

CHAPTER 4

FOOD LICENSING AND REGULATIONS

Article I Food Licensing and Regulations

4.101 – 4.107

ARTICLE I FOOD LICENSING AND REGULATIONS

Section 4.101 Adoption of the FDA 2022 Food Code

That a certain document, three copies of which are on file in the office of the City Clerk of the City of Portsmouth, New Hampshire being marked and designated as the Food Code, 2022 Recommendations of the United States Public Health Service/Food and Drug Administration and Annexes "FDA Food Code" as published by the U.S. Department of Health and Human Services, Public Health Services, Food and Drug Administration be, and is hereby adopted, subject to the following amendments, additions and deletions.¹

If specific provisions of the FDA Food Code are not referenced below, the text remains as written.

Section 4.102: Amendments, Additions and Deletions to Food Code

Change subsection to read as follows:

1-201.10 Statement of Application and Listing of Terms.

Temporary food establishment" means a food establishment that operates for a period of no more than 3 consecutive days in conjunction with a single event or celebration.

Add sentence at the end of paragraph to read as follows:

1-201.10 Food Establishment.

(2) (b) These facilities must be in compliance with Portsmouth Health Department's Guidelines.

Delete following subsections:

1-201.10 Food Establishment.

(3) (e) – (g) *Delete*

¹ For a copy of the FDA Food Code, 2022 go to <https://www.fda.gov/food/fda-food-code/fiid-code-2022>

Change subsection to read as follows:

3-301.11 Preventing Contamination from Hands.

- (B) Except when washing fruits and vegetables as specified under 3-302.15 Food Employees may not contact exposed, READY-TO-EAT FOOD with their bare hands and shall use suitable UTENSILS such as deli tissue, spatulas, tongs, single-use gloves, or dispensing EQUIPMENT.
- (D) *Delete*

Delete following subsection in its entirety:

3-305.13 Vended Potentially Hazardous Food (Time/Temperature Control for Safety Food), Original Container.

Delete following subsection:

3-306.12 Condiments Protection.

- (B) *Delete*

Delete following subsection:

3-801.11 Pasteurized Foods, Prohibited Re-Service, and Prohibited Food.

- (D) *Delete*

Delete following subsection:

4.204.14 (A) (B) Vending Machines, Vending Stage Closure.

Delete following subsection:

4-204.19 Can Openers on Vending Machines.

Delete following subsection:

4-204.111 Vending Machines, Automatic Shutoff.

Add new subsection to read as follows:

4-301.13 Drainboards.

Dual drainboards must be integral to warewashing sinks, in addition, UTENSIL racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided per necessary UTENSIL holding before cleaning and after SANITIZING.

Add new subsection to read as follows:

4-301.16 Food Prep Sink.

A Food Prep sink that meets the requirements specified in 4-205.10, 5-202.13 and 5-402.11 shall be provided for washing/thawing of foods, and drawing of potable water, to be used for no other purposes.

Delete following subsections:

4-301.12 Manual Warewashing, Sink Compartment Requirements.

(C)(5) *Delete*

(C)(6) *Delete*

(D) *Delete*

Add new subsection to read as follows:

4-302.12 Food Temperature Measuring Devices.

- (A) Digital food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment in maintenance of food temperatures as specified under Chapter 3.

Change subsection to read as follows:

4-501.16 Warewashing Sinks, Use Limitation.

- (A) A warewashing sink may not be used for handwashing as specified under §2-301.15, or drawing potable water, wash produce, or thaw foods.

Delete following subsections:

4-603.16 Rinsing Procedures.

(C) *Delete*

(D) *Delete*

(E) *Delete*

Change subsection to read as follows:

5-104.12 Alternative Water Supply.

Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a two-hour interruption of its water supply through:

Change subsections to read as follows:

5-203.11 Handwashing Sinks.

A handwashing sink shall be located within 20 unobstructed feet:

- (A) To allow convenient use by employees in food preparation, food dispensing, and warewashing areas; and
(B) In toilet rooms.

Change subsection to read as follows:

5-501.12 Outdoor Enclosure.

- (A) If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable, and cleanable materials with tight-fitting lids, and in a clean and cleanable manner, that does not attract pests.

Add new subsection to read as follows:

6-202.15 Outer Openings; Protected.

- (F) Permanently located outdoor beverage bars shall be fully enclosed during non-operating hours with a sturdy, permanent structure capable of withstanding wind, weather, be rodent, bird, insect-proof, and seal out any and all intentional and unintentional sources of contamination and adulteration. If adequate protection can be provided by other effective means a variance may be issued pursuant to 8-103.10 through 8-103.12.

Change subsection to read as follows:

6-303.11 Intensity.

The light intensity shall be:

- (A) At least 216 lux (20 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

Change subsection to read as follows:

6-501.115 Prohibiting Animals.

- (A) Except as specified in (B) and (C) of this section, live animals may not be allowed on the premises of a food establishment, unless allowed by variance pursuant to 8-103.10 through 8-103.12 for outdoor decks.

Delete following subsection:

7-202.12 Conditions of Use.

(A)(2) *Delete*

Change subsections to read as follows:

8-101.10 Public Health Protection.

- (B)(1) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition and used as intended by the manufacturer;

Change subsection to read as follows:

8-103.11 Documentation of Proposed Variance and Justification.

- (C) A HACCP plan if required as specified under 8-201.13(A) that includes the information specified under 8-201.14 as it is relevant to the variance requested, and reviewed by a 3rd party acceptable to the Health Department or Special Process Review if requested.

Add new subsection to read as follows:

8-201.11 When Plans Are Required.

- (D) Change of owner.

Delete following subsections:

8-201.12 Contents of Plans and Specifications.

(B) *Delete*

(D) *Delete*

(E) *Delete*

Add new subsection to read as follows:

8-201.14 Contents of a HACCP Plan.

- (F) Verified by a qualified 3rd party reviewer acceptable to the Health Department if requested.

Delete following subsection:

8-404.11 Ceasing Operations and Reporting.

(B) *Delete*

Delete following subsection:

Annex 2022, Annex 1, Sections 8-905.10 through 8-908.20 and replace with the following:

Section 8-905.10 FOOD LICENSING BOARD OF APPEALS

SECTION 8.905.11 GENERAL PURPOSE AND DUTIES OF THE BOARD OF APPEALS

In order to hear and decide appeals from the denial, suspension or revocation of a Food License made by the Health Officer or Health Department staff, there shall be created a Food Licensing Board of Appeals. The members of the Board of Appeals shall be appointed by the City Manager for a term of two years from the date of appointment.

SECTION 8.905.12 LIMITATION OF AUTHORITY

An appeal shall be based on a claim that the Health Officer or Health Department staff improperly interpreted or applied the 2022 FDA Food Code as adopted in this Chapter. The Board may hear and decide appeals from the denial, suspension or revocation of a Food License but shall have no authority to waive requirements of the 2022 FDA Food Code as adopted in this Chapter.

SECTION 8.905.13 COMPOSITION AND QUALIFICATIONS OF BOARD MEMEBERS

8.905.13.1 The Board of Appeals shall consist of 3 voting members who are not employees of the City. The Board shall consist of three members who have the following qualifications:

One member shall be a current or former Health Officer, Health Inspector or Environmental Health Specialist with knowledge of and experience applying the FDA Food Code; and

One member shall be a current or former doctor or nurse practitioner or nurse with public health experience; and

One member shall have experience as a Restaurant Manager or Food Service Manager.

8.905.13.2 Alternate members. The City Manager may appoint an alternate for each Board member with the same qualifications for each position listed above. The Board Chairperson may call alternative members to hear appeals during the absence or disqualifications of a member.

8.905.13.3 The Board shall adopt policies and procedures necessary to carry out its duties and be subject to all conflict of interest and ethics rules of the City of Portsmouth.

SECTION 8.905.14 TIMING FOR APPEAL

The application for an appeal shall be filed on a form obtained by the Health Department within ten (10) days after the receipt of a denial, revocation or suspension of a Food License from the Health Department.

SECTION 8.905.15 PROCEDURE FOR HEARING AND DECISION

8.905.15.1 The Board shall meet within 15 days of the receipt of an appeal.

8.905.15.2 The appellant, the appellant's representative, the Health Officer and other City staff or any person whose interests are affected shall be given an opportunity to be heard.

8.905.15.3 The Board's decision shall be in writing and shall be issued within 5 business days after the hearing.

8.905.15.4 Any decision of the Board may be appealed by the appellant or the City to the Superior Court.

Add the following as first paragraph of subsection:
Annex 2022, Annex 7, Model forms Guides and Other Aids.

Model forms are adopted as amended by the Portsmouth Health Department.

Section 4.103 Adoption of Specific Parts He-P 2300, as amended:

Specific parts of the N.H. Code of Administrative Rules, Part He-P 2300, Sanitary Production and Distribution of Food (“He-P 2300”) published as of the date this Chapter is adopted, are hereby adopted subject to the following amendments, additions and deletions. Any section not referenced is not adopted.

Adopt the following definitions:

He-P 2301 DEFINITIONS (as defined in He-P 2300, unless otherwise noted):

- (a) “Acid foods”
- (b) “Acidified foods”
- (c) “Applicant”
- (d) “Bed and breakfast”
- (e) “Beverage”
- (f) “Caterer”
- (g) “Certified food protection manager” means the person in charge who has shown proficiency of required information through passing a test that is part of an accredited program or as stated in 2-102.12(A) of the Food Code.
- (h) “Change of ownership” Change of ownership means any time a controlling interest in a sole proprietorship, joint venture, partnership, corporation, limited liability company, or any other kind of entity is transferred to another sole proprietor, joint venture, partnership, corporation, limited liability company or any other kind of entity. The transfer of a business entity to a trust and its controlling interest to a trustee for estate planning purposes will not be deemed a change of ownership, provided that the transfer is not made to avoid compliance with this Chapter.
- (i) “Continental breakfast”
- (k) “Corrective Action Plan (CAP)”
- (l) “Critical control point”
- (m) “Critical limit”
- (n) “Department” means the Portsmouth Health Department
- (ab) “Low acid foods”
- (av) “Soup kitchen”
- (aw) “Time/Temperature Control for Safety (TCS) food”
- (p) “Food”
- (q) “Food Code” means the US Department of Health and Human Services, Public Health Services, Food and Drug Administration, Food Code, 2022 edition
- (r) “Food Establishment” means “food service establishment” as defined in RSA 143-A:3, IV, or “retail food store” as defined in RSA 143-A:3, VII.
- (s) “Food processing plant”

- (u) "Foodborne disease outbreak"
- (x) "Immediately endangers public health or safety"
- (y) "Imminent health hazard"
- (z) "License"
- (aa) "License holder"
- (ab) "Low-acid foods" means "low-acid foods" as defined by 21 CFR 114.3(d), namely, "any foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (aw) greater than 0.85. Tomatoes and tomato products having a finished equilibrium pH less than 4.7 are not classed as low-acid foods"
- (ac) "Major food allergen"
- (ad) "Mobile food unit" means a food service establishment mounted on wheels or otherwise designed to be immediately moveable and works out of a licensed commissary.
- (af) "Package"
- (ah) "Potentially hazardous food"
- (al) "Public water system" means "public water system" as defined in RSA 485:1-a, XV
- (ap) "Regulatory authority"
- (aq) "Remodeled"
- (ar) "Retail food store" means "retail food store" as defined in RSA 143-A:3, VII

- (as) "Sanitization"
- (au) "Sewage"

Adopt and amend the following definitions to read as follows:

- (n) "Department" means the Portsmouth Health Department.
- (ad) "Mobile food unit" means a food service establishment mounted on wheels or otherwise designed to be immediately moveable.

Adopt the following subsection in its entirety and add new subsection to read as follows:

He-P 2302.02 Soup Kitchens Exempt from Licensure.

- (5) Person-in-charge must attend food safety training to be provided by the Department.

Adopt the following subsection in its entirety:

He-P 2304.13 Hazard Analysis and Critical Control Point (HACCP)

Adopt the following subsection in its entirety:

He-P 2304.15 Trade Secrets and Confidentiality

- (a) The department shall treat as confidential, in accordance with RSA 350-B, information that meets the criteria specified in RSA 350-B for a trade secret and is contained on inspection report forms. In the plans and specifications submitted as specified under He-P 2304.12 and in any HACCP plans submitted.
- (b) Consumer complaints received regarding illness or sanitation of a food establishment shall have the name, address, and phone number or other identifying information of the individual making the complaint maintained as confidential and such information shall not be released without written permission of the complainant.

Adopt the following subsection as amended:

He-P 2305.02 Correction of Deficiencies Identified During an Inspection of Food Processing Plants

- (a) All deficiencies identified in the inspection report shall be corrected at the time of inspection, as practicable.
- (b) For food processing plants; if any violation is found during an inspection and cannot be corrected immediately and permanently in the presence of the inspector, the applicant or licensee shall:
- (1.) Agree to temporarily correct the violation and to permanently correct it in a specified time frame, not to exceed 10 calendar days after the inspection; or
 - (2.) Complete a Corrective Action Plan (CAP) in the presence of the inspector in accordance with He-P 2305.03

Adopt the following subsection as amended:

He-P 2305.03 Corrective Action Plan (CAP):

- (a) When a deficiency identified in the inspection report cannot be corrected either immediately and permanently in the presence of the inspector or permanently within 10 calendar days after the inspection, pursuant to He-P 2305.02(b), the licensee shall complete, date, and sign, at the time of inspection, a Corrective Action Plan form provided by the inspector, including:
1. How the licensee intends to correct each deficiency;
 2. The date by which each deficiency shall be corrected; and
 3. What measures will be put in place to ensure that the deficiency does not recur.

(b) The department shall review and accept each CAP that:

1. Achieves compliance with RSA 143, RSA 143-A, He-P 2300;
2. Addresses all deficiencies and deficient practices as cited in the inspection report;
3. Prevents a new violation of RSA 143, RSA 143-A, He-P 2300, or Chapter 4 as a result of the implementation of the CAP, and
4. Specifies the date upon which the deficiencies will be corrected.

(c) The department shall verify the implementation of any CAP that has been accepted by:

1. Reviewing materials submitted by the licensee; or
2. Conducting a follow-up inspection;

(d) If the department finds the licensee to be out of compliance with the CAP by the specified completion date at the time of the next inspection, the department shall:

1. Revoke the license in accordance with Section 4.107 Term of License.

Adopt the following subsection in its entirety and amend subsections (a), (c)(6), (g) and (i) as follows:

He-P 2305.01 Inspections.

(a) For the purpose of determining compliance with this Chapter, the Department or its inspectors, or special agents designated for that purpose, shall have full power and authority at all times to enter and inspect every building, room or other place occupied or used for the production, storage, sale or distribution of food, and all utensils and appurtenances and records relating thereto, including shellfish tags, or other records pertaining to food supplies purchased and distributed by the food establishment. The applicant or licensee shall admit and allow any department representative at any time to enter and inspect the following:

(c) (1) *Delete*

(c) (4) *Delete*

(c)(6) Occupation of space after construction, renovations or structural alterations or a period of closure that exceeds 90 days; or

(g) Upon completion of the inspection, the Department shall provide a written or electronic copy of the inspection report. The inspection report shall contain:

(i) Except for Food Processing Plants, numerical scoring shall be on a 100 point scale, with:

- (1) A+ with a score of 95-100 with no critical item violations
- (2) A with a score of 90-100 and one or more critical item violations
- (3) B+ with a score of 85-89
- (4) B with a score of 80-84
- (5) C+ with a score of 75-79
- (6) C with a score of 70-74
- (7) F score below 70 is a failing score.
- (8) Scoring shall be assigned as Priority Items are valued at 5 points, Priority Foundation items are valued at 3 points and Core items shall be valued as 1 point. The value of the inspection categories shall be that of the highest point item in that category.

Adopt and amend subsection to read as follows:

He-P 2308.02 Basic Requirements.

- b (2) A residential model sanitizing dish machine and a one compartment sink:

Adopt the following subsection in its entirety and amend to read as follows:

He-P 2309 Special Requirements for Food Processing Plants

- (a) Apply as “Processors,” Class E on the food service permit application and comply with the License, Application and Terms of License requirements;

Section 4.104 Temporary Events.

Food preparation and handling practices for food establishments are to be in compliance with this Chapter. Event Coordinators must submit completed application to the Department for approval no later than one month prior to the date of the event.

Section 4.105 License.

It shall be unlawful for any person or entity to operate a Food Service Establishment or Food Processing Plant within the City of Portsmouth without obtaining a valid food service license issued by the Department. Only a person or entity who complies with the requirements of this Chapter shall be entitled to receive and retain such a license. A food service license shall be posted in public view. Licenses are not transferable between entities or locations. Any change in ownership shall require a new food service license subject to the provisions of this Chapter.

Section 4.106 Application.

The Health Department may issue a food service license to any Food Service Establishment upon receipt of a written or electronic application. A food service license shall be granted upon the express condition that the Food Service Establishment complies with all the requirements of this Chapter, and the applicant agrees at all times to conduct their operation and maintain their facilities in accordance with the requirements of this Chapter and those Guidelines promulgated hereunder. The application procedure and issuance shall be in keeping with this Chapter and administrative policies of the Department, with the fees approved by City Council through its budgetary processes.

Section 4.107 Term of License.

Food service licenses shall be issued upon compliance with all of the provisions of this Chapter: All annual licenses expire September 30th. Seasonal licenses are valid from April 15 through October 15 of the calendar year. Temporary licenses are valid for the length of the event, not to exceed a period of 3 days.

Not an official copy