

Chapter 55

FOOD SERVICE ESTABLISHMENTS

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[HISTORY: Adopted by the Town of Derry 5-4-2010.¹ Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 12.

§ 55-1. Adoption of sanitary food code; amendments.

- A. 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. Where there is a conflict between this chapter and He-P 2300, this chapter shall govern.
- B. The following sections of He-P 2300 shall be amended: He-P 2302.02 through section He-P 2302.06, He-P 2302.09, He-P 2302.21 and He-P 2302.23 shall be replaced with § 55-3. Section He-P 2302.17 shall be replaced with § 55-6, Sections He-P 2302.26(f), He-P 2302.30, He-P 2302.32 and He-P 2350 (cold storage facilities) shall be deleted.
- C. Wherever there is a reference to "Commissioner" in He-P 2300, it is replaced and inserted is "Health Authority of the Town of Derry."
- D. Wherever there is a reference to "Department" in He-P 2300, it is replaced and inserted is the "Derry Public Health Department."

§ 55-2. Definitions.

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

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

1. Editor's Note: This legislation also superseded former Ch. 55, Food Service Establishments, adopted 5-15-1982, amended in its entirety 4-20-2004.

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. It shall also include those establishments that offer for sale packaged non-potentially hazardous food to the public.

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 — Except as amended under § 55-1, the New Hampshire Rules for the Sanitary Production and Distribution of Food, He-P 2300, and any amendments thereto.

§ 55-3. License procedure.

It shall be unlawful for any person to operate a food service establishment within the Town of Derry, New Hampshire, who does not possess a valid license 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 license. Licenses shall not be transferable from one person to another person or place. A valid license shall be conspicuously posted in every food service establishment. Licenses for temporary food service establishments shall be issued for a period of time not to exceed 14 days.

A. Issuance of licenses and fees. Any person desiring to operate a food service establishment shall make written application for a license on forms provided by the Health Authority. Upon receipt of such an application and the designated license fee, and after inspection reveals that the requirements of this chapter have been met, a license 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 and shall be designated as follows:

CLASSIFICATION OF FOOD ESTABLISHMENT/LICENSE FEES

Type	Description	Fee
Type I:	Restaurants/Cafeterias with seating capacity of 75 persons or more; supermarkets; hospitals	\$350
Type II:	Restaurants/Cafeterias with seating capacity of 25 to 74 persons; bakeries; warehouses; flea markets; nursing homes; distributors; grocery markets with food preparation areas	\$215
Type III:	Establishments selling only prepackaged foods; cafeterias and food service establishments having a seating capacity of less than 25 persons; liquor lounges; bars; clubs; day-care facilities; seasonal produce stands; mobile food units that offer potentially hazardous food	\$145

CLASSIFICATION OF FOOD ESTABLISHMENT/LICENSE FEES

Type	Description	Fee
Type IV:	Temporary food establishments (not to exceed 14 days); flea market vendors; home food manufacture; vending machines, theater concessions and mobile units that offer non-potentially hazardous food	\$60
Type V:	Nonprofit organizations not holding a liquor license, including soup kitchens and senior meals; public and parochial schools and institutions; government facilities	-0-
	Late renewal fee	\$20

NOTE: Licenses shall be subject to suspension if annual renewals become more than five days overdue.

- B. Suspension of licenses. Licenses may be suspended temporarily by the Health Authority for failure of the holder to comply with the requirements of this chapter.
- (1) Whenever a license holder or operator has failed to comply with any notice under the provisions of this chapter, the license holder or operator shall be notified in writing that the license is, upon service of the notice, immediately suspended and will be granted a hearing before the Board of Health, provided that the licensee requests a hearing in writing within 10 days of the service of the notice.
 - (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 license 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 license be immediately suspended, and all food service operations shall be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the Board of Health shall be afforded a hearing before the Board of Health as soon as possible but no later than 20 days from receipt of the petition.
- C. Reinstatement of suspended licenses. Any person whose license has been suspended may, at any time, request a reinspection for the purpose of reinstatement of the license. 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 license have been corrected, the Health Authority shall make a reinspection. If the applicant is complying with the requirements of this chapter, the license shall be reinstated.
- D. Revocation of licenses. 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 license may be permanently revoked after an opportunity for a hearing has been provided by the Board of Health. Prior to such action, the Health Authority shall notify the license holder 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 10

days following service of such notice, unless a request for a hearing is filed with the Board of Health, by the license holder, within such ten-day period. Failure to file within this time limit shall be a waiver of the license holder's right to a hearing before the Board of Health. A license 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 license 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 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 establishment within the Town of Derry 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 license 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 this chapter or the New Hampshire Rules for the Sanitary Production and Distribution of Food have been violated, he shall notify the license 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 license.

- 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 license 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 license 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 § 55-3B of this chapter.

§ 55-5. Establishments 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 no later than 15 days before such work is begun. A detailed description of all special operations, including but not limited to salad bars, catering, vacuum packaging or service to highly susceptible populations shall also be provided. No building permit shall be issued by the Building Inspector until such approval has been given by the Health Authority. A food establishment license shall not be issued until a certificate of occupancy is issued by the Building Inspector.

§ 55-7. Violations and penalties.

- A. The Health Authority may elect to impose administrative fines up to the level imposed by the rules and procedures of the New Hampshire Sanitary Food Code, adopted by reference herein.
- B. Nothing herein shall prevent the Health Authority from seeking injunctive relief in the Superior Court or deprive it of any other remedy available under the law.

§ 55-8. Severability.

Should any provision of this chapter be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole, or any part thereof other than the part so declared to be invalid.