

Chapter 216

Food Service

Article I

Definitions and Jurisdiction

§ 216-1 Jurisdiction.

This chapter shall be effective in all territory embraced within the limits of McLean County as provided by law.

§ 216-2 General definitions.

In addition to the definitions contained in Title 77 Illinois Administrative Code Part 750 and the FDA 2017 Food Code and any subsequent amendments or revisions thereto, the following general definitions shall apply in the interpretation and enforcement of this chapter:

ADULTERATED

The condition of food if it:

- A. Bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;
- B. Consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption;
- C. Has been processed, prepared, packed or held under insanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or
- D. Is in whole or in part of the product of a diseased animal, or an animal which has died otherwise than by slaughter.

APPROVED

Acceptable to the Health Department based on its determination as to conformance with good public health practices and standards.

BOARD OF HEALTH

The Board of Health of the McLean County Health Department of the County of McLean, Illinois, or its authorized representatives.

HEALTH DEPARTMENT

The McLean County Health Department.

CERTIFIED FOOD PROTECTION MANAGER (CFPM)

A person that has supervisory and management responsibility and the authority to direct and control food preparation and service who has shown proficiency of required information through passing a test that is part of an accredited program.

CORE ITEM

An item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

CRITICAL CONTROL POINT

A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

CRITICAL LIMIT

The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

EQUIPMENT

Stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dish-washing machines, steam tables, and similar items other than utensils, used in the operation of a food establishment.

FDA CODE

"Food Code U.S. Public Health Service FDA 2017," and any subsequent amendments or revisions thereto.

FOOD

Any 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.

FOOD ESTABLISHMENT

An operation that stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption 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 pantry; and 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.

Food establishment includes 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 regulatory authority; and 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.

Food establishment does not include an establishment that offers only prepackaged foods that are not time/temperature control for safety foods; a produce stand that only offers whole, uncut fresh fruits and vegetables; a food processing plant including those that are located on the premises of a food establishment; a kitchen in a private home, such as a small family daycare provider or a bed and breakfast operation as defined in the Bed and Breakfast Act that prepares and offers food to guests; a private home that receives catered or home delivered food; a closed family function where food is prepared or served for individual family consumption; or a cottage food operation.

HACCP PLAN

A written document that delineates the formal procedures for following the HAZARD Analysis and CRITICAL CONTROL POINT principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

HAZARD

A biological, chemical, or physical property that may cause an unacceptable consumer health risk.

IMMINENT HEALTH HAZARD

A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

- 1) The number of potential injuries, and
- 2) The nature, severity, and duration of the anticipated injury

Imminent health hazards include, but are not limited to; fire, flooding, interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, gross insanitary occurrences or conditions, or other circumstances that may endanger public health.

LAW

State and local statutes, ordinances, and regulations.

PERMIT HOLDER

Mean the entity that:

- 1) Is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and
- 2) Possesses a valid permit to operate a food establishment.

PERSON

Any individual, partnership, corporation, association, or other legal entity.

PRIORITY ITEM

An item whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. Priority items include, but are not limited to, cooking, reheating, cooling, handwashing, back flow prevention, sanitization, and chemical use.

PRIORITY FOUNDATION ITEM

An item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as, but are not limited to, personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

REPEAT VIOLATION

A violation noted on the previous inspection report that is observed again on the next routine inspection on the same piece of equipment, same area of the facility, or same practice.

“RISK”

Means the likelihood that an adverse health effect will occur within a population as a result of a HAZARD in a FOOD.

SANITIZED

Effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level (when those disease organisms which may be present are destroyed so as to prevent transfer) on cleaned food-contact surfaces of utensils and equipment.

SINGLE-SERVICE UTENSILS

Cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one-person use and then to be discarded.

SPECIAL PROCESS

Food preparation or process requiring a variance or HACCP plan as required in the FDA Code.

TEMPORARY FOOD ESTABLISHMENT

A food establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single special event or celebration.

TIME/TEMPERATURE CONTROL FOR SAFETY FOOD (TCS)

- 1) "Time/temperature control for safety food" means a FOOD that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.
- 2) "Time/temperature control for safety food" includes:
 - (a) An animal FOOD that is raw or heat-treated; a plant FOOD that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and
 - (b) Except as specified in Subparagraph (3)(d) of this definition, a FOOD that because of the interaction of its A_w and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:
- 3) "Time/temperature control for safety food" does not include:
 - (a) An air-cooled hard-boiled EGG with shell intact, or an EGG with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;
 - (b) A FOOD in an unopened HERMETICALLY SEALED CONTAINER that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
 - (c) A FOOD that because of its pH or A_w value, or interaction of A_w and pH values is designated as a non-TCS FOOD in Table A or B of this definition;

- (d) A FOOD that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that FOOD is precluded due to:
 - (i) Intrinsic factors including added or natural characteristics of the FOOD such as preservatives, antimicrobials, humectants, acidulants, or nutrients,
 - (ii) Extrinsic factors including environmental or operational factors that affect the FOOD such as packaging, modified atmosphere such as REDUCED OXYGEN PACKAGING, shelf life and use, or temperature range of storage and use, or
 - (iii) A combination of intrinsic and extrinsic factors; or
- (e) A FOOD that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the Subparagraphs (3)(a) - (3)(d) of this definition even though the FOOD may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

UTENSIL

Any implement used in the storage, preparation, transportation, or service of food.

VARIANCE

A written document issued by the health department that authorizes a modification or waiver of one or more requirements of this Chapter if, in the opinion of the health department, a hazard or nuisance will not result from the modification or waiver.

WHOLESOME

In sound condition, clean, free from contamination, and otherwise suitable for use as human food.

§ 216-3 State rules and regulations adopted by reference.

- A. In addition to those provisions set forth herein, this chapter shall adopt by reference the rules and regulations set forth in the following State of Illinois Department of Public Health publications: [**Amended 11-17-2009; 10-16-2012; 10-21-2014**]
 - 1) The publication entitled "Food Code U.S. Public Health Service FDA 2017,"and any subsequent amendments or revisions thereto; and
 - 2) 77 Illinois Administrative Code 750 adopted December 2018, and any subsequent amendments or revisions thereto; and
 - 3) 410 ILCS 82, the Smoke Free Illinois Act, and any subsequent amendment or revisions thereto.
- B. Three certified copies of each shall be on file in the office of the McLean County Clerk.

Article II Food Establishments

[Added 6-21-1983]

§ 216-4 **Public toilet facilities.**

All food establishments that serve alcoholic beverages for consumption on the premises shall provide adequate public toilet facilities that are separate for men and women. Table 7.21.2 of the Illinois State Plumbing Code, 1983, and any other subsequent amendments or revisions thereto, will be used for the recommended number of fixtures. However, the minimum number of fixtures provided shall be a water closet, urinal and lavatory in the men's room and a water closet and lavatory in the women's room. Other food establishments that provide public toilet facilities shall also satisfy the above requirements.

§ 216-5 **Food sanitation requirements.**

[Added 11-17-2009]

Time/temperature control for safety food shall be maintained at safe temperatures of 41° F. (5° C.) or below or 140° F. (60° C.) or above, as appropriate, except during necessary periods of preparation and serving.

§ 216-6 Permits.

[Amended 9-17-1985; 11-19-1991; 11-17-1992; 10-19-1993; 9-20-1994; 9-19-1995; 9-17-1996; 9-16-1997; 10-20-1998; 9-14-1999; 10-17-2000; 10-16-2001; 11-19-2002; 10-21-2003; 11-16-2004; 11-15-2005; 11-21-2006; 11-20-2007; 11-17-2008; 11-17-2009]

It shall be unlawful for any person to operate a food establishment within the County of McLean, or its police jurisdiction, who does not possess a valid permit which shall be issued annually to him or her by the Health Department. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person and place to another person or place or from one mobile unit to another mobile unit. A valid permit shall be framed and posted in conspicuous view of the public in every food establishment.

A. Issuance of permits.

- 1) Any person desiring to operate a food establishment shall make written application for a permit at least one week prior to the proposed date of opening on forms provided by the Health Department. Such application shall be completed and signed by the owner or his or her representative.
- 2) Upon receipt of such an application, the Health Department shall cause to be inspected the establishment named in the application prior to the date of opening; and it shall determine if the establishment is in compliance with the provisions of this article. When an inspection reveals that the provisions of the article have been met, a permit shall be issued. The permit for full-time establishments is valid through December 31 of the year issued. Seasonal permits expire six months after the date of issue or December 31, whichever one occurs sooner.

- 3) Any person who has not paid his or her annual fee for the renewal of his or her food permit by January 1 of the permit renewal year shall be considered to be operating a food establishment without a valid permit. However, the annual fee for the renewal of seasonal permits shall be paid at least one week prior to the reopening of the establishment.

B. Suspension of permits.

- 1) Permits may be suspended temporarily by the Health Department for failure of the holder to comply with the requirements of this article.
- 2) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of § **216-9D** of this article, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that the opportunity for a hearing will be provided if, within 72 hours, a written request for a hearing is filed with the Health Department by the permit holder.
- 3) Notwithstanding the other provisions of this article, whenever the Health Department finds insanitary or other conditions in the operations of a food establishment which, in its judgment, constitute an imminent health hazard, it may, without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the permit is suspended at the time of inspection, and all food service operations are to be immediately discontinued.
 - (a) Any person to whom such an order is issued shall comply therewith, but, upon written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order.
 - (b) The Health Department shall provide a hearing not later than five days from the filing of said petition.

C. Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for a 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 or her opinion, the conditions causing suspension of the permit have been corrected, the Health Department shall make a reinspection. If the applicant is in compliance with the requirements of this chapter, the permit shall be reinstated.

D. Revocation of permits. For serious and/or repeated violations of any of the requirements of this chapter, or for interference with the Health Department in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Health Department. Prior to such hearing, the Health Department 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, within such five-day period, a written petition for a hearing is filed with the Health Department. The Health Department shall provide a hearing not later than five days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

E. Food permit classifications. Food permits shall be divided into the following classes:

1) Class A.

(a) A food establishment that meets all of the following criteria:

- [1] Foods requiring time/temperature control for safety are routinely heated, cooled and reheated.
- [2] Prepares and serves foods requiring time/temperature control for safety for more than one meal period a day.
- [3] Prepares and serves foods requiring time/temperature control for safety a minimum of six days a week.
- [4] Preparation and service of foods requiring time/temperature control for safety is the principal feature of the food service business of the food establishment.
- [5] The total occupancy of the food establishment is a minimum of 200, excluding banquet rooms and bar rooms where food from the kitchen is not routinely served.
- [6] Total occupancy is based on the 1993 National Fire Protection Association Life Safety Code 101 and any subsequent amendments or revisions thereto.

(b) A State of Illinois licensed nursing home or hospital.

(c) A food establishment with three or more of the following food operations: meat cutting, a bakery where food items are prepared on-site from two or more ingredients, delicatessen or fresh fish.

(d) A food establishment that engages in a food preparation process that requires a Variance or HACCP plan as required by FDA Code.

2) Class B.

(a) A food establishment that prepares and serves foods requiring time/temperature control for safety but does not meet the requirements for either a Class A or Class C food permit.

(b) A bakery where food items are prepared on-site from two or more ingredients.

(c) A food establishment with one or two of the following food operations: meat cutting, a bakery where food items are prepared on-site from two or more ingredients, delicatessen or fresh fish.

(d) A caterer where the primary operation of the food business is preparation of food items for consumption at a location other than its base of operation.

(e) A mobile food unit with food preparation of foods requiring time/temperature

control for safety other than frankfurters.

- (f) A vending commissary where food is prepared, processed, packaged or repackaged.
- (g) A State of Illinois licensed day-care center where food is prepared on-site.

3) Class C.

- (a) A food establishment that serves only beverages such as alcoholic drinks, soft drinks, juices, espresso, cappuccino, tea and milk.

[1] Any food preparation of foods requiring time/temperature control for safety is limited to commercially prepared, prepackaged, foods requiring time/temperature control for safety such as sandwiches, soups, frozen pizzas, frankfurters and nachos cheese that require no preparation other than heating prior to service.

[2] Foods requiring time/temperature control for safety cannot be cooled and reheated.

[3] Hand-dipped ice cream can be served.

- (b) Mobile food units or pushcarts limited to serving foods not requiring time/temperature control for safety, commissary-wrapped or commercially prepackaged foods requiring time/temperature control for safety and/or the preparation and service of frankfurters.
- (c) All foods requiring time/temperature control for safety for service are catered to the facility by a food establishment with a McLean County food permit.
- (d) Only foods not requiring time/temperature control for safety are prepared, processed, packaged, repackaged, or served. Commercially prepared baked goods are baked off-site. **[Amended 2-17-2015]**
- (e) A State of Illinois licensed day-care center where all food served is catered to the facility by a food establishment with a McLean County food permit.
- (f) A Department of Agriculture inspected meat facility with a meat case that offers commercially prepackaged cuts of meat to consumers.

4) Class D. (Reserved)

5) Class E.

- (a) A food establishment where all foods requiring time/temperature control for safety arrive at the store commercially prepared and prepackaged from the supplier and are offered to the customers without further processing or packaging or repackaging.

- (b) A vending commissary where all foods requiring time/temperature control for safety arrive commercially prepared and prepackaged from the distributor and leave the commissary without further processing or repackaging.
- 6) Class F, exempt establishments: churches, schools, governmental units and charitable, tax- exempt, not-for-profit corporations registered under Section 501(c)(3) of the Internal Revenue Service Code.
- F. Food establishment permit fees. The annual fees for food permits shall be set forth in Chapter **205**, Fees. [**Amended 10-18-2011; 10-16-2012; 12-17-2013; 10-21-2014; 2-17-2015**]
 - (1) Such fees shall be payable upon receipt of an invoice issued by the Health Department.
 - (2) Fees for permits issued after June 30 shall be reduced by 1/2 the annual fee.
 - (3) Fees for seasonal permits issued for periods of six months or less during any calendar year shall be reduced by 1/2 of the annual fee.
- G. Fees for first permits. The fee for the first permit issued to an owner, for each food establishment owned or operated, shall be increased by 40% of the annual fee for that establishment. If a business changes location, the owner shall be required to pay the surcharge of 40% for the first permit at the new location.
- H. Penalty fee for late permit renewal payments. A late penalty fee as set forth in Chapter **205**, Fees, shall be assessed for permit renewal payments received after January 7 of the permit renewal year. The late penalty fee shall be increased as set forth in Chapter **205**, Fees, for payments received after January 21 of the renewal year. Any food establishment operating after February 4 of the permit renewal year without a renewed, valid permit shall discontinue operation or be subject to prosecution pursuant to this § **216-6** and to the penalties contained in § **216-16** of this article. [**Amended 2-17-2015**]

§ 216-7 **Hearings.**

Any permit holder that has had its permit suspended, revoked or nonrenewed by the Health Department may seek a review of the decision by the Board of Health by:

- A. Filing within seven days of receipt of the decision, written notice with the Board of Health of intent to seek review of the decision;
- B. Filing a written brief with the Board of health which states the permit holder's arguments as to why the decision of the Health Department shall be reversed. In addition to the permit holder's arguments for reversal, this brief shall contain a short recitation of relevant facts, citation to any relevant legal authority and copies of any documentary evidence the permit holder wishes to be considered by the Board of Health; and
- C. Appearing at the meeting of the Board of Health at which the Board of Health is scheduled to consider the review requested by the permit holder.
- D. The hearings provided for in this section shall be conducted by a quorum of the members of the Board of Health at a time and place designated by the Board within 30 days of the date on

which the written request was filed.

- 1) Notification. The petitioner for the hearing shall be notified of the time and place of the hearing not less than five days prior to the date on which the hearing is to be held.
- 2) Findings. 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.
- 3) Written report. A written report of the hearing decision shall be furnished either personally or by certified mail to the petitioner by the Board of Health.

§ 216-8 **Administrative review of decisions.**

Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Board of Health. The term "administrative decision" is defined in Section 1 of the Administrative Review Act.

§ 216-9 **Inspections.**

- A. The Health Department shall routinely inspect each food establishment located in the County of McLean, or its police jurisdiction, at a minimum frequency in accordance with the following schedule and shall make as many additional inspections and reinspections as are necessary for the enforcement of this article: [**Amended 9-20-1994; 9-17-1996**]

Permit	Frequency of Inspection
Class A	Four times per year
Class B	Three times per year
Class C	Two times per year
Class E	One time per year
Class F	Two times per year*

NOTE:

- * State of Illinois licensed nursing homes and hospitals shall be inspected at the same frequency as Class A.

- B. Access to establishments. The Health Department, after proper identification, shall be permitted to enter, at any reasonable time, any food establishment within the County of McLean, or its police jurisdiction, for the purpose of making an inspection to determine compliance with this article. It 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.
- C. Inspection records. Whenever the Health Department makes an inspection of a food establishment, it shall record its findings on an inspection report form provided for this purpose and shall furnish a paper or electronic copy of such inspection report form to the

permit holder or operator.

- D. Issuance of notices. Whenever the Health Department makes an inspection of a food establishment and discovers that any of the provisions of this article have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Health Department shall:
- 1) Set forth the specific violations found;
 - 2) Establish a specific and timely period for the correction of the violations found, substantially as follows:
 - (a) When one or more items are identified as out of compliance, those items must be corrected by the completion of the inspection; or considering the nature of the violation involved and the complexity of the corrective action needed, corrections may be completed as follows:
 - (i) All Priority items must be corrected as soon as possible but not to exceed 10 calendar days from the time of inspection;
 - (ii) All Priority, Priority Foundation items, or HACCP plan deviation items must be corrected within 10 calendar days from the time of the inspection; and
 - (iii) When one or more Core items is identified as out of compliance, such items must be corrected no later than the next inspection or within a time period proposed in writing by the permit holder approved by the health department provided the extended existence of the item does not present or result in a health hazard.
 - (b) When the existence of an imminent health hazard is identified, the permit is subject to immediate suspension as provided in § **216-6B**, herein. In case immediate suspension is not invoked, the hazard and all Priority items shall be corrected within 48 hours from the time of inspection. Corrective action shall be initiated on all of the remaining items. Reinspections shall be conducted at timely intervals to ensure correction. If, within the specified forty-eight-hour time period, corrective action has not occurred, the establishment shall be closed as provided for in § **216-6B** herein.
 - (c) Repeat violations of Priority and Priority Foundation items documented on two or more previous routine inspections will subject the food establishment permit to suspension as provided in § 216-6B. Suspension of the permit may be deferred upon the permit holder's submission of a written corrective action plan within 72 hours of the inspection. The corrective action plan shall include the repeat violations noted on the inspection, the time period in which the violation will be permanently corrected, and procedures implemented by the food establishment to mitigate risks and hazards associated with the repeat violations.
 - (d) In case of temporary food establishments, 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.

- 3) State that failure to comply with any notice issued in accordance with the provisions of this article may result in suspension of the permit as provided for in § **216-6B** herein.
 - 4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Health Department within the period of time established in the notice for correction.
- E. Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy 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 Department.

§ 216-10 **Examination and condemnation of food.**

Food may be examined or sampled by the Health Department as often as may be necessary to determine freedom from adulteration or misbranding.

A. Embargo orders.

- (1) The Health Department may, upon written notice to the owner or person in charge, place an embargo order on any food which it determines or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded. Under an embargo order, food shall be permitted to be suitably stored.
- (2) It shall be unlawful for any person to remove or alter an embargo order, notice or tag placed on food by the Health Department, and neither such food nor containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Health Department, except on order by a court of competent jurisdiction.

- B. Post-hearing actions. After the owner or person in charge has had a hearing as provided for in § **216-7** herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Health Department may vacate the embargo order or may by written order direct the owner or person in charge of the food which was placed under the embargo order to denature or destroy such food or to bring it into compliance with the provisions of this chapter; provided that such order of the Health Department to denature or destroy such food or bring it into compliance with the provisions of this chapter shall be stayed if the order is appealed to a court of competent jurisdiction within three days.

§ 216-11 **Establishments outside jurisdiction of Health Department.**

Food from food establishments outside the jurisdiction of the Health Department of the County of McLean may be sold within the County of McLean if such food establishments conform to the provisions of this article or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Health Department may accept reports from regulatory authorities in other jurisdictions where such food establishments are located.

§ 216-12 Plan review of future construction.
[Amended 10-19-1993]

When a food establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use a food establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout arrangement, and construction materials of work areas, and the location, size and type of equipment and facilities, shall be submitted to the Health Department in a manner prescribed by the Health Department for approval before such work is begun. A proposed menu must be submitted with the plans.

§ 216-13 Variances.
[Added 11-17-2009]

- A. Any food establishment may request a variance from the requirements of this article and adopted references when such an establishment believes that the requirements result in an undue economic hardship or when it is believed a standard may not apply to the specific situation.
- B. Requests shall be submitted in writing to the Health Department and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.
- C. Any person who requests a variance from the provisions of these regulations shall have the burden of supplying the Health Department with information that demonstrates that conditions exist which warrant the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.
- D. The Health Department may grant a variance if:
 - 1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Service Sanitation Code and its associated acts and codes and this article; and
 - 2) It is consistent with the protection of the public health; and
 - 3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and
 - 4) The circumstances of the food establishment are unique; and
 - 5) The cost of compliance is so great that it would threaten the economic viability of the food establishment or the food establishment would be in grave jeopardy if compliance were enforced; and
 - 6) The damage to the food establishment's economic viability is in fact caused by compliance.

- E. A variance shall be revoked or expire if:
- 1) In the opinion of the Health Department, the variance results in a health hazard or nuisance; or
 - 2) There is a change of circumstances from those supporting the variance; or
 - 3) There is a change of ownership of the food establishment.
- F. Any food establishment for which a variance has been denied may appeal such denial by requesting a hearing before the Health Department.

§ 216-14 Equipment standards.
[Amended 10-19-1993; 10-21-2003]

- A. All new and replacement equipment shall meet or be equivalent to applicable National Sanitation Foundation (NSF) standards, or equivalent commercial food equipment standards of another recognized testing agency that tests to NSF commercial food equipment standards. If NSF commercial food equipment standards do not exist for a piece of equipment, the equipment must be inspected and approved by this department before being placed into service.
- B. All new or replacement three-compartment sinks shall have two integral drain boards as original equipment from the manufacturer.
- C. All new and replacement ice binds, where ice is used for both cooling beverage products and stored for human consumption, shall have an integral cold plate as original equipment from the manufacturer.

§ 216-15 Procedure when infection is suspected.

When the Health Department has reasonable cause to suspect the possibility of disease transmission from any food establishment employee, the Health Department shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Health Department may require any or all of the following measures:

- A. The immediate exclusion of the employee from all food establishments;
- B. The immediate closure of the food establishment concerned until, in the opinion of the Health Department, no further danger of disease outbreak exists;
- C. Restriction of the employee's services to some areas of the establishment where there would be no danger of transmitting disease; and
- D. Adequate medical and laboratory examinations of the employee, of other employees, and of their body discharges.

§ 216-16 **Penalties.**
[Amended 2-17-2015]

Any person who shall violate any provisions of this article shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,500 or imprisonment of not more than six months, or both. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

Article III
Bed-and-Breakfast Establishments

[Added 9-20-1988]

§ 216-29 **Jurisdiction.**

This article shall be effective in all of the area of McLean County outside the corporate limits of any city, town or village and also within the corporate limits of any city, town or village in McLean County where there is in effect an intergovernmental agreement between the governing body of said city, town or village, the County Board of McLean County and the Health Department for the regulation of bed-and-breakfast establishments.

§ 216-30 **Definitions.**

In addition to the definitions contained in the State of Illinois Food Service Sanitation Rules and Regulations, the following definitions shall apply in the interpretation and enforcement of this article:

BED-AND-BREAKFAST ESTABLISHMENT

An operator-occupied residence providing accommodations for a charge to the public with no more than five guestrooms for rent, in operation for more than 10 nights in a twelve-month period. Breakfast may be provided to the guests only. Bed-and-breakfast establishments shall not include motels, hotels, boardinghouses, or food establishments.

COMMERCIALY PREPARED SWEET BAKED GOODS

An individually portioned and wrapped, yeast or cake-type bread, bun, croissant or roll with or without filling and/or icing not requiring time/temperature control for safety.

CONTINENTAL BREAKFAST

Limited to only coffee, tea, and/or juice and commercially prepared sweet baked goods.

GUESTROOM

A sleeping room intended to serve no more than two transient guests per night.

OPERATOR

The owner of a bed-and-breakfast establishment, or the owner's agent, who is required by the Bed-and-Breakfast Act to reside in the bed-and-breakfast establishment, or on contiguous property.

§ 216-31 **Food sanitation requirements.**

- A. Food shall be clean, wholesome, free from spillage, free from adulteration and misbranding and safe for human consumption. Containers of food shall be stored above the floor, on clean racks, shelves or other clean surfaces in such a manner as to be protected from splash or other contamination. Milk of only pasteurized Grade A may be used. Use of home canned food is prohibited, except for jams and jellies.
- B. Food shall be protected from contamination while being stored, prepared and served, and during transportation. Perishable foods shall be stored at temperatures that will protect them against spoilage. Time/temperature control for safety food shall be maintained at safe temperatures of 41° F. (5° C.) or below or 140° F. (60° C.) or above, as appropriate, except during necessary periods of preparation and serving. Frozen food shall be kept at temperatures that will keep them frozen, except when being thawed for preparation. Frozen time/temperature control for safety food shall be thawed at refrigeration temperatures or below, quick-thawed as part of the cooking process, or thawed by another method approved by the local health department. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffing, poultry, and pork products shall be cooked to heat all parts of the food at least 165° F (74° C.) before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs and other time/temperature control for safety prepared food shall be prepared from chilled products with a minimum of manual contact. Portions of food once served to an individual may not be served again. Laundry facilities shall be separated from food preparation areas. Live animals shall be excluded from food preparation areas. **[Amended 11-20-2007]**
- C. No person knowingly infected with a communicable disease that may be transmitted by food handling may work in a bed-and-breakfast establishment.
- D. If a bed-and-breakfast operator suspects that any employee, family member or the operator himself or herself has a communicable disease, the operator shall notify the McLean County Health Department immediately.
- E. All operators shall be Certified Food Protection Managers. Certification shall be achieved by successfully completing training approved by the Illinois Department of Public Health and receive a passing score on the examination offered by a certified exam provider accredited under standards developed and adopted by the Conference for Food Protection or its successor as described in the current edition of the Illinois Food Code.
- F. Persons preparing or serving food or washing utensils shall wear clean outer garments and maintain a high degree of personal cleanliness. They shall wash their hands thoroughly before starting work and as often as necessary while working to remove soil and contaminants. After visiting a toilet room, persons shall wash their hands thoroughly in a lavatory but never in the kitchen sink.
- G. No one, while preparing or serving food, may use tobacco in any form.
- H. Utensils shall be kept clean and in good repair.
- I. Multi-use eating and drinking utensils shall be thoroughly cleaned after each use. Facilities needed for the operations of washing, rinsing and sanitizing shall be provided.

- J. Pots, pans and other utensils used in the preparation or serving of food or drink, and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non-food contact surfaces of equipment shall be cleaned at intervals that will keep them in a clean and sanitary condition.
- K. Residential sinks and home-style mechanical dish-washing machines are acceptable facilities for washing multi-use eating and drinking utensils. Utensils shall be air-dried.
- L. Immediately following either manual or mechanical washing of eating or drinking utensils, and pots, pans and other cooking utensils, these utensils shall be effectively sanitized by being submerged in a hypochlorite solution with a chlorine concentration continuously maintained in 100 parts per million, or another approved sanitizing solution which shall be used at the concentration tested and approved by the local health department. Dishpans may be used to accomplish the final sanitizing rinse. The reuse of single-service utensils is prohibited.

§ 216-32 Soap, linen and towels.

Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary. Clean linen shall be stored and handled in a sanitary manner.

§ 216-33 Water supply.

- A. Enough potable water for the needs of the bed-and-breakfast establishment shall be provided from a source constructed and operated according to law.
- B. The water supply shall be sampled and analyzed prior to the opening of the bed-and-breakfast establishment and annually thereafter to determine the acceptability of the bacterial and nitrate qualities of water.

§ 216-34 Sewage disposal.

All water-carried sewage shall be disposed of by means of:

- A. A public sewage system; or
- B. A private sewage disposal system that is constructed and operated in conformance with the McLean County Private Sewage Disposal System Ordinance.

§ 216-35 Plumbing.

All plumbing shall be sized, installed, and maintained in accordance with applicable provisions of the Illinois State Plumbing Code. Local ordinances may be followed when standards are equal to or exceed those contained in the aforementioned code. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or any source of pollution through which the safe water supply might become contaminated.

§ 216-36 Permits.

It shall be unlawful for any person to operate a bed-and-breakfast establishment which serves breakfast within the County of McLean's jurisdiction who does not possess a valid permit which shall be issued annually to him or her by the Health Department. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person and place to another person or place. A valid permit shall be framed and posted in conspicuous view of the public.

A. Issuance of permits.

- 1) Any person desiring to operate a bed-and-breakfast establishment shall make written application for a permit at least one week prior to the proposed date of opening on forms provided by the Health Department. Such application shall be completed and signed by the owner or his or her representative.
- 2) Upon receipt of such an application, the Health Department shall cause to be inspected the bed-and-breakfast establishment named in the application prior to the date of opening; and it shall determine if the bed-and-breakfast establishment is in compliance with the provisions of this article. When an inspection reveals that the provisions of the article have been met, a permit shall be issued. The permit for full-time establishments is valid through December 31 of the year issued. Seasonal permits expire six months after the date of issue or December 31, whichever one occurs sooner. **[Amended 11-17-1992]**
- 3) Any person who has not paid his or her annual fee for the renewal of his or her food permit by January 1 of the permit renewal year shall be considered to be operating a bed-and-breakfast establishment without a valid permit. However, the annual fee for the renewal of seasonal permits shall be paid at least one week prior to the reopening of the establishment. **[Added 10-19-1993]**

B. Suspension of permits.

- 1) Permits may be suspended temporarily by the Health Department for failure of the holder to comply with the requirements of this article.
- 2) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of § **216-39D** of this article, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that an opportunity for a hearing will be provided if, within 72 hours, a written request for a hearing is filed with the Health Department by the permit holder.
- 3) Notwithstanding the other provisions of this article, whenever the Health Department finds insanitary or other conditions in the operations of a bed-and-breakfast establishment which, in its judgment, constitute a substantial immediate hazard to the public health, it may, without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken, and, if deemed necessary, such order shall state that the permit is suspended at the time of inspection, and all bed-and-breakfast operations are to be immediately discontinued.
 - (a) Any person to whom such an order is issued shall comply therewith but, upon

written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order.

- (b) Health Department shall provide a hearing not later than five days from the filing of said petition.
- C. Reinstatement of suspended permits. Any person whose permit has been suspended may, at any time, make application for a 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 or her opinion, the conditions causing suspension of the permit have been corrected, the Health Department shall make a reinspection. If the applicant is in compliance with the requirements of this article, the permit shall be reinstated.
- D. Revocation of permits. For serious and/or repeated violations of any of the requirements of this article, or for interference with the Health Department in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Health Department. Prior to such hearing, the Health Department 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 within such five-day period a written petition for a hearing is filed with the Health Department. The Health Department shall provide a hearing not later than five days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.
- E. Bed-and-breakfast permit classifications.
 - 1) Class H: bed-and-breakfast establishment licensed to serve more than a continental breakfast.
 - 2) Class I: bed-and-breakfast establishment licensed to serve a continental breakfast.
- F. Bed-and-breakfast permit fees. The annual fees for the permit shall be as set forth in Chapter 205, Fees. [**Amended 11-19-1991; 11-17-1992; 9-20-1994; 9-19-1995; 9-17-1996; 9-16-1997; 10-20-1998; 9-14-1999; 10-17-2000; 10-16-2001; 10-21-2003; 11-16-2004; 11-15-2005; 11-21-2006; 11-20-2007; 11-17-2008; 11-17-2009; 10-18-2011; 10-16-2012; 12-17-2013; 10-21-2014; 2-17-2015**]
 - 1) Such fees shall be payable upon receipt of an invoice issued by the Health Department.
 - 2) Fees for permits issued after June 30 shall be reduced by 1/2 the annual fee.
 - 3) Fees for seasonal permits issued for periods of six month or less during any calendar year shall be reduced by 1/2 the annual fee.
- G. First permit fee. The fee for the first permit issued to an owner, for each bed-and-breakfast establishment owned or operated, shall be increased by 40% of the annual fee for the establishment. If a bed-and-breakfast establishment changes location, the owner shall be required to pay the surcharge of 40% for the first permit at the new location. [**Amended 11-17-1992; 10-21-2003**]
- H. Late penalty fee for late renewal payments. A late penalty fee as set forth in Chapter 205,

Fees, shall be assessed for permit renewal payments received after January 7 of the permit renewal year. The late penalty fee shall be increased as set forth in Chapter **205**, Fees, for payments received after January 21 of the renewal year. Any bed-and-breakfast establishment operating after February 4 of the permit renewal year without a renewed, valid permit shall discontinue operation or be subject to prosecution pursuant to this section and to the penalties contained in § **216-44** of this article. **[Added 10-19-1993]**

§ 216-37 **Hearings.**

Any permit holder that has had its permit suspended, revoked or nonrenewed by the Health Department may seek a review of the decision by the Board of Health by:

- A. Filing within seven days of receipt of the decision, written notice with the Board of Health of intent to seek review of the decision;
- B. Filing a written brief with the Board of health which states the permit holder's arguments as to why the decision of the Health Department shall be reversed. In addition to the permit holder's arguments for reversal, this brief shall contain a short recitation of relevant facts, citation to any relevant legal authority and copies of any documentary evidence the permit holder wishes to be considered by the Board of Health; and
- C. Appearing at the meeting of the Board of Health at which the Board of Health is scheduled to consider the review requested by the permit holder.
- D. The hearings provided for in this section shall be conducted by a quorum of the members of the Board of Health at a time and place designated by the Board within 30 days of the date on which the written request was filed.
 - 1) Notification. The petitioner for the hearing shall be notified of the time and place of the hearing not less than five days prior to the date on which the hearing is to be held.
 - 2) Findings. 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.
 - 3) Written report. A written report of the hearing decision shall be furnished either personally or by certified mail to the petitioner by the Board of Health.

§ 216-38 **Administrative review of decisions.**

Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the said Board of Health. The term "administrative decisions" is defined in Section 1 of the Administrative Review Act.

§ 216-39 **Inspections.**

- A. The Health Department shall routinely inspect each bed-and-breakfast establishment located in the County of McLean's jurisdiction, at a minimum frequency in accordance with the following schedule, and shall make as many additional inspections and reinspections as are necessary for the enforcement of this article: **[Amended 9-20-1994]**

Permit	Frequency of Inspection
Class H	Three times per year
Class I	Two times per year

- B. Access to establishments. The Health Department, after proper identification, shall be permitted to enter, at any reasonable time, any bed-and-breakfast establishment within the County of McLean's jurisdiction for the purpose of making an inspection to determine compliance with this article. It 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.
- C. Inspection records. Whenever the Health Department makes an inspection of a bed-and-breakfast establishment, it shall record its findings on an inspection report form provided for this purpose and shall furnish a paper or electronic copy of such inspection report form to the permit holder or operator.
- D. Issuance of notices. Whenever the Health Department makes an inspection of a bed-and-breakfast establishment and discovers that any of the provisions of this article have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Health Department shall:
- 1) Set forth the specific violations found
 - 2) Establish a specific and timely period for the correction of the violations found, substantially as follows:
 - (a) When one or more Priority item, Priority Foundation item, or a provision of a HACCP plan controlling critical limits is identified as out of compliance, all items must be corrected by the completion of the inspection or considering the nature of the violation involved and the complexity of the corrective action needed, corrections may be completed as follows:
 - (i) All Priority items must be corrected as soon as possible but not to exceed 10 calendar days from the time of inspection;
 - (ii) All Priority, Priority Foundation items, or HACCP plan deviation items must be corrected within 10 calendar days from the time of the inspection; and
 - (iii) When one or more Core items is identified as out of compliance, such items must be corrected no later than the next inspection or within a time period proposed in writing by the permit holder approved by the health department

provided the extended existence of the item does not present or result in a health hazard.

- (b) When the existence of an imminent health hazard is identified the permit is subject to immediate suspension as provided in § **216-36B**, herein. In case immediate suspension is not invoked, the hazard and all Priority items shall be corrected within 48 hours from the time of inspection. Corrective action shall be initiated on all of the remaining items. Reinspections shall be conducted at timely intervals to ensure correction. If, within the specified forty-eight-hour time period, corrective action has not occurred, the establishment shall be closed as provided for in § **216-36B** herein.
- (c) Repeat violations of Priority and Priority Foundation items documented on two or more previous routine inspections will subject the food establishment permit to suspension as provided in § 216-36B. Suspension of the permit may be deferred upon the permit holder's submission of a written corrective action plan within 72 hours of the inspection. The corrective action plan shall include the repeat violations noted on the inspection, the time period in which the violation will be permanently corrected, and procedures implemented by the food establishment to mitigate risks and hazards associated with the repeat violations.

- 3) State that failure to comply with any notice issued in accordance with the provisions of this article may result in suspension of the permit as provided for in § **216-36B** herein.
- 4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Health Department within the period of time established in the notice for correction.

E. Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy 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 Department.

§ 216-40 **Examination and condemnation of food.**

Food may be examined or sampled by the Health Department as often as may be necessary to determine freedom from adulteration or misbranding.

A. Embargo orders.

- 1) The Health Department may, upon written notice to the owner or person in charge, place an embargo order on any food which it determines or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded. Under an embargo order, food shall be permitted to be suitably stored.
- 2) It shall be unlawful for any person to remove or alter an embargo order, notice or tag placed on food by the Health Department and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Health Department, except on order by a court of competent

jurisdiction.

- B. Post-hearing actions. After the owner or person in charge has a hearing as provided for in § 216-37 herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Health Department may vacate the embargo order or may by written order direct the owner or person in charge of the food which was placed under the embargo order to denature or destroy such food or to bring it into compliance with the provisions of this article; provided that such order of the Health Department to denature or destroy such food or bring it into compliance with the provisions of this article shall be stayed if the order is appealed to a court of competent jurisdiction within three days.

§ 216-41 Plan review of future construction.
[Amended 10-19-1993]

When a bed-and-breakfast establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a bed-and-breakfast establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout arrangement, and construction materials of work areas, and the location, size and type of equipment and facilities, shall be submitted to the Health Department in a manner prescribed by the Health Department for approval before such work is begun. A proposed menu must be submitted with the plans.

§ 216-42 Variances.
[Added 11-17-2009]

- A. Any bed-and-breakfast establishment may request a variance from the requirements of this article and adopted references when such an establishment believes that the requirements result in an undue economic hardship or when it is believed a standard may not apply to the specific situation.
- B. Requests shall be submitted in writing to the Health Department and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.
- C. Any person who requests a variance from the provisions of these regulations shall have the burden of supplying the Health Department with information that demonstrates that conditions exist which warrant the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.
- D. The Health Department may grant a variance if:
 - 1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Code and its associated acts and codes and this article; and
 - 2) It is consistent with the protection of the public health; and

- 3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and
- 4) The circumstances of the bed-and-breakfast establishment are unique; and
- 5) The cost of compliance is so great that it would threaten the economic viability of the bed-and-breakfast establishment or the bed-and-breakfast establishment would be in grave jeopardy if compliance were enforced; and
- 6) The damage to the bed-and-breakfast establishment's economic viability is in fact caused by compliance.

E. A variance shall be revoked or expire if:

- (1) In the opinion of the Health Department, the variance results in a health hazard or nuisance;
or
- (2) There is a change of circumstances from those supporting the variance; or
- (3) There is a change of ownership of the bed-and-breakfast establishment.

F. Any bed-and-breakfast establishment for which a variance has been denied may appeal such denial by requesting a hearing before the Board of Health.

§ 216-43 Procedure when infection is suspected.

When the Health Department has reasonable cause to suspect the possibility of disease transmission from any bed-and-breakfast establishment employee, the Health Department shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Health Department may require any or all of the following measures:

- A. The immediate exclusion of the employee from all bed-and-breakfast establishments;
- B. The immediate closure of the bed-and-breakfast establishment concerned until, in the opinion of the Health Department, no further danger of disease outbreak exists;
- C. Restriction of the employee's services to some areas of the establishment where there would be no danger of transmitting disease; and
- D. Adequate medical and laboratory examinations of the employee, or other employees, and of their body discharges.

§ 216-44 Penalties. [Amended 2-17-2015]

Any person who shall violate any provisions of this article shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,500 or imprisonment of not more than six months, or both. In addition thereto, such persons may be

enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.

Article IV Temporary Food Establishments

[Added 9-20-1994]

§ 216-45 **Permits.**

[Amended 10-16-2001; 10-21-2003]

It shall be unlawful for any person to operate a temporary food establishment within the County of McLean, or its police jurisdiction, who does not possess a valid permit issued by the Health Department. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable from one person or establishment to another person or establishment. A person must have a temporary food permit for each temporary food establishment or from one mobile unit to another mobile unit. A valid permit shall be posted in conspicuous view of the public in every temporary food establishment or the food establishment cannot open.

A. Issuance of permits.

- 1) Any person desiring to operate a temporary food establishment shall make written application for a permit at least five days prior to the proposed date of opening for each event or for each season on forms provided by the Health Department. Such application shall be completed and signed by the owner or his or her representative. Applications submitted to the Health Department less than five business days prior to the opening day of any listed event on the application shall be assessed a penalty fee of \$25. **[Amended 11-17-2009]**
- 2) Upon receipt of such an application for a Class J temporary food permit, the Health Department, at its discretion, may inspect the temporary food establishment and determine if the establishment is in compliance with the provisions of this article before issuing the permit. The permit is valid for one single special event or celebration and for a period of time not to exceed 14 days.
- 3) Upon receipt of such an application for a Class K multiple event temporary food permit, the Health Department shall cause to be inspected the temporary food establishment named in the application prior to the issuance of the permit to determine if the establishment is in compliance with the provisions of this article. When an inspection reveals that the provisions of the article have been met, a permit shall be issued. Multiple event temporary food permits shall expire six months after the date of issue or December 31, whichever one occurs sooner. **[Amended 9-19-1995]**

B. Suspension of permits.

- 1) Permits may be suspended temporarily by the Health Department for failure of the holder to comply with the requirements of this article.
- 2) Whenever a permit holder or operator has failed to comply with any notice issued under

the provisions of § **216-48D** of this article, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, suspended and that an opportunity for a hearing will be provided if, within 72 hours, a written request for a hearing is filed with the Health Department by the permit holder.

- 3) Notwithstanding the other provisions of this article, whenever the Health Department finds insanitary or other conditions in the operations of a temporary food establishment which, in its judgment, constitute a substantial immediate hazard to the public health, it may, without warning, notice or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken, and, if deemed necessary, such order shall state that the permit is suspended at the time of inspection and all food service operations are to be immediately discontinued.
- 4) Any person to whom such an order is issued shall comply therewith, but, upon written petition filed not more than 72 hours after the discontinuance order, may request a hearing for abatement of the order. The Health Department shall provide a hearing not later than five days from the filing of said petition.

C. Reinstatement of suspended temporary food permits. Any person whose permit has been suspended may, at any time, make application for a 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 or her opinion the conditions causing suspension of the permit have been corrected, the Health Department shall make a reinspection. If the applicant is in compliance with the requirements of this article, the permit shall be reinstated.

D. Revocation of temporary food permits. For serious and/or repeated violations of any of the requirements of this article, for interference with the Health Department in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the Health Department. Prior to such hearing, the Health Department 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 within such five-day period a written petition for a hearing is filed with the Health Department. The Health Department shall provide a hearing not later than five days from the filing of said petition. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

E. Temporary food permit classifications. Temporary food permits shall be divided into two classes as follows:

- 1) Class J temporary food establishment permit. [**Amended 11-17-2009**]

- (a) Single event: a one-time permit for a single special event or celebration.

- (b) Single event: fee-exempt.

- (c) Single event: a one-time permit for a three- to fourteen-day single special event or celebration.

- 2) Class K temporary food establishment permit. [**Amended 9-19-1995**]

(a) Multiple event: a six-month permit to operate at single, special events or celebrations for a period of time not to exceed 14 days at any one single special event or celebration.

(b) Multiple event: fee exempt.

F. Temporary food permit fees. The fees for temporary food permits shall be as set forth in Chapter **205**, Fees. [**Amended 9-17-1996; 10-16-2001; 11-16-2004; 11-17-2008; 11-17-2009; 2-17-2015**]

1) Fees shall be nonrefundable and paid before a temporary food permit can be issued.

2) Fee-exempt establishments: includes units of government and bona fide religious, charitable, educational, tax-exempt and other not-for-profit organizations registered under Section 501(c)(3) of the Internal Revenue Service Code.

3) The Health Department may require proof of eligibility for any person or organization applying for a fee-exempt permit.

4) Late fees.

(a) Any temporary food permit applications that are not received five business days prior to the first day of the proposed special event by the Health Department will be charged a late fee as set forth in Chapter **205**, Fees, in addition to the required permit fee.

(b) Any person found operating a temporary food establishment before submitting a written application to and with approval from the Health Department shall be assessed two times the corresponding Class J permit fee.

§ 216-46 **Hearings.**

Any permit holder that has had its permit suspended, revoked or nonrenewed by the Health Department may seek a review of the decision by the Board of Health by:

A. Filing within seven days of receipt of the decision, written notice with the Board of Health of intent to seek review of the decision;

B. Filing a written brief with the Board of health which states the permit holder's arguments as to why the decision of the Health Department shall be reversed. In addition to the permit holder's arguments for reversal, this brief shall contain a short recitation of relevant facts, citation to any relevant legal authority and copies of any documentary evidence the permit holder wishes to be considered by the Board of Health; and

C. Appearing at the meeting of the Board of Health at which the Board of Health is scheduled to consider the review requested by the permit holder.

D. The hearings provided for in this section shall be conducted by a quorum of the members of

the Board of Health at a time and place designated by the Board within 30 days of the date on which the written request was filed.

- (1) Notification. The petitioner for the hearing shall be notified of the time and place of the hearing not less than five days prior to the date on which the hearing is to be held.
- (2) Findings. 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.
- (3) Written report. A written report of the hearing decision shall be furnished either personally or by certified mail to the petitioner by the Board of Health.

§ 216-47 Administrative review of decisions.

Any person, firm or corporation affected by the decisions, rules or regulations of the Board of Health of McLean County, Illinois, may have the decisions of said Board of Health reviewed in the Circuit Court of McLean County, Illinois, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Board of Health. The term "administrative decisions" is defined in Section 1 of the Administrative Review Act.

§ 216-48 Inspections.

Each temporary food establishment located in the County of McLean, or its police jurisdiction, is subject to an opening inspection and as many additional inspections and reinspections as are deemed necessary by the Health Department for the enforcement of this article.

- A. Access to establishments. The Health Department, after proper identification, shall be permitted to enter, at any reasonable time, any temporary food establishment within the County of McLean, or its police jurisdiction, for the purpose of making an inspection to determine compliance with this article. It 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 Department makes an inspection of a temporary food establishment, it shall record its findings on an inspection report form provided for this purpose and shall furnish a paper or electronic copy of such inspection report form to the permit holder or operator.
- C. Issuance of notices. Whenever the Health Department makes an inspection of a temporary food establishment and discovers that any of the provisions of this article have been violated, it shall notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such notifications, the Health Department shall:
 - 1) Set forth the specific violations found.
 - 2) Establish a specific and reasonable period of time for the correction of the violations found, substantially as follows:

(a) Class J temporary food establishment. All violations must be corrected at the time of the inspection or, at the discretion of the Health Department, within a period of time not to exceed 24 hours.

(b) Class K temporary food establishment.

[1] All Priority and Priority Foundation items must be corrected at the time of the inspection or, at the discretion of the Health Department, within a period of time not to exceed 24 hours.

[2] All Core items must be corrected within 24 hours or, at the discretion of the Health Department, before the establishment is operated at another single event or celebration.

3) State that failure to comply with any notice issued in accordance with the provisions of this article may result in suspension of the permit as provided in § **216-45B** herein.

4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a hearing is filed with the Health Department within the period of time established in the notice for correction.

D. Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy 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 Department.

§ 216-49 Examination and condemnation of food.
[Amended 11-17-2009]

Food may be examined or sampled by the Health Department as often as may be necessary to determine freedom from adulteration or misbranding. Time/temperature control for safety food shall be maintained at a safe temperature of 41° F (5° C.) or below or 140° F. (60° C.) or above, as appropriate, except during periods of preparation and serving.

A. Embargo orders. The Health Department may, upon written notice to the owner or person in charge, place an embargo order on any food which it determines or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded. Under an embargo order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter an embargo order, notice or tag placed on food the Health Department, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the Health Department, except on order by a court of competent jurisdiction.

B. Post-hearing actions. After the owner or person in charge has had a hearing as provided for in § **216-46** herein, and on the basis of evidence produced at such hearing, or on the basis of its examination in the event a written request for a hearing is not received within 10 days, the Health Department may vacate the embargo order or may by written order direct the owner or person in charge of the food which was placed under the embargo order to denature or destroy such food or to bring it into compliance with the provisions of this article; provided that such

order of the Health Department to denature or destroy such food or bring it into compliance with the provisions of this article shall be stayed if the order is appealed to a court of competent jurisdiction within three days.

**§ 216-50 Establishments outside jurisdiction of Health Department.
[Amended 2-17-2015]**

Food from temporary food establishments outside the jurisdiction of the Health Department of the County of McLean may be offered within the County of McLean, if such temporary food establishments conform to the provisions of this article or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Health Department may accept reports from regulatory authorities in other jurisdictions where such food establishments are located.

§ 216-51 Plan review.

The Health Department may require that plans for construction, remodeling, layout, arrangement and construction materials for any hereafter constructed or remodeled temporary food establishment be submitted for approval before such work is begun. A proposed menu shall be submitted with the plans.

**§ 216-52 Variances.
[Added 11-17-2009]**

- A. Any temporary food establishment may request a variance from the requirements of this article and adopted references when such an establishment believes that the requirements result in an undue economic hardship or when it is believed a standard may not apply to the specific situation.
- B. Requests shall be submitted in writing to the Health Department and shall include the name and location of the business, the name of the licensee or prospective licensee when applicable, and the section for which a variance is being requested. Evidence of undue economic hardship should include estimates and costs for compliance. If it is believed that a standard may not apply to the specific situation, an explanation shall be included.
- C. Any person who requests a variance from the provisions of these regulations shall have the burden of supplying the Health Department with information that demonstrates that conditions exist which warrant the granting of a variance. All doubts shall be resolved in the interest of the public's health and safety and in the favor of denial.
- D. The Health Department may grant a variance if:
 - 1) Such variance is consistent with the purpose and intent of the most current edition of the Illinois Food Code and its associated acts and codes and this article; and
 - 2) It is consistent with the protection of the public health; and
 - 3) In the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance; and

- 4) The circumstances of the temporary food establishment are unique; and
- 5) The cost of compliance is so great that it would threaten the economic viability of the temporary food establishment or the temporary food establishment would be in grave jeopardy if compliance were enforced; and
- 6) The damage to the temporary food establishment's economic viability is in fact caused by compliance.

E. A variance shall be revoked or expire if:

- 1) In the opinion of the Health Department, the variance results in a health hazard or nuisance; or
- 2) There is a change of circumstances from those supporting the variance; or
- 3) There is a change of ownership of the temporary food establishment.

F. Any temporary food establishment for which a variance has been denied may appeal such denial by requesting a hearing before the Board of Health.

§ 216-53 **Equipment standards.**

- A. All new and replacement equipment shall meet or be equivalent to applicable National Sanitation Foundation (NSF) standards or equivalent commercial food equipment standards of another recognized testing agency that tests to NSF commercial food equipment standards. If NSF commercial food equipment standards do not exist for a piece of equipment, the equipment must be inspected and approved by this department before being placed into service. In addition, adequate cold holding equipment must be provided to maintain cold time/temperature control for safety food at 41° F (5° C) or below. Mechanical refrigeration must be provided for temporary food events lasting two days or longer. Mechanical refrigeration is strongly recommended for all temporary food events.
- B. Hand-washing facilities must be provided, including a hands-free flowing-type container with a spout, warm water, liquid soap, single-use/disposable paper towels, and a container for catching wastewater. Avoid direct hand contact with ready-to-eat foods by providing gloves, tongs, deli tissue, etc.
- C. All new or replacement three-compartment sinks shall have two integral drain boards as original equipment from the manufacturer. **[Added 11-19-2002; amended 10-21-2003]**

§ 216-54 **Procedure when infection is suspected.**

When the Health Department has reasonable cause to suspect the possibility of disease transmission from any temporary food establishment employee, the Health Department shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated, and take appropriate action. The Health Department may require any or all of the following measures:

- A. The immediate exclusion of the employee from all temporary food establishments;

- B. The immediate closure of the food establishment concerned until, in the opinion of the Health Department, no further danger of disease outbreak exists;
- C. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and
- D. Adequate medical and laboratory examinations of the employee, of other employees, and of their body discharges.

§ 216-55 Penalties.
[Amended 2-17-2015]

Any person who shall violate any provisions of this article shall be guilty of a Class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,500 or imprisonment of not more than six months, or both. In addition thereto, such persons may be enjoined from continuing such violations. Each day upon which such violation occurs shall constitute a separate violation.