

**TOWNSHIP OF MAHWAH
BOARD OF HEALTH**

ORDINANCE NO. 23-134

AN ORDINANCE TO AMEND CHAPTER V OF THE TOWNSHIP OF MAHWAH BOARD OF HEALTH CODE ENTITLED “RETAIL FOOD ESTABLISHMENTS” IN ITS ENTIRETY

BE IT ORDAINED by the Board of Health of the Township of Mahwah, County of Bergen, State of New Jersey as follows:

ARTICLE 1: WHEREAS, THE MAHWAH BOARD OF HEALTH DESIRES TO UPDATE ITS CURRENT CODES, REGULATIONS AND REQUIREMENTS IN THE AREAS OF FOOD HANDLING AND LICENSURE TO MORE ADEQUATELY PROTECT THE PUBLIC HEALTH AND,

ARTICLE 2: WHEREAS THE MAHWAH BOARD OF HEALTH IS IN AGREEMENT THAT IT HAS A RESPONSIBILITY TO RAISE LICENSE FEES FROM TIME TO TIME TO REFLECT THE ACTUAL COSTS INVOLVED IN THE ENFORCEMENT OF THESE PROTECTIONS, AND,

ARTICLE 3: WHEREAS THE LAST REVISION TO CHAPTER V WAS ACCOMPLISHED IN DECEMBER OF 2013,

ARTICLE 4: THEREFORE, BE IT ORDAINED BY THE BOARD OF HEALTH OF THE TOWNSHIP OF MAHWAH THAT CHAPTER V IS HEREBY AMENDED IN ITS ENTIRETY WITH EXCEPTION TO THE TITLE OF SAME CHAPTER WHICH SHALL REMAIN “RETAIL FOOD ESTABLISHMENTS.”

Adam Matysiak

APPROVED: **ADAM MATYSIAK**
President, Board of Health

Kathryn Hagan

ATTEST: **Kathryn Hagan**
Recording Secretary, Board of Health

CHAPTER V - RETAIL FOOD ESTABLISHMENTS

(As updated November 2023 via Ordinance 23-134)

BH: 5-1 ADOPTION OF CODE BY REFERENCE

[BH Ord. #29, 1976 Code § 192-1]

A Code regulating retail food establishments, providing for the inspection of such establishments and fixing penalties for violation is hereby established pursuant to Revised Statutes 26:3-69.1 to 3-69.6. A copy of the Code is annexed hereto and made a part hereof without the inclusion of the text thereof herein.

§ BH5-2 TITLE OF CODE.

[BH Ord. #29; 1976 Code § 192-2]

The Code adopts by reference Chapter 24 of the New Jersey State Sanitary Code which provides for “Sanitation in Retail Food Establishments and Food and Beverage Vending Machines.” (N.J.A.C. 8:24-1)

§ BH5-2(a) COPIES ON FILE.

[BH Ord. #29; 1976 Code § 192-3]

Three (3) copies of the “Sanitation in Retail Food Establishments and Food and Beverage Vending Machines (2022) have been placed on file in the office of this local Board of Health upon the introduction of this Chapter for public viewing.

BH5-3 DEFINITIONS

BOARD OF HEALTH shall mean and refer to the Board of Health of the Township of Mahwah.

COMMISSARY shall mean an established commercial kitchen that is rented out to individual food service owners and/or operated and staffed by a single owner for the storage and preparation of food for sale by delivery only.

EXTENDED COMMISSARY FOOD DELIVERY VEHICLE shall mean a vehicle that is an extension of a food commissary, which, under its direction, is responsible for storing and preparing the meals that will ultimately be delivered to a private location.

EXTENDED COMMISSARY FOOD HUB shall mean a facility that stores and refrigerates food prepared at a commissary (separate location) that will supply food for an extended food delivery vehicle.

FOOD & BEVERAGE VENDING MACHINES- shall mean and include any device offered for public use which, upon insertion of currency or token, or by other means, dispenses unit servings of food or beverage, either in bulk or in package, without the necessity of replenishing the device between each vending operation.

FOOD HANDLER shall mean any person working with unpackaged food or food equipment or utensils or food-contact surfaces.

FOOD HANDLER CERTIFICATION- shall mean a certificate, degree or documentary proof obtained for satisfactory completion (at a minimum) of a three hour course of instruction in safe food handling as approved by the Health Officer.

FOOD PROTECTION MANAGER CERTIFICATION shall mean a certificate, degree or documentary proof obtained when passing a Food Protection Manager Safety Examination administered by an agency accredited by the Conference for Food Protection.

MOBILE RETAIL FOOD ESTABLISHMENT means any movable restaurant, truck, van, trailer, cart, bicycle, watercraft or other movable unit including hand carried, portable containers in or on which food or beverage is transported, stored or prepared for retail sale or given away at temporary locations.

- a. Cold Truck shall mean and refer to any vehicle or conveyance which deals exclusively with pre-packaged food and does not engage in food preparation on or within said vehicle or conveyance.
- b. Hot Truck shall mean and refer to any vehicle, or conveyance wherein food is prepared on, in or about said vehicle conveyance.

PERSON IN-CHARGE (PIC) means the individual present at a retail food establishment who is responsible for the operation at the time of inspection.

RETAIL FOOD ESTABLISHMENT shall mean and refer to “retail food establishment” as defined in N.J.A.C. 8:24-1.5.

RISK TYPE 1 FOOD ESTABLISHMENT means any retail food establishment that:

1. Serves or sells only pre-packaged, non-potentially hazardous foods;
2. Prepares only non-potentially hazardous foods; or
3. Heats only commercially processed, potentially hazardous foods for hot holding and does not cool potentially hazardous foods. Such retail establishments may include, but are not limited to, convenience store operations, hot dog carts, and coffee shops.

RISK TYPE 2 FOOD ESTABLISHMENT means any retail food establishment that:

1. Prepares, cooks, and serves most products immediately;
 2. Exercises hot and cold holding of potentially hazardous foods after preparation or cooking;
- or
3. Limits the complex preparation of potentially hazardous foods, including the cooking, cooling, and reheating for hot holding, to two or fewer items. Such retail establishments may include, but are not limited to, retail food store operations, schools that do not serve a highly susceptible population, and quick service operations, depending on the menu and preparation procedures.

RISK TYPE 3 FOOD ESTABLISHMENT means any retail food establishment that:

1. Has an extensive menu which requires the handling of raw ingredients; and is involved in the complex preparation of menu items that includes the cooking, cooling, and reheating of at least three or more potentially hazardous foods; or
2. Prepares and serves potentially hazardous foods including the extensive handling of raw ingredients; and whose primary service population is a highly susceptible population. Such establishments may include, but are not limited to full- service restaurants, diners, commissaries, and catering operations; or hospitals, nursing homes, and preschools preparing and serving potentially hazardous foods.

RISK TYPE 4 FOOD ESTABLISHMENT means a retail food establishment that

conducts specialized processes such as smoking, curing, canning, bottling, acidification designed to control pathogen proliferation, or any reduced oxygen packaging intended for extended shelf-life where such activities may require the assistance of a trained food technologist. Such establishments include those establishments conducting specialized processing at retail.

SEASONAL RETAIL FOOD ESTABLISHMENT shall mean a retail food establishment that operates for a period of 15 days to less than 4 months.

TEMPORARY RETAIL FOOD ESTABLISHMENT shall mean a retail food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

§ BH5-4 LICENSE REQUIRED; FEES; OR REVOCATION; NONTRANSFERABILITY.
[BH Ord. #19; BH Ord. #47; BH Ord. #77; 1976

BH5-4.1 License Required

- a. No person shall operate a retail food establishment in Mahwah until a license has been approved and issued by this Board of Health. Such license shall be posted in a conspicuous place within the establishment.
- b. Licenses issued or approved under the provisions of this Chapter shall expire annually on December 31 of each year and application for renewal thereof shall be submitted, together with the required fee, prior to February 1, of each year.

- c. An additional fee of 50% of the license fee will be charged on February 1, and again on the first day of each subsequent month that payment is delinquent.
- d. A license or approval of a license may be revoked for a violation by the holder of any provision of this Chapter or Code established herein, after an opportunity for a hearing by the Board of Health or its authorized representative on seven (7) days' notice to the licensee.
- e. A license issued by this Board of Health is not transferrable.

BH5-4.2 License Fee

The following fee for such license or renewal of such license shall apply:

A. Retail Food Licenses

1. Retail food establishment without seating:

- a. Prepackaged- no food preparation, no potentially hazardous food (NPH) - **\$125.00**
- b. Ice Cream Shops- cold/frozen items only **\$175.00**
- c. Bakeries, convenience stores **\$200.00**
- d. Delicatessens and Take-Out **\$275.00**
- e. Commissaries and Shared-Use kitchens **\$500.00**
- f. Extended Commissary Hub **\$200.00**

2. Retail food establishments with seating:

- a. 1-49 Seats: **\$250.00**
- b. 50-99 Seats: **\$375.00**
- c. 100-149 Seats: **\$500.00**
- d. 150-249 Seats: **\$650.00**
- e. 250-499 Seats: **\$925.00**
- f. 500-999 Seats: **\$1,350.00**
- g. 1,000+ Seats: **\$1,800.00**

3. Supermarket: \$1,500. 00

4. Public School Cafeterias : \$250.00

5. Mobile food establishments:

- a. Cold Truck **\$150.00**
- b. Hot **\$250.00**
- c. Extended Commissary Delivery Vehicle. **\$75.00**

6. Temporary Food Establishment Licenses

a. Temporary Food License (1 to 14 days) \$100.00

b. Non-Profit Temporary Food License (1 to 14 days) \$25.00

The fee for Temporary licenses for non-profits and for vendors currently holding an annual food establishment license in the Township may be waived at the discretion of the Health Officer or Board of Health.

7. Seasonal Food Establishment License-

***Establishment open for 15 days and up to less than 4 months - \$175.00**

8. Vending Machines-

\$60.00 for each vending machine maintained on or in any location in the municipality

9. Non-Conforming Establishment-

Fees to be determined by Board of Health or Health Officer for those operations that do not conform to the above listed categories.

BH5-4.3 REINSPECTION FEES:

a. Reinspection fees for a Conditionally Satisfactory Inspection. One hundred (\$100.00) dollars for 1st reinspection; Two hundred (\$200.00) dollars for 2nd reinspection; Three hundred (\$300.00) dollars for 3rd or subsequent reinspection.

b. Reinspection fees for an Unsatisfactory Inspection. Five hundred (\$500.00) dollars for each reinspection following an Unsatisfactory finding upon inspection.

§ BH5-4.4 RETAIL FOOD SAFETY CERTIFICATIONS REQUIRED.

§ BH5-4.4.1 Food Safety Certifications Required.

[BH Ord. No. 14-130]

a. All retail food establishment employees involved in the handling or preparation of food or drink shall complete a Food Handler Training Course and obtain a Food Handler Certificate.

b. Risk Level 2, 3 & 4 Retail Food Establishments (as defined by N.J.A.C. 8:24-1.5):

1. At least one Person In- Charge (PIC) shall hold a current Food Protection Manager Certification from an accredited certifying program recognized by the NJ Department of Health.

2. A PIC shall be on-site at the retail food establishment during all hours of operation.

§ BH5-4.4.2 Validity and Non-transferability of Food Safety Certifications.

[BH Ord. No. 14-130]

a. No person to whom a Food Protection Manager or Food Handler Certificate is issued shall give, loan, transfer or permit same to be used by any other person for any purpose whatsoever.

b. A Food Handler Certificate shall, unless otherwise stated, be considered valid for a period of three (3) years from the date of issuance.

c. A Food Protection Managers Certificate shall, unless otherwise stated, be considered valid for a period of five (5) years from the date of issuance.

§ BH5-5 ENFORCEMENT: SUSPENSION, VIOLATIONS AND PENALTIES.

[BH Ord. #19; 1976, BH Ord. #14-130; 2017, Code § 192-5; New]

BH5-5.1 Violations

a. Any person who violates any provision of or order promulgated under this Chapter or Code established herein shall, upon conviction thereof, be liable to the penalty as stated in BH:1-2.1

The penalty prescribed in paragraph a of this section shall not be deemed to be in lieu of Section BH:5-4.1(d) providing for the revocation of any license issued under this Chapter.

. Any establishment not in compliance with any provision of this section shall be subject to fines and costs of not less than \$100.00 or more than \$1,000.00 per violation.

BH5-5.3 Suspensions

a. The Board of Health may suspend the Retail Food Establishment License of any person, partnership, corporation or establishment in violation of this Chapter for a period of not more than three (3) days, pursuant to the authority of the Board of Health to license and regulate Retail Food Establishments as provided by N.J.S.A. 26:3-31.