



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

Office of Health and Human Services  
Montgomery County Regulation on:

## EATING AND DRINKING ESTABLISHMENTS – REGULATIONS - FOOD SERVICE FACILITIES

Issued by: County Executive

COMCOR No. 15.00.01

Authority: Code Section 2-42A(e)

Supersedes: Executive Regulation 11-93, in part  
Council Review Method (1) Under Code Section 2A-15

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Comment Deadline: January 31, 2021

Effective Date: \_\_\_\_\_

Sunset Date: None

**SUMMARY:** This regulation amends Section 15.00.01 of the Code of Montgomery County Regulations to update the names of state and local departments.

**ADDRESS:** Department of Health and Human Services  
401 Hungerford Drive  
Rockville, Maryland 20850

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**BACKGROUND:** These changes reflect the current name of Montgomery County Department of Health and Human Services and the Maryland Department of Health.

### **COMCOR 15.00.01 Food Service Facilities**

#### **15.00.01.01 Definitions**

The Section of the Code of Maryland Regulations (COMAR) 10.15.03, Food Service Facilities governing definitions is incorporated for the definitions of this regulation unless superseded or amended by the following definitions.

Approving Authority – The Director or the Director’s duly authorized representative.



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**Bona Fide Nonprofit Organization** – An organization having official documentation from the United States Internal Revenue Service or the Attorney General for the State of Maryland that the organization has current tax-exempt nonprofit status.

**County** – Montgomery County.

**Critical Public Health Standard** – Any requirement of these regulations which directly affects food service sanitation or personal hygiene. These requirements are in the areas of improper food-handling, storage, cooking, reheating, hot-holding, cooling, refrigeration, employee handwashing habits, food-handlers' health, or related equipment violations.

**Department** – The Montgomery County Department of Health and Human Services.

**Detention Order** – A written notification by the Director, to the person in charge of a food service facility, to hold or retain in a secured location, specific foods pending determination by the approving authority, that the food is not likely to cause a food-borne illness, or is not spoiled or adulterated.

**Director** – The Director of the Montgomery County Department of Health and Human Services or the Director's duly authorized representative.

**Distressed Food or Drink** – Food or drink which has lost its label; which has been subjected to possible adulteration due to an accident, fire, flood, chemical contamination, adverse weather, or any other similar cause; or may have become unsafe or unsuitable for human consumption or use.

**Eating and Drinking Establishment** – A food service facility.

**Excluded Organization** – An excluded organization is a volunteer fire company or bona fide nonprofit fraternal, civic, war veterans, religious, charitable organization or corporation that prepares or serves only non-potentially hazardous food to the public, and prepares or serves this food or drink less than 4 days a week.

**Food-handler** – A food service employee who performs activities that may result in the touching of food or drink during preparation, display, or service, for example, cooks, chefs, salad/sandwich makers, short-order cooks, bartenders, waitresses, or waiters.

**Food Service Facility** – Any enterprise that prepares, serves, or sells food or drink for human consumption, on or off the premises, with or without charge. A food service facility includes the following types of facilities:



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**Number:** 22-20

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**Effective Date:**

1. a restaurant, coffee shop, cafeteria, short order café, luncheonette, tavern, sandwich stand, soda fountain, retail market, or retail bakery outlet; or
2. a food operation in an industry, institution, hospital, club, school, camp, church, catering kitchen, commissary, or a similar place in which food or drink is prepared for sale or for service on or off the premises.

A food service facility does not include:

1. a kitchen in a private home where food is prepared at no charge for residents or guests in the home, for guests at a private social gathering or for members of a nonprofit organization, but not served to the public; or
2. a facility that is owned or operated by and inspected by the Federal government.

Food Service Manager – An individual who is:

1. the licensee;
2. an employee assigned by the licensee to supervise or manage food-handling employees; or
3. an employee who otherwise has the authority, either personally or through others, to immediately enforce food protection, preparation, serving, storage, and display practices as well as good personal hygiene.

Imminent Public Health Hazard – A condition within or adjacent to a food service facility which:

1. has or will likely cause the contamination of food;
2. has or will likely cause exposure of food to improper temperatures;
3. has or will likely prevent employees from properly washing their hands or using the toilet facilities;
4. has resulted in a heavy infestation by insects, rodents, or any animals capable of spreading a food-borne illness or otherwise posing a direct threat to the public health or welfare; or
5. has or will likely cause a direct threat to the public health or welfare.

Itinerant Food Service Facility – A temporary or special food service facility that:



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**Number:** 22-20

**Originating Department:**  
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**Effective Date:**

1. operates at a fixed location for a temporary period of time such as at a fair, carnival, public exhibition, construction project, recreational facility, or similar gathering; or
2. a mobile unit that travels from place to place.

Each itinerant food service facility belongs to 1 of 4 classes.

1. Class I means a food service facility that operates from a fixed location or a mobile unit, handles, serves, or sells only sealed and prewrapped or prepackaged food or drink in the original sealed container or wrapping, but does not prepare, wrap, or package any food or drink on the premises or within the mobile unit.
2. Class II means a food service facility that operates from a fixed location, handles, serves, or sells food or drink other than in sealed containers or wrappings, or prepares, packages, or wraps any food or drink on the premises.
3. Class III means a food service facility that operates from a mobile unit, handles, serves, or sells food or drink other than in sealed containers or wrappings, or prepares, packages, or wraps any food or drink within the mobile unit.
4. Class IV means a food service facility that operates from a mobile unit, handles or sells only sealed, prewrapped, or prepackaged food or drink that is in the original sealed container or wrapping, but does not prepare, wrap, or package any food or drink within the mobile unit except coffee or tea.

**License** – The authority to operate a food service facility or an itinerant food service facility in the County.

**Licensee** – A person who is issued a license.

**Non-potentially Hazardous Food** – Food that is fit for human consumption, and meets on or more of the following criteria:

1. is a hard-boiled, uncracked shell egg which has been air-cooled;
2. has a water activity ( $a_w$ ) value of 0.85 or less;
3. has a hydrogen ion concentration (pH) level of 4.6 or below;



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

4. is in an unopened hermetically sealed container which has been commercially processed to achieve and maintain sterility under conditions of nonrefrigerated storage and distribution; or
5. is a food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms, the growth of *Clostridium botulinum*, or the production of pathogenic microbial toxins will not occur.

Operating From a Fixed Location for a Temporary Period – The operation of a temporary food service facility at a fixed location for less than 90 days. This 90-day time period may be subject to variance at the discretion of the Director. The operation of a mobile food service facility or the relocating of a mobile food service facility to different sites does not mean operating for a temporary period of time.

Person – Any individual, partnership, corporation, joint stock association, city, state, or government subdivision; and includes any trustee, receiver, assignee, or personal representative.

Person in Charge – Food service manager.

Potentially Hazardous Food – A natural or synthetic food or food ingredient which is:

1. capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth of *Clostridium botulinum*, or the production of pathogenic microbial toxins; and
2. of animal origin and is raw or has been heat-treated, of plant origin and has been heat-treated, or raw seed sprouts.

Special Food Service Facility – An itinerant food service facility.

Temporary Food Service Facility – An itinerant food service facility.

Temporary Period of Time – A period of time that is less than 90 days.

## **15.00.01.02 Minimum Construction and Operating Standards for Food Service Facilities**

The Sections of the Code of Maryland Regulations (COMAR) 10.15.03, Food Service Facilities and the Maryland Department of Health's [Health and Mental Hygiene's] standards for "Public Health Management of Food Service Employees" governing: food supplies, food protection, personnel, food equipment and utensils, sanitary facilities and control, other facilities and



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

**Subject:** Eating and Drinking Establishments – Regulations – Food  
Service Facilities

**Number:** 22-20

**Originating Department:**  
Office of Health and Human Services

**Effective Date:**

operations, special food service facilities, egg records, choking posters, plan review, priority assessment, hazard analysis, food-borne disease investigation and control, the sampling, detention, and condemnation of food, and Table 1 are incorporated as the construction and operating standards of this regulation unless superseded or amended by the following specific standards.

## A. Food Supplies

### 1. General

All fruits, vegetables, or other foods that have become spoiled or adulterated, all refrozen food, and all previously frozen perishable foods that have been thawed and kept above 45°F. must be properly salvaged or destroyed.

### 2. Distressed Food or Drink

- a. All distressed food or drink must be properly salvaged at a plant under Federal, state, or local inspection or destroyed.
- b. All metal cans of food offered for sale or distribution must be free from penetrating rust, pitting, and dents, especially those located on the rim, end double seams, and side seams. Any cans showing surface rust must have their labels removed, be inspected, and destroyed if they contain pinholes. If salvageable, they must be cleaned and sanitized by a method approved by the Department before being relabeled with the correct product information. Leakers, springers, flippers, and swells must be deemed unfit for sale, distribution, or consumption of the contents of such cans.
- c. Containers, including metal and glass containers with press caps, screw caps, pull rings, or similar types of openings which have been in contact with water, liquid foam, or other adulterating substances as a result of fire fighting efforts, chemical spills, flooding, sewage backups, or other reasons, must be deemed unfit for sale, distribution, or consumption of the contents (i.e., nonsalvageable). When feasible, consideration may be given for the reconditioning of spirits by distillation.
- d. All metal containers of food, other than those mentioned in IIA3.c., that have been partially or totally submerged in water, liquid foam, or other adulterating substances as a result of fire fighting efforts, chemical spills, flooding, sewage backups, or other reasons, but whose integrity has not



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

**Subject:** Eating and Drinking Establishments – Regulations – Food  
Service Facilities

**Number:** 22-20

**Originating Department:**  
Office of Health and Human Services

**Effective Date:**

been compromised, nor would be compromised by reconditioning, must, after thorough cleaning, be subjected to a sanitizing rinse of 100 ppm free chlorine residual for a minimum time of 1 minute, or must be sanitized by another method approved by the Department. These containers must subsequently be treated to inhibit rust formation.

- e. When original labels are missing or illegible, food containers must be correctly relabeled or overlabeled. If a container of food is missing its label or mandatory information and cannot be identified to correctly relabel, it cannot be sold.
- f. All food containers that have been salvaged must be labeled to indicate that they have been salvaged. All salvaged food containers must be provided with labels meeting the requirements of the Maryland Food, Drug and Cosmetic Act or COMAR 10.15.03.

## B. Food Protection

- 1. Food or drink must not be stored, prepared, or displayed beneath overhead sewer or drain pipes unless such pipes are protected to prevent contamination of food, drink, or utensils by leakage or condensation. Newly constructed or remodeled facilities must be designed so that soil or drain pipes are not located over a food preparation, storage, display, or serving area.
- 2. All salad ingredients including unopened containers of commercially prepared food must be prechilled to 45°F. prior to opening.
- 3. The internal temperature of all potentially hazardous food must be kept at or below 45°F. or at or above 140°F. during storage, display, and transit.
- 4. All potentially hazardous food that is cooked and then refrigerated must be rapidly cooled to 45°F. To achieve this goal, one or more of the following procedures must be used:
  - a. store this food under refrigeration, preferably in a walk-in unit, in uncovered, shallow pans with a maximum food depth of 3 inches;
  - b. reduce the size of any solid pieces of food by slicing, cutting into smaller portions, or deboning before storing this food under refrigeration, preferably in a walk-in unit;



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

- c. put the container of food in an ice bath and stir it frequently;
  - d. run potable water that is less than 70°F. over the product;
  - e. add ice from an approved source to the product; or
  - f. any other procedure that has been approved by the Director.
5. The time and temperature must be monitored during the cooling process for potentially hazardous food. If the cooling procedures listed in IIB.4. above are used, and they do not rapidly lower the temperature of the food to 45°F., the licensee must take whatever action(s) have been deemed appropriate by the Director to protect the health of the customers.

## C. Personnel

Every person connected with a food service facility whose work brings them in contact with the production, handling, displaying, serving, or storing of food, drink, or utensils, must furnish all information, permit any physical examination and submit any laboratory specimens or test results that the Director may require for the purpose of determining their freedom from a communicable disease. The following are specific requirements:

1. a person who is a carrier of a food-borne disease, has knowingly been exposed to a food-borne disease, or who shows outward symptoms of an infection that could be spread by the contamination of food must not handle food, drink or food preparation equipment or utensils unless approved for these duties by the Director; and
2. when required by the Director, results of an employee's tuberculosis test must be kept at the food service facility, and be available for inspection.

## D. Food Equipment and Utensils

1. All multi-use food-contact utensils must be thoroughly cleaned and sanitized after each use and following any interruption of operations during which contamination of the food-contact surface is likely to have occurred.
2. An approved dishwasher or a three-compartment sink of sufficient size to accommodate the largest utensil must be used to wash, rinse, and sanitize all multi-





# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

use, food-contact utensils. When a three-compartment sink is utilized, the first compartment is to be used to wash with hot soapy water, the second compartment to rinse with clean hot water, and the third compartment to subject the utensils to a sanitizing process. Two-compartment sinks and detergent sanitizers must not be used for manual utensil washing. When a hot water sanitizing dishwasher is used, the surface of the utensils being sanitized must reach 160°F.

3. An ammonium chloride solution 2 times the recommended minimum strength must not be used for sanitizing equipment that does not fit in a dishwasher or sink compartment.
4. Clean linen must not be stored in a toilet room.
5. Aisles or working spaces in food preparation and storage areas must be at least 36 inches wide.

## E. Sanitary Facilities and Control

1. Signs containing information on proper handwashing and control of food-borne diseases must be placed in each toilet room and at each handsink used by employees.
2. Restrooms must be provided on the premises for employees. Restrooms for food service facilities that are located in office buildings or food courts in a shopping mall must be located within a reasonable distance and accessible to employees and customers during all hours of operation.
3. If on-site consumption of food is permitted, at least one restroom must be available for customer use. Customers must not gain access to a restroom by entering the food preparation or storage areas.
4. Condensate from refrigeration equipment must drain to the outside of the unit, and be disposed of in an open-site drain or flash evaporator pan.
5. Sinks designated for handwashing must be conveniently located, and no more than 25 feet from any food-handling work area.
6. A drain line from a wash compartment of a [3] three-compartment sink may be directly connected to a grease interceptor.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

7. All refuse receptacles must be washable and thoroughly [thoroughly] cleaned when emptied. If properly lined, these receptacles must be cleaned as often as necessary. Refuse receptacles may be treated to prevent an insect or odor nuisance.

## F. Other Facilities and Operations

1. Floors subject to extreme heat must be resistant to peeling, cracking, and pitting.
2. Floors in nonrefrigerated, dry-storage areas must be nonabsorbent.
3. A covered [coved] juncture must be provided at all floor-wall intersections and at the base of equipment that is permanently floor mounted.
4. Acoustical ceiling material in food preparation and storage areas must be a light color and kept clean or replaced as necessary.
5. Exposed ceiling rafters and pipes in storage areas must be kept clean and must not become harborage areas for insects or rodents.
6. Walls in rooms where food or drink is stored or prepared must be finished in a light color, gloss or semi-gloss paint or other surface which is durable, washable and grease resistant.
7. Shatter-proof light bulbs or tubes may be used in place of light shields.
8. Ventilation – The minimum exhaust velocity at the edge of the cooking surface must be 50 feet per minute, and the air must be exhausted from within the hood. The criteria contained in the Montgomery County booklet “Planning to Sell Food?” is the guideline for ventilation systems installed in Montgomery County.

### 15.00.01.03 Licenses and Manager Certification

#### A. License

1. Initial Food Service Facility License

Application forms will be provided by the Department and must be submitted with 2 copies of the following: menu, food preparation flow diagrams, construction or renovation plans, and equipment specifications. This information must be submitted prior to the start of any construction or alterations, and should be



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

submitted at least 30 days prior to the intended date of initiating construction or renovations or the transfer of ownership of a food service facility. Approval of this information by the Department must be issued before the start of construction or renovation. Construction plans are not required for an itinerant food service facility unless specified by the Department.

## 2. Renewal

A renewal application for a food service facility license will be provided by the Department and must be submitted with the appropriate fee 60 days prior to the expiration of the existing license.

## B. Manager Certification

### 1. Initial Food Service Manager Certification Card

a. Application forms for food service manager certification will be provided by the Department and must be presented in person by the applicant along with a recent photograph which when trimmed to a size of 2" x 2" clearly shows the applicant's face and one of the following:

- (1) a certificate from the Maryland Department of Health [and Mental Hygiene (DHMH)] (MDH) indicating successful completion of a food service manager sanitation course;
- (2) a transcript or official grade notification from Montgomery College or other institution offering a food service sanitation course approved by [DHMH] MDH or other approving authority; or
- (3) other official, written documentation of passing a course approved by [DHMH] MDH or other approving authority.

b. A wallet-sized photo identification card will be issued by the Department to each applicant upon presentation of acceptable documentation.

c. To be recognized as a certified food service manager, an individual must have a valid certification card in their possession.

d. County certification will remain valid for 3 years from completion of coursework, unless specified otherwise by the Department.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

- e. The Department must draft a list of jurisdictions that the County has established reciprocity with in regards to food service manager certification.
- f. Individuals who do not hold current certification from a jurisdiction on the reciprocity list or do not have training credentials from a previously approved source must submit information to [DHMH] MDH or other approving authority concerning the individual or institution offering the course, a course outline, the number of classroom hours, credentials of the instructor, dates of attendance, official proof of successful completion, and any other information required by [DHMH] MDH or other approving authority.

## 2. Renewal

- a. Application forms for renewal of a food service manager certification card will be provided by the Department. Once the expiration date on a card has passed, the holder of the card will not be recognized as a certified food service manager. This individual may take the appropriate steps to renew their card with the Department within one year of this expiration date. After one year of the date of expiration, the card may not be renewed.
- b. The applicant must submit in person the appropriate form, their existing food service manager's certification card, and one of the following:
  - (1) official, written documentation of successfully completing an approved recertification program;
  - (2) proof of having, over the previous three-year period, personally provided to food handlers, a minimum of 24 hours of Department preapproved food service sanitation training; or
  - (3) proof of having developed, in conjunction with a Department representative, food preparation flow diagrams for all menu items, and over the previous three-year period, conducted 18 bimonthly critical control point self-inspections.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

**Subject:** Eating and Drinking Establishments – Regulations – Food  
Service Facilities

**Number:** 22-20

**Originating Department:**  
Office of Health and Human Services

**Effective Date:**

The Sections of the Code of Maryland Regulations (COMAR) 10.15.03, Food Service Facilities, governing food service facility inspection parameters, frequency of evaluation and inspection, and time period for correction of violations are incorporated as the inspection standards unless superseded or amended by the following standards.

The Director must inspect each food service facility in accordance with the requirements of Section 15-3 of Chapter 15, Montgomery County Code – Eating and Drinking Establishments. Inspections will be noted on a form approved by the Director. At a minimum, the form must identify the facility, the date of inspection, the ordinance title, the violations observed, any time frames for compliance, and provide for the signatures and title of the Director's representative and the person receiving a copy of the form.

## **15.00.01.05 Suspension and Revocation**

The Section of the Code of Maryland Regulations (COMAR) 10.15.03, Food Service Facilities, governing enforcement procedures are incorporated as the enforcement standards unless superseded or amended by the following standards.

### **A. General**

The Montgomery County food service facility license may be temporarily suspended or permanently revoked by the Director for violation of Chapter 15, Montgomery County Code or these regulations.

### **B. Suspension and Revocation Procedure**

The following are the procedures for the suspension or revocation and the summarial suspension of a food service facility license and an itinerant food service facility license for violation of public health standards.

#### **1. Failure to Correct Violations of Public Health Standards**

Under these circumstances, the license may be suspended or revoked as provided in Section 15-16(a) of the Code.

- a. The notice of each violation order is in writing, includes time frames for compliance, and is hand delivered or mailed to the licensee, food service manager, or person in charge of the facility.
- b. The violations are not corrected within the time frames specified.



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
Office of Health and Human Services

Effective Date:

- c. At least one reinspection reveals these violations to be uncorrected.
- d. A second notice with time frames for compliance is issued to the licensee, food service manager, or person in charge specifying the repeated violations, the suspension and revocation authority in Section 15-16(a) of the Code, and the appeal rights of the licensee.
- e. The Director provides a reasonable and specific time and date for the licensee to attend a conference to review all notices and discuss failure to comply with the specified corrections.
- f. A second reinspection reveals that one or more previously noted violations has not been corrected.

## 2. Summary Suspension

Under the following circumstances, a food service facility license and an itinerant food service facility license may be summarily suspended as provided in Section 15-16(b) of the Code.

- a. Non-compliance with any of the critical control point criteria.
  - (1) The notice of each violation order is in writing, includes the time frames for compliance, and is hand delivered or mailed to the licensee, food service manager, or person in charge of the facility.
  - (2) The written notice includes a statement which affords the licensee an opportunity to request a review of the inspection findings with the Director prior to the date of correction.
  - (3) A reinspection reveals one or more violations of the sustained or revised orders to correct critical control points have not been corrected.
- b. Existence of an imminent public health hazard.

When, in the judgment of the Director, a condition exists which represents an imminent public health hazard that can only be corrected or avoided by action which necessitates closing the facility, a written notice is to be



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Food  
Service Facilities

Number: 22-20

Originating Department:  
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Effective Date:

issued to the licensee, food service manager, or person in charge directing that the facility be closed.

### 3. Notice of Appeals of Suspension or Revocation Orders

The licensee, food service manager or person in charge must be notified that a suspension order may be appealed in writing to the County Board of Appeals within ten days of the action. Filing an appeal does not stay the action unless the Board of Appeals grants a stay upon application to the person filing the appeal.

#### 15.00.01.06 Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

#### 15.00.01.07 Effective Date

This regulation takes effect 30 days after approval by the County Council.

Approved:

\_\_\_\_\_  
Marc Elrich, County Executive

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_  
/s/ Amy DiBiasio  
Office of the County Attorney

\_\_\_\_\_  
12/14/2020  
Date