

**CHAPTER 55. FOOD SERVICE ESTABLISHMENTS**

**[HISTORY: Adopted by the Town of Derry 5-15-1982; amended in its entirety 4-20-2004. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**

Alcoholic beverages — See Ch. [12](#).

**§ 55-1. Adoption of sanitary food code.**

In conjunction with the regulations contained herein, the Town of Derry hereby adopts by reference the New Hampshire Rules for the Sanitary Production and Distribution of Food, He-P 2300, and any subsequent amendments thereto, so as to regulate food service establishments operating within its jurisdiction.

**§ 55-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**BOARD OF HEALTH**

The Council of the Town of Derry, New Hampshire, and the Health Officer, in accordance with RSA 128:3.

**FOOD SERVICE ESTABLISHMENT**

Shall include all such establishments defined as such in the New Hampshire Rules for the Sanitary Production and Distribution of Food, He-P 2300.

**HEALTH AUTHORITY**

The Health Officer of the Town of Derry, New Hampshire, or his designated representatives, whose appointments shall be under the jurisdiction of RSA 128:1. He shall have police powers and sheriff's powers as designated in RSA 147-4 and RSA 147-5.

**SANITARY FOOD CODE**

The New Hampshire Rules for the Sanitary Production and Distribution of Food, He-P 2300, and any amendments thereto.

**§ 55-3. Permit procedure.**

It shall be unlawful for any person to operate a food service establishment within the Town of Derry, New Hampshire, or its police jurisdiction, who does not possess a valid permit issued to him by the Health Authority. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in every food service establishment. Permits for temporary food service establishments shall be issued for a period or time not to exceed 14 days.

A. Issuance of permits and fees. Any person desiring to operate a food service establishment shall make written application for a permit on forms provided by the Health Authority. Upon receipt of such an application and the designated license fee, and after inspection reveals that the application requirements of this chapter have been met, a permit shall be issued to the applicant by the Health Authority. Licenses expire on the 31st day of March each year and must be renewed annually. The fees shall be payable to the Town of Derry Health Department and shall be designated as follows:

<b>CLASSIFICATION OF FOOD ESTABLISHMENT/PERMIT FEES</b>		
<b>Type</b>	<b>Description</b>	<b>Fee</b>
Type I:	Restaurants/Cafeterias with seating capacity of 75 persons or more; supermarkets; hospitals; etc.	\$285

Type II:	Restaurants/Cafeterias with seating capacity of 25 to 74 persons; bakeries; warehouses; flea markets; nursing homes; distributors; grocery markets w/food preparation areas	\$174
Type III:	Grocery markets selling only prepackaged foods; cafeterias; food service establishments having a seating capacity of less than 25 persons; liquor lounges; bars; clubs; day-care facilities; seasonal produce stands	\$117
Type IV:	Temporary food establishments (not to exceed 14 days); mobile food units; flea market vendors; home food manufacture	\$48
Type V:	Nonprofit organizations not holding a liquor permit and not serving meals on a daily basis; public and parochial schools and institutions; government facilities	-0-
	Late renewal fee	\$20*

**\*\*NOTE:** Permits shall be suspended if annual renewals become more than five days overdue.

B. Suspension of permits. Permits may be suspended temporarily by the Health Authority for failure of the holder to comply with the requirements of this chapter.

(1) Whenever a permit holder or operator has failed to comply with any notice under the provisions of this chapter, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Health Authority by the permit holder.

(2) Notwithstanding the other provisions of this chapter, whenever the Health Authority finds unsanitary or other conditions in the operations of a food service establishment which, in his judgment, constitute a substantial hazard to the public health, he may issue a written notice to the permit holder or operator citing such condition, the corrective action to be taken, and specifying the time period within which such actions shall be taken. If it is deemed necessary, the Health Authority may order that the permit be immediately suspended, and all food service operations will be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the Health Authority shall be afforded a hearing as soon as possible.

C. Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for reinspection for the purpose of reinstatement of the permit. Within five days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the Health authority shall make a reinspection. If the applicant is complying with the requirements of this chapter, the permit shall be reinstated.

D. Revocation of permits. For serious or repeated violations of any of the requirements of this chapter, or for interference with the Health Authority in the performance of his duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Health

Authority. Prior to such action, the Health Authority shall notify the permit holder in writing stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five days following service of such notice, unless a request for a hearing is filed with the Health Authority, by the permit holder, within such five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

E. Hearing. The hearings provided for in this section shall be conducted by the Board of Health at a time and place designated by it. Based upon the record of such hearing, the Board of Health 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 permit holder by the Board of Health.

#### **§ 55-4. Inspections.**

At least once every six months, the Derry Health Authority shall inspect each food service establishment located in the Town of Derry, with police jurisdiction, and shall make as many additional inspections and reinspections as are necessary for the enforcement of this chapter.

A. Access to establishments. The Health Authority, after proper identification, shall be permitted to enter at any reasonable time any food service establishments within the Town of Derry, with police jurisdiction, for the purpose of making inspections to determine compliance with this chapter. He shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

B. Inspection records. Whenever the Health Authority makes an inspection of a food service establishment, he shall record his findings on an inspection report form provided for this purpose, and shall furnish the original of such inspection report form to the permit holder or operator. Such form shall summarize the requirements of the New Hampshire Rules for the Sanitary Production and Distribution of Food and shall set forth demerit point values for each such requirement.

C. Issuance of notices. Whenever the Health Authority makes an inspection of a food service establishment and discovers that any of the requirements of the New Hampshire Rules for the Sanitary Production and Distribution of Food have been violated, he shall notify the permit holder or operator of such violation by means of an inspection report form or other written notice.

(1) In such notification, the Health Authority shall:

(a) Set forth the specific violations found together with the demerit score of the establishment.

(b) Establish a specific and reasonable period of time for the correction of the violations found.

(2) In the case of a temporary food service establishment, the violations must be corrected within a specified period of time, not to exceed 24 hours. Failure to comply with such notice shall result in immediate suspension of the permit.

D. Service of notices. Notices provided 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 permit holder 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 permit holder. A copy of such notice shall be filed with the records of the Health Authority. Nothing herein shall preclude a suspension of license and temporary closing of violators as set forth in § 55-2B of these regulations

#### **§ 55-5. Establishments from outside jurisdiction of health authority.**

Food from food service establishments outside the jurisdiction of the Health Authority of the Town of Derry may be sold within the Town of Derry if such food service establishments conform to the

provisions of this chapter or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Health Authority may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

**§ 55-6. Plan review of future construction.**

When a food service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food service establishment, prepared plans and specifications for such construction, remodeling, or alteration, showing the layout, arrangement and construction materials of work areas, and the location, size, and type of fixed equipment and facilities, shall be submitted to the Health Authority for approval before such work is begun. No building permit shall be issued by the Building Inspector until such approval has been given by the Health Authority.

**§ 55-7. Violations and penalties.**

Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$275. Each day which such a violation occurs shall constitute a separate violation.