

COPY

Ordinance No. 11272017

A Resolution Enacting A Pike County Food Sanitation Program Ordinance

WHEREAS, the Pike County Health Department was established in accordance with Illinois State statute, 55 ILCS 5/5 as amended; and,

WHEREAS, local health departments are subject to the provisions of 77 Illinois Administrative Code, Part 615; and,

WHEREAS, said Administrative Code requires local health departments to conduct a food sanitation program in accordance with local ordinance that incorporates by reference or includes provisions at least as stringent as the Illinois Department of Public Health Food Sanitation and Retail Food Store Sanitation Codes; and,

WHEREAS, the Pike County Board desires to enact ordinances, in accordance with State statutes that regulate the activities of its local health department; and,

WHEREAS, it is the desire of the Pike County Board to protect the citizens of Pike County from transmitting or contracting foodborne disease;

NOW THEREFORE, BE IT RESOLVED by the Pike County Board that the following ordinance defining, licensing, and regulating food service establishments, and temporary food establishments within the county townships served by the Pike County Health Department, whether or not said establishments are located within the corporate limits of any municipality, be hereby adopted. Said ordinance shall be deemed in full force and effect immediately upon passage.

Section I: General Provisions

Sect. I. 01 Adoption by Reference -- In addition to those provisions set forth herein, this Ordinance hereby adopts by reference the current edition and subsequent revisions of the following:

- a) "Illinois Department of Public Health Food Service Sanitation Code," 77 Ill. Adm. Code 750
- b) "Bed and Breakfast Act," 50 ILCS 820/1 et seq.
- c) "Food Handling Regulation Enforcement Act" {410 ILCS 625}

Three copies of each shall be on file with the office of the Pike County Clerk.

Sect. I. 02 Definitions -- Words and phrases shall be taken in their plain, or ordinary and usual sense, except where used in a technical sense or where context or the intent of the Pike County Board indicates or requires a different meaning.

Adulterated shall mean the condition of any food:

- a) If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; or
- b) If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation or in excess of such tolerance of one has been established; or
- c) If it consists in whole or in part of any filthy, putrid or decomposed substance or it is otherwise unfit for human consumption; or
- d) If it has been processed, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
- e) If it is in whole or in part the product of a diseased animal or animal which has died otherwise than by slaughter; or
- f) If its containers are composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health, (410 ILCS 620/10)

Bed and Breakfast Establishment shall mean an operator-occupied residence providing accommodations for a charge to the public with no more than five (5) guest rooms for rent, in operation for more than ten (10) nights in a twelve month period; meals may be provided to the guests only as allowed by the Bed and Breakfast Act (50 ILCS 820) ; this term shall not include motels, hotels, boarding homes, or food service establishments (50 ILCS 820/2.a.).

Category I Facility shall mean a food service establishment that presents a high level of relative risk of causing food-borne illness based on the large number of food handling operations typically implicated in food-borne outbreaks and/or the type of population served by the facility. Category I facilities include those where the following operations occur:

Potentially hazardous foods are cooled, as part of the food handling operation at the facility;

Potentially hazardous foods are prepared hot or cold and held hot or cold for more than 12 hours before serving;

Potentially hazardous cooked and cooled foods must be reheated;

Complex preparation of foods or extensive handling of raw ingredients with hand contact for ready-to-eat foods occurs as part of the food handling operations of the facility;

Vacuum packaging, other forms of reduced oxygen packaging, or other special processes that require a HACCP plan; or

Immunocompromised individuals such as the elderly, young children under age four and pregnant women are served, where these individuals comprise the majority of the consuming population.

Category II Facility shall mean a food service establishment that presents a medium relative risk of causing food-borne illness based upon few food handling operations typically implicated in food-borne illness outbreaks. Category II facilities include those where the following operations occur:

Hot or cold foods are held at required temperatures for no more than 12 hours and are restricted to same day services;

Food prepared from raw ingredients using only minimal assembly; and

Foods that require complex preparation (whether canned, frozen or fresh prepared) are obtained from approved food processing plants, high risk food service establishments or retail stores.

Category III Facility shall mean a food service establishment that presents a low relative risk of causing food-borne illness based upon few or no food handling operations typically implicated in food-borne outbreaks. Category III facilities include those where the following operations occur:

Only non-potentially hazardous foods and potentially hazardous foods commercially pre-packaged in an approved processing plant are available or served at the facility;

Only limited preparation of non-potentially hazardous foods and beverages, such as snack foods and carbonated beverages, occurs at the facility: or

Only beverages (alcoholic and non-alcoholic) are served at the facility.

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

Food Service Establishment shall mean an operation that stores, prepares, serves, vends food directly to the consumer, or otherwise provides 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 a 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 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. This inclusion applies regardless of where consumption is on or off the premises and where there is a charge for food.

Food establishment does not include:

An establishment that offers only prepackaged foods that are not time/temperature controlled for safety;

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 guest;

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. (77 Ill. Adm. Code 750.10)

Health Department shall mean the Pike County Health Department.

Health Officer shall mean the Administrator of the Pike County Health Department or his/her authorized representative.

License Holder shall mean any person or his agent who makes application to license a food service establishment, ~~retail food store,~~ or temporary food establishment pursuant to this ordinance.

Misbranded shall mean the presence of any written, printed, or graphic matter upon or accompanying food or containers of food which is false or misleading.

Not-for-profit Organization shall mean those organizations recognized as such pursuant to the laws of the State of Illinois. This definition does not include organizations in possession of an annual liquor license (not a special event license) or an Illinois sales tax number for commercial purposes (not tax exempt numbers).

Potentially Hazardous Food shall mean any time/temperature control for safety food.

Person shall mean an individual, firm, partnership, co-partnership, company, corporation, trustee, lessee, receiver, association, municipality, or any political subdivision or department thereof, or any other entity, or its agent.

Temporary Food Establishment shall mean a food service establishment that operates at a fixed location for a period of time of more than three consecutive days but less than fourteen consecutive days in conjunction with a single event or celebration

Time/Temperature Control for Safety Food (formerly “potentially hazardous food” (PHF)) shall mean:

- 1) Time/Temperature control for safety food means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganisms growth or toxin formation
- 2) Time/Temperature control for safety 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 microorganisms 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 Aw and pH values is designated as Product Assessment Required (PA).
- 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 Aw value, or interaction of Aw and pH values, is designated as a non-TCS Food;
 - d) A food that is designated as Product Assessment Required (PA) in Table A or B (2013 FDA Food Code) 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 facts 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.

Section II: License Requirements

Sect. II. 01 License Required – It shall be unlawful for any person to operate a food service establishment or temporary food establishment, within that County of Pike, State of Illinois, who does not possess a valid license issued by the Pike County Health Department. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a license. Licenses shall not be transferable from one person to another nor shall said license be transferable to any location, building, or place other than that which it was originally issued. A valid license shall be posted in every food service establishment so as to be clearly visible to all customers. A valid license is one that is not suspended, revoked, or expired.

The following establishments shall be exempt from the provisions of this Ordinance:

- a) Establishments which have only non-perishable and/or non- time/temperature control for safety food and whose principle order of business is not to sell food for human consumption.
- b) Facilities licensed and inspected by the Illinois Department of Corrections.

Sect. II. 02 License Issuance – Any person desiring to operate a food service establishment, or temporary food establishment must comply with existing Pike County Zoning provisions, where applicable, and shall make written application for a license on forms provided by the Health Department. Any applicant who is not a resident of Pike County must designate a managing agent or registered agent who is a resident, and upon whom service may be made.

Sect. II. 03 License Length – The license for food service establishments and ~~retail food stores~~ shall be issued annually by the Health Department, beginning on the first day of July following the effective date of this ordinance. Licenses issued after this date, but within the next twelve months period, shall have their license fee pro-rated.

Sect. II. 04 License Renewal – Annual renewal of licenses shall be required for continued operation of the establishment. The annual operating license shall run from July 1 to June 30th. The Health Department will provide for effective notification and registration of all food service establishments and retail food stores according to the following timeline:

- a) **MAY 1:** Annual renewal notification and forms will be sent out to all currently licensed food service establishments by May 1 for the next licensure year.
- b) **JUNE 1:** Renewal forms and fees are due to the Health Department by June 1. The Health Department will send a registered letter and specific renewal requirements along with possible penalty amounts for non-renewal to all facilities who fail to respond to the

June 1 deadline. Valid renewal forms and payments not received by June 1 will be subject to a 50% late penalty fee in addition to the annual license fee.

- c) **JULY 1:** By July 1, the Health Department will mail all license renewals.
- d) **AUGUST 1:** Any food service establishment that has NOT made effective application to the Health Department for their annual license renewal will result in a lapse of license and the facility will be considered as not possessing a valid operating license on this date.

Sect. II. 05 License Updates – The License Holder has an affirmative and continuing requirement to update the original and all renewal applications. As a result, the License Holder must inform the Health Officer of any changes in the information listed in these applications within thirty (30) days.

Failure to comply with the requirements of this section, or knowingly furnishing false information on the original or renewal applications shall be grounds for immediate suspension or revocation of any license issued pursuant to this Ordinance.

Sect. II. 06 License Suspension – Licenses for food service establishments or temporary food establishments may be suspended by the Health Officer upon notice to the License Holder of same. Reasons for suspending the license include, but are not limited to, the following:

- a) Failure to comply with the provisions of this Ordinance;
- b) Failure to comply with the provisions of this Ordinance after notification by the Health Officer;
- c) Failure to comply with the provisions of this Ordinance within the time established by the Health Officer;
- d) Interference with the Health Officer in the performance of his duties, including, but not limited to, failure to allow the Health Officer access to the License Holders' building or records;
- e) Failure to update the original and renewal applications, as required by this Ordinance; or,
- f) Knowingly furnishing false information on the original or renewal applications

Upon making a determination that a suspension is appropriate, the Health Officer shall advise the License Holder, or his managing or registered agent, in writing, of the intended suspension. The notice shall be delivered in person by the Health Officer or sent via certified mail. The License Holder may make a written request for a hearing with the Pike County Code Hearing Officer before imposition of the period of suspension according to the procedures set out in the Hearing Procedure section.

Licenses for food service establishments or temporary food establishments may be temporarily suspended by the Health Officer without notice to the License Holder when, in the judgement of the Health Officer, a condition exists that will result in an imminent health hazard to the public.

Upon making a determination that a suspension without notice is appropriate, the Health Officer shall immediately, without warning or notice, advise the License Holder, or his managing or registered agent, of said condition and all food service operations shall be immediately discontinued.

Before resuming operations following a suspension of service imposed by the Health Officer because imminent health hazards were identified, the facility must successfully pass a re-inspection by the Health Officer to assure the identified imminent health hazards have been eliminated.

Sect. II. 07 License Revocation – Licenses for food service establishments or temporary food establishments may be revoked by the Pike County Board upon notice to the License Holder of same. Reasons for suspending the license include, but are not limited to, the following:

- a) Serious violations of the provisions of this Ordinance;
- b) Repeatedly failing to comply with the provisions of this ordinance;
- c) Interference with the Health Officer in the performance of his duties, including, but not limited to, failure to allow the Health Officer access to the License Holder's building or records;
- d) Failure to update the original and renewal applications, as required by this Ordinance;
- e) Knowingly furnishing false information on the original or renewal applications;
- f) Failure to apply for re-inspection within 30 days of the end of a suspension period imposed for violations of the provisions of this Ordinance; and,
- g) When the continuous operation of the business has lapsed for a period of more than ninety (90) days.

Upon making a determination that a revocation is appropriate, the Health Officer shall advise the License Holder, or his managing or registered agent, in writing of the intended revocation. The notice shall be delivered in person by the Health Officer or sent via certified mail. The License Holder may make a written request for hearing with the Pike County Code Hearing Officer before imposition of the revocation according to the procedures set out in the Hearing Procedure section.

Sect. II. 08 License Classifications – The Pike County Health Department shall annually conduct a category assessment for every food service establishment operating in Pike County, pursuant to the Local Health Protection Grant Rules established by the Illinois Department of Public Health.

Sect. II. 09 License Fees – No annual registration fee shall be issued to any establishment, regardless of classification level.

Sect. II. 10 No Valid License –

- a) When a food service establishment is in operation for longer than a period of thirty days after the July 1st annual licensing deadline with no valid license, the facility shall be closed by notification until a valid license is obtained.
- b) All new food service establishments shall have a valid license prior to opening or they shall be closed by notification until they have a valid license.

Sect. II. 11 Embargo and Condemnation - Food may be examined or sampled by the Health Officer to determine freedom from adulteration or misbranding. The Health Officer may condemn or embargo (detain) equipment or food when he has probable cause to believe that any food or piece of equipment may be unwholesome or unfit for use. Such conditions include but are not limited to:

- a) Food that has been adulterated;
- b) Food that has been misbranded;
- c) Any Time/Temperature control for safety food found to be in the optimal temperature range for the growth of pathogenic foodborne bacteria as defined in the Illinois Food Service Sanitation Code;
- d) Where equipment used in the preparation of food products is found to be in a state of disrepair, unsafe, unsanitary, or unsuitable for use in the preparation, display or service of food; and,
- e) In the event that food is contaminated as a result of fire, flood, sewage backup, power outage, or similar events.

Condemned or embargoed food, food containers, or equipment may be suitably stored by the License Holder unless said storage would pose a risk to the public health. If a risk exists, immediate destruction shall be ordered by the Health Officer, or voluntary destruction may be accomplished by the License Holder. If the License Holder refuses to destroy the condemned food, food containers, or equipment, same shall be held under embargo until they have been proved satisfactory for human consumption by a certified laboratory at the expense of the License Holder.

No person shall remove or alter a condemnation or embargo order, notice, or tag placed on food, food containers or equipment by the Health Officer. Said food, food containers or equipment shall not be relabeled, replaced, reprocessed, repackaged, altered, disposed of, destroyed, or placed back in service without the permission of the Health Officer, except on order by a court of competent jurisdiction. The License Holder may make a written request for a hearing with the Health Officer before imposition of condemnation according to the procedures set out in the Hearing before the Pike County Code Hearing Unit section of this Ordinance.

Sect. II. 12 Employee Health – When the Health Department has reasonable cause to suspect the possibility of disease transmission by an employee of any establishment regulated by this Ordinance, the Health Officer shall investigate the suspected employee and take appropriate action pursuant to this Ordinance and State Statutes.

Sect. II. 13 Construction and Remodeling – Whenever any establishment regulated by the provisions of this Ordinance is constructed or remodeled, or whenever an existing structure is converted to use as an establishment to be regulated by this Ordinance, plans and specifications for such construction, remodeling, or conversion shall be submitted to the Health Officer for review and approval before construction, remodeling, or conversion may begin. At a minimum, any remodeling which requires the establishment owner to obtain a building permit due to the extent or cost of the work to be performed shall be required to also submit plans for said remodeling to the Health Department for review and approval prior to construction.

The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Health Officer shall inspect the proposed establishment prior to the beginning or resumption of operations to determine compliance with the approved plans and specification and the requirements of this Ordinance.

Section III: ADMINISTRATION AND ENFORCEMENT

Sect. III. 01 Inspection Schedule – The Health Department shall conduct routine onsite inspections for each food service establishment and temporary food establishment operating in Pike County in accordance with the guidelines established by the Illinois Department of Public Health. The Health Department shall perform additional inspections as deemed necessary for complaint resolutions and program quality assurance. All facilities must be initially inspected to determine the amount and type of food being prepared, served, and/or sold. Any food service establishment operating more than three consecutive days, or twelve or more times per year, will be inspected.

Sect. III. 02 Inspection Report- Whenever an inspection of an establishment is made, the findings shall be recorded on a standardized inspection report form pursuant to 77 Ill. Adm. Code 750. One copy of the completed inspection report form will be furnished to the License Holder or his managing or registered agent at the time of inspection. If violations of this Ordinance exist, the inspection report shall serve as official notice to the License Holder that the establishment is in violation of the provisions of this Ordinance. The completed inspection report form shall specify the violations found by the Health Officer, and shall establish a reasonable time period within which said violations must be corrected. All enforcement actions on inspections shall be conducted with the current Pike County Enforcement Policy and Procedures approved and adopted by the Board of Health. A copy of the current Pike County Enforcement Policy and Procedures can be found at <http://www.pikecountyil.org/health-department>, or by calling 217-285-4407.

Sect. III. 03 Right of Entry – The Health Officer, after proper identification, shall have access at any reasonable time to any establishment regulated by this Ordinance. Reasonable time for the purpose of this section shall mean at all times the establishment is open to the public. The Health Officer shall be permitted to examine all areas and records of the establishment, which are reasonably necessary to his inspection or investigation. Denial of access as herein provided shall be deemed as interference with the Health Officer in the performance of his duties, including but not limited to denial of access to the License Holder's building or records.

Sect. III. 04 Hearing before the Pike County Code Hearing Unit – Any person aggrieved by the final decision of the Health Officer as a the result of an enforcement action taken pursuant to the current Pike County Enforcement Policy and Procedures may file a written request to the Pike County Code Hearing Unit for a hearing at a time and place designated by the Pike County Code Hearing Officer within thirty (30) days of the date on which the written request was filed. A copy of this request shall be provided the Health Officer. The petitioner for the hearing shall be notified of the time and place of the hearing not less than five (5) days prior to the date on which the hearing is to be held.

If as a result of facts elicited as a result of the hearing, the Pike County Code Hearing Officer finds that strict compliance with the decision of the Health Officer would cause undue hardship on the petitioner, and that the public health would be adequately protected and substantial justice done by granting a variance from the decision of the Health Officer, the Pike County Code Hearing Unit may grant a variance and as a condition for such variance, may, where it deems necessary, make requirements which are additional to those prescribed by this Ordinance.


The Pike County Code Hearing Officer shall render a decision within thirty (30) days after the date of the hearing which shall be reduced to writing and placed on file in the office of the Health Officer and a copy thereof shall be served on the petitioner personally or be delivered to the petitioner by certified mail. A certified transcript of the record shall be provided at the expense of the person requesting the hearing. All witnesses called shall be required to testify under oath. An appeal from a decision of the Pike County Code Hearing Officer may be made to the circuit Court of Pike County, pursuant to the Illinois Administrative Review Act, 735 ILCS 5/3-101 et seq., as amended.

Sect. III. 05 Penalties – Any License Holder who violates the provisions of this Ordinance or any of the regulations promulgated hereunder, will be issued a written warning. If the License Holder violates the same provision as the written warning for a 2nd time, they shall be fined \$100. If the License Holder violates the same provision as the written warning for a 3rd time, they shall be fined up to \$500. The License Holder shall be subject to a fine of not more than \$600 for each offense. Further, the Health Officer, with the approval of the Board of Health, may seek injunctive relief and fines for non-compliance with the provisions of this Ordinance. The Pike County State’s Attorney serves as legal counsel and prosecuting officer for the Board of Health and Health Department and the Pike County Code Hearing Officer serves as hearing officer for violations of county ordinances.

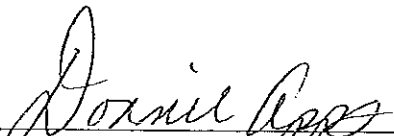
Sect. III. 05a – Effective January 1, 2015, a food service establishment shall be assessed a “non-compliance” penalty fee for the third re-inspection of a violation and an additional “non-compliance” penalty fee for all subsequent re-inspection performed in order to determine compliance with this ordinance. A “non-compliance” fee schedule shall be determined by the Board of Health.

Sect. III. 06 Severability – If any provision of this Ordinance is declared unconstitutional or invalid by a Court of competent Jurisdiction, that decision shall not affect the validity of the remainder of the Ordinance.

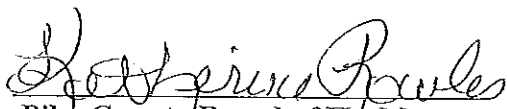
PASSED AND ADOPTED by the Pike County Board this 27 day of November, 2017



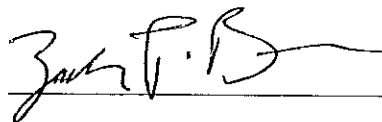
Andrew Borrowman
Pike County Board

Attest: 
Donald Apps, County Clerk

Respectfully submitted,


Pike County Board of Health

Approved As To Form:



Zachary Boren, States Attorney
Pike County