



Legislation Text

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Ordinance to Amend and Reenact the City Code of the City of Hampton, Virginia by Amending Chapter 15, Food and Food Establishments, Section 15-1, Section 15-3, Section 15-21, Section 15,26, Section 15-38, Section 15-40, Section 15-47, Section 15-50, Section 15-66, Section 15-66, Section 15-67, Section 15-74, Section 15-86, Section 15-87, Section 15-88, Section 15-96, Section 15-97, Section 15-98, Section 15-106, Section 15-107, Section 136, Section 137, Section 141 and Section 142, to make the Ordinance consistent with the current practices of the Health Department and to conform to state and federal law; the repeal of Section 15-4, Sections 15-22 - 15-25, Sections 15-27 - 15-37, Section 15-39, Sections 15-41 - 15-46, Section 15-48 - 15-49, Sections 15-51 - 15-56, Sections 15-68 - 15-73, Sections 15-108 - 15-118, Sections 15-138 -15-140 and Sections 15-143 - 15 -173 to delete sections that are already covered by state law; and the renumbering of appropriate sections for efficiency.

PURPOSE/BACKGROUND:

This Ordinance was no longer in conformance with state law. Furthermore, the Virginia Code and Regulations had become stricter than the City's Food Ordinance because of changing thoughts about food safety. Rather than amend our Ordinance to match Virginia's Code and Regulations, the Health Department and City Attorney's Office decided to strike all provisions that were already regulated by the Virginia Code or Regulations, and keep only those sections that are specific to Hampton's Ordinance, or are stricter regulations than those contained in the Virginia Code or Regulations.

Discussion:

During the course of drafting the amendments, it also became clear that the City's Ordinance directed the Health Department to regulate certain activities that were already being regulated by the Virginia Department of Agriculture and Consumer Services, such as retail stores and certain food manufacturing operations. We eliminated those redundancies as well. Finally, we changed some of the definitions in the City Ordinance to more closely match what is used by the state. There are no additions to the requirements of either the Health Department or citizens and businesses that have to comply with these rules, only the elimination of redundancies and duplicative regulations.

Impact:

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Recommendation:

Approve Ordinance.

CHAPTER 15. FOOD AND FOOD ESTABLISHMENTS.

ARTICLE I. IN GENERAL

Sec. 15-1. Definitions.

For the purposes of this chapter, the following words and terms shall have the meanings herein ascribed to them, unless the context clearly indicates to the contrary:

Cook-for-hire. A person hired to prepare and/or serve food at a private function or home. All food prepared by the cook is handled at the location of the function or in the home. No food is stored, prepared, or handled off-site. A health permit is not required for a cook-for-hire.

Food. The word "food" shall mean 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. The term "food establishment" shall mean any place where food is prepared or provided and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place, regardless of whether consumption is on or off the premises and regardless of whether or not there is a charge for the food. The term does not include private homes where food is prepared or served without compensation for individual family consumption, the location of food vending machines or supply vehicles.

Food service manager. The term "food service manager" shall mean an individual having supervisory or management duties and any other person working in a food establishment who may be in charge of its food handling operation and who holds a valid food service manager's certificate issued under section 15-98.

Health authority. The term "health authority" shall mean the director of the department of public health or his authorized representative.

Mobile food service facility. The term "mobile food service facility" shall mean a food establishment mounted on wheels (excluding boats in the water) readily moveable from place to place at all times during operation and shall include, but not be limited to, pushcarts, trailers, trucks, or vans. The facility, all operations, and all equipment must be integral to and be within or attached to the facility

Prepackaged. The term "prepackaged" shall mean contained in a bottle, can, carton, secure wrapping or other types of containers and includes both hermetically and non-hermetically sealed packaging.

Risk assessment. The term "risk assessment" shall mean an evaluation of the potential for a foodborne illness to occur in a food establishment based on a hazard analysis of the food.

Temporary food establishment. The term "temporary food establishment" shall mean a food establishment that operates at a fixed location for a period of not more than 14 days in conjunction with a single event or celebration.

Sec. 15-2. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class three misdemeanor. Each day that such a violation exists shall constitute a separate offense.

Cross references: Penalty for Class three misdemeanor, § 1-11.

Sec. 15-3. Enforcement of chapter generally.

Unless otherwise noted, the health authority shall be responsible for the enforcement of this chapter. Inspections for the enforcement of this chapter shall be made as frequently as deemed necessary by the health authority.

Secs. 15-4--15-20. Reserved.

ARTICLE II. FOOD ESTABLISHMENTS GENERALLY*

***Cross references:** Indecent exposure by waitresses or waiters, § 23-13; tax on meals sold by restaurants, § 37-226 et seq.

State law references: Sanitary requirements for food establishments generally, Code of Virginia, § 3.2-5106 et seq.; regulations of state board of health governing restaurants, § 35.1-14.

DIVISION 1. GENERALLY

Sec. 15-21. Compliance with law.

All food establishments must comply with the relevant requirements of the Virginia Code and the Virginia Administrative Code.

Sec. 15-22. Examination and condemnation of food and drink.

Samples of food and drink may be taken from food establishments and examined by the health authority as often as deemed necessary to determine if such food or drink is adulterated, impure or dangerous. The health authority may condemn, remove and destroy any food or drink deemed adulterated, impure or dangerous. Portions of food once served to customers and left unconsumed shall be deemed adulterated, impure or dangerous and shall be destroyed. Food or drink, after having been once condemned by the health authority shall not thereafter be removed or disposed of by the operator or employee, except at the direction of, and in accordance with the directions of, the health authority.

State law references: Authority to condemn adulterated, impure or dangerous milk, milk product, beverage, food or food product, Code of Virginia, § 15.2-1109.

Sec. 15-23. Dishwashing equipment.

All non-restaurant food establishments shall be provided with adequate sinks, one of which shall be a sink of not less than three compartments, with hot and cold running water available to each compartment.

Sec. 15-24. Use of poisonous material in cleaning or polishing utensils.

No article, polish or other substance containing any cyanide preparation or other poisonous material shall be used in any food establishment for the cleaning or polishing of eating or cooking utensils.

State law references: Daily cleaning of instruments and machinery in food establishments, Code of Virginia, § 3.2-5110.

Sec. 15-25. Use of rooms for domestic purposes.

A person who prepares, furnishes, or prepares and furnishes food intended for individual portion service at the premises of the consumer, whether such premises are temporary or permanent, and as part of a specific menu for a specified number of people, shall not conduct their operation in any room used for domestic purposes. Similarly, no operations of a domestic nature shall be conducted in any room in which the operations of such person previously described in this section are conducted. This section is not applicable to cooks-for-hire.

Sec. 15-26. Samplings and demonstrations.

Any sampling or so-called "demonstration" conducted in a food establishment shall be conducted in accordance with the requirements set forth in this chapter for the operation of a temporary food establishment. Approval in writing of the facilities for such sampling or demonstration by the health authority shall be had before such an operation may lawfully be conducted.

Secs. 15-27--15-65. Reserved.

DIVISION 2. OPERATOR'S PERMIT

Sec. 15-66. Required.

It shall be unlawful for any person who does not possess a current unrevoked operator's permit issued pursuant to 12 VAC 5-421-3660 to operate any food establishment in the city.

Sec. 15-67. Prerequisite to issuance of license.

No license to operate a food establishment shall be issued by any officer or agent of the city until an operator's permit issued pursuant to 12 VAC 5-421-3660 is presented by the applicant.

Sec. 15-68. Closing and padlocking establishment operated without permit.

Upon written notice from the health authority that a food establishment is being operated without the permit required by 12 VAC 5-421-3660, or after such permit has been revoked, the chief of police or his designee, shall close and padlock such food establishment and it shall not be reopened to the public until such permit has been issued or reinstated.

Secs. 15-69-15-85. Reserved.

DIVISION 3. FOOD HANDLER'S PERMIT

Sec. 15-86. Required.

(a) It shall be unlawful for any employee who does not possess an unexpired or unrevoked food handler's permit issued under this division to work in any food establishment in the city, unless such employee is required to have a food service manager certificate pursuant to Sec. 15-98 or unless otherwise exempted by the health authority.

(b) The operator of a mobile food service facility shall be required to obtain a food handler's permit under this division, before operating any mobile food service facility within the city, unless the operator is required to have a food service manager certificate pursuant to Sec. 15-98.

(c) It shall be unlawful for any person operating a food establishment to employ any person to work therein, unless such person has a valid food handler's permit issued under this division or a food service manager certificate pursuant to Sec. 15-98, unless otherwise exempted by the health authority.

(d) Anyone needing a food handler's permit shall make application to the health authority and pay the application fee of ten dollars.

Sec. 15-87. To whom issued.

Food handlers' permits required by this division shall be issued by the health authority only to employees who shall furnish such information and laboratory specimens and submit to such physical examination and tests as the health authority may require and who have received such instructions in personal hygiene and food establishment sanitation as may be offered or required by the health authority.

Sec. 15-88. Term.

Each food handler's permit issued under this division shall remain in force for not more than two years or until revoked by the health authority for cause.

Sec. 15-89. Posting.

A food handler's permit issued under the provisions of this division shall be kept posted in the place of employment of the holder thereof, together with a complete list of all employees of the food establishment in question.

Secs. 15-90--15-95. Reserved

DIVISION 4. FOOD SERVICE MANAGER CERTIFICATE

Sec. 15-96. Purpose.

The purpose of this division is to require a minimum of one full-time staff supervisor at each food establishment who has been certified in food sanitation. This person shall have successfully completed a health authority approved food manager course, and have the knowledge necessary to provide safe storage, preparation, display and service of foods in a manner to prevent foodborne illness and to protect the public health and shall also have the knowledge to provide training for the employees under their supervision in safe food handling procedures.

Sec. 15-97. Rules and regulations for administration and enforcement.

The health authority or his designee is responsible for the enforcement of this division. The health authority is hereby authorized to make and adopt necessary rules and regulations as he may deem necessary for the administration and enforcement of this division, which rules and regulations shall not be in conflict with or an enlargement of any of the provisions of this division.

Sec. 15-98. Food service manager; responsibilities; certification.

(a) No person shall operate a food establishment unless there is at least one full-time certified food service manager on staff.

(b) The food service manager shall be responsible for training employees and for establishing sanitary food handling procedures. Written documentation of a training program and training records of individual employees shall be available upon request by the health authority.

(c) The application for a food service manager's certificate shall be submitted to the health authority. Before a food service manager's certificate is issued, the applicant must pay a fee of ten dollars and:

(1) Show proof of having successfully completed a course in food preparation, which shall be approved by the health authority; or

(2) Possess a valid certificate of registration from the food protection certification program of the Educational Testing Service Center for Occupational and Professional Assessments.

(d) Such certificate shall be issued in the name of the individual only and shall be valid for a period of three years from the date of issuance. A food service manager's certificate is not transferable from one person to another.

(e) A food service manager's certificate shall be renewed for a three-year period upon payment of a fee of ten dollars to the health authority and:

(1) Completing a refresher course in food protection, which shall be approved by the health authority; or

(2) Take and pass the food protection certification test of the Educational Testing Services Center for Occupational and Professional Assessment.

(f) The health authority may require certified supervisory personnel to successfully complete additional training as specified by the health authority when:

(1) The employing food establishment has repeated or persistent violations of critical health code requirements and effective corrective action has not been taken over a reasonable period of

time as determined by the health authority; or

(2) The employing food establishment is suspected with reasonable cause by the health authority as the source of foodborne illness.

All costs associated with required training or testing shall be the responsibility of the food establishment or the individual food service manager.

Sec. 15-99. Proof of certification.

Each certified food service manager shall display his certificate in a prominent location in the food establishment or carry it upon his person when on duty as directed by the health authority.

Sec. 15-100. Exemptions.

Food establishments that serve, sell or distribute only prepackaged foods and beverages are exempt from the provisions of this division. Temporary food establishments and mobile food service facilities may be exempted by the health authority. The health authority may also grant additional exemptions to this division on the basis of a risk assessment.

Secs. 15-101-15-105. Reserved.

ARTICLE III. TEMPORARY FOOD ESTABLISHMENT ITINERANT RESTAURANTS

Sec. 15-106. Compliance with article.

(a) All temporary food establishments must have an operator's permit issued pursuant to 12 VAC 5-421-3660. (b) Upon failure, after warning by the health authority, of any person maintaining or operating any temporary food establishment to comply with any of the requirements set out in this article or in the Virginia Code or the Virginia Administrative Code, the health authority shall request and the chief of police or his designee shall close and padlock the temporary food establishment in question and it shall not be reopened to the public until such compliance is had.

Sec. 15-107. Application for a temporary food permit.

Temporary food vendors must apply for a temporary food permit no less than ten calendar days prior to the event. No application for outdoor temporary food sales in conjunction with an event that requires a special event permit pursuant to city code section 2-311, et. seq., will be accepted unless a special event permit application has also been submitted to the special events coordinator. Secs. 15-108-15-135. Reserved.

ARTICLE IV. MOBILE FOOD SERVICE FACILITIES GENERALLY*

*Cross references: Regulations governing sales conducted on or adjacent to public right-of-way, § 34-7.

Sec. 15-136. Compliance with article generally.

All mobile food service facilities must have an operator's permit issued pursuant to 12 VAC 5-421-3660. The health authority shall approve a mobile food service facility only if it complies with the requirements set out in this article, the Virginia Code and the Virginia Administrative Code.

Sec. 15-137. Closing of facility for noncompliance with article.

Upon failure, after warning from the health authority, of any person maintaining or operating any mobile food service facility to comply with any of the requirements set forth in this article, the health authority shall close the facility and post a notice of such closing upon the facility. The notice

shall state that the mobile food service facility has been found in violation of health regulations and that such facility shall remain closed until found to be in full compliance.

Sec. 15-138. Operation in public parks.

Approved food service facilities may be operated in all public parks within the city, subject to the approval of the director of parks, recreation and leisure services. Nothing herein shall be construed to limit the authority vested in the director of parks, recreation and leisure services by chapter 26 of this Code.

Cross references: Operation of mobile food service facilities in specific parks, § 26-31.

Sec. 15-139. Base of operations for mobile food service facilities.

All mobile food service facilities shall have as their base of operations a restaurant or other food establishment approved by the health authority. Such base of operations shall have an adequate refrigeration facilities, storage, utensil washing facilities, an approved water supply of approved sanitary quality for the cleaning of utensils and equipment and replenishment of potable water for the mobile food service facility, sewage disposal facilities and space to service the facility. Adequate and satisfactory toilet and hand-washing facilities shall be readily accessible to operators of mobile food service facilities at such base of operations.