership; design, layout or function as a result of construction or extensive remodeling; location; or menu to include potentially hazardous food or other extensive revision

3.4.7.3.5.11 Failure to pay re-inspection fees

3.4.7.3.5.12 Operating a food establishment without a food establishment permit by making potentially hazardous food available to the public

3.4.8 APPEAL

Upon notice of denial or revocation of permit or follow-up inspection, the permit holder may file a written request for a hearing to the Johnson County Health Officer within three (3) days of the incident for which a hearing is requested. The Johnson County Health Officer is to hold the hearing within ten (10) days receipt of the request.

3.4.9 PENALTY

Any person who violates any provision of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 60 days, or by both fine and imprisonment. For each day during any portion of which any violation of the provisions of this article is found to exist and is continued, such person or persons is guilty of separate offenses for each day and shall be punished therefore as provided.

3.4.10 SAVING CLAUSE

If any part of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this order.

3.5 BE IT ORDAINED AS FOLLOWS:

The County Commission hereby promulgates and adopts the Johnson County Code of Health Regulations Food Ordinance as recommended and requested by the Johnson County Community Health Service and Board of Trustees.

The County Clerk is hereby ordered to have the ordinance printed and available in his/her office for distribution to the public.

A copy of this ordinance shall be published in some newspaper in this county in three successive weeks, with the first publication occurring not later than thirty (30) days after the adoption of this Ordinance.

EFFECTIVE DATE

THIS ORDINANCE SHALL BECOME EFFECTIVE ON AND AFTER THE

_____ day of _____, 2010.

PASSED THIS _____ DAY OF _____, 2010.

Presiding Commissioner

Board of Trustees Chairman

Eastern District Commissioner

Board of Trustees Secretary

Western District Commissioner

Board of Trustees Treasurer

ATTEST:

County Clerk