

Order 208-14/15

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 11 FOOD AND FOOD HANDLERS
ARTICLE I. and ARTICLE II. FOOD SERVICE ESTABLISHMENTS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN
CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*1. That Articles I and II, Sections 11-1 through 11-49 of the Portland
City Code are hereby amended to read as follows:*

Chapter 11 FOOD AND FOOD HANDLERS*

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ARTICLE I. IN GENERAL

Sec. 11-1. Adoption of Maine State Food Code 2001~~3~~3: Food Code.

There is hereby adopted for the purpose of prescribing regulations to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented, a code known as the Maine State Food Code 2001~~3~~3 (hereinafter "Food Code") recommended by the health authority, being particularly the 2001~~3~~3 edition thereof and the whole thereof except for such portions, as are deleted, modified or amended by section 11-4 and which code shall be controlling within the limits of the City.

Sec. 11-2. Copies on file with the Clerk.

Pursuant to Title 30-A M.R.S.A. §3003, at least three (3) copies of the Maine State Food Code as adopted by reference by Section 11-1 above, have been and shall be on file in the office of the City Clerk for public inspection and use.

Sec. 11-3. Definitions.

Wherever the words "regulatory authority" are used in the Food Code, they should be held to mean the health inspector of the City of Portland or his or her duly authorized representative.

Wherever the word "municipality" is used in the Food Code, it shall

mean the City of Portland.

ARTICLE II. FOOD SERVICE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 11-4. Amendments.

The Maine State Food Code 20~~0~~13: Food Code adopted by section 11-1 is amended and modified in the following respects.

(a) Section 1.201.10.B shall be amended as follows:

Approved shall mean acceptable to the city health inspector as meeting the requirements of this article and conforming to good public health practices.

Food service establishment shall include any permanent, temporary or mobile establishment including any restaurant; caterer; innholder; buffet; lunchroom; grill room; lunch counter; tavern; dining room of a hotel; coffee shop; cafeteria; sandwich shop; soda fountain; in plant feeding establishment; private club; church feeding facility; school feeding facility; institutional feeding establishment; tea room; theater refreshment stand; grocery store; meat market; retail bakery store; delicatessen; bottle club; community kitchen; shelter; food pantry; or any other establishment where food or drink is prepared, served, kept, or stored for retail sale on-site. This definition shall not include as food service establishments private homes with permanent guests.

Imminent health hazard means 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: (a) The number of potential injuries, and (b) The nature, severity, and duration of the anticipated injury. Imminent Health Hazard includes, but is not limited to, the following: (1) an extended loss of water supply, (2) an extended power outage, (3) flood water or sewer back-up into the establishment, (4) fire, (5) a lack of hot water (minimum temperature of 100F for handwashing and 110F for warewashing) or (6) any other violation(s) that has/have the potential to pose an imminent threat to public health. Maine Food Code October 2013 Page 11 Failure to include other violations in this definition shall not be construed as a

determination that other violations may not, in light of the circumstances, be found to pose an imminent health hazard.

Temporary food service establishment shall mean any food service establishment which operates for a temporary period of time in connection with a fair, carnival, circus, public exhibition or similar transitory gathering. There shall be two (2) types of temporary food service establishment licenses: one (1) shall be for those establishments that sell unopened prepackaged food, with a license period not to exceed three (3) months, and the other license shall be for establishments that sell or serve either food that is not prepackaged or prepackaged food that is opened prior to its sale, including the opening of one (1) or more prepackaged items for the purpose of providing free samples, with a license period not to exceed two (2) weeks.

- (b) Section 1.201.10.B shall be amended to add the following:

Base station shall mean a location used by a mobile food service establishment which shall be considered part of the food service establishment for the purpose of determining compliance with this article. The mobile unit and base station shall comply with all of the requirements of this article except those relating to toilet facilities, and the additional requirements herein set forth except as herein prescribed.

Food pantries shall mean an organization or entity that acquires, stores and distributes food to the needy in their community. Food pantries are typically supported by community food drives, umbrella organizations, as well as grocery stores, local agriculture, food manufacturers and other distributors. All items are pre-packaged, properly labeled, and no food preparation occurs. If bulk food packages are divided, they shall be in properly labeled, food safe containers.

Food processing establishment shall mean a commercial establishment in which food is processed or otherwise prepared and packaged only for sale to food service establishments and other retail outlets.

Ice cream truck shall mean a motorized vehicle utilized for the sale of prewrapped or prepackaged ice cream or frozen yogurt or ice cream or frozen yogurt products or novelties.

Innholder shall mean and include any person offering to the

public, generally, lodgings and food as the occasion requires where the person rents out four (4) or more rooms or cottages.

Mobile food service establishment shall mean and include only a food service establishment capable of movement over public or private ways which has all utilities and facilities contained within the unit regardless of whether it needs an outside power source or not which has no fixed location for the operation or transaction of business; and which is moved from one (1) location to a different location not less frequently than once every twelve (12) hours in any twenty-four (24) hour period in order to serve persons otherwise present at such locations at such times. For purposes of this ordinance, mobile food service establishments include, but are not limited to, pushcarts, food vending trucks and ice cream trucks.

Shelters shall mean an establishment providing temporary housing and meals for those in difficult domestic situations, as well as for homeless families and individuals. In addition many shelters provide referrals to other social service agencies. Shelters are often considered agencies of larger food banks or food share operations.

Stationary food vending unit shall mean any vending unit from which food products are sold and which is licensed for one (1) location on private property and conducts all of its sales from that one (1) location.

- (c) Section 1.201.10.B shall be amended to delete the following definitions:

Adulterated, ~~Certified food protection manager, Easily cleanable, Employee, Equipment, Food, Food-contact surface, Kitchenware, Poisonous or toxic materials, Potentially hazardous food, Sealed, Molluscan shellfish, Single-service articles, Tableware, and Utensil.~~

- (d) Section 3-603.11.B shall be amended as follows:

(B) Disclosure shall include:

(1) A description of the animal-derived Foods, such as "oysters on the halfshell (raw oysters)," "raw-Egg Caesar salad," and "hamburgers (can be cooked to order)" with an asterisk to a footnote that states that the items are served

raw or undercooked, or contain (or may contain) raw or undercooked ingredients; or

(2) Identification of the animal-derived Foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

(C) A reminder shall include asterisking the animal-derived Foods requiring Disclosure to a footnote that states:

(2) Consuming raw or undercooked Meats, Poultry, seafood, shellfish, or Eggs may increase your Risk of foodborne illness.

Sec. 11-5. Contaminated items of food or drink.

No person shall knowingly sell, offer for sale, or hold for sale in the city any unwholesome, stale, putrid, diseased, or otherwise contaminated items of food or drink, and shall make such immediate disposition of all items found in such condition as shall be ordered by the health authority.

State law reference(s)--Sale or possession of unwholesome food or drink, 17 M.R.S.A. § 3451 et seq.

Sec. 11-6. Application to food prepared outside city.

No person shall sell or bring into the city food prepared outside the city for sale by a food service establishment unless such food is prepared and handled in accordance with the requirements of this article. In determining whether such food is prepared or handled in accordance with the requirements of this article, the health inspector, shall accept reports from responsible authorities in such jurisdiction that such location complies with the provisions of this article.

Sec. 11-7. Right to enter.

The health inspector shall be permitted to enter any food service establishment during business hours for the purpose of making inspections and of copying any and all records of food purchases and payrolls. It shall be the duty of every person responsible for the management or control of such establishment to afford free access to every part of such establishment and to render all aid and assistance necessary to enable the health authority to make a full, thorough and complete examination thereof to determine compliance with this article. Records of purchases of food shall be held for a period of

three (3) months following the date of purchase either at the food service establishment or at another place where they are customarily kept and shall be made available to the health authority at the food service establishment within a reasonable time upon request.

Sec. 11-8. Handwashing facilities.

Handwashing sinks with hot and cold running water shall be provided in or convenient to toilet rooms and in no instance more than twenty five (25) feet from and easily accessible to the toilet room. Soap and sanitary towels or other approved drying facilities in suitable holders or dispensers shall be provided. Common towels are prohibited. No person shall resume work after using the toilet room without first washing his or her hands. If such handwashing sink is not located within ten (10) feet of the entrance to all food preparation rooms or areas, additional handwashing sinks with hot and cold running water, soap, and sanitary towels shall be provided in or within twenty five (25) feet and easily accessible to such food preparation rooms or areas. Durable, legible signs shall be posted conspicuously at each handwashing facility used by employees directing them to wash their hands before returning to work. Dishwashing vats, vegetable sinks and pot sinks shall not be approved as handwashing facilities for employees. Any self-closing, or metered faucet used shall be designed to provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet. Steam mixing valves are prohibited. Spring type faucets which require two (2) hands to operate are prohibited.

Sec. 11-9. Three-bay sink.

A three-bay sink shall be provided for such manual cleaning; each compartment shall be equipped with hot and cold running water and large enough to permit complete immersion of the largest utensil, and must be within twenty five (25) feet of and easily accessible to the food preparation area.

Sec. 11-10. Certified Food Protection Managers.

(a) A food service establishment must have at least one employee granted supervisory and management responsibility designated a Certified Food Protection Manager (CFPM) as defined in Section 1.201.10.B of Maine State Food Code 2013: Food Code adopted in Section 11-1, above. Proof of CFPM certification is required as follows:

- (1) Prior to the issuance of any new license required by Chapter 15;
- (2) Prior to the renewal of any license required by Chapter

15.

(3) Within 60 days of the date when a CFPM leaves employment;

(4) At the time of any inspection by the City's Health Inspector.

(b) Proof of compliance with the requirements of this section shall be provided to the City Food Inspector. Prior to the issuance of any license required by Chapter 15, the City Food Inspector must certify to the City Clerk's Office that the requirements of this Section have been met. Failure to provide proof of compliance with the requirements of this Section will be subject to a denial, suspension or revocation of a license in accordance with the provisions of Chapter 15. In addition to license suspension or revocation, violations of subsection 11-10(a) (3) & (4), above, shall result in a penalty to the violator of \$150.00.

Sec. 11-~~110~~. Ice cream trucks.

All ice cream trucks shall comply with the following:

- (a) *General regulations.* All ice cream trucks shall comply with all requirements of section 11-35, including the requirements for a base station, and all other requirements of this article except those relating to toilet facilities, in addition to the requirements set forth in this section.
- (b) *Permitted sales locations.* Ice cream trucks shall be limited to sales on or from public rights-of-way in city parks where vending is allowed or in residential zones only, where such public rights-of-way have a posted speed limit of twenty-five (25) miles per hour or less.
- (c) *Sales prohibited.* No ice cream truck shall stop at any time for the purpose of making sales if such stop is located within five hundred (500) feet of a licensed food service establishment.
- (d) *Length of stop.* No ice cream truck shall stop on a public right-of-way in a residential zone for more than fifteen (15) minutes. An ice cream truck shall operate its four-way flashers whenever stopped.
- (e) *Manner of stops.* Ice cream trucks shall pull over to the side of the public right-of-way as far as practicable when stopping for the purpose of selling. In no event shall an

ice cream truck stop for the purpose of selling if such a stop prevents the passage of other motor vehicles on the public right-of-way.

- (f) *Hours of operation.* Ice cream trucks shall only operate from 11:00 a.m. until 8:00 p.m.
- (g) *License, insurance required.* Each ice cream truck shall be required to be separately licensed under this article and to provide to the City Clerk evidence of public liability insurance in an amount of not less than four hundred thousand dollars (\$400,000.00) as amended, with the city named as an additional insured on the policy.
- (h) *Cost of licenses and expiration date.* The cost of a license for an ice cream truck and base station and the expiration date for such licenses shall be the same as those established in section 15-12 for a mobile food service establishment license and a base station license. Each base station shall be required to have one (1) base station license, even if more than one (1) truck utilizes the same base station.
- (i) *Passengers prohibited.* No ice cream truck shall carry any passenger not employed by or related to the license holder or driver.

Sec. 11-1~~1~~2. Stationary food vending unit.

A stationary food vending unit shall be subject to the following regulations:

- (a) Only nonalcoholic beverages and prepackaged foods shall be sold from a stationary food vending unit, and there shall be no cooking in or near the unit.
- (b) An applicant for a stationary food vending unit license shall provide the City Clerk, in addition to any other information required by chapter 15, with acceptable proof of ownership or control of the property upon which the unit will be located. Such proof shall consist of a deed, lease or other written agreement.
- (c) An applicant for a stationary food vending unit license shall submit the following information for review by the health authority:
 - 1. A plan for waste disposal;

2. A plan for disposal of liquid waste, which shall not be allowed to run into the ground; and
 3. A plan for provision of restrooms for employees;
 4. The precise location and manner of proposed or existing electrical hookups, which must be done by a licensed master electrician, or the type and location of other proposed or existing power sources.
- (d) No stationary food vending unit shall be located within sixty-five (65) feet of any other licensed food establishment, including street vending units and mobile food service units.
- (e) The fees and the expiration date for a stationary food vending unit license shall be the same as those established in chapter 15 of this Code for mobile food service establishments, except that no base station or fee for a base station shall be required.
- (e) The location of any stationary food vending unit shall be subject to the applicable requirements of articles III and V of chapter 14 of this Code.

Sec. 11-123. Community kitchens.

- (a) A community kitchen shall mean a kitchen, licensed pursuant to this chapter, that is utilized by two or more entities at differing times for preparation of food to serve to the public off-site.
- (b) Not more than one entity may utilize the community kitchen at one time. Any time more than one entity is utilizing a kitchen licensed pursuant to this chapter, there must be a reasonable amount of time built in to the schedule to ensure the kitchen is cleaned prior to the next use.
- (c) Schedule and records: The schedule of the use of the community kitchen shall be prominently displayed in a conspicuous location at all times and all associated records shall be available for review by the health inspector at all times.
- (d) License required: Each entity utilizing a community kitchen shall procure a community kitchen license from the City Clerk's office.

Sec. 11-134. Penalties.

Following the issuance of a failed inspection notice and an order to correct violations, the health inspector will reinspect the premises at a fee of seventy five dollars (\$75.00); if the followup inspection results in another failed inspection, the violator will be charged a second re-inspection fee of one hundred fifty dollars (\$150.00). If the third reinspection results in a failed inspection, the third and each subsequent follow-up reinspection will result in a three hundred dollar (\$300.00) per reinspection charge. In addition, upon the third failed reinspection, the health inspector may order the establishment closed until the establishment yields a passing inspection.

The requirements set forth in this section shall apply to the entire chapter.

Sec. 11-145. Reserved.

Sec. 11-165. Reserved.

Sec. 11-176. Reserved.

Sec. 11-187. Reserved.

Sec. 11-198. Reserved.

Sec. 11-2019. Reserved.

Sec. 11-210. Reserved.

DIVISION 2. LICENSE*

Sec. 11-212. License Required.

No person shall operate any food service establishment within the city unless licensed to do so by the city.

Sec. 11-23. Pre-Operational Inspection.

~~Prior to applying for~~All applications for food service establishment licenses must be accompanied by a certification, issued by the Health Inspector, certifying that the food service establishment has undergone a Pre-Operational Inspection and successfully demonstrated compliance with the provisions of this Chapter. The fee for the Pre-Operational Inspection required by this section shall be \$150.00.~~a food service establishment license, and before any such license may be granted under Chapter 15, a food service establishment must~~

11-224. Hearing.

A hearing shall be held upon any original and any renewal application for a license required by this division.

Sec. 11-235. Suspensions and revocations.

Licenses shall be suspended or revoked pursuant to chapter 15, except that a license which has been suspended may be reinstated by the clerk upon application, in writing, from the holder if the health inspector certifies to the clerk that he or she has reinspected the premises and the condition for which the suspension was imposed has been corrected.

Sec. 11-246. General provisions to apply.

Except to the extent that this division contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this division.

Sec. 11-257 thru 11-457 Reserved.

~~DIVISION 2. LICENSE*~~

~~Sec. 11-46. Required.~~

~~No person shall operate any food service establishment within the city unless licensed to do so by the city.
(Code 1968, § 905.1; Ord. No. 231-80, 12-22-80)~~

~~Sec. 11-47. Hearing.~~

~~A hearing shall be held upon any original and any renewal application for a license required by this division.~~

~~Sec. 11-48. Suspensions and revocations.~~

~~Licenses shall be suspended or revoked pursuant to chapter 15, except that a license which has been suspended may be reinstated by the clerk upon application, in writing, from the holder if the health inspector certifies to the clerk that he or she has reinspected the premises and the condition for which the suspension was imposed has been corrected.~~

~~Sec. 11-49. General provisions to apply.~~

~~Except to the extent that this division contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this division.~~