

Chapter 11.5

HEALTH AND SANITATION ¹

ARTICLE I. IN GENERAL

§ 11.5 - 1. Definitions:

As used in this chapter, the following terms shall be defined as indicated in this section, unless the context clearly requires otherwise:

Adulterated: The condition of food if it:

- 1) Bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health,
- 2) 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 if one has been established,
- 3) Consists in whole or in part of filthy, putrid, or decomposed substance or if it is otherwise unfit for human consumption,
- 4) Has been processed, prepared, packed or held under unsanitary conditions whereby it may have become contaminated or whereby it may have been rendered injurious to health,
- 5) Is in whole or in part the product of a diseased animal or animal which has died other than by approved slaughter method,
- 6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

Authorized Representative: A designated employee of the Kane County Health Department.

Bed And Breakfast Establishment : An operator occupied residence providing accommodations for a charge to the public with no more than five (5) guestrooms for rent, in operation for more than ten (10) nights in a twelve (12) month period. Breakfast may be provided to the guests only. Bed and breakfast establishments shall not include motels, hotels, boarding houses or food service establishments.

Building: Any structure which is designed, used or intended for the support, enclosure, shelter, or protection of persons, animals, or other property and which is, permanently affixed to the land.

Commissary: A catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.

County: The County of Kane, state of Illinois.

County Board: The County Board of Kane County, Illinois.

Embargo: To detain the sales or place a hold on the service of any food.

Employee: An individual having supervisory or management duties or other person working in a food service establishment.

Environmental Health Practitioner: An employee of the Department engaged in the carrying out of any activity pursuant to this article including but not limited to inspections and investigations.

Extermination: The control and elimination of insects, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, trapping or by any other recognized and legal method of pest elimination approved by the health officer or authorized representative.

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: Any food service establishment, or retail food store, which definitions are included in the "State Of Illinois, Department Of Public Health, Division of Food, Drugs And Dairies, 2008 Food Service Sanitation Code" and subsequent editions.

Food Service Worker: Any person, who handles, prepares, serves, sells or gives away food for consumption by persons other than his or her immediate family, or who handles utensils and equipment appurtenant thereto. The term does not include persons in establishments regulated under this code who handle food or drink exclusively in closed crates, cartons, packages, bottles or similar containers in which no portion of the food or drink is exposed to contamination through such handling.

Food Service Manager: Any person who supervises/trains a food service worker(s) to follow all food safety regulations. The manager shall have a current State of Illinois Food Service Sanitation Certificate, and have the original certificate onsite for review by the health officer or authorized representative.

Garbage: Organic waste resulting from the preparation, processing, handling and storage of food and all decayed or spoiled food from any source whatsoever.

Health Committee: The public health committee of the county board.

Health Department: The Kane County Health Department.

Health Officer: The executive director of the Health Department or their authorized health department representative.

Hearing Committee: Four (4) members of the public health committee appointed by the public health committee chairman to conduct hearings relative to this chapter or, in the event that any such members are not available, up to three (3) other members of the county board appointed by the public health committee chairman.

Highly Susceptible Population: Persons who are more likely than other people in the general population to experience food-borne disease because they:

Are immunocompromised, preschool age children or older adults; and

Obtain food at a facility that provides services such as custodial care, health care, or assisted living (such as a child or adult day care center, kidney dialysis center, hospital or nursing home), or nutritional or socialization services (such as senior center).

Home Lead Inspection: An inspection requested by a property owner to identify lead bearing surfaces on the property, excluding lead inspections required as part of the childhood lead poisoning prevention program.

Human Wastes: Food and byproducts of metabolism which are passed out of the human body.

Infestation: The presence within a building or food establishment of any insects, rodents, vermin or other pests.

Label: A display of written, printed or graphic matter upon the immediate container of an article.

Misbranded: The presence of any written, printed or graphic matter upon or accompanying food or containers of food which is false or misleading.

Mobile Food Unit: A vehicle mounted mobile food service establishment designed and operated as readily movable, e.g., mobile truck moving from location to location continuously. The unit shall return daily to a commissary for supplies, cleaning and for all servicing operations. The unit shall not have permanent potable water, wastewater, or electric connections.

Non-mobile Food Unit: A vehicle mounted mobile food service establishment designed to be stationary in a fixed location throughout the day, e.g., trailer. The unit shall be removed from the fixed location daily to a commissary for supplies, cleaning and for all servicing operations. The unit shall be provided with permanent potable water, wastewater and electric connections at the fixed location to ensure no interruption in operation, e.g., potable water tank empty, wastewater tank full, generator malfunction.

Occupant: Any individual living or sleeping in a building, or having possession of space within a building.

Owner: Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Permit: A written authorization issued by the Health Department or its authorized representative.

Person: "Person" shall mean, but not be limited to, any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust estate, or municipality, or his or its legal representative or agent.

Person in Charge: The individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge. In addition to the foregoing, the owner shall always be considered a person in charge.

Potentially Hazardous Food: Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; growth and toxin production of *Clostridium botulinum*; or, in raw shell eggs, the growth of *Salmonella enteritidis*. Potentially hazardous foods includes an animal food (a food of animal origin) that is raw or heat treated; a food of plant origin that is heat treated or consists of raw seed sprouts; cut melons; and garlic – in – oil mixtures that are not modified in a way that results in mixtures that do not support the growth of infectious or toxigenic microorganisms. The term does not include foods that:

Have a pH level of 4.6 or below, or

Have a water activity (a_w) value of 0.85, or

Are 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.

Pre-hearing Conference: An informal conference between the authorized representative of the Health Department and the party affected by a notice pursuant of this chapter, conducted by the health officer or authorized representative.

Pre-Packaged: Bottled, canned, cartoned, or securely wrapped. The term "pre -packaged" does not include a wrapper, carry-out box, or other non-durable container used to containerize food for the purpose of facilitating food protection during service and receipt of the food by the consumer.

Property Owner: The person in whose name legal title to the real estate is recorded including beneficiaries and/or trustees of a land trust.

Pushcart: A cart that is limited to precooked hot dogs, unshucked cooked corn, whole fresh fruit, canned beverages, condiments, and prepackaged nonpotentially hazardous food. The unit shall return daily to a commissary for supplies, cleaning and for all servicing operations. The unit shall not have permanent potable water, wastewater, or electric connections.

Ready – to – eat food: Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. Ready – to – eat food includes:

Unpackaged potentially hazardous food that is cooked to the temperature and time required for specific food under Section 750.180 of the Illinois Department of Public Health Food Service Sanitation code;

Washed and cut raw fruit and vegetables;

Whole raw fruits and vegetables that are intended for consumption without the need for further washing, such as at a buffet, but excluding whole raw fruits and vegetables offered for retail sale; and

Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

Revocation: To permanently remove a permit to operate a food service establishment or temporary food establishment.

Rodents: Rats and mice.

Rubbish : Combustible and noncombustible waste material except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, cans, metals, mineral matter, glass, crockery, and dust from similar materials.

Seasonal Temporary Food Service: Seasonal temporary events will include multiple temporary events within Kane County.

Suspension: To temporarily remove a permit to operate a food service establishment or temporary food service.

Temporary Food Service : A food service that operates at a fixed location for a period of time not to exceed fourteen (14) consecutive days in conjunction with a single event or celebration.

Tenant: A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

Vending Machine: Any self-service device which upon insertion of a coin, coins or tokens or by other similar means, dispenses unit servings of food either in bulk or in packages without the necessity of replenishing the device between each vending operation.

Vermin: Roaches, bedbugs, fleas, lice, termites or similar pest like insects.

Other definitions as stated in rules and regulations that are referenced in this chapter shall apply. (Ord. 08-168, 5-13-2008)

§ 11.5 - 2. Right Of Inspection:

The health officer or authorized representative, after identification and subject to constitutional limitations, may enter at reasonable times upon private or public property, both indoors and outdoors, for the purposes of investigating conditions relating to the administration and enforcement of this chapter or ordinance or to determine if a violation of this chapter or ordinance exists. The owner, occupant, tenant or agent of said premises or the person in charge thereof shall give the health officer or authorized representative free access to all parts of said premises at all reasonable times for the purpose of investigating conditions relating to the administration and enforcement of this chapter. If entry is refused or not obtained, the health officer or authorized representative is authorized to pursue recourse as provided by law including, but not limited to, the obtaining of a warrant for inspection at a prescribed time. (Ord. 08-168, 5-13-2008)

§11.5 - 3. Issuance Of Notice:

Whenever the Health Department determines that a violation of any provision of this chapter has occurred, the Health Department shall give written notice to the owner, occupant, tenant or agent of the property upon which the violation exists; the notice shall contain:

- (1) The location of the violation;
- (2) A description of what constitutes the violation;
- (3) A statement of acts necessary to abate the violation;
- (4) A date by which the violation must be abated to avoid further legal action. (Ord. 08-168, 5-13-2008)

§11.5 - 4. Hearings and Conferences:

(a) *Prehearing Conferences Before The Health Officer.* Any person affected by any order or notice issued by the Health Department in connection with the enforcement of any section of this chapter, may file in the office of the Health Department a written request for a prehearing conference before the health officer or authorized representative. Unless stated elsewhere in this chapter, the health officer or authorized representative shall hold a prehearing conference at a time and place designated by him as soon as possible but no later than five (5) days from the date of which the written request was filed. The petitioner for the prehearing conference shall be notified of the time and place of the prehearing conference not less than five (5) days prior to the date on which the prehearing conference is to be held. The prehearing conference shall be an informal proceeding and there shall be no testimony by witnesses. If, as a result of the prehearing conference, the health officer or authorized representative finds that strict compliance with the order or notice would cause undue hardship on the petitioner, and that the public health would be adequately protected and substantial justice done by varying or withdrawing the order or notice, the health officer or authorized representative may modify or withdraw the order or notice and as a condition for such action may, where he deems it necessary, make requirements which are additional to those prescribed in this chapter for the purpose of properly protecting the public health. The health officer or authorized representative shall render a decision within ten (10) days

after the date of the prehearing conference which shall be reduced to writing and placed on file in the office of the Health Department as a matter of public record. Any person aggrieved by the decision of the health officer or authorized representative may seek relief therefrom through a hearing before the hearing committee.

(b) *Hearings Before Hearing Committee:* Any person aggrieved by the decision of the health officer or authorized representative rendered as the result of a prehearing conference held in accordance with this section, may file in the office of the Health Department a written request for a hearing at a time and place designated by the secretary of the hearing committee as soon as possible but no later than five (5) days of the date on which the written request was filed. 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 held. If as a result of facts elicited as a result of the hearing, the hearing committee finds that strict compliance with the decision of the health officer or authorized representative 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 or authorized representative, the hearing committee 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 chapter. The hearing committee shall render a decision within five (5) days after the date of the hearing which shall be reduced to writing and placed on file in the office of the health officer or authorized representative and a copy thereof shall be served on the petitioner personally or by delivery 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 sworn oath. An appeal from a decision of the hearing committee may be made to the circuit court of Kane County, pursuant to the provisions of the "Administrative Review Law" in force and effect at that time in the State. (Ord. 08-168, 5-13-2008)

§11.5 - 4.1. Enforcement:

(a) The health officer or authorized representative may issue a complaint against the owners and occupant of said property or the person responsible for causing the violation charging a violation of any section or subsection of this chapter.

(b) The health officer or authorized representative upon observing any violation of this chapter may issue a notice of violation directed to the recorder of deeds of the county, or to the occupant of said property, or both, which said notice shall describe the violation and shall establish a reasonable time limit for the abatement thereof by such owner or occupant, which time shall not be less than ten (10) business days after service of such notice. An authorized representative shall serve the notice herein provided for upon the owner, occupant, tenant or agent of the property where such violation exists, or upon both of them, and shall make upon his or her return a copy of such notice, showing the time of service the person upon whom it was served, or the manner in which it was served.

- (1) Immediately upon the termination of the time allowed in any such notice for the abatement of such violation, a health officer or authorized representative shall investigate to determine whether or not such violation has been abated.
- (2) In the event the owner or occupant of the property upon which such violation exists has failed within the prescribed time to abate such violation, then the health officer or authorized representative shall file a complaint pursuant to the processes and methods prescribed by Chapter 1 Article IX of the Kane County Code entitled Administrative Adjudication. (Ord. 08-168, 5-13-2008)

§ 11.5 - 5. Penalty:

- (a) Any person who violates any provisions of this Chapter shall upon conviction, be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and each day's failure to comply with any such provision shall constitute a separate offense.
- (b) Revocation of a permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced. The levy and/or payment of any penalty or fine provided in this Article shall not be deemed a waiver of the authority of the health officer or authorized representative to suspend, revoke or refuse to renew any license or permit for cause. (Ord. 08-168, 5-13-2008)

§11.5 - 6. Reserved:

§11.5 - 7. Cleanup:

- (a) If the owner, agent, occupant or tenant of any premises or lot neglects or fails to abate a declared violation after due notice and time specified by the health officer or authorized representative, the Health Officer may request a private hauler to remove such materials and the expense incurred shall be billed to the owner, agent, occupant or tenant.
- (b) If the owner, agent, occupant or tenant of any premises or lot neglects or fails to exterminate any infestations of vermin or rodents after due notice and time, as specified by the Health Officer or authorized representative, the Health Officer or authorized representative may cause such vermin or rodents to be exterminated and the expense incurred shall be billed to the owner, agent, occupant or tenant.
- (c) If the charge for cleanup or extermination remains unpaid, it shall be made a special lien against the property at the next tax roll. Such lien shall be such notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied. (Ord. 08-168, 5-13-2008)

§11.5 - 8. Intergovernmental Agreements:

The County of Kane may enter into intergovernmental agreements with municipalities for the provision of services under this Chapter. All rights and obligations shall be detailed in a written agreement which shall be passed and signed by the governing boards of each political body. (Ord. 08-168, 5-13-2008)

§11.5 - 9. Jurisdiction:

The Health Department shall have jurisdiction for the purpose of enforcement of this Chapter as referenced in 55 Illinois Compiled Statutes 5/5-25008. (Ord. 08-168, 5-13-2008)

§11.5 - 10. Relief from Personal Responsibility:

- (a) The health officer or authorized representative charged with the enforcement of this Chapter while acting for Kane County and in good faith and without malice shall not thereby render himself liable personally, and is hereby relieved from all personal liability for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his official duties.
- (b) Any suit instituted against the health officer or authorized representative because of an act performed by him in the lawful discharge of duties and under provisions of this Chapter, shall be defended by the legal representative of Kane County until the final termination of the proceedings.
- (c) In no case shall the health officer or authorized representative be liable for cost in any action, suit, or proceedings that may be instituted in pursuance of the provisions of this Chapter.
- (d) The health officer or authorized representative, acting in good faith and without malice, shall be free from liability for acts performed under any provisions of this Chapter or by reason of any act or omission in the performance of his official duties in connection thereto. (Ord. 08-168, 5-13-2008)
- (e) It is the intent of this Chapter that the County, health officer, and all authorized representatives shall be extended the full amount of any immunities authorized by the Local Governmental and Governmental Employees Tort Immunity Act (745ILCS 10/) or at common law.

§ 11.5 – 10.1. Severability:

All provisions, paragraphs, sections, divisions, subdivisions and any portions thereof of this chapter are separate and distinct. If any one or more provisions, paragraphs, sections, divisions, subdivisions or portions thereof, are found to be void, invalid or otherwise unenforceable, the validity of the remaining provisions, paragraphs, sections, divisions, subdivisions or portions that can be given effect without such void provisions shall not be affected.

**ARTICLE II.
BOARD OF HEALTH**

§11.5 - 11. Establishment; Powers; Term:

- (a) The Kane County Board of Health ("Board of Health") shall be established consisting of all of the members of the Kane County Board, including the Chairman thereof.
- (b) The powers of the Board of Health shall be those authorized by statute.
- (c) The Board of Health shall continue in effect until: 1) the effective date of an ordinance of the County Board abolishing the Board of Health, or 2) the effective date of any amendment to Illinois Compiled Statutes, or valid State rules or regulations that attempt to reconstitute the Board of Health in any manner other than consisting of all of the members of the Kane County Board. (Ord. 08-168, 5-13-2008)

§11.5 - 12. Board of Health Advisory Committee:

The Board of Health shall be advised by a Board of Health Advisory Committee which shall consist of at least five (5) members appointed by the Chairman of the County Board with the approval of the County Board for terms of three (3) years; except that of the first appointees, at least two (2) shall serve for three (3) years, at least two (2) shall serve for two (2) years, and at least one shall serve for one year. At least one member of the Advisory Committee shall be a physician licensed in Illinois to practice medicine in all its branches, at least one shall be a dentist licensed in Illinois, and one shall be a nurse licensed in Illinois. All members shall be chosen for their special fitness for membership on the Advisory Committee. (Ord. 08-168, 5-13-2008)

§11.5 - 13. Appointments; Initial Meetings:

The Chairman of the County Board shall:

- (1) Appoint the members of the Advisory Committee in accord with this Article.
- (2) Call to order at the earliest convenient opportunity, the first meeting of the Board of Health for the purpose of organization.
- (3) Schedule and call to order the first meeting of the Advisory Committee for organization purposes. (Ord. 08-168, 5-13-2008)

§11.5 - 14. Officers; Proceedings:

- (a) The officers of the County Board, including Chairman and Vice Chairman, shall also serve as the officers of the Board of Health.
- (b) The Health Officer and the other appointed officials and employees shall report to the Public Health Committee of the County Board.

- (c) All of the Board of Health activities, including meetings, shall be conducted as part of the regular County Board procedures, activities, meetings and rules.
- (d) Every activity authorized under Illinois Compiled Statutes, as amended, for county boards of health, shall be deemed an action of a board of health, if done by the county board, even though the words "board of health" or terms related thereto are not contained in said action, rules or correspondence. (Ord. 08-168, 5-13-2008)

§11.5 - 15. Abolishment of Tuberculosis Sanitarium and Board; Tax:

In accordance with section 1a of "an act relating to the care and treatment by counties of persons afflicted with tuberculosis and providing the means therefore", approved June 28, 1915, as amended:

- (1) The tuberculosis sanitarium and board are abolished and the employees, assets and liabilities of the sanitarium and board transferred to and assumed by the board of health; and
- (2) A tax be imposed by the Health Department up to the maximum rate of 0.05, which shall not be increased at any time. (Ord. 08-168, 5-13-2008)

§11.5 - 16. Authorized Personal Health Fees:

(a) *Fees:*

- (1) *Assessment of Fees:* Administration fees may be assessed upon each individual receiving personal health services and collected by the Health Department. However, no eligible individual may be denied services because of inability to pay.
- (2) *Schedule of Fees:* The fee schedule for this section is on file in the office of the county clerk.

(b) *Credit of Fees:* Fees collected shall be credited to fund 041 (health fund), line item 16-99 (fees). (Ord. 08-168, 5-13-2008)

§11.5 - 17. Authorized Environmental Health Fees Fees collected shall be credited to fund 042 (health fund), line item 16-99 (fees).1

(a) *Fees:*

- (1) *Assessment of Fees:* Administration fees may be assessed upon each individual receiving environmental health services and collected by the Health Department.
- (2) *Schedule of Fees:* The fee schedule for this section is on file in the office of the county clerk. (Ord. 08-168, 5-13-2008)

- (a) The fee schedule for this section attached herto as exhibit 'B' and shall be on file with the County Clerk, from time to time it shall be increased here and after "*Effective January 1st 2011: COLA increase*" the schedule of fees exhibit 'B' shall take effect January 1st 2011 and shall increase thereafter effective each succeeding January 1st in an amount determined equal to the increase in the Consumer Price Index as determined by the United States Department of Labor for the Chicago Metropolitan Area, but in no event shall any fees established be less than the fee schedule effective on January 1st 2011.

§11.5 – 18 - 11.5 – 25. Reserved:

ARTICLE III. FOOD SANITATION

§11.5 - 26. Scope:

This article regulates food establishments, temporary food establishments, the operation of such establishments and equipment, and requiring permitting of food establishments and temporary food establishments within the limits of Kane County. (Ord. 08-168, 5-13-2008)

§11.5 - 27. Adoption By Reference:

In addition to those provisions set forth herein, this article hereby adopts by reference the provisions set forth in the State of Illinois, Department of Public Health, Division of Food, Drugs and Dairies, 2008 Food Service Sanitation Code, 1996 Illinois Retail Food Code, 2004 Illinois Plumbing Code and 2006 Illinois Department of Children and Family Services licensing standards for daycare centers and any subsequent amendments or revisions thereto, three (3) copies of which shall be on file in the office of the county clerk. (Ord. 08-168, 5-13-2008)

§11.5 - 28. Permits:

- (a) *Permits:* Beginning January 1, 1987, and every year thereafter, it shall be unlawful for any person to operate a food establishment or temporary food establishment within the county who does not possess a valid permit issued to him by the health officer or authorized representative. 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 to another person nor shall said permit be applicable to any locations, buildings, or places other than that for which it is issued. Each facility shall have a valid permit. A valid permit shall be posted in every food establishment so as to be clearly visible to all customers. A valid permit is one that is not suspended, revoked or expired.

- (b) *Term:* A permit for a food establishment shall expire December 31 of each year unless sooner suspended or revoked. A permit for a temporary food establishment shall be issued for a period of time not to exceed fourteen (14) days.

(c) *Fees*:

(1) *Schedule of Fees*: The fee schedule for this section is on file in the office of the county clerk.

(2) Definition of Categories:

a. "Category I facility" means a food establishment that presents a high 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;

Potentially hazardous foods are prepared for off-premises serving for which time-temperature requirements during transportation, holding and service are relevant;

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 at the facility;

Vacuum packaging and/or other forms of reduced oxygen packaging are performed at the retail level; or

Immunocompromised individuals such as the elderly, young children under age four (4) and pregnant women are served, where these individuals compose the majority of the consuming population.

Examples of category I facilities would include but are not limited to, large (greater than 15, 000 square feet) multi-department retail grocery stores which may include delicatessen, bakery, meat/seafood, produce and food service.

b. "Category II facility" means a food establishment that presents a high 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 II 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;

Potentially hazardous foods are prepared for off-premises serving for which time-temperature requirements during transportation, holding and service are relevant;

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 at the facility;

Vacuum packaging and/or other forms of reduced oxygen packaging are performed at the retail level; or

Immunocompromised individuals such as the elderly, young children under age four (4) and pregnant women are served, where these individuals compose the majority of the consuming population.

Examples of category II facilities would include but are not limited to, full menu restaurants, caterers, hospitals, small (less than 15,000 square feet) grocery stores, daycares / preschools providing a full service meal.

- c. "Category III facility" means a food 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 III 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;

Foods are 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 food stores.

Examples of category III facilities would include but are not limited to, fast food restaurants and daycares / preschools that provide potentially hazardous prepackaged or catered food that must be kept hot or cold.

- d. "Category IV facility" means a food 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 illness outbreaks. Category IV facilities include those where the following operations occur:

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

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.

Examples of category IV facilities would include but are not limited to, retail outlets selling only prepackaged foods, movie theaters with popcorn and soda, bars that do not prepare potentially hazardous food and daycares / preschools that serve limited potentially hazardous foods such as milk or non-potentially hazardous snacks.

e. *Temporary Food Service Establishments* : The fee established in the Environmental Health fee section for a food service establishment that operates at a fixed location for a period of time not to exceed fourteen (14) days per single event or celebration. There will be a late fee according to the current environmental health fee schedule for any application received within seven (7) days of event or celebration.

1. Seasonal Temporary Events: Seasonal temporary events will include multiple temporary events within Kane County. Permits expire on December 31 of each year unless sooner suspended or revoked.
2. Exceptions: Charitable not for profit organizations pay 50 percent of the appropriate category fee.

f. *Mobile Food Units, Nonmobile Food Units And Pushcarts*: Mobile food units, nonmobile food units, and pushcarts within Kane County shall be charged a fee according to the current environmental health fee schedule. Permits expire on December 31 of each year unless sooner suspended or revoked.

(3) *Pro-ration Of Fees*: Permit fees will be nonrefundable and prorated on a semiannual basis for newly opened establishments and/or establishments with a change of ownership. To obtain a valid permit, the new owner must reapply and complete the permit application process. Establishments opening or changing ownership prior to July 1 will pay one hundred percent (100%) of the appropriate annual fee. Establishments opening or changing ownership July 1 or after will pay fifty percent (50%) of the annual fee for the remainder of the calendar year. Establishments opening or changing ownership October 1 or after will pay twenty-five percent (25%) of the annual fee for the remainder of the calendar year.

(4) *Late Payment Penalty*: All permit fees for the annual renewal of permits are due by December 31 of the previous year. The permitted year is the calendar year, January 1 through December 31. Failure to submit the total fee required by December 31 will result in expiration of the permit and cessation of food establishment operations due to lack of a valid permit. Establishments failing to submit the required fee by December 31 shall be assessed a late payment penalty fee of twenty five percent (25%) of the required fee

in addition to the appropriate permit fee. Establishments failing to submit the required fee by January 31 shall be assessed a late payment penalty fee of fifty percent (50%) of the required fee in addition to the appropriate permit fee.

- (d) *Issuance:* Any person desiring to operate a food establishment or temporary food service, or person desiring to renew an expired permit shall make written application for a permit on forms provided by the health officer or authorized representative. Food establishments shall provide a dedicated fax number/machine that is available 24 hours per day, and an e-mail account to receive emergent food safety information related to but not inclusive of food recalls. This shall take effect beginning on January 1st 2011. Establishments failing to provide the fax number/machine and e-mail account shall have the food establishment license suspended, until compliance is verified. Such application shall include: the applicant's full name, post office address, and whether such applicant is an individual, firm, corporation or partnership; the names and type of proposed food establishment; and the signature of the applicant or applicants. The information provided on the application shall be kept current at all times. If the application is for a temporary food service establishment, it shall also include the inclusive dates of the proposed operation. Upon receipt of such an application for a new establishment, the health officer or authorized representative shall make an inspection of the food establishment to determine compliance with the provisions of this article. When inspection reveals that the applicable requirements of this article have been met, a permit shall be issued to the applicant by the health officer or authorized representative.
- (e) *Renewal:* Upon receipt of an application to renew an annual permit, the health officer or authorized representative shall review the food establishment record to determine compliance with the provisions of this article. Whenever the review process for renewal of permit reveals serious repeat violations of this article the permit will not be issued and the health officer or authorized representative shall notify the applicant immediately thereof. Such notice shall state the reasons for not renewing the permit. Such notice shall also state that an opportunity for a hearing shall be provided for the applicant, if requested, at a time and place designated by the health office or authorized representative. Such hearing shall be scheduled as soon as possible, but no later than five (5) days from the date of notice. The notice referred to in this subsection shall be delivered to the applicant in person by the health officer or authorized representative or may be sent by certified mail, return receipt requested. A permit which has expired shall be removed from the food establishment by the health officer or authorized representative.
- (f) *Suspension:* Permits may be suspended by the health officer or authorized representative for failure of the permit holder to comply with the requirements of this article. Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of section 11.5-37 of this article, the permit holder or operator shall be notified, in writing, that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the health officer or authorized representative by the permit holder within five (5) days from receipt of the notice. Upon suspension of the permit, the permit shall be removed from the food establishment by the health officer or authorized representative. Notwithstanding the other provisions of this article, whenever the health officer or authorized representative finds unsanitary or other conditions in the operation of a food establishment which in his judgment constitute a substantial hazard to the public health, he may without warning,

notice or hearing, issue a written notice to the permit holder or operator, citing such conditions, 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 immediately suspended, and all operations as a food establishment are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the health officer or authorized representative, shall be afforded a hearing as soon as possible but no later than five (5) days of written request.

(g) *Cessation Of Operations*: Permits for all food establishments shall be automatically suspended should the holder or operator cease operation of the food establishment for thirty (30) consecutive days or longer, irrespective of whether such cessation of operations shall be due to the seasonal nature of such food establishments, or any other reason. Said permit shall be reinstated upon application to the health officer or authorized representative for re-inspection of the food establishment if the establishment is in compliance with the applicable requirements of this article.

(h) *Reinstatement*: Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. As soon as possible, but no later than five (5) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the health officer or authorized representative shall make a reinspection. If the applicant is compliant with the requirements of this article, the permit shall be reinstated.

(i) *Revocation*:

(1) For serious or repeated violations of any of the requirements of this article, or for interference with the health officer or authorized representative in the performance of his duties, a permit may be revoked after an opportunity for a hearing has been provided by the health officer or authorized representative. Prior to such action, the health officer or authorized representative shall notify a 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 (5) days following service of such notice unless a request for a hearing is filed with the health officer or authorized representative by the permit holder within such five (5) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(2) Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit in accordance with this section.

(j) *Hearing Conference*: The hearing conferences provided for in this article shall be conducted by the health officer or authorized representative at a time and place designated by the health officer or authorized representative. The Department and the permit holder shall be entitled to call witnesses, be represented by legal counsel, and a record shall be made of the proceedings. The health officer or authorized representative shall make a final finding based upon the complete information presented and shall sustain, modify or rescind any notice or order considered at the prehearing conference. A written decision shall be furnished to the holder of the permit by the health officer or authorized representative and

said decision shall be final, but may be appealed to the hearing committee upon written request. (Ord. 08-168, 5-13-2008)

§11.5 - 29. Inspections:

(a) *Frequency:* The health officer or authorized representative or authorized representative shall inspect each food establishment within Kane County as follows:

Category I 3 times annually

Category II 3 times annually

Category III 1-2 times annually

Category IV 1 time annually

The following activities may be used in place of one annual inspection of a category I & II facility:

(1) A certified food service manager is present at the facility at all times food is being prepared.

(2) A hazard analysis critical control point (HACCP) inspection / menu review

(3) Facility employees attend an in-service training or educational conference on food sanitation.

The health officer or authorized representative shall make as many additional inspections and reinspections as are necessary for the enforcement of this article.

(b) *Right of Entry:* The health officer or authorized representative, after proper identification, shall be permitted to enter, during normal business hours, any food establishment or temporary food service in the county for the purpose of making inspections, and to determine compliance with this article. The health officer or authorized representative shall be permitted to examine the records of the food establishment or temporary food service to obtain pertinent information pertaining to food and supplies purchased, received or used, and persons employed. Failure to permit access after proper identification shall be grounds for immediate suspension or revocation of the permit. After such suspension or revocation, the permit holder may submit, in writing, a request for reinstatement of the permit.

(c) *Consent to Inspection:* The receipt of any permit or license issued by the Health Department pursuant to this Chapter to any person, firm, or corporation shall constitute the agreement of such person, firm, or corporation to such investigations or inspections.

(d) *Reports:* Whenever an inspection of a food establishment or temporary food service is made, the findings shall be recorded on an inspection report. One copy of the inspection report form shall be furnished to the person in charge of the food establishment or temporary food service. The inspection report form for food establishments shall set forth a weighted point value for each requirement. The rating score of the food establishment shall

be the total of the weighted point values for all violations subtracted from one hundred (100) and shall be shown on all copies of the report. (Ord. 08-168, 5-13-2008)

§11.5 - 30. Correction Of Violations:

- (a) The completed inspection report form shall specify a reasonable period of time for the correction of the violations found. The correction of the violations shall be accomplished within the period specified in accordance with the "Kane County Health Department Food Sanitation Enforcement Procedure". The inspection report shall state that failure to comply with any time limits for corrections may result in immediate suspension of all food service operations. An opportunity for a prehearing conference on the inspection findings or the time limitation or both will be provided if a written request is filed with the within five (5) days following suspension of operations. If a request for a prehearing conference is received, the prehearing conference shall be held within thirty (30) days of receipt of the request.
- (b) When more than one (1) follow-up inspection of a food service facility is necessary to ensure compliance with a previous inspection, a fee per sanitarian per hour will be assessed pursuant to the current environmental health fee schedule.
- (c) Whenever a food establishment or temporary food service is required under provisions of subsection (a) of this section to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time period. (Ord. 08-168, 5-13-2008)

§11.5 - 31. Examination And Condemnation:

- (a) Food may be examined or sampled by the health officer or authorized representative as may be necessary to determine freedom from adulteration or misbranding. The health officer or authorized representative may, upon written notice to the owner or person in charge, embargo any food which he determines or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded. Under an embargo, food shall be permitted to be suitably stored. It shall be unlawful for any person to move or alter an embargo notice or tag placed on food by the health officer or authorized representative. Neither such food nor the containers therefore shall be relabeled, repackaged or reprocessed, altered, disposed of or destroyed without permission of the health officer or authorized representative, except on an order by a court of competent jurisdiction.
- (b) After the owner or person in charge has had a prehearing conference as provided in section 11.5-4 of this chapter, and on the basis of evidence produced at such prehearing conference, or on the basis of an examination in the event a written request for a prehearing conference is not received within ten (10) days, the health officer or authorized representative may vacate the embargo or may, by written order direct the owner or person in charge of food which was placed under the embargo, to denature or destroy such food or bring it into compliance with the provisions of this article.
- (c) Where equipment used in the preparation of food products is found to be in a state of disrepair, unsafe, unsuitable for use, or unsanitary, such equipment shall be taken out of

use and an embargo placed on said items by the health officer or authorized representative. Such equipment may not be put back into service until written permission is obtained from the health officer or authorized representative. It shall be unlawful for any person to move or alter an embargo, notice or tag placed on equipment by the health officer or authorized representative. Such equipment will not be altered, disposed of or destroyed without permission of the health officer or authorized representative except on an order by a court of competent jurisdiction.

- (d) After the owner or person in charge has had a prehearing conference as provided in section 11.5-4 of this chapter, and on the basis of the evidence produced at such prehearing conference, or on the basis of an examination in the event a written request for a hearing is not received within ten (10) days, the health officer or authorized representative may vacate the embargo or may by written notice direct the owner or person in charge of the equipment to bring it into compliance with the provisions of this article. Such orders shall be stayed if the order is appealed to a court of competent jurisdiction within three (3) days. (Ord. 08-168, 5-13-2008)

§11.5 - 32. Outside Jurisdiction:

Food from establishments outside the jurisdiction of the County may be sold in the County 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 officer or authorized representative may accept reports from responsible authorities and other jurisdictions where such food establishments are located. (Ord. 08-168, 5-13-2008)

§11.5 - 33. Plan Review:

- (a) Reference Environmental Health Fee Schedule
- (b) *General:* Whenever a food establishment is hereafter constructed or remodeled or whenever an existing structure is converted to use as a food establishment, an application for permit is required including properly prepared plans and specifications for such construction, remodeling or conversion which shall be submitted to the health officer or authorized representative for review and approval before construction, remodeling or conversion is begun. 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 or authorized agent shall approve the plans and specifications if they meet the requirements of this article. No food establishment shall be constructed, remodeled or converted except in accordance with plans and specifications approved by the health officer or authorized representative. Construction, remodeling and/or conversion activities shall not begin until the plans and specifications have been approved by the health officer or authorized representative.
- (c) When the health officer or authorized representative issues an approval letter, the construction documents shall be approved, by stamp, as "Reviewed for Code Compliance". One set of the construction documents so reviewed shall be retained by the Health Department. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the health officer or authorized representative.

- (d) *Pre-opening Inspections:* Whenever plans and specifications are required by subsection (b) of this section to be submitted to the health officer or authorized representative, the health officer or authorized representative shall inspect the food establishment prior to the beginning or resumption of operations, to determine compliance with the approved plans and specifications and with the requirements of this article. (Ord. 08-168, 5-13-2008)

§ 11.5 - 34. Employee Health:

When the health officer or authorized representative has reasonable cause to suspect the possibility of disease transmission by any food establishment or temporary food service, he shall make such investigation as may be indicated, including the morbidity history of suspected employees and take appropriate action. The health officer or authorized representative may require any or all of the following measures:

- (1) The immediate exclusion of the employee from all food establishments or temporary food services.
- (2) No employee shall be allowed to return to work in a food establishment or temporary food service until the health officer or authorized representative certifies that the employee no longer presents a health hazard.
- (3) Restriction of the employee service to some areas of the establishment where there would be no danger of transmitting disease.
- (4) Adequate medical and laboratory examination of the employee and, if deemed necessary, other employees and of his and/or their body discharges.

Any person to whom such an order is issued shall comply immediately therewith, but upon written application to the health officer or authorized representative, shall be afforded a prehearing conference. (Ord. 08-168, 5-13-2008)

§ 11.5 – 34-1. Employee Requirements:

“Effective Date of Training Requirements in this section ‘§ 11.5 – 34-1’ shall take effect January 1st 2011, all other provisions of this ordinance shall be in full force and effect from and after its passage and publication as required by law”

(1) Food Service Worker’s Training

- a. Within 90 days of employment, all food service workers must obtain a food service worker's certificate by completing a food service worker’s sanitation course and test given by a nationally recognized agency such as the National Restaurant Association.

(2) Display of Health Certificates

a. Each food establishment shall maintain a separate file containing the certificates for each food service worker and food service manager. This file shall be accessible to the environmental health practitioner for review upon request.

(3) Food Service Worker's Duty

a. To Report to the Food Service Manager and/or Person in Charge:

The Onset of any of the Following Symptoms, Either While at Work or Outside of Work, Including the Date of Onset:

1. Diarrhea, Vomiting, Jaundice, Sore throat with fever, Infected cuts or wounds, or lesions containing pus on the hand, wrist, an exposed body part, or other body part and the cuts, wounds, or lesions are not properly covered (such as boils and infected wounds, however small)

b. Future Medical Diagnosis:

Whenever diagnosed as being ill with Norovirus, typhoid fever (*Salmonella* Typhi), shigellosis (*Shigella* spp. infection), *Escherichia coli* O157:H7 or other EHEC/STEC infection, or hepatitis A (hepatitis A virus infection)

c. Future Exposure to Foodborne Pathogens:

1. Exposure to or suspicion of causing any confirmed disease outbreak of Norovirus, typhoid fever, shigellosis, *E. coli* O157:H7 or other EHEC/STEC infection, or hepatitis A.

2. A household member diagnosed with Norovirus, typhoid fever, shigellosis, illness due to EHEC/STEC, or hepatitis A.

3. A household member attending or working in a setting experiencing a confirmed disease outbreak of Norovirus, typhoid fever, shigellosis, *E. coli* O157:H7 or other EHEC/STEC infection, or hepatitis A.

(4) Food Service Manager and/or Person in Charge Duty

The Food Service Manager and/or Person in Charge shall ensure that:

a. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas.

b. Employees and other persons such as delivery, maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this ordinance.

c. Employees are effectively cleaning their hands, by routinely monitoring their handwashing.

- d. Employees are visibly observing foods as they are received to determine that they are, delivered at the required temperatures, protected from contamination, and unadulterated.
- e. Employees are properly cooking potentially hazardous food known to cause severe foodborne illness.
- f. Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours.
- g. Consumers who order raw or partially cooked ready-to-eat-foods of animal origin are informed that the food is not cooked sufficiently to ensure its safety.
- h. Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused.
- i. Consumers are informed by posting a notice that clean tableware is to be used when they return to self-service areas such as salad bars and buffets.
- j. Employees are preventing cross-contamination of ready-to-eat-food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.
- k. Employees are properly trained in food safety as it relates to their assigned duties.
- l. Food employees are informed of their responsibility to report in accordance with this ordinance, to the food service manager, information about their health and activities as they relate to diseases that are transmissible through food.

§11.5 - 35. Exemptions:

- Persons operating establishments which have only prepackaged nonperishable and/or nonpotentially hazardous food and whose principal order of business is not to sell food for human consumption shall be exempt from the provisions of this article.
- Roadside stands operated for the sale of unprocessed agricultural products produced and offered for sale shall be exempt from the provisions of this article.
- Temporary food services selling prepackaged nonperishable and/or nonpotentially hazardous food shall be exempt from the provisions of this article.
- Establishments which have only nonperishable, nonpotentially hazardous food dispensed by vending machines shall be exempt from the provisions of this article. (Ord. 08-168, 5-13-2008)

§11.5 - 36. Adulterated Food:

No food establishment shall offer for sale or keep for the purpose of selling or offering for sale, any food of any kind intended for human consumption which is adulterated for any reason, or violate any rule or regulation as provided herein. (Ord. 08-168, 5-13-2008)

§11.5 - 37. Notices:

- (a) *Issuance:* Whenever a health officer or authorized representative makes an inspection and discovers that any of the requirements of this article have been violated, he may notify the permit holder or operator of such violations by means of an inspection report form or other written notice. In such written notice, the health officer or authorized representative shall:
- (1) Set forth the specific violations found;
 - (2) Establish a specific and reasonable period of time for the correction of the violations found in accordance with the enforcement procedure;
 - (3) State that failure to comply with any notice issued in accordance with the provisions of this article may result in immediate suspension of the permit, and/or the possibility of further legal action;
 - (4) State that an opportunity for appeal from any notice or inspection findings will be provided if a written request for a prehearing conference is filed with the health officer or authorized representative within the period of time established in the notice of correction.
- (b) *Service:* Notices provided for under this section shall be deemed 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 certified mail, return receipt requested, to the last known address of the permit holder. Copy of such notice shall be filed with the records of the health officer or authorized representative. (Ord. 08-168, 5-13-2008)

§11.5 - 38. Bed And Breakfast Guidelines:

Bed and Breakfast establishments shall be subject to the (Bed and Breakfast Requirements) as approved by the County Board, PH Committee, and incorporated as Exhibit A¹ to this Chapter. The Public Health Committee may from time to time amend such guidelines at any public meeting after required public notice. (Ord. 08-168, 5-13-2008)

§11.5-39 - 11.5-50. Reserved: