

CITY OF CONCORD

In the year of our Lord two thousand and twenty-four

AN ORDINANCE amending the CODE OF ORDINANCES, Title I, General Code, Chapter 13, Public Health, Article 13-5, Sanitary Food Code

The City of Concord ordains as follows:

SECTION I: Amend the CODE OF ORDINANCES, Title I, General Code, Chapter 13, Public Health, Article 13-5, Sanitary Food Code, as follows:

13-5-1 – Sanitary Food Code Adopted.

The **2022 FDA Food Code** [~~The Food Code, 2001 Recommendations of the United States Public Health Service/Food and Drug Administration, as published by the U.S. Department of Health and Human Services,~~] as amended by this Article is hereby adopted and, together with this Article, shall be known as the Sanitary Food Code of the City of Concord. The annexes of the **FDA Food Code** [~~are excluded from adoption under this Article except if and when necessary to complete the requirements of this Article under specific reference. The annexes may, however,~~] **may** be used separately as a reference to understand the intent of the Code.

13-5-2 – Administration and Enforcement.

The administration and enforcement of this Article shall be the duty of the **Health and Licensing Officer acting under the authority of the** Code Administrator, who is hereby authorized to take such action as may be reasonably necessary to enforce the provisions and purposes of this Article. The Code Administrator may appoint and authorize **designees** or such assistants and agents as may be necessary to carry out the provisions of this Article.

13-5-3 – Amendments to the [~~2001 U.S. Public Health Service/FDA Food Code~~] **2022 FDA Food Code**.

The following amendments are hereby made to the ~~2001 U.S. Public Health Service/FDA Food Code~~ **2022 FDA Food Code** as adopted by Section 13-5-1:

- (a) Amend subpart “1-201.10(B) Terms Defined” by deleting **the** definition of [(36)] “Food establishment” in its entirety and inserting in its place the following:
 - [(36)] “Food establishment” shall be interchangeable with the term “food service establishment” and shall mean any fixed or mobile restaurant, temporary food service establishment, cafeteria, coffee shop, cocktail lounge, catering kitchen, sidewalk

cafe, commissary, luncheonette, grill, short-order cafe, sandwich shop, soda fountain, ice cream shop, mobile ice cream truck, mobile lunch truck, tearoom, drive-in theatre, movie theatre, drive-in restaurant, night club, roadside stand, grocery store, meat market, bakery, warehouse, juice bar, industrial feeding establishment, wholesale ice or food processing plant, wholesale distributor, group daycare facility, service or fraternal clubs, liquor lounge, food vending operation (whether attended or unattended ***dispensing temperature control for safety foods***), ***homestead operation***, private, public or nonprofit organization or institution serving the public, or ***other establishments*** ~~[similar place]~~ in which food is prepared for sale, or any establishment where food is stored, manufactured, processed, or packaged, or any other eating or drinking establishment where food or drink is served or provided for the public with or without charge.

- (b) Amend subpart “1-201.10(B) Terms Defined” by deleting ***the*** definition of ~~[(37)]~~ “Food processing plant” in its entirety and inserting in its place the following:

~~[(37)]~~ “Food processing plant” means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to the consumer. ***Food processing plants under State or Federal monitoring shall not be required to maintain an additional City license.***

- (c) Amend subpart “1-201.10(B) Terms Defined” by deleting ***the*** definition of ~~[(55)]~~ “Permit” in its entirety and inserting in its place the following:

~~[(55)]~~ “Permit” shall be interchangeable with the term “license” and shall mean the document issued by the Code Administrator that authorizes a person to operate a food service establishment.

- (d) Amend subpart “1-201.10(B) Terms Defined” by deleting ***the*** definition of ~~[(73)]~~ “Regulatory Authority” in its entirety and inserting in its place the following:

~~[(73)]~~ “Regulatory authority” shall be interchangeable with and mean the Code Administrator of the City of Concord or the Code Administrator’s designee.

- (e) Amend subpart “1-201.10(B) Terms Defined” by deleting ***the*** definition of ~~[(95)]~~ “Temporary food establishment” in its entirety and inserting in its place the following:

~~[(95)]~~ “Temporary food establishment” shall be interchangeable with the term “temporary food service establishment” and shall mean a food service establishment which operates at a fixed location for a temporary period of time, not to exceed fourteen (14) days, in connection with a fair, carnival, circus, public exhibition, ***licensed special event***, or similar transitory gathering ***as permitted under relevant Zoning Ordinances.***

- (f) Amend subpart “1-201.10(B) Terms Defined” by inserting the following new definitions:

~~[(102)]~~ “Bed and breakfast establishment” means a type of lodging facility wherein a single-family dwelling is used to provide rooming units for transient lodging and which may provide limited food service for guests or lodgers. ***“Bed and breakfast” establishments are subject to the same licensing requirements as any other commercial enterprise serving food to the public.***

([103]) “Board,” as used for appeal and hearing purposes within this Article, shall mean the Board established under Title V, Administrative Code, Article 30-3, Boards and Commissions, Section 30-3-13, Licensing Board.

“Homestead Operation” means food products that are being offered, created or manufactured from one’s own residential kitchen with the intention of being sold.

(g) Amend subpart “2-103.11, Person in Charge” by adding a new paragraph (R) as follows:

(R) EMPLOYEES shall maintain at least once daily per cold-holding and hot-holding unit(s) a written record of temperatures, a written policy detailing how and when ice machine(s) are cleaned, and a standard operating procedure for management of fat, oil and/or grease laden waste when such is a byproduct of establishment operations

(h)[(g)] Amend subpart “3-201.11 Compliance with Food Law” by deleting paragraph (B) in its entirety and inserting in its place the following:

(B) Except when prepared in an approved and licensed ***commercial*** [home] facility ***within a home***, food prepared in a private home may not be used or offered for human consumption in a food service establishment.

(i) [(h)] Amend subpart “4-201.11 Equipment and Utensils” by adding a second sentence as follows:

All multi-use equipment and utensils shall meet or exceed the current National Sanitation Foundation or equivalent ***commercial*** standards.

~~[(i) Amend part “4-3 Numbers and Capacities” by adding a new subpart as follows:~~

~~“4-301.15 Mechanical Warewashing, Tableware.” Except when specifically waived by the Code Administrator, a mechanical warewashing machine shall be provided in all establishments utilizing tableware in service to the public, and all tableware other than single serve articles shall be cleaned after each use, using such machine(s).]~~

(j) Amend subpart “4-501.16 Warewashing Equipment, Use Limitation” by adding a new paragraph (C) as follows:

(C) A separate ***food preparation*** sink ***with appropriate air gap*** shall be required for the thawing, washing or preparation of produce and raw foods.

(k) Delete subpart “5-203.12 Toilets and Urinals” in its entirety and insert in its place the following:

“5-203.12 Toilets and Water Closets.” At least 1 toilet (water closet) shall be provided and no fewer than the number of toilets required by law and which conform with the plumbing code currently adopted by state and local laws and ordinances.

Seating Capacity	Number of Fixtures	
	Male	Female
1—50	1	1
51—150	2	2
151—300	3	4
Over 300 add one fixture each to male and female for each 200 additional seats.]		

- (l) Amend subpart “6-201.16 Wall and Ceiling Coverings and Coatings” by adding a second sentence at the end of paragraph (A) as follows:

All walls shall be easily cleanable, light in color, and covered with kalite, kemlite, formica, or other ***water resistant, non-porous*** material, ***easily cleanable*** surface or coating approved by the [Code Administrator] ***Health and Licensing Officer***.

- (m) Amend subpart “6-201.16 Wall and Ceiling Coverings and Coatings” by deleting paragraph (B) in its entirety.

- ~~(n) Amend subpart “6-401.10 Conveniently Located” by adding a second sentence as follows:~~

~~Except when approved by the Code Administrator and when employee access does not require passage through a customer dining area, employee handwashing lavatories shall satisfy the requirements of §§ 5-203.11 and 5-204.11 and shall be separate from customer restroom facilities.]~~

- (n[ø]) Amend subpart “6-401.10 Conveniently Located” by adding a second sentence as follows:

~~[Except when approved by the Code Administrator and when employee access does not require passage through a customer dining area, employee toilet rooms shall satisfy the requirements of § 5-203.12 and shall be separate from customer restroom facilities.]~~ ***A handwashing sink shall be conveniently and adjacently located the warewashing area, and to each food preparation station, or as deemed necessary by the Health and Licensing Officer.***

- (o[p]) Delete subpart “8-301.11.1 Prerequisite for Operation” in its entirety and insert in its place the following:

A person shall not operate a food service establishment without a valid license issued in accordance with Section 13-5-4 of this Article.

- (p[q]) Amend subpart “8-302.13 Qualifications and Responsibilities of Applicants” by deleting paragraph (D) in its entirety and inserting in its place the following:

Pay the applicable license fees in accordance with Section 13-5-5 of this Article.

(q[~~r~~]) Delete subpart “8-304.10 Responsibilities of the Regulatory Authority” including paragraphs (A) and (B) in their entirety and insert in its place the following:

“8-304.10 Code Acquisition” The licensee shall acquire and have on the premises at all times a copy of this Code, *or the ability to access this Code*.

13-5-4 - License.

It shall be unlawful for any person to operate a food service establishment within the City of Concord who does not possess a valid license issued by the Code Administration Department. Only a person who complies with the requirements of this Article shall be entitled to receive and retain such a license. A valid license shall be posted in every food service establishment. Licenses for temporary food service establishments shall be issued for a period of time not to exceed fourteen (14) days. ***Food establishments licensed outside the City of Concord shall be required to apply for a Temporary Food Service Establishment License.***

13-5-5 - Issuance of License and Fees.

Every applicant for a license to operate a *new* food service establishment shall ***submit plan review documentation and the plan review documentation fee listed in Schedule 1 of Chapter 1. After receipt of the plan review documentation, the Health and Licensing Officer shall conduct an inspection of the establishment. Upon completion of the inspection, the applicant shall submit a*** [make] written application for a license on forms provided by the Code Administration office ~~[. Upon receipt of an application]~~ and the license fee listed in Schedule I of Chapter 1 ~~[and after inspection,]~~. [t]The Code Enforcement Administrator shall issue a license to the applicant if the applicable requirements of this Article have been met. A license shall be renewable on the anniversary date of its issuance. The fee shall be payable to the City at the Code Administration office.

13-5-6 - Suspension of License.

A license may be suspended temporarily by the Code Administrator for failure of the holder to comply with the requirements of this Article. Whenever a licensee has failed to comply with any notice under the provisions of this Article, the licensee shall be notified in writing that the license is, upon service of the notice, immediately suspended and that upon written petition to the Board the licensee shall be afforded a hearing as soon as possible but not later than seven (7) days from receipt of such petition. Notwithstanding the other provisions of this Article, whenever the Code Administrator finds insanitary or other conditions in the operation of a food service establishment which is deemed to constitute a substantial hazard to the public health, the Code Administrator may issue a written notice to the licensee citing such condition, the corrective action to be taken, and specifying the time period within which such action shall be taken. If it is deemed necessary, the Code Administrator may order that the license be immediately suspended and all food service operations cease immediately therewith. Upon written petition to the Board, an operator shall be afforded a hearing as soon as possible but not later than seven (7) days from the receipt of such petition.

13-5-7 - Reinstatement of Suspended License.

Any person whose license has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the license. Within five (5) days following receipt of a written request, including a statement signed by the applicant alleging that the conditions causing suspension of the license have been corrected, the ~~[Code Administrator]~~ **Health and Licensing Officer** shall make a reinspection. If the applicant is complying with the requirements of this Article, the license shall be reinstated.

13-5-8 - Revocation of License.

For serious or repeated violations of any of the requirements of this Article, or for interference with the ~~[Code Administrator]~~ **Health and Licensing Officer** in the performance of duties imposed by this Article, the license may be permanently revoked after an opportunity has been provided for a hearing by the Board. Prior to such action, the ~~[Code Administrator]~~ **Health and Licensing Officer** shall notify the licensee in writing, stating the reasons for which the license is subject to revocation and advising that the license shall be permanently revoked at the end of five (5) days following service of such notice, unless a request for a hearing is filed with the Board by the licensee within such five-day period. A license may be suspended for cause pending its revocation or a hearing relative thereto.

13-5-9 - Hearing.

The hearings provided for in this Section shall be conducted by the Board at a time and place designated by the Board. Based upon the record of such hearing, the Board shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the licensee by the Board.

13-5-10 - Inspection Records~~[; Demerit Values; Demerit Scores]~~.

~~[Whenever the Code Administrator makes an]~~ **At every routine food safety** inspection of a food service establishment, a record of the findings shall be made on an inspection report form developed by the ~~[Code Administrator]~~ **Health and Licensing Officer**, which ~~[form]~~ shall summarize the requirements of the Sanitary Food Code of the City of Concord ~~[and shall set forth demerit point values for each requirement]~~. Upon completion of an inspection, the ~~[Code Administrator]~~ **Health and Licensing Officer** shall ~~[total the demerit point values for all requirements in violation, said total becoming the demerit score for the establishment, and shall furnish the original report to the licensee]~~ **review the violations noted during the inspection with the "Person In Charge" at the establishment at the time of inspection. A copy of the inspection report shall be made available to the "Person In Charge" at the conclusion of this review.**

13-5-11 - Issuance of Notices.

Whenever the ~~[Code Administrator]~~ **Health and Licensing Officer** makes an inspection of a food service establishment and discovers that any of the requirements of the Sanitary Food Code of the City of Concord have been violated, the ~~[Code Administrator]~~ **Health and Licensing Officer** shall notify the licensee of such violations by means of an inspection report form or other written notice. In such notification, the ~~[Code Administrator]~~ **Health and Licensing Officer** shall:

- (a) Set forth the specific violations found, ~~[together with the demerit score of the establishment]~~ **noting specifically those violations known in the FDA Food Code as “priority item,” “priority foundation item” or “core item” violations.**
- (b) Establish a specific and reasonable period of time for the correction of the violations found, in accordance with the following provisions:
 - (1) ~~[When the demerit score of the establishment is less than twenty (20), all] violations of two (2) or four (4) demerit points must by the time of the next routine inspection; or]~~ **A “core item” violation shall be corrected within 90 days after the inspection, unless an extended timeline is authorized by the Health and Licensing Officer.**
 - (2) ~~[When the demerit score of the establishment is twenty (20) or more but less than forty (40), all items of two (2) or four (4) demerit points must be corrected within a period of time not to exceed ten (10) calendar days; or]~~ **A “priority foundation item” violation shall be corrected within 10 calendar days after the inspection, unless an extended timeline is authorized by the Health and Licensing Officer.**
 - (3) ~~[When one or more six demerit point items are in violation regardless of demerit score, such item must be corrected within a period of time not to exceed seven (7) calendar days.]~~ **A violation of a “priority item” must be corrected within a period of time not to exceed seventy-two hours, unless an extended timeline is authorized by the Health and Licensing Officer.**
 - (4) ~~[When the demerit score of the establishment is forty (40) or more, the]~~ **A license may be immediately suspended by order of the Code Administrator or Health and Licensing Officer when there is an “imminent health hazard” as defined by the 2022 FDA Food Code. The license may be reinstated upon verification of correction of the violations noted by the inspector.**
 - (5) In the case of temporary food service establishments, violations must be corrected within a specific period of time not to exceed twenty-four (24) hours. Failure to comply with such notice shall result in immediate suspension of the license.

13-5-12 - Service of Notices.

Notices provided ~~[for]~~ under this Section shall be deemed to have been properly served when ~~[the original of]~~ the inspection report ~~[form]~~ or other notice has been delivered personally to the licensee or person in charge or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the licensee **or sent by electronic mail**

upon written confirmation of acceptance and receipt of the notice by the licensee or “Person in Charge.” A copy of such notice shall be filed with the records of the Code Administrator.

13-5-13 - Food from Food Service Establishments Outside the Jurisdiction of the City of Concord.

Food from food service establishments outside the jurisdiction of the City of Concord may be sold within the City of Concord if such food service establishment conforms to the provisions of this Article or to substantially equivalent provisions. To determine the extent of compliance with the provisions of this Article, the Code Administrator may accept evidence from responsible authorities in other jurisdictions where such food service establishments are located.

13-5-14 - Extermination (***Pest Control***) on a Regular Basis.

All food service establishments operating within the jurisdiction of the City of Concord, ***with the exception of vending machines or Temporary Food Licenses at the discretion of the Health Officer,*** must employ a licensed and registered ***pest control*** ~~[extermination]~~ service on a monthly basis or as otherwise directed by the ~~[Code Administrator]~~ ***Health and Licensing Officer*** in order to prevent and control problems associated with insect and rodent infestations.

13-5-15 - Garbage and Rubbish Receptacles to be Provided.

The owner or landlord of any premises where garbage or rubbish is generated shall provide for the storage and removal of same in a manner acceptable to the Code Administrator. Containers shall be noncorrosive, nonabsorbent, and leakproof and shall be adequate in size and number to store all such materials until removed. Containers shall be tightly covered, washed and disinfected frequently, and located so as to prevent odors, insect or rodent infestations, or other nuisances to adjoining properties.

13-5-16 - Homestead Operations

All homestead operations shall be required to possess a valid license issued by the Code Administration office, and shall be required to comply with all applicable rules and regulations which are promulgated by the Health and Licensing Officer in accordance with Section 15-10-4.

13-5-~~17~~~~16~~ - Code Conflicts.

Whenever a conflict results between this Article and the referenced U.S. Food Code, the Amendments and requirements of this Article shall prevail.

SECTION II: This ordinance shall take effect on adoption.

Explanation: Matter removed from the current ordinance appears in [brackets and ~~struck through~~].
Matter inserted into the current ordinances appears in ***bold and italics***.