

## **Chapter 136, FOOD SERVICE**

[HISTORY: Issued by the Health Authority, approved 12-3-1981 by the Board of Selectmen, authorized 5-14-1982 by the Annual Town Meeting, Arts. 25 and 26. These provisions were approved by the State of NH, Div. of Public Health Services on 1-11-1982. These provisions also provided that they shall be in full force and effect 1-1-1982; provided however that § 136-4 with respect to license fees only shall become effective 7-1-1982; Amended by the Merrimack Town Council 12-17-2009; Reviewed 12-7-2017; Amended 5-9-2024]

### **§ 136-1. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**BOARD OF HEALTH** -- The Town Council of the Town of Merrimack and the Health Officer, in accordance with RSA 128:3.

**FOOD TRUCK** – Any food service establishment mounted on wheels or otherwise designed to be immediately moveable and works out of a licensed commissary. Also called a “Mobile Food Vending Unit”, also includes any type of mobile canteen truck. This includes Food Trucks operating at Farmers Markets.

**HEALTH OFFICER** -- The Health Officer of the Town of Merrimack, New Hampshire or his or her designated representatives. He or she shall have such police powers as may be designated by New Hampshire RSAs.

**HOMESTEAD FOOD OPERATOR** – A person, persons, or establishment which sells food from the homestead residence, at the owner's farm stand, or at farmers' markets, of non-potentially hazardous foods (as defined by RSA 143-A:12) that are made at home and are pre-packaged and that do not require time and/or temperature control for safety (e.g. can be safely kept at room temperature and do not require refrigeration).

**FOOD SERVICE ESTABLISHMENT** - Includes all such establishments defined by RSA 143-A:3 and the State of New Hampshire, Department of Health and Human Services, Sanitary Production and Distribution of Food He-P 2300, as may be amended. Includes Food Trucks.

**RESTAURANT** - Includes all such establishments defined as such by the State of New Hampshire, Department of Health and Human Services, Sanitary Production and Distribution of Food He-P 2300.

**SANITARY FOOD CODE** -- The Sanitary Food Code, as adopted and amended, from time to time, by the State of New Hampshire, Department of Health and Human Services, Sanitary Production and Distribution of Food He-P 2300.

**TEMPORARY FOOD SERVICE ESTABLISHMENT** -- Any food service establishment which operates at a fixed location for a temporary period of time not exceeding 2 weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering.

**§ 136-2. Compliance required; adoption of standards.**

Every restaurant and food service establishment within the Town of Merrimack shall comply with the provisions of the Sanitary Production and Distribution of Food He-P 2300, which is herein, incorporated by reference and made a part of this chapter.

**§ 136-3. License required; non-transferability; posting.**

- A. It shall be unlawful for any person, entity or corporation to operate a food service establishment within the Town of Merrimack without a valid license issued by the Health Officer.
- B. No license shall be issued to or retained by any applicant who shall fail to comply with the requirements of the regulations herein set forth.
- C. No license shall be transferable to any other person, entity or corporation, nor from one location to another.
- D. A valid license shall be posted in every restaurant and food service establishment.
- E. A license for temporary food service establishments shall be issued for a period of time not to exceed 14 days.

**§ 136-4. Issuance of license.**

Any person desiring to operate a restaurant or other food service establishment shall make written application for a license on forms provided by the Health Officer. Mobile Food Vending Units (Food Trucks) have a separate application. Upon receipt of such an application and the designated license administrative fee, and after the inspection confirms that the applicable requirements of the regulations have been met, a license shall be issued to the applicant by the Health Officer.

- A. License Fees and fee schedule shall be as stated in the NH Sanitary Production and Distribution of Food Code He-P 2300 as amended from time to time by the State of New Hampshire.

**§ 136-5. Expiration of license.**

Licenses expire twelve (12) months after the issue date of license and must be renewed.

**§ 136-6. Notice of Violation and Procedure for Administrative Fines.**

- A. Whenever the Health Officer shall make an inspection of a restaurant or food service establishment and discover that any of the requirements of the Sanitary Food Code have been violated, the Health Officer shall notify the license holder or operator of such violations by means of an inspection report form or other written notice. In such notification, the Health Officer shall:

- (1) Identify each violation;
- (2) Inform the license holder of the amount of the proposed fine under He-P 2302.29;

(3) Inform the license holder of the right to appeal the Health Officer's decision to assess a fine by submitting a written request for a hearing to the Board of Health no later than 10 calendar days from the date of receipt of the notice;

(4) Inform the license holder of the opportunity to waive the right to a hearing by paying the fine within 10 days of the receipt of the Health Officer's notice of administrative fine; and

(5) Inform the license holder that if he or she does not request an appeal as specified in A(3) above, the Health Officer's decision to assess a fine shall become final after the 10 day period specified in A(3) above and the fine shall be paid to the Town no later than 10 days from that date.

#### **§ 136-7. Suspension of license and closure.**

- A. Any restaurant or other food service establishment within this Town which shall fail to comply with the requirements of this chapter may be closed by the Health Officer without a hearing for a ten-day period or until the violation is corrected and the sanitary condition is approved by the Health Officer as per He-P 2300 section 2302.32.
- B. Whenever a licensee has failed to comply with any notice or order of the Health Officer under the provisions of this chapter, the licensee shall be notified, in writing, that the license is immediately suspended. Any licensee may apply for a hearing before the Board of Health, which shall be scheduled within (10) days after its receipt.

#### **§ 136-8. Reinstatement of suspended license.**

Any person whose license has been suspended may, at any time, make application for a re-inspection for the purpose of reinstatement of the license. Within five days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the license have been corrected, the Health Officer shall make a reinspection. If the establishment is in compliance with the requirements of this chapter, the license shall be reinstated.

#### **§ 136-9. Mobile and Temporary Food Service Licensing**

##### **§ 136-9.a. License Fees**

- A. One-day License: Each license shall be valid for only the calendar day for which the license is issued. The fee for such a license shall be \$50.
- B. One-week License: Each license shall be issued for a specific time period from two to up to seven consecutive days. The expiration date shall appear on the approved license. The fee for such license shall be \$100.
- C. Annual License: Each license shall expire after one year; the year shall run April 1 through March 31. The fee for such a license shall be \$250 annually per cart, stand or motor vehicle from which goods are sold.

D. Licenses are not transferable and shall be issued only for a specific cart, stand or vehicle to be located at a specific location. An additional license shall be required for each additional cart, stand or vehicle or for any change in the location of the vending/sales business.

#### **§ 136-9.b. Multiple Location Licenses**

A. Persons may apply for a multi-location license for the purpose of vending/selling from a specific cart, stand, or vehicle in multiple locations.

B. Application for multiple location license may only be made at the time of the person's initial application each license year (April 1 through March 31)

C. Persons covered by the Chapter must first purchase an annual license for one location. The fee for a second location shall be \$100. The license shall be \$25 for each additional location beginning with the third location.

D. Persons must give the Merrimack Police Department twenty-four-hour notice prior to commencing sales activity at additional locations.

#### **§ 136-9.c. Application Deadline**

Complete applications for a Mobile and/or Temporary Food Service License must be submitted to the Building & Health Division no later than 7 days prior to the event. No applications will be accepted if submitted less than 7 days prior to the event. No exceptions.

#### **§ 136-10. Hearings.**

The hearings provided for in §136-6 and § 136-7 shall be conducted by the Board of Health at a time and place designated by it. Based upon the record of such hearing, the Board of Health shall make a finding and shall sustain, modify or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the license holder by the Board of Health within five days of decision.

#### **§ 136-11. Inspections.**

A. At least twice per year, the Merrimack Health Officer shall inspect each restaurant and food service establishment located in the Town of Merrimack and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this chapter.

B. The Health Officer shall prepare a written form as a guideline for all inspections, and such form shall be incorporated herein by reference and made a part of this chapter.

C. The Health Officer after proper identification shall be permitted to enter, at any reasonable time, any restaurant or food service establishment within the Town of Merrimack for the purpose of making inspections to determine compliance with this chapter. The Health Officer shall be permitted to examine the records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used and persons employed.

**§ 136-12. Exemptions.**

The following are exempt from the requirements of this Chapter:

A. Homestead Food Operators as defined above selling less than maximum annual gross sales of \$35,000 of food. Notwithstanding, all Homestead Food Operators must comply with state law RSA 143-A:12.

**§ 136-13. Applicability to establishments beyond Town's jurisdiction.**

Food from food service establishments outside the jurisdiction of the Town of Merrimack may be sold within the Town of Merrimack if such food service establishments conform to the provisions of this chapter. To determine the extent of compliance with such provisions, the Health Officer may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

**§ 136-14. Approval of plans for new establishments.**

When a restaurant or food service establishment is hereafter constructed or extensively remodeled or when an existing structure is converted for use as a food service establishment, properly prepared plans and specifications for such construction, remodeling or alteration, showing layout, arrangement and construction materials of work areas and the location, size and type of fixed equipment and facilities shall be submitted to the Health Officer for approval before such work is begun. No building permit shall be issued by the Building Inspector until such approval has been given by the Health Officer.

**§ 136-15 RSA 147:1 provides the authority for this Chapter.**

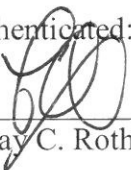
**§ 136-16. Severability.**

Should any section, paragraph, sentence, clause or phrase of this chapter be declared unconstitutional or invalid for any reason, the remainder of said chapter shall not be affected thereby.

**§ 136-17. Town Property.**

No person shall sell food on any Town-owned property unless expressly approved by the Town Council. This is done at a public Town Council meeting by submitting a completed Council agenda request form together with a completed license application package 14 days prior to the Council meeting.

Authenticated:

  
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Finlay C. Rothhaus, Town Council Chair

5/9/2024  
Date

  
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Brenda S. DuLong, Town Clerk / Tax Collector

5-10-2024  
Date