

ORDINANCE NO. 9861 (N.S.)

AN ORDINANCE AMENDING CHAPTER 1 - PREPARATION  
AND DISTRIBUTION OF FOOD - OF THE COUNTY CODE OF  
REGULATORY ORDINANCES  
RELATING TO THE CALIFORNIA RETAIL FOOD CODE

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

Section 1. Purpose: This ordinance updates the County Code with terminology and section changes found in the new California Retail Food Code. It also expands the definition of “limited food preparation” for purposes of categorizing restaurant facility permits found in Section 65.107 (a)(1).

Section 2. Chapter 1, Article 1 of the San Diego County Code of Regulatory Ordinances, related to definitions and general provisions, is hereby amended to read as follows:

**SEC. 61.100. DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL HEALTH  
TO ENFORCE THE CALIFORNIA RETAIL FOOD CODE.**

The Director of the Department of Environmental Health is hereby designated as the officer to enforce and is charged with the enforcement of that portion of the California Health and Safety Code, known as the California Retail Food Code, to include all of its provisions, articles, and definitions.

**SEC. 61.103. NUISANCE -- POWER OF DIRECTOR.**

Any food establishment or food facility which is found by the Director to be unsanitary or a menace to the public health or which is not in compliance with the requirements of the California Retail Food Code is declared to be a public nuisance. The Director is authorized and empowered to take such action as is necessary to abate the nuisance. In the event that immediate action is necessary to preserve or protect the public health or safety, the Director is authorized and empowered to summarily abate such nuisance by any reasonable means; otherwise, the Director shall inaugurate proceedings in accordance with Section 11.116, the Uniform Public Nuisance Abatement Procedure contained in Chapter 2, Division 6, Title 1 (commencing with Section 16.201) of this Code, or shall seek a court order abating the nuisance. Nothing contained in this Code shall be deemed to limit the right and duty of the Director to take immediate action in the interests of the public health, safety and welfare. The remedies authorized by this section are not exclusive, but are cumulative to other remedies provided by law.

Section 3. Chapter 1, Article 2 of the San Diego County Code of Regulatory Ordinances, is hereby amended to read as follows:

**SEC. 61.110. PERMIT REQUIRED.**

No person shall sell, offer for sale, barter, trade or give away any food or beverage and no person shall permit the same to be done, from any facility unless such facility has a valid food-facility permit, which permit has not been revoked or suspended.

**SEC. 61.111. APPLICATION FOR PERMIT -- FEE.**

The permit required by this Chapter shall be applied for and issued as prescribed in Title 6, Division 5 of this Code. The annual fee for the permit shall be as prescribed in said Division 5.

**SEC. 61.111.1.FACILITY.**

Facility means each individual site, premise, vehicle or vessel from which a Health-regulated business is conducted. Individual sites and premises which are contiguous and which are under one management shall be considered a single facility. Individual sites and premises which are in or about the grounds of a stadium, ball park, theater or other facility at which large groups of people congregate and which are under one management shall be considered a single facility.

**SEC. 61.111.2. FEES FOR UNLICENSED ACTIVITIES.**

(a) The County shall recover the cost of the Director's enforcement activities when they are not otherwise regulated by a permit as a health regulated business. The County shall also recover any reasonable costs that it may incur in connection with the collection of such fees.

(b) The fee shall be assessed when the Director has issued an official inspection report requiring correction of a condition found to exist.

**SEC. 61.112. FACILITY PLAN REVIEW.**

Every applicant for a permit or license required by this division shall, prior to obtaining a building permit, opening a new facility or upon remodeling an old facility, submit to the Director a plan of the proposed facility detailing all equipment, materials and facilities necessary to comply with the California Retail Food Code, whichever applies, and all applicable County Ordinances or regulations, accompanied by a fee as set forth in Title 6, Division 5, Section 65.107, par. (a), of this Code to cover the cost of said review. The Director shall review said plans and specifications and shall determine whether they are in accordance with the requirements of law. In the event that the plans and specifications do not comply with applicable provisions of law, amended plans and specifications may be submitted to the Director for re-review and approval, and the fee for such re-review shall be as set forth in Title 6, Division 5, Section 65.107, par. (a), of this Code, payable to the Director in advance.

**SEC. 61.113. APPEAL FROM DENIAL OF PERMIT.**

A person aggrieved by the denial to him of a permit may appeal from such denial to the Board of Supervisors in the manner set forth in Section 61.126.

**SEC. 61.114. GRANTING AND REVOCATION OF PERMIT -- CONDITION.**

A permit shall be granted only on the express condition that it is subject to revocation or suspension upon a showing satisfactory to the Director of the violation by the permittee, their employee, servant or agent, or any other person acting with their consent or under their authority, of any provision of this chapter, and all applicable state and federal laws and regulations.

**SEC. 61.115. SEPARATE PERMIT FOR EACH BUSINESS.**

A separate permit shall be required for each place of business, concession, or vehicle used by permittee.

**SEC. 61.119. SCORE 80 PERCENT -- ALPHABETICAL GRADE CARD.**

The Director, by regulation, may adopt a score card for the grading of a facility undergoing inspection. No permit shall be issued to any facility scoring less than 80 percent on the score card. Each facility shall maintain standards of sanitation and health sufficient to score 80 percent on the score card at all times. If upon inspection any facility shall fail to attain a score of 80 percent, due written notice shall be served on the applicant for the permit. The notice shall list the deficiencies and state that such deficiencies must be corrected within 30 days, at which time a reinspection will be made. A facility failing to comply with the written notice, or failing to attain a score of 80 percent on the reinspection, shall immediately close and remain closed until a score of at least 80 percent is achieved on a reinspection by the Department of Environmental Health.

The Director shall issue an alphabetical grade card to each restaurant inspected, which grade card shall be displayed at all times while the restaurant is open to the public. Restaurants scoring 90 percent or more on the score shall receive an "A" score card; those scoring 80 to 89.5 percent shall receive a "B" score card; those scoring below 80 percent shall receive a "C" score card.

**SEC. 61.120. PERMIT AND GRADE CARD TO BE POSTED.**

Every health permit and/or alphabetical grade card issued shall be kept posted in a conspicuous place in the facility for which the permit is issued. The Director shall prescribe the location in or on the facility where such permit shall be kept posted. Alphabetical grade cards shall be posted in the front window of the facility so as to be clearly visible to patrons entering the-facility, or in a display case mounted on the outside of the front door, or in a display case mounted on the outside front wall of the facility within five (5) feet of the front door, or in some other location clearly visible to patrons entering the facility which has been approved by the Director. The alphabetical grade card shall be protected from damage by weather conditions and shall not be defaced, marred, or camouflaged or hidden so as to prevent the general public from observing it.

**SEC. 61.122. SPECIAL PERMIT -- ISOLATED RURAL AREAS.**

In the isolated or rural districts where running water, electricity or other modern conveniences are not available, a special permit may be issued if in the opinion of the Director such is advisable and is consistent with the preservation of the public health and safety. All such special permits shall be revocable for any cause which affects the public health and safety.

**SEC. 61.123. SUSPENSION OR REVOCATION OF PERMIT.**

The Director or a designee of the Director shall order that a hearing be held, with himself or herself or the designee as hearing officer, to determine whether or not the health permit of an facility should be suspended or revoked whenever it appears to him, by reason of either citizen complaint or Department of Environmental Health investigation, that the permittee, their employee, servant or agent, or any person acting with their consent or under their authority, has or may have violated any provision of this division or any relevant requirement established or provided by law.

Any hearing pursuant to this section and any order of suspension or revocation resulting therefrom is supplemental to and shall not bar or foreclose subsequent proceedings against such person initiated pursuant to Sections 11.116 and 11.117 of this code.

**SEC. 61.124. NOTICE OF HEARING.**

Upon the determination that a hearing be held pursuant to Section 61.123, the Director shall provide substantially as follows:

"NOTICE OF HEARING"

TO: (name and address of permittee)

Notice is hereby given that on \_\_\_\_\_ the Director of the Department of Environmental Health of San Diego County (insert 'and of the City of \_\_\_\_\_', if appropriate) ordered that a hearing be held on (date and hour) at (place of hearing) to determine whether or not Health Permit No. \_\_\_\_\_ issued to you for the facility known as \_\_\_\_\_ should be suspended or revoked.

"The actions or inactions complained of are as follows:

(set forth actions or inactions and the dates of such, and the code sections, statutes, or regulations violated).

"Be prepared to present evidence and witnesses on your behalf at this hearing if you so desire. You may be represented by legal counsel. Your failure to appear will not prevent the issuance of an order of suspension or revocation should such order appear justified by the evidence presented."

Section 4. Chapter 1, Article 3 of the San Diego County Code of Regulatory Ordinances, related to definitions and general provisions, is hereby amended to read as follows:

**SEC. 61.143. RODENT OR VERMIN INFESTATION.**

The owner, operator or manager of every facility shall keep the premises free and rid of rats, mice, roaches, ants and other vermin and pests.

**SEC. 61.149. LIMITED FOOD PREPARATION.**

For the purposes of Section 65.107(a), limited food preparation includes:

1. Frozen ice cream, hot dogs, nonpotentially hazardous beverages and 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.
2. Alcoholic Beverage Control (ABC) license type 42 or 48 facilities that do not engage in the activities listed in 3.
3. Limited food preparation does not include slicing, chopping or grinding of raw potentially hazardous foods; reheating for hot holding; washing of foods; or cooking, baking, barbecuing, broiling, frying and grilling.

Section 5. Chapter 1, Article 5 of the San Diego County Code of Regulatory Ordinances, related to definitions and general provisions, is hereby amended to read as follows:

**SEC. 61.170. CERTIFICATION INSPECTION.**

The Director may require that each mobile food facility have an annual certification inspection at a location designated by the Department of Environmental Health. A certification sticker shall be provided once the operator has successfully passed inspection and submitted proof of an approved commissary. Notice of such inspection, when required, shall be provided with the permit renewal. Failure of the operator to have and pass an annual certification inspection during the designated time period, when required, is subject to a fee of up to 50% of the cost of the permit and immediate closure until a permit and certification sticker are obtained.

**SEC. 61.179.2. RESPONSIBILITY FOR VIOLATIONS.**

The owners, managers or operators of any mobile food facility are responsible for the violation of any provision of this Article by their servants, agents or employees.

Section 6. Chapter 1, Article 7 of the San Diego County Code of Regulatory Ordinances, related to definitions and general provisions, is hereby amended to read as follows:

**SEC. 61.191. APPLICATION OF ORDINANCES.**

The provisions of Division I, Title 6, of the San Diego County Code of Regulatory Ordinances and the California Retail Food Code Facilities relative to food handler training and the preparation and distribution of food apply to caterers and caterer operations.

**SEC. 61.192. HEALTH PERMITS AND FEES.**

Persons operating as caterers and catering equipment rental facilities are considered to be operating a health regulated facility and are subject to public health permit requirements as specified in Sec. 61.110 of this Code. Such persons shall pay the permit fees prescribed for restaurants in Section 65.107(a) of this Code and shall be subject to penalties for delinquent fee payment as set forth in Sections 65.104 and 65.105 of this Code.

**SEC. 61.194. POTENTIALLY HAZARDOUS FOODS.**

All potentially hazardous foods as defined in Sec. 113871 of the California Retail Food Code that are stored, held, transported or served by a caterer must be protected from contamination and kept at temperatures as required by California State law.

**SEC. 61.196. CATERING VEHICLES.**

No person or company shall operate or cause to be operated a catering vehicle without complying with the following:

- (a) Such person or company shall have a valid health permit as required in Sec. 61.192 of this Code.
- (b) Foods and food containers shall be carried in compartments with cleanable interior surfaces.
- (c) Vehicles shall be maintained in a clean condition.
- (d) Compartments used to carry foods shall be capable of maintaining potentially hazardous foods at or below 41 degrees Fahrenheit or at or above 135 degrees Fahrenheit.

**SEC. 61.197. CATERING EQUIPMENT RENTAL FACILITY.**

No person or company shall operate or cause to be operated a catering equipment rental facility without complying with the following:

- (a) All food service equipment shall be stored in a building that meets the requirements of California State law.
- (b) All food service equipment such as dishes, glasses, tableware, pots and pans shall be cleaned and sanitized by methods prescribed in the California Retail Food Code Facilities.

Section 7. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego.

Section 8. Operative Date. This Ordinance shall be operative on July 1, 2007.

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of May 16, 2007.