

**FOOD PROTECTION ORDINANCE
KENDALL COUNTY ORDINANCE 21-26
KENDALL COUNTY, ILLINOIS**

SECTION 1: SCOPE

This Ordinance is enacted to establish and provide for the minimum standards to protect the health of the public through the permitting and regulation of food service establishments within Kendall County.

The statutes of the State of Illinois grant to the Kendall County Board the power to enact such ordinances that protect the health of the citizens of Kendall County.

Therefore, be it ordained by the County Board of Kendall County, Illinois, that the following rules and regulations are hereby made and adopted.

SECTION 2: ADOPTION BY REFERENCE

The rules and regulations set forth in the Illinois Food Service Sanitation Code (77 Ill. Adm. Code 750), Sanitary Food Preparation Act (410 ILCS 650) and Food Handling Regulation Enforcement Act (410 ILCS 625) as now enacted or hereafter amended are adopted by reference and fully incorporated herein.

SECTION 3: DEFINITIONS

"APPLICANT" means the business or property owner or his/her authorized agent

"COMMISSARY" means a food service establishment, restaurant, or any other permitted/licensed place in which food, containers, or supplies are kept, handled, prepared, packaged, cleaned, or stored.

"DIRECTOR" means the Director of Environmental Health Services

"EMBARGO" to detain or place a hold on food or equipment

"ESTABLISHMENT RATING" inspection score or grade as outlined by the Illinois Food Service Sanitation Code

"FOOD SERVICE ESTABLISHMENT" means a food service establishment, food establishment, or a restaurant location as defined in the Illinois Food Service Sanitation Code; including but not limited to an operation conducted in mobile, stationary, temporary, or permanent facility or location

"HEALTH DEPARTMENT" means the Kendall County Health Department and its authorized representatives

"MOBILE FOOD SERVICE ESTABLISHMENT" means a vehicle, trailer, or cart mounted food service establishment designed to be readily movable. Regulations found in Food Service Sanitation State Code.

"NON PROFIT" describes an organization or food operator such as a 501(c)(3) organization or an organization or special event organized for one of the purposes identified in section 103.05 of the General Not For Profit Corporation Act of 1986, 805 ILCS 105/03.05(a).

"PERMIT HOLDER" means any business or property owner or his/her agent holding a permit issued by the Health Department

"PERSON" includes any individual, organization, partnership, corporation, association, or legal entity

"POT LUCK EVENT" is defined pursuant to 410 ILCS 625/3.1 as an event that meets all of the following conditions:

1. People are gather to share food at the event;
2. There is no compensation provided to people for bringing food to the event;
3. There is no charge for any food or beverage provided at the event;
4. The event is not conducted for commercial purposes, and;
5. It is generally understood by the participants at the event that neither the food nor the facilities have been inspected by the State or local certified public health department.

"REVOCATION" means the nullification of a permit, or approval

"SEASONAL FOOD SERVICE ESTABLISHMENT" means any food service establishment which routinely operates at an approved, fixed location and for a temporary period of time not exceeding eight (8) consecutive months within a permit year, excluding temporary food service establishments

"SHALL" means that the stated provision is mandatory

"SHOULD" means the stated provision is recommendation, but not required

“SUSPENSION” means a temporary hold on a permit

“TEMPORARY FOOD SERVICE ESTABLISHMENT” means a food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days of a single event or celebration

“VENDING MACHINE” means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by electronic transaction dispenses or provides unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

SECTION 4: FOOD HANDLING PERMITS

A. PERMITS IN GENERAL

Any person seeking to operate a food establishment within Kendall County’s jurisdiction shall possess a valid permit issued by the Kendall County Health Department. Only a person, who meets and complies with the requirements of this Ordinance, referenced state law and codes, and any applicable variance, shall be entitled to receive or retain such a permit. It shall be unlawful for any person to operate a food establishment outside of defined parameters as set forth in this Ordinance and related state code.

The food handling permit is not transferable to another person nor is it useable by the same permit holder at another location or outside of the permitted, fixed facility.

A valid food handling permit shall be posted for public display at every food service establishment.

Annual food handling permits shall be issued for a period of one (1) year, April 1 – March 31, unless subject to suspension or revocation.

B. PERMIT APPLICATION

Any person desiring to operate a food service establishment shall make a written application for a food handling permit on forms provided by the Health Department. Applications shall include, but not be limited to, the following:

- a. Applicant’s full name, post office address, and telephone number,
- b. Whether said applicant is an individual, firm, corporation, partnership, or other legal entity,
- c. The name, location, and type of the proposed establishment,
- d. Proof of access to commissary, if applicable, and
- e. The signature of applicant.

Upon receipt of such application, the Health Department shall make an inspection of the food service establishment to determine compliance with the provisions of this Ordinance. If the inspection reveals that the application requirements have been met, a permit shall be issued by the Health Department.

C. PERMIT RENEWAL

A renewal application must be completed prior to the expiration date of the annual food handling permit. Whenever an inspection, or the record, reveal(s) a serious or repeated violation of this Ordinance, the annual food handling permit may not be renewed and the Health Department shall notify the applicant in writing that the annual food handling permit will not be renewed and that an opportunity for a hearing will be provided if a written request for such hearing is filed within five (5) business days from receipt of the notice with the Health Department by the applicant. Such hearings, and the notice for them, shall be as directed in Section 6(D).

D. CONDITIONAL FOOD HANDLING PERMIT

When conditions exist that prevent an annual food handling permit from being issued, a conditional food handling permit may be issued. A conditional food handling permit shall be issued for a period of no more than ninety (90) days. The issuance of an annual food handling permit shall be contingent upon the completion of items requiring correction during the conditional food handling permit period.

No more than two (2) consecutive conditional food handling permits may be issued.

E. TEMPORARY FOOD SERVICE ESTABLISHMENT PERMITS

Food establishments including food stands that operate at a fixed location for a period of time not to exceed fourteen (14) consecutive days must obtain a Temporary Food Permit from the Health Authority prior to commencing with food operations.

Applications shall include, but not be limited to, the following:

- a. Applicant’s full name, post office address and telephone number,
- b. The name and dates of the event,
- c. The location of the temporary establishment,
- d. The menu to be served,
- e. Proof of access to commissary, if applicable, and
- f. The signature of the applicant.

Temporary food handling permit applications submitted less than 48 hours (2 days) in advance of the start of the event shall be assessed a late fee, as designated in the fee schedule, in addition to the permit fee.

No more than two (2) consecutive temporary food handling permits shall be issued.

F. VENDING MACHINE PERMITS

Only those vending machines that vend food or beverages that are in part or in total, time/temperature controlled for safety, shall be subject to the requirements of this ordinance. Vending machines must meet all applicable requirements in the 2017 FDA Food Code, 77Ill. Administrative Code 750 (section 1-201.10, definitions), and any subsequent revisions.

Vending machines that vend in part or in total, food and/or beverages that require time/temperature control for safety and are located and serviced by the same operator of a permitted food service establishment who already holds a Kendall County food service establishment permit are not subject to vending machines permit fees. These vending machines shall be permitted and inspected under the food service establishment’s existing permit.

G. POT LUCK EVENTS

Notwithstanding any other provision of law, the Kendall County Health Department shall not regulate the serving of food that is brought to a potluck event sponsored by a group of individuals or a religious, charitable, or nonprofit organization by individuals attending the potluck event for consumption at the potluck event.

Individuals who are not members of a group or organization sponsoring a potluck event may attend the potluck event and consume food at the event.

Pursuant to the Food Handling Regulation Enforcement Act (410 ILCS 625/3.1), no fee may be charged for admission to a potluck event that is exempt from regulation under this Section, nor may food be sold at a potluck event that is exempt from regulation under said Act. A business establishment dealing in the sale of food items may not sponsor a potluck event. Potluck event food may not be brought into the kitchen of a business establishment dealing in the sale of food items.

SECTION 5: INSPECTIONS

The Health Authority shall inspect each food service establishments, food stores and seasonal operations within Kendall County as described in this Ordinance and the applicable state code.

A. ACCESS TO ESTABLISHMENTS

The Health Department, after proper identification, shall be permitted to enter, at any reasonable time, any food service establishment within Kendall County, Illinois, for the purpose of conducting inspections or investigations to determine compliance with this Ordinance. Refusal to permit access after proper identification may be cause for immediate suspension or revocation of the permit.

The Health Department shall be permitted to examine the records of any food service establishment to obtain information pertinent to food safety; including but not limited to, food and supplies purchased, food received or sold, services acquired, and persons employed.

B. INSPECTION FREQUENCY

The frequency of routine inspections of permitted food service establishments by the Health Department shall be as outlined below, or as required by the Illinois Department of Public Health Local Protection Grants Rules if they are more restrictive (see 77 Ill. Adm. Code 615.310):

“The local health department shall inspect facilities at least as often as prescribed by the following schedule.

- A. Category I facilities shall receive three inspections per year, or two inspections per year if one of the following conditions is met:
 - i. A certified food service manager is present at all times the facility is in operation; or
 - ii. Employees involved in food operations receive a Hazard Analysis Critical Control Point (HACCP) training or in-service training in another food service sanitation area, or attend an educational conference on food safety or sanitation.
- B. Category II facilities shall receive one inspection per year.
- C. Category III facilities shall receive one inspection every two years.”
- D. Vending machines that vend food or beverages that are in part or in total time/temperature controlled for safety shall receive two inspections per year.

The Health Department shall make as many additional inspections as necessary for the enforcement of this Ordinance.

C. INSPECTION RECORDS

Upon inspection of a food service establishment by the Health Department, the inspection findings shall be recorded on an inspection report provided for this purpose and a copy shall be provided to the permit holder.

D. INSPECTION REPORTS

When the Health Department makes an inspection of a food service establishment and discovers that any of the requirements of this Ordinance have been violated, it shall notify the permit holder in writing.

Written notification shall include:

- a. The specific violation(s) found,
- b. A reasonable time frame for correction of said violation(s),
- c. A statement that failure to comply with any time limits for correction may result in immediate suspension and/or revocation of the subject permit and/or further legal action, and
- d. When applicable, the establishment rating.

SECTION 6: ADMINISTRATIVE

A. SUSPENSION OF PERMITS

Permits may be suspended by the Health Department for failure of the permit holder to comply with the requirements of this Ordinance. Whenever a permit holder has failed to comply with a notice issued

under provisions of this Ordinance, requiring mitigation of conditions capable of compromising the health and safety of the public, the permit holder shall pursuant to Section E below be notified in writing that the food handling permit is immediately suspended. An opportunity for a hearing will be provided if a written request for such a hearing is filed, within five (5) calendar days from receipt of the notice at the Health Department by the permit holder.

If the Health Department finds unsanitary or other conditions in the operations of a food service establishment that constitute a substantial health risk to the public, or in the event that there is reasonable cause to suspect the possibility of disease transmission from any food service establishment or any employee, the Health Department may issue a notice of suspension of the food handling permit requiring the permit holder to immediately suspend all food service operations. At that time the permit shall be removed from the establishment by the Health Department. An opportunity for a hearing will be provided if a written request for such a hearing is filed, within five (5) calendar days from suspension, at the Health Department by the permit holder.

B. REINSTATEMENT OF SUSPENDED PERMITS

A permit holder whose food handling permit has been suspended may make a written request for a re-inspection of the food service establishment for the purpose of reinstatement of the food handling permit. If the permit holder is in substantial compliance with the requirements of this Ordinance, and any applicable agreements from administrative actions, the food handling permit may be reinstated.

C. REVOCATION OF PERMITS

For serious or repeated violations of any of the requirements of this Ordinance, for the failure to correct permit suspension violations, or for the interference with the Health Department in the performance of its duties, the Health Department may revoke any food handling permit.

Prior to such action, the Health Department shall notify the permit holder in writing of the reasons for which the food handling permit is subject to revocation and advising the permit holder that the food handling permit shall be revoked after five (5) calendar days following service of the notice unless a request for a hearing is filed with the Health Department by the permit holder within five (5) calendar days of receiving such notice. A food handling permit may be suspended for cause pending revocation. Following revocation, the Health Department shall obtain the permit from the establishment.

D. HEARINGS

Any person may appeal a permitting decision to the Health Department by written notice that shall be filed with the Department within ten (10) business days after the receipt of the subject notice to revoke, suspend or deny the permit at issue.

A hearing for such appeal shall be scheduled to take place as soon as reasonably possible, but no later than fifteen (15) business days from the date of filing such request, unless a later date is agreed upon. The Health Officer conducting the hearing shall give notice by phone and regular mail of the date, time and location of such hearing. Written notice of the hearing to a party may be waived by that party.

The hearing shall be conducted by a Health Officer at the place and time designated by him/her. All hearings shall be conducted so as to provide the parties adequate time to prepare, the right to present evidence in support of their position, the right to cross-examine, and the right to legal counsel at their own expense. The formal rules of evidence shall not apply. The Health Office may ask questions of any witness to assist in reaching a decision. The Health Officer shall make a record of the proceedings. Should a party desire a verbatim transcript of such hearings, they may obtain a court reporter at their own expense.

Based upon the record of such hearing, the Health Department shall make a finding and a written decision shall be prepared. Such decision shall be considered final and shall be provided to the permit holder by the Health Department within fifteen (15) days and a record of the same shall be maintained.

E. SERVICE OF NOTICES

Notices shall be considered properly served when a copy of the inspection report or other notice has been delivered to the permit holder or applicant, or mailed to the permit holder or applicant at the address provided on the permit application, by certified mail, return receipt requested. A copy of the Notice shall be kept on file by the Health Department.

SECTION 7: PLAN REVIEW FOR NEW OR REMODELED FACILITIES

When a food service establishment is to be constructed or remodeled, and whenever an existing structure is converted for such use, properly prepared plans and specifications shall be submitted to the Health Department for review and approval prior to commencement of construction or remodeling. The plans and specifications shall be approved by the Health Department, in writing, only if they meet the requirements of this Ordinance.

The plans and specifications shall include the following:

- a. A copy of the proposed menu,
- b. A completed Plan Review application,
- c. The proposed layout/arrangement of equipment,
- d. Mechanical and plumbing schematics,
- e. Proposed equipment types and models,
- f. Proposed construction materials and finish schedules.

SECTION 8: FEES

FOOD SERVICE SANITATION FEES	
Food Service Establishment / Retail Food Store Annual Permit:	
Risk Type 1 (Low)	\$190
Risk Type 2 (Medium)	\$350
Risk Type 3 (High)	\$500
Retail Grocery w/ Food Prep (per check-out lane, in addition to risk based permit fee)	\$20
Vending Machine (requiring time/temperature control for food safety)	\$25
<i>New food establishment permit fees for application received after October 1st but prior to April 1st will be prorated.</i>	
Mobile Food Vendor Permit:	
Risk Type 1	\$175
Risk Type 2	\$225
Risk Type 3	\$275
Temporary / Special Event:	
Risk Type 1 and All Non Profit Organizations or Events	\$30
Risk Type 2	\$50
Risk Type 3	\$70
Temporary event permit late fees	\$10
Construction Plan Reviews:	
Risk Type 1	
Up to 1500 Sq. Ft.	\$300
1501 – 3000 Sq. Ft.	\$350
3001 – 5000 Sq. Ft.	\$450
Over 5001 Sq. Ft.	\$550
Risk Type 2	
Up to 1500 Sq. Ft.	\$400
1501 – 3000 Sq. Ft.	\$450

3001 – 5000 Sq. Ft.	\$550
Over 5001 Sq. Ft.	\$650
Risk Type 3	
Up to 1500 Sq. Ft.	\$450
1501 – 3000 Sq. Ft.	\$500
3001 – 5000 Sq. Ft.	\$550
Over 5001 Sq. Ft.	\$650
Conditional Permit	Permit fee x 50%
Re-inspection / non-compliance fee	\$100
Late payment fee	25% of fee
Outdoor grilling plan review	\$100
Pre-Operational re-inspection	\$50
Application to perform reduced oxygen packaging	\$125
Change of ownership inspection	\$100
Replacement establishment annual permit	\$20
Cottage food operation (one time registration)	\$15
Permit reinstatement fee	\$75
<ul style="list-style-type: none"> • Fee exemptions will be granted to those organizations that are classified as official units of Kendall County Government. • An applicant that can prove 501 (C)(3) status will be granted a fee reduction of 50 percent of the regular fee listed on this schedule, except in the context of a temporary or special event permit for which the applicant already receives a discount as a Non Profit. • All soup kitchens, food pantries and surplus food outlets which provide food to the public at no charge shall be exempt from the food permit fee. This fee exemption does not relieve the entity from the need to obtain a permit and meet all other requirements of this ordinance. • Issuance of a food service establishment, retail food store or mobile food vendor permit is contingent upon Health Department receipt of payment for any and all past due fees owed by said business to the Health Department. 	

SECTION 9: EXAMINATION AND CONDEMNATION

Food may be examined, sampled, or collected by the Health Department as often as necessary to determine freedom from adulteration, misbranding, or bacteriological contamination for the enforcement of this Ordinance.

The Health Department may, upon written notice to the permit holder, specifying the particular reasons, place an embargo on any food which it believes creates a potential health hazard. The Health Department shall tag, label, or otherwise identify any food subject to the embargo. No food subject to an embargo shall be used, served, altered, or moved from the food service establishment until written permission is obtained from the Health Department. The Health Department shall permit storage of the food under conditions specified in the embargo, unless storage is not possible without risk to the health of the public; in which case, immediate destruction shall be ordered and observed by the Health Department.

The permit holder may make a written request for a hearing to seek the lifting of an embargo or order for destruction of materials in accordance with Section 6(D). Such request must be submitted to the Health Department within five (5) business days after receipt of the subject notice.

Where equipment used in the preparation of food is found to be in a state of disrepair, unsafe, unsuitable for use, or unsanitary, such equipment shall be taken out of service and an embargo may be placed on said equipment by the Health Department. Such equipment that has been embargoed shall not be returned to service, altered, disposed of, or destroyed until written permission is obtained from the Health Department, or otherwise by order of a Court of competent jurisdiction.

SECTION 10: IMMINENT HEALTH HAZARD

A permit holder shall immediately discontinue operations and must notify the Health Department if an imminent health hazard may exist because of an emergency including, but not limited to, fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent food borne or waterborne illness outbreak, gross unsanitary occurrence or condition, or other circumstances that may endanger public health. The Health Department upon receiving this notice shall take actions necessary to protect the health of the public.

SECTION 11: FOOD PREPARED OUTSIDE OF KENDALL COUNTY

Food prepared for human consumption outside of Kendall County and transported into Kendall County shall conform to the standards and provisions of this Ordinance. To determine the extent of compliance with such provisions, the Health Department may accept reports from the regulating agency where such establishments are located.

SECTION 12: VARIATIONS

The Health Department may grant a variation by modifying or waiving specific requirements of this Ordinance if, in the opinion of the Health Department, a public health hazard or nuisance will not result from the issuance of the variation. If a variation is granted, the Health Department shall retain all pertinent information in its records.

Variation requests must be submitted in writing by the permit holder and shall include the following:

- a. An explanation of how the potential public health hazards shall be addressed,
- b. The relevant code sections that apply,
- c. A HACCP plan, if required.

A variance shall not be granted for more than one specific dimension per application. A copy of an approved variance must be kept on-site at the food service establishment. The permit holder must comply with the plans and procedures that are approved by the Health Department. Failure to comply with the variation, as approved, shall result in the revocation of variation approval.

All approvals, denials, and revocations shall be provided by the Health Department, in writing, to the permit holder.

SECTION 13: DIRECT SALES OF BAKED GOODS FROM HOME KITCHEN OPERATIONS

Pursuant to authority granted by 410 ILCS 625/3.6(c) of the Food Handling Regulation Enforcement Act as amended by Public Act 99-0191, which went into effect on January 1, 2016, the Kendall County Board allows for the direct sale of baked goods from home kitchen operations as set forth below.

A. Definitions:

1. "BAKED GOODS" as defined pursuant to 410 ILCS 625/4(b)(1)(C) are those such as, but not limited to, breads, cookies, cakes, pies, and pastries are allowed. Only high-acid fruit pies that use the following fruits are allowed: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants, or a combination of these fruits. Fruit pies not listed may be produced by a cottage food operation provided their recipe has been tested and documented by a commercial laboratory, at the expense of the cottage food operation, as being not potentially hazardous, containing a pH equilibrium of less than 4.6 or has been specified and adopted as allowed in administrative rules by the Department of Public Health pursuant to 410 ILCS 625/4(e).

2. "HOME KITCHEN OPERATION" is defined pursuant to 410 ILCS 625/3.6(a) as a person who produces or packages non-potentially hazardous baked goods in a kitchen of that person's primary domestic residence for direct sale by the owner or family member.

A home kitchen operation does not include a person who produces or packages non-potentially hazardous baked goods for sale by a religious, charitable, or nonprofit organization for fundraising purposes; the production or packaging of non-potentially baked goods for these purposes is exempt from the requirements of this Act.

3. "POTENTIALLY HAZARDOUS FOOD" is defined pursuant to ILCS 625/4(a) and 410 ILCS 625/4(b)(1)(C) as food that is potentially hazardous according to the Department of Public Health administrative rules, generally meaning food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation. The following are potentially hazardous and prohibited from production and direct sale by a home kitchen operation: pumpkin pie, sweet potato pie, cheesecake, custard pie, crème pie, and pastries with potentially hazardous filling or toppings.

B. Home kitchen direct sales conditions:

The direct sale of baked goods from home kitchen operations is allowed in the County of Kendall pursuant to 410 ILCS 625/3.6 and is subject to the following conditions:

1. Monthly gross sales do not exceed one thousand dollars (\$1000).
2. The food is a non-potentially hazardous baked good, as described in 410 ILCS 625/4.
3. A notice is provided to the purchaser that the product was produced in a home kitchen.
4. The food package is affixed with a label or other written notice is provided to the purchaser that includes:
 - i. The common or usual name of the food product; and
 - ii. Allergen labeling as specified in federal labeling requirements by the United States Food and Drug Administration.
5. The food is sold directly to the consumer.
6. The food is stored in the residence where it is produced or packaged.

C. Home kitchen inspections:

Home kitchen operations may be inspected by the Department of Public Health or the Kendall County Health Department in the event of complaint or disease outbreak. (*Kendall County Ordinance No. 16-06*)

SECTION 14: PARTIAL INVALIDITY

If any section, subsection, paragraph, sentence, clause, or phrase of this article shall be declared invalid for any reason whatsoever, such invalidation shall not affect the remaining portions of this article which shall remain in full force and effect.

SECTION 15: PENALTIES OTHER THAN SUSPENSION AND REVOCATION

Any person, firm, or corporation, who violates, disobeys, omits, neglects, refuses to comply with, or refuses to remedy a violation of the provisions of this Ordinance shall be guilty of a Class B misdemeanor pursuant to 55 ILCS 5/5-1116 and be fined \$500.00 for each offense, with each day upon which such violation continues constituting a separate offense, unless such other penalties for the particular offense are set forth by State or Federal law.

In addition, the Health Department may refer the matter to the Kendall County State's Attorney's Office to initiate any necessary action to obtain injunctive relief in the Circuit Court, in order to abate any such violating condition as enumerated in the Ordinance or the associated State law.

SECTION 16: ENFORCEMENT

Enforcement of this Ordinance shall be performed by the Kendall County Health Department. The Kendall County State’s Attorney’s Office shall be authorized to bring any necessary actions and prosecute any violations of this ordinance in the Circuit Court.

SECTION 17: REPEAL AND DATE OF EFFECT

This ordinance shall be in effect upon its adoption by the Kendall County Board and, at that time, all ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

BE IT FURTHER RESOLVED that the Kendall County Food Protection Ordinance shall be available in print at the Kendall County Health Department.

DATE OF KENDALL COUNTY BOARD OF HEALTH APPROVAL: OCTOBER 19, 2021

DATE OF KENDALL COUNTY BOARD APPROVAL: NOVEMBER 16, 2021

DATE OF EFFECT: NOVEMBER 16, 2021

Ayes - 8
Nays - 0
Abstain - 0