

**TOWNSHIP OF HAMILTON
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE

No. **21-059**

1ST READING October 19, 2021

DATE TO MAYOR _____

2ND READING & PUBLIC HEARING Nov 8, 2021

DATE RESUBMITTED TO COUNCIL _____

WITHDRAWN _____ LOST _____

DATE EFFECTIVE _____

APPROVED AS TO FORM AND LEGALITY

FACTUAL CONTENTS CERTIFIED TO BY

TOWNSHIP ATTORNEY

TITLE

ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE TOWNSHIP OF HAMILTON, NEW JERSEY, PART II, GENERAL LEGISLATION, CHAPTER 235, FOOD AND FOOD ESTABLISHMENTS

Be It Ordained by the Council of the Township of Hamilton, in the County of Mercer and State of New Jersey, that the *Code of the Township of Hamilton, New Jersey, Part II, General Legislation, Chapter 235, Food and Food Establishments*, as amended and supplemented, be further amended and supplemented as follows:

Chapter 235

FOOD AND FOOD ESTABLISHMENTS

[Article I. Packaging and Labeling of Meat]

[§ 235-1. Findings.]

[It is found by the Township Council that prepackaged fresh-cut meats offered for sale by food dealers and retail food establishments in the Township are often contained within partially transparent sealed wrapping or are shingled or layered when packaged, making the condition and contents thereof not fully and wholly visible to the consumer because of the shingling or layering of meats and the insertion of a cardboard or opaque substance on one or more sides of such transparent packaging.]

§ 235-[2]1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CONDITIONALLY SATISFACTORY EVALUATION

At the time of inspection, the retail food establishment was found not to be operating in substantial compliance with N.J.A.C. 8:24 and was in violation of one or more provisions of N.J.A.C. 8:24.

COTTAGE FOOD OPERATOR

A person who holds a New Jersey Department of Health Cottage Food Operator Permit.

COTTAGE FOOD PRODUCT

Non-TCS food that a cottage food operator prepares in the private kitchen of the operator's residence and at no other location. This product is prepared in a private kitchen that is not inspected by the New Jersey Department of Health or Hamilton Township Division of Health.

EXPLANATION: Matter underlined thus in this legislation is new matter.
Matter contained in brackets [thus] is to be omitted from the law.

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FOOD

Means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

FOOD DEALER

Every person and his agents or employees engaged in the business of selling, offering or exposing for sale food at retail for human consumption either on or off the premises where sold.

HEALTH AUTHORITY

The duly licensed agent of the local board of health and/or State Department of Health to act in the enforcement of its ordinances and sanitary laws of the State.

MOBILE RETAIL FOOD ESTABLISHMENT

Any movable restaurant, truck, van, trailer, cart, bicycle, watercraft, or other movable unit including hand carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations.

POTENTIALLY HAZARDOUS FOOD (PHF)

A food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of *Clostridium botulinum*; or in shell eggs, the growth of *Salmonella enteritidis*.

*"Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified under the first paragraph of this definition. *

REFRIGERATED VEHICLE

A vehicle that is designed to carry perishable cargo at low temperatures to completely safeguard the products contained in it to the fullest extent possible.

RETAIL FOOD ESTABLISHMENT

An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

1. Such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and
2. That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.
3. An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the health authority; or
4. An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

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SATISFACTORY EVALUATION

The retail food establishment is found to be operating in substantial compliance with N.J.A.C. 8:24 and food service personnel have demonstrated that they are aware of and are practicing sanitation and food safety principles as outlined in N.J.A.C. 8:24.

TCS FOOD (Time/Temperature Control for Safety)

A food that requires time and /or temperature control for safety to limit pathogenic microorganism growth or toxin formation.

TEMPERORY RETAIL FOOD ESTABLISHMENT

A retail food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

UNSATISFACTORY EVALUATION

The retail food establishment is operating with one or more violations that constitutes gross unsanitary or unsafe conditions, which pose an imminent health hazard.

VENDING MACHINE

A self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

§ 235-2. Vehicles used in transportation of food.

All potentially hazardous foods shall remain under refrigeration or frozen during transport until the time of sale or delivery. Refrigerated or frozen, potentially hazardous food shall be maintained at temperatures as specified in N.J.A.C. 8:24-3.2(f) and N.J.A.C. 8:24-3.5(a). Potentially hazardous food that is cooked to safe cooking temperatures, and received hot shall be at a temperature of 135°F or above.

[§ 235-3. Transparent packaging required; exceptions.]

[It shall be unlawful for any food dealer in the Township to sell or offer or expose for sale at retail any sealed, prepackaged, unprocessed or untreated fresh-cut meat, cut or packaged on the premises, unless the packaging is colorless and transparent on both sides, exclusive of labeling, which labeling shall not occupy more than 10% of one side of the package, or which fresh-cut meat is layered or shingled making the contents of the package not wholly visible. This article shall not apply to frozen meat or meat commonly designated or known as chopped meat, ground meat, fowl, sausage or frankfurters.]

Article [II]]. Retail Food Establishments and Vending Machines

§ 235-[4]3. License required; expiration of license; posting of license and [inspection report] inspection evaluation placard.

No person shall operate a retail food establishment as defined in Title 8, Chapter 24, of the State Sanitary Code, entitled "Sanitation in Retail Food Establishments and Food and Beverage Vending Machines," without first having obtained a license from the Township and paid the required license fee. The term of the license shall be for a period of one year, with all licenses to expire on December 31. Each license shall apply only to the person to whom it was issued, and no license shall be transferable to another person. Every license and the most recent inspection evaluation placard shall be posted in a prominent, readily visible location near the licensed establishment's main entrance. A license shall be surrendered upon closure of the business for which it was issued.

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§ 235-~~5~~4. Investigation of applicant.

In addition to the requirements contained in § 235-~~4~~3, each application for a license under this article shall be investigated reviewed by the Health Officer[, who shall report his findings in writing to the Director of Health, Recreation, Senior and Veterans Services within a reasonable time. No license shall be issued unless the Health Officer reports that the applicant conforms to all provisions of Chapter 24 of the State Sanitary Code.] and/or their designee/appointee. The Health Officer and/or their designee/appointee retains the right to request additional documentation from the applicant.

§ 235-~~6~~5. License classes; fee.

A. License classes. (Based on risk type classifications per N.J.A.C. 8:24.)

(1) There shall exist six classes of license under this article according to the following schedule:

(a) Risk Type 1.

1. Serves or sells only prepackaged, non-potentially hazardous foods;
2. Prepares only non-potentially hazardous foods; or
3. Heats only commercially processed potentially hazardous foods for hot holding and do not cool potentially hazardous foods.
4. Such retail food establishments may include, but not be limited to, convenience store operations, hot dog carts, and coffee shops.

(b) Risk Type 2.

1. Prepares, cooks, and serves most products immediately;
2. Exercises hot and cold holding of potentially hazardous foods after preparation or cooking; or
3. Limits the complex preparation of potentially hazardous foods, including the cooking, cooling, and reheating for hot holding, to two or fewer items.
4. Such retail food establishments may include, but not be limited to, retail food store operations, schools that do not serve a highly susceptible population, and quick service operations, depending on the menu and preparation procedures.

(c) Risk Type 3.

1. Has an extensive menu which requires the handling of raw ingredients, and is involved in the complex preparation of menu items that includes the cooking, cooling, and reheating of at least three or more potentially hazardous foods; or
2. Prepares and serves potentially hazardous foods, including the extensive handling of raw ingredients, and whose primary service population is a highly susceptible population.

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3. Such establishments may include, but not be limited to, full service restaurants, diners, commissaries, and catering operations; or hospitals, nursing homes, and preschools preparing and serving potentially hazardous foods.
- (d) Risk Type 4.
1. A retail food establishment that conducts specialized processes such as smoking, curing, canning, bottling, acidification designed to control pathogen proliferation, or any reduced oxygen packaging intended for extended shelf-life where such activities may require the assistance of a trained food technologist.
 2. Such establishments include those conducting specialized processing at retail.
 3. Note: Some retail food establishments will be classified as a Risk Type 3 and 4 because of food processing done on site. (Retail food establishments that prepare sushi on site will fall into both risk types due to the [acidification] process used when preparing sushi rice.)
- (e) Temporary retail food establishment. [A retail food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.]
- (f) Vending machine. [A self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.]
- (2) The definition of each of the establishments mentioned in Subsection **A(1)** of this section shall be the same as those in § 550-7 or as applied in common usage.
- B. Fee schedule. The fees under this article for the license classes described in this section shall be as set forth in Chapter 215, Fees, of the Township Code.
- C. Exemption. The following applicants shall be exempt from the payment of fees for the licenses described in this section: any corporation or association organized and operated for religious, charitable, literary, recreational or educational purposes and which has a properly issued tax immunity certificate from the Director of the Division of Taxation of the state. In lieu of a tax immunity certificate, the corporation or association may provide the Township with an affidavit of its president or duly authorized official stating that the corporation or association is organized and operated for religious, charitable, literary, recreational or educational purposes.
- D. Late fee schedule. Any licensee who fails to renew a license shall be required to pay a late fee as set forth in Chapter 215, Fees, of the Township Code, for each 30 days the renewal is late. The license renewal and applicable fee are due by January 31 of each year.

§ 235-[7]6. Suspension or revocation of license.

In addition to the grounds for revocation set forth in § 285-10, any license issued under this article may be suspended or revoked for failure to comply with any provision of Chapter 24 of the State Sanitary Code.

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§ 235-[8]7. Re-inspection of food establishments receiving conditionally satisfactory or unsatisfactory [rating] evaluation.

- A. The re-inspection fees for retail food establishments that receive a conditionally satisfactory or unsatisfactory rating, as defined in N.J.A.C. 8:24-8.11, are set forth in Chapter 215, Fees, of the Township Code.
- B. Fee shall be paid prior to re-inspection to determine if the cause for the "conditionally satisfactory" or "unsatisfactory", as defined by N.J.A.C. 8:24-8.11, has been abated.

§ 235-8. Review of plans for submission and approval.

- A. Owner or operator of a retail food establishment shall submit to the Division of Health properly prepared plans, specifications, application and fee for review and approval before:
 - (1) The construction of a retail food establishment;
 - (2) The conversion of an existing structure for use as a retail food establishment; or
 - (3) Change of use or the remodeling of a retail food establishment.
- B. Whenever plans and specifications are required by the Division of Health to be submitted, the Division of Health shall inspect the retail food establishment prior to the start of operations to determine compliance with the requirements set forth in N.J.A.C. 8:24.

Article II. Cottage Food Operator.

§ 235-9. Requirements.

- A. A person or entity that engages in the production, distribution, and/or sale of food products in the private kitchen of the operator's residence shall:
 - (1) If you live in an apartment, condominium, townhome, or other residence where there are bylaws or other regulations that restrict the production of cottage food items in accordance to applicable N.J.A.C. 8:24 regulations, you shall obtain written approval from the management or association to operate as a cottage food operator from your residence;
 - (2) Register the business on the Hamilton Township Business registry as defined in the Township of Hamilton Ordinance Chapter 150 "Businesses and Nonprofit Corporations, Registration of";
 - (3) Obtain a Cottage Food Operator Permit from the New Jersey Department of Health;
 - (4) Comply with N.J.A.C. 8:24-11 "COTTAGE FOOD OPERATOR PERMIT" and local ordinances.
- B. Provide Cottage Food Operator Permit and other documentation to the Health Officer and/or the health officer's designee/appointee upon request.

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C. Shall obtain a temporary retail food license from the Hamilton Township Division of Health at a farmer's market, farm stand or other temporary event within the Township where the operator wishes to sell food items.

(1) The operator shall display the cottage food permit, temporary retail food license and a placard stating: "This food is prepared pursuant to N.J.A.C. 8:24-11 in a home kitchen that has not been inspected by the Department of Health."

Any Ordinance or Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

PRESIDENT

MUNICIPAL CLERK

RECORD OF VOTE													
First Reading							Second Reading						
COUNCIL	AYE	NAY	NV	AB	ORD	SEC	COUNCIL	AYE	NAY	NV	AB	ORD	SEC
ANTHONY P. CARABELLI, JR.	✓	✓					ANTHONY P. CARABELLI, JR.						
RICHARD L. TIGHE, JR.	✓	✓				✓	RICHARD L. TIGHE, JR.						
CHARLES F. WHALEN	✓	✓			✓		CHARLES F. WHALEN						
NANCY PHILLIPS	✓	✓					NANCY PHILLIPS						
PASQUALE "PAT" PAPERIO, JR.	✓	✓					PASQUALE "PAT" PAPERIO, JR.						

X - Indicates Vote A.B. - Absent N.V. - Not Voting RES. - Moved SEC. - Seconded

REJECTED _____

JEFFREY S. MARTIN, MAYOR

DATE

APPROVED _____

RECONSIDERED BY COUNCIL _____ OVERRIDE VOTE AYE _____ NAY _____

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EXPLANATION: Matter underlined thus in this legislation is new matter.
Matter contained in brackets [thus] is to be omitted from the law.