

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 4, Article I – **FOOD LICENSING AND REGULATIONS**, Section 4.101 – **Adoption of the FDA 2009 2022 Food Code**, Section 4.102 – **Amendments, Additions and Deletions to Food Code**, Section 4.103 – **Adoption of Specific Parts He-P 2300, as amended**, and Section 4.107 – **Term of License**, of the Ordinances of the City of Portsmouth be amended as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

## **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 **and the Health Department** of the City of Portsmouth, New Hampshire being marked and designated as the Food Code, 2009 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.<sup>1</sup>

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

<sup>1</sup>For a copy of the FDA Food Code, **2009 2022** go to  
<https://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm2019396.htm>.**foodcode2009**  
<https://www.fda.gov/food/fda-food-code/food-code-2022>

### **Section 4.102: Amendments, Additions and Deletions to Food Code**

1-201.10 Food Establishment.

(2) ~~(B)~~**(b)** These facilities must be in compliance with Portsmouth Health Department’s Guidelines.

**Add 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:~~

~~4-302.13 — Temperature Measuring Devices, Manual Warewashing.~~

~~(B) — In hot water mechanical **WAREWASHING** operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the **UTENSIL** surface temperature.~~

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, **and or** drawing potable water, wash produce, or thaw foods.

Annex **2009 2022**, Annex 1, Section 8-905.10 through 8-908.20 and replace with the following:

Section 8-905.10 FOOD LICENSING BOARD OF APPEALS

#### 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 **2009 2022** FDA Food Code as adopted in this Chapter. The Board may hear and decide appeals from the denial, suspension or revocation or a Food License but shall have no authority to waive requirements of the **2009 2022** FDA Food Code as adopted in this Chapter.

#### SECTION 8.905.15 PROCEDURE FOR HEARING AND DECISION

Add the following as first paragraph of subsection:

Annex **2009 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) “Bulk food”~~
- (g)(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 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.

**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 30<sup>th</sup>. 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.**

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

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Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

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Kelli L. Barnaby, City Clerk