

ORDINANCE NO. 10218 (N.S.)

AN ORDINANCE AMENDING PORTIONS OF THE COUNTY CODE OF REGULATORY
ORDINANCES RELATING TO
MOBILE FOOD FACILITIES

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1: The Board of Supervisors finds and determines that provision should be made for improved public notification signage for mobile food facilities that prepare and serve ready-to-eat food by establishing a letter grading system similar to that used by the Department of Environmental Health (DEH) to rate restaurants. This ordinance amends appropriate sections of the San Diego County Code of Regulatory Ordinances to implement regulations which will extend the restaurant letter grading program to approximately 550 mobile food facilities that prepare and serve ready to eat food allowing consumers to make safe dining choices.

Section 2: Title 6, Division 1, Chapter 1 of the San Diego County Code of Regulatory Ordinances is hereby amended to read as follows:

SEC. 61.101. PURPOSE.

Health and Safety Code (H & S Code) sections 113700 et seq., also referred to as the California Retail Food Code (CRFC), provide Statewide health and sanitation standards for retail food facilities. These sections allow a county to establish some local requirements for retail food facilities and their employees. These sections also provide that a local enforcement agency shall have primary enforcement responsibility for the State regulations in its jurisdiction. The purpose of this chapter is to adopt additional regulations for retail food facilities and their employees to protect the public health and safety in San Diego County and to appoint the Department of Environmental Health to enforce State and County regulations for retail food facilities and their employees.

SEC. 61.102. DEFINITIONS.

The following definitions shall apply to this chapter:

- (a) "DEH" means the Department of Environmental Health.
- (b) "Director" means the Director of DEH and any person appointed or hired by the Director to enforce or administer this chapter.
- (c) "Equipment" has the same meaning as the term "equipment" in H & S code section 113777.
- (d) "Food" has the same meaning as the term "food" in H & S code section 113781.
- (e) "Food facility" has the same meaning as the term "food facility" in H & S code section 113789.
- (f) "Food handler" means a person who prepares, handles, packages, serves or stores food or handles utensils, or assists another person in any of those tasks at a food facility that requires a permit pursuant to this chapter.

(g) "Imminent health hazard" has the same meaning as the term "imminent health hazard" in H & S code section 113810.

(h) "Limited food preparation facility" means for purposes of section 65.107(a), a retail food facility that only serves frozen ice cream, hot dogs, beverages that are not potentially hazardous, coffee or cocoa based beverages that may contain cream, milk or similar dairy products requiring no preparation other than heating, blending, assembly, scooping or dispensing. A limited food preparation facility also includes an Alcoholic Beverage Control license type 42 or 48 facility, as long as that facility does not engage in slicing, chopping or grinding of raw potentially hazardous foods, reheating for hot holding, washing of foods, or cooking, baking, barbecuing, broiling, frying or grilling any food.

(i) "Prepare" means to package, process, assemble, portion or engage in any operation that changes the form, flavor or consistency of food, but does not include trimming produce.

(j) "Ready-to-eat food" has the same meaning as the term "ready-to-eat food" in H & S code section 113881.

(k) "Tableware" has the same meaning as the term "tableware" in H & S code section 113926.

(l) "Utensil" has the same meaning as the term "utensil" in H & S code section 113934.

SEC. 61.103. DEPARTMENT OF ENVIRONMENTAL HEALTH TO ENFORCE RETAIL FOOD REGULATIONS.

DEH shall be the local enforcement agency for the CRFC and the regulations adopted in this chapter.

SEC. 61.104. PERMIT REQUIRED FROM DEPARTMENT OF ENVIRONMENTAL HEALTH.

A person who is required to obtain a food facility permit pursuant to the CRFC shall submit an application for the permit to DEH on a form provided by the department. The application shall be accompanied by the fee required in Title 6, Division 5, Chapter 1.

SEC. 61.105. PENALTY FOR ACTIVITIES WITHOUT A PERMIT.

When DEH initiates an enforcement action against a person operating a food facility without a permit required by the CRFC the department may recover its enforcement costs from the violator, up to a maximum of three times the cost of the permit. After the enforcement activity has been completed, DEH may send the violator a penalty assessment for its enforcement costs. The violator shall pay the assessment within 15 days from the date of the assessment or at the time the violator applies for the permit, whichever occurs first.

SEC. 61.106. PLAN REVIEW FEE.

A person required to submit written plans and specifications to DEH pursuant to H & S code section 114380 shall pay the plan review fee required in Title 6, Division 5 at the time the person submits plans and specifications.

SEC. 61.107. GRADING SYSTEM FOR CERTAIN FOOD FACILITIES.

(a) The Director may adopt regulations to grade permanent or mobile food facilities that prepare ready-to-eat food, using a letter grade system. The grading system may be used during any inspection DEH conducts. An "A" grade shall represent a score of 90 percent or higher. A "B" grade shall represent a score of 80 to 89 percent. A "C" grade shall represent a score less than 80 percent. DEH shall issue an alphabetical grade card to each food facility graded during an inspection pursuant to this section and shall provide the permit holder with a list of deficiencies found during the grading inspection. If DEH determines from the inspection, however, that the facility presents an imminent health hazard that warrants immediate closure DEH shall not issue the facility a grade card.

(b) DEH may order a food facility permit holder receiving a grade of "B" or "C" to submit to subsequent re-grade inspections within 30 days, until the facility receives an "A" grade. DEH may also order a permit holder to correct a deficiency found during an inspection in less than 30 days. The permit holder shall pay DEH a re-grade fee at the time of each re-grade inspection, as specified in Title 6, Division 5, Section 65.107 (d).

(c) DEH may use information obtained during an inspection pursuant to this section to temporarily suspend a food facility permit and order a food facility to immediately close due to an imminent health hazard that cannot be immediately corrected. DEH may also use the information obtained during an inspection to modify, suspend or revoke the food facility's permit.

(d) If DEH determines that a food facility should be ordered to show cause at a hearing why its permit should not be suspended or revoked, DEH may require the facility to post a specified alternative notice instead of a grade card, until that hearing process is concluded and a decision concerning the permit is rendered.

(e) If DEH determines that the public should be informed of temporary conditions affecting a food facility, such as a boil water order or a closure order for only a portion of the facility, DEH may require the facility to post a specified notice, and may direct that such posting be maintained either instead of or in addition to posting a grade card.

(f) Violations of the requirements of this code related to food facility grading shall be subject to the penalties and procedures set out in Division 8 of Title 1 of this code.

SEC. 61.108. ALPHABETICAL GRADE CARD TO BE POSTED.

(a) The permit holder of a permanent or mobile food facility that prepares ready-to-eat food shall post the alphabetical grade card DEH issues, or any alternative notice specified by DEH pursuant to Section [61.107](#), whenever the facility is open for business. The grade card or alternative notice shall be posted so that it is clearly visible to patrons of the facility so that statements on the card may be read.

(b) If the food facility is enclosed, the permit holder shall post the grade card or alternative notice: (1) in the front window of the facility, (2) in an accessible display case mounted on the outside of the front door, (3) in an accessible display case mounted on the outside front wall of the facility within five feet of the front door or (4) in some other location DEH approves. If the food facility has a drive-through feature, the permit holder shall also post the grade card or alternative notice at the drive-in pickup window of the facility.

(c) If the food facility is not enclosed, the permit holder shall display the grade card or alternative notice in a location clearly visible to any patron of the facility. DEH may require the permit holder of an unenclosed facility to display the grade card or alternative notice in a specific location.

(d) The permit holder shall protect the alphabetical grade card or alternative notice from damage by weather conditions and shall not allow the card or alternative notice to be defaced, marred, camouflaged or hidden so as to prevent the general public from observing it. The permit holder shall request a new card or alternative notice from DEH within one business day of the grade card or alternative notice being damaged, marred, altered or lost.

SEC. 61.109. HEARING REQUESTED BY PERMIT HOLDER OR DEPARTMENT OF ENVIRONMENTAL HEALTH; APPEALS.

(a) If a permit holder requests a hearing within 15 days after receiving notice that DEH proposes to suspend or revoke a food facility permit pursuant to the CRFC, or if DEH temporarily closes a food facility for an imminent health hazard, the Director shall schedule a hearing. The Director shall also schedule a hearing when DEH proposes to modify, suspend or revoke a permit for serious or repeated violations of the CRFC. A hearing pursuant to this section shall be with a DEH employee, at the supervisor level or higher, who was not involved in the decision to propose to modify, suspend or revoke the permit or to temporarily close the facility.

(b) The permit holder may appeal the decision made at the hearing to the Appellate Hearing Board as provided in Chapter 1 of Division 6 of Title 1 of this Code. Filing an appeal shall stay the decision of the DEH hearing officer, unless the DEH hearing officer determined that an imminent health hazard required closure of the facility.

(c) The Clerk shall endeavor to schedule the appeal hearing on an expedited basis if the food facility must remain closed until that appeal is heard.

SEC. 61.110. ADMINISTRATIVE PROBATION.

(a) A permit holder and DEH may enter into a written administrative probation agreement to modify a decision by a departmental hearing officer to suspend a permit.

(b) If a permit holder fails to comply with the terms of an administrative probation agreement DEH may reinstate the original permit suspension and enforce any additional violation of the CRFC. The Director shall be the sole judge of whether the permit holder failed to comply with the agreement.

SEC. 61.111. NOTICE OF CLOSURE OF FOOD FACILITY.

(a) If the Director determines that a food facility is operating without a permit required by the CRFC the Director may order the person who owns or operates the facility to close immediately. In addition to taking any legal action authorized by law to compel a facility owner or operator to cease operating without a permit, the Director may post a notice of closure at or on a food facility operating without a permit, advising the public that the facility does not have a permit to sell food.

(b) The Director may also post a notice of closure on a food facility:

(1) When the Director orders the facility to close due to an imminent health hazard that the food facility does not immediately correct.

(2) When the Director suspends or revokes the facility's permit.

(c) No person other than the Director shall remove a notice posted by the Director pursuant to this section.

SEC. 61.112. INSPECTIONS AND TRACKING MOBILE FOOD FACILITIES.

(a) A mobile food facility permit holder shall pass an annual certification inspection at the same time the permit holder renews the annual permit or at a later date that DEH designates. A mobile food facility permit holder that passes inspection shall be issued a certification sticker, which the permit holder shall display on the mobile food facility at all times. If the mobile food facility permit holder fails to timely complete the annual inspection process the permit holder shall pay a late fee of 50% of the cost of the permit. No person shall operate or allow another person to operate a mobile food facility unless the facility passes the annual inspection. The mobile food facility may also be inspected in the field as authorized by the Director.

(b) The Director may establish a program to ensure that Mobile Food Facilities can be efficiently located in the field for inspections and grading, and may implement that program through permitting conditions.

A current list of locations at which a mobile food permit holder will operate shall be submitted to DEH along with a current cell phone number. DEH shall be notified in a timely manner whenever a change is made.

SEC. 61.113. RENTING OR LEASING EQUIPMENT AND UTENSILS.

(a) No person shall rent or lease equipment, tableware or utensils to a food facility without a permit issued by DEH.

(b) No person shall rent or lease equipment, tableware or utensils to a food facility unless it complies with the following requirements:

(1) The equipment is stored in a building that complies with the requirements the CRFC requires a food facility to comply with for storing equipment in a building.

(2) The tableware and utensils have been cleaned and sanitized by the same methods the CRFC requires a food facility to follow.

SEC. 61.114. FOOD HANDLER REQUIREMENTS.

(a) Except as provided in subsection (e) below no person shall employ a person as a food handler in a food facility unless the food handler: (1) has been issued a current food handler training certificate as provided in subsection (b), or (2) is supervised by a food safety certified owner or employee pursuant to the CRFC and has passed a food handler test, as described in subsection (d) below. A person may employ a food handler, however, who for the first ten days of employment has not passed the food handler test.

(b) The Director, or a person the Director authorizes, may issue a food handler training certificate to a person who successfully completes a three hour food sanitation training course and scores a grade of 80% or higher on a proficiency test, provided the Director approves the instructor, the course and the test. To be approved, the course of instruction shall include all of the following subjects:

(1) Major causes of foodborne illness.

- (2) Time and temperature control of potentially hazardous foods.
- (3) Proper employee health and hygiene practices.
- (4) Methods to protect food from contamination.
- (5) Required consumer advisories.
- (6) Approved food sources.
- (7) Washing and sanitizing of utensils and equipment.
- (8) Pest control.

(c) A food handler training certificate shall be valid for three years from the date it is issued. A person issued a food handler training certificate continuing employment at the facility shall obtain a new certificate every three years. The Director or a person the Director authorizes may renew a food handler training certificate for additional three year periods if the food handler is able to obtain a score of 80% or higher on the proficiency test at renewal time. If the food handler is unable to achieve a score of 80% on the test, the food handler shall repeat the food handler training certificate course and pass the proficiency test in order to obtain a renewal certificate. The Director may also require a person with a food handler training certificate to retake the training certificate course or retake and pass the proficiency test after less than three years from the date the certificate is issued.

(d) A food safety certified owner or employee may administer a food handler test that the Director prepares covering fundamental principles of food safety practices. A grade of 80% or higher is a passing grade. The food handler's passing test score shall be valid for three years from the test date or until the food handler ceases working as a food handler at the facility. A food handler continuing employment at the facility shall obtain a passing grade on the food handler test every three years. The Director may require a food handler to retake the test after less than three years.

(e) Notwithstanding the requirements of this section, the Director may allow the owner or operator of a temporary food facility to employ a food handler who does not have a current food handler certificate or who has not passed the food handler test within the last three years if: (1) the temporary food facility complies with H & S Code section 113947.1(c) and (2) the food handler is able to demonstrate adequate knowledge of food safety principles related to the operation of the temporary food facility. If a temporary food facility operator has passed the approved and accredited food safety certification examination specified in H & S code sections 113947.2 and 113947.3 the temporary food facility may apply for an annual temporary food facility permit rather than having to obtain a temporary event permit for each temporary event the facility participates in.

SEC. 61.115. FOOD HANDLER RECORDS.

The permit holder of a food facility shall maintain at the food facility a complete list of all food handlers and food safety certificate holders the facility employs. The permit holder shall also maintain a copy of any employed food handler's current: (a) food handler training certificates, (b) food handler test and (c) food safety certificate required by the CRFC. The Director may inspect any of these records the permit holder is required to maintain at the facility whenever the facility is open for business.

Section 3: This ordinance shall take effect and be in force thirty days after its passage and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 25th day of July, 2012.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY

Rodney F. Lorang, Senior Deputy