

CHAPTER NO. 2015 - 29

**AN ORDINANCE ADDING CHAPTER 6.68 TO THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA TO GRADE FOOD FACILITIES.**

The Board of Supervisors of the County of Alameda ordains as follows:

**SECTION I – General**

**6.68.010 Declarations of Findings.**

The Board of Supervisors finds and determines that provisions should be made for improved public notification signage for Food Facilities, including Mobile Food Facilities, by establishing a grading system based on specific requirements for food handling. This Chapter creates a grading program for Food Facilities, including Mobile Food Facilities (food trucks), allowing consumers to make safe dining choices.

**6.68.020 Jurisdiction.**

This chapter shall apply to all of Alameda County except for those cities where the governing body of that incorporated area (city) has authorized its own local health officer or environmental health director to administer and enforce the provisions of California Health and Safety Code Section 113700 et seq. (the California Retail Food Code). This Chapter shall be administered and implemented by the Alameda County Department of Environmental Health (ACDEH). The Director of ACDEH shall have the authority to prepare and implement Regulations for the administration and implementation of this chapter and to protect the public health and safety.

This chapter shall apply to all Food Facilities located within the jurisdiction defined above.

**6.68.030 Purpose of Chapter.**

This Chapter provides for the enforcement of California Laws and Regulations pertaining to retail Food Facilities and establishes local requirements as authorized by California Retail Food Code. This Chapter also establishes a local grading system for Food Facilities as authorized by California Health and Safety Code section 113709. The provisions of this Chapter are authorized pursuant to State law and are intended to supplement and not to preempt state law. This Chapter may be cited as the Food Facility Grading Ordinance.

All definitions, authority, scope, responsibilities, requirements, standards, conditions, exemptions, procedures, and penalties contained in the California Retail Food Code, as it may be amended, beginning at Health and Safety Code Section 113700 et seq. are incorporated herein.

#### **6.68.040 Definitions.**

All definitions contained in the California Retail Food Code, beginning with Section 113728, shall apply in the interpretation and application of this Chapter. The following definitions shall also apply:

**"ACDEH"** means the Alameda County Department of Environmental Health.

**"County"** means the County of Alameda, a political subdivision of the State of California.

**"Director"** means the director of the Alameda County Department of Environmental Health.

**"Fixed Food Facility"** shall have the same meaning as Permanent Food Facility in the California Retail Food Code.

**"Health Inspector"** means an employee of the Alameda County Department of Environmental Health authorized under the California Retail Food Code to inspect Food Facilities as an enforcement officer and render findings based on his or her inspection.

**"Health Officer"** means the Health Officer of the County of Alameda and his or her authorized agent or designee.

**"Health Permit"** or **"Permit"** have the same meaning and definition as "Permit" in the California Retail Food Code.

**"Inspection"** means an official visit by a Health Inspector to a Food Facility to determine compliance with all applicable federal, state, and local laws and regulations pertaining to the protection of public health. The term Inspection includes but is not limited to Re-inspection, Routine Inspection and Rescore Inspection.

**"Local Enforcement Agency"** means the Alameda County Department of Environmental Health and its designated employees, or other designated agents.

**"Notice of Closure"** means a public notice posted by a Health Inspector upon suspension or revocation of the facility's Permit to operate and that results in the immediate closure of the facility and the discontinuance of all operations of the food preparation and service facility because of violations of applicable Federal, State and local statutes, orders, ordinances, quarantines, rules, regulations, or other directives relating to the public health. The sign must remain posted until the facility is reopened by ACDEH.

**"Official Inspection Report" (OIR)** means the written report prepared and issued by the Health Inspector after conducting an inspection of a Food Facility to document compliance with all applicable federal, state, and local laws and regulations pertaining to the protection of the public health and retail food.

**"Operator"** means any person engaged in the dispensing of, or assisting in the preparation of, food or beverages or any person otherwise employed or working in a Food Facility.

**"Placard"** means a green, yellow, or red color-coded Placard that describes the compliance status of the Food Facility at the most recent Inspection.

**“Routine Inspection”** means an inspection of a Food Facility to determine compliance with all applicable federal, state, and local laws and regulations pertaining to the protection of public health. An inspection to determine compliance with specific regulations or legal requirements is not a routine inspection.

**“Rescore Inspection”** means a re-evaluation of a Food Facility which is conducted as a Routine Inspection in order to have the facility rescored. A fee is charged for a rescore inspection based on the current hourly rate. If the rescore inspection is requested by the Permit Holder, the fees are due at the time of the request. Requesting a Rescore Inspection is not a guarantee of receiving an upgraded Placard.

**“Re-inspection”** means an inspection initiated by the Health Inspector when the Routine Inspection reveals serious or repeat violations at a Food Facility. This is not a Routine Inspection and only the issues noted on the original OIR are addressed. Re-inspections are not included in the annual Environmental Health Permit fee so additional charges may be required of the Permit Holder.

**“Regulations”** means the ACDEH “Alameda County Food Facility Regulations.”

## **SECTION II - Permits**

### **6.68.050 Health Permit.**

- A. Application. A person intending to operate any Food Facility must complete a Health Permit application and file it with ACDEH. A health permit must be obtained prior to operating any food facility.
- B. Inspection. Once the Permit application has been processed, the Health Inspector shall make an inspection of the Food Facility, and if all the provisions of this Chapter and the California Health and Safety Code have been complied with, the Health Inspector shall notify the applicant and issue a Health Permit to operate.
- C. Issuance. If the Food Facility does not conform to the provisions of this Chapter, or the health laws and regulations of the State, the Health Inspector shall not issue a Permit.
- D. Unlawful Operation Without Permit. Except as set forth in the Regulations, it is unlawful for any person controlling, leasing, acting as an agent for, conducting, or managing any Food Facility in the County, to conduct or operate, or cause or allow to be conducted or operated, such Food Facility without a Permit to operate the same, during a suspension, or after the revocation of such Permit, notwithstanding the fact that such person holds another valid license from a state, local or federal municipality to conduct such business, such as a business license.

## **SECTION III - Grading and Placards**

### **6.68.060 Placard Grading System.**

- A. The Placard grading system consists of Green, Yellow and Red placards for inspection and scoring of Food Facilities.

B. The Health Inspector shall order immediate closure of the Food Facility upon issuance of a Red Placard. The Health Permit issued to the Food Facility shall be suspended and the Red Placard, which is a Notice of Closure, shall be posted until the Health Permit is reinstated.

#### **6.68.070 Posting of Placards.**

A. Upon completion of an Inspection of a Food Facility, the Health Inspector shall post the appropriate Placard at the Food Facility. The appropriate Placard shall be determined by the Health Inspector based upon inspection results.

B. Once inspected and assigned a Placard, it is unlawful to operate a Food Facility unless the Placard is posted in accordance with this Chapter and as specified in the Regulations.

C. The Placard shall be posted so as to be clearly visible to the general public and to patrons entering the Food Facility. "Clearly visible to the general public and to patrons" means:

1. Posted in the front window of the Fixed Food Facility within five feet of the front door; or
2. Posted in a display case mounted on the outside front wall of the Fixed Food Facility within five feet of the front door; or
3. Posted in the service window of the Mobile Food Facility; or
4. Posted in a location approved by the Health Inspector to ensure proper notice to the general public and to patrons of the Food Facility.

D. If any Placard becomes damaged or altered the Permit Holder or Operator shall immediately contact ACDEH for replacement.

E. A Placard shall remain valid from the time of issuance until a new Inspection or a change in ownership, at which time a new Placard may be issued.

F. In addition to the Placard, the OIR shall be maintained at the Food Facility and shall be available to the general public for review upon request. The Food Facility shall keep the OIR maintained at the Food Facility until such time as the Health Inspector issues a new OIR.

#### **6.68.080 Placard Tampering, Removal, and Violations.**

A. Placards are the property of Alameda County

B. Placards shall not be defaced, marred, camouflaged, hidden, or removed.

C. The Permit Holder is responsible if any Placard becomes defaced, marred, camouflaged or otherwise damaged.

D. Removal of the Placard is a violation of this Chapter and shall be punishable as specified in this Chapter and set forth in the Regulations. In addition to any other fines and penalties, the removal of a Placard may result in the suspension or revocation of the Health Permit.

E. Removal of the Placard will result in the Food Facility being subject to Re-inspection, including on a daily basis until the correct Placard is properly displayed and all associated fees are paid.

F. In addition to any other enforcement action tampering with a placard is punishable by fines set by the resolution of the Board of Supervisors.

## **SECTION IV – Mobile Food Facilities**

### **6.68.090 Mobile Food Facilities.**

A. To operate a Mobile Food Facility in the County of Alameda a permit issued by ACDEH is required.

B. Mobile Food Facilities must complete a full application and full inspection

C. In order for routine operational inspections of Mobile Food Facilities to be conducted at the required frequency for the protection of the public, the Health Inspector must have knowledge of locations and routes of Mobile Food Facilities.

D. The Director shall establish procedures to be set forth in the Regulations so that Mobile Food Facilities can be accurately located in the field for inspections and issuance of a Placard, including mandatory conditions to be met before issuance or renewal of a Permit. These conditions may require that the Mobile Food Facility install and maintain equipment to identify its location for the purpose of unscheduled inspections, such as the installation of a Global Positioning System (GPS) unit on Mobile Food Facilities.

## **SECTION V – Education**

### **6.68.100 Mandatory Food Safety Education.**

The Health Inspector may require the anyone associated with the Food Facility to attend a food safety education class, including if Health Inspector determines either of the following:

1. There have been repeated major violations (CDC Risk Factor Violations) that affect food safety; or
2. Any Food Handler or Food Employee does not have sufficient knowledge and understanding of how to safely prepare and serve foods.

## **SECTION VI – General Requirements**

### **6.68.110 Toilet Facilities.**

A. Permanent Food Facilities must provide toilet and hand-washing facilities for employees within the Food Facility, except as set forth in California Health and Safety Code Section

114250.1. Toilet and hand-washing facilities for employees cannot be located in another business.

B. Mobile Food Facilities must operate within 200 feet travel distance of an approved and readily available toilet and hand-washing facility, or as otherwise approved by the enforcement agency, to ensure that restroom and hand-washing facilities are available to facility employees whenever the Mobile Food Facility is stopped to conduct business for more than a one-hour period.

#### **6.68.120 Garbage and Waste Disposal.**

Outdoor storage area or enclosure used for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be easily cleanable, durable, and sloped to a sanitary sewer drain. Permit holders shall follow procedures as outlined in the regulations.

### **SECTION VII – Cottage Food**

#### **6.68.130 Cottage Food Operators**

Operating as a cottage food operation without a valid permit or registration is a violation of this Chapter.

### **SECTION VIII- Enforcement**

#### **6.68.140 Enforcement - Inspection**

ACDEH, through the Health Officer, is charged with the enforcement of the provisions of this chapter. Any authorized representative of the Health Officer or ACDEH may at all reasonable times enter any Food Facility or any place suspected of being a Food Facility to inspect the premises and operations in accordance with the California Retail Food Code, this Chapter and all other laws and regulations.

#### **6.68.150 Suspension or Revocation of Permit.**

A. Any Permit issued pursuant to the provisions of California Retail Food Code and this chapter may be suspended or revoked by ACDEH for a violation of the provisions of this chapter, or any applicable health law or regulation of the State.

B. Suspension or revocation proceedings shall be conducted in accordance with the California Retail Food Code and any regulations adopted by the Director.

#### **6.68.160 Operating Without a Permit**

A. A violation of Section 6.68.050 D (Unlawful Operation Without Permit ) is a misdemeanor punishable by fine, or imprisonment in the county jail for a period not exceeding six months, or both.

B. Any person violating Section 6.68.050 D (Unlawful Operation Without Permit) may be enjoined from such violation by any court of competent jurisdiction. The remedy provided by this section is cumulative to any other remedy provided by law.

C. Any person who intentionally violates any injunction issued pursuant to this Chapter shall be liable for a civil penalty collected by the ACDEH.

D. Continuing violations. Where the conduct consisting of a violation of Section 6.68.050 D (Unlawful Operation Without Permit) or an injunction issued pursuant to this Chapter is of a continuing nature, each day of such conduct is a separate and distinct violation.

**6.68.170 Noncompliance with Local Enforcement Agency — Injunctive relief.**

Any person who, after notice, violates, or who, upon demand of the Local Enforcement Agency, refuses or neglects to conform to any rule, regulation, order or directive prescribed by the Local Enforcement Agency may be enjoined from such violation by any court of competent jurisdiction. The remedy provided by this section is cumulative to any other remedy provided by law. A civil action to enforce the provision of this section may be brought by the county counsel or the district attorney.

**6.68.190 Penalties.**

A. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

B. For the protection of public health and safety and to safeguard public health and provide to consumers food that is safe, in addition to any other enforcement action, violations of this Chapter and the Regulations may result in fines and penalties.

C. Any fines, penalties, fees and costs may be collected by ACDEH, or their designee by a civil action against the Permit Holder and/or Operator.

D. The Board of Supervisors shall set a schedule of civil fines and penalties for those matters within in its authority and in violation of this Chapter and not already set by state law or regulation.

**SECTION IX**

**6.68.200 Fees.**

Services provided by ACDEH, as the Local Enforcement Agency, including but not limited to, consultations, plan checks, Inspections, follow up Inspections, and other related activities shall be charged at the current hourly cost recovery rate established by the Board of Supervisors upon recommendations of the Director.

**SECTION X**

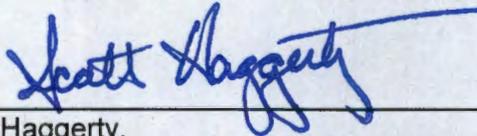
This Chapter shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen days after its passage it shall be published once with the names and members voting for and against the same in a newspaper published in the County of Alameda.

Passed and adopted this 9<sup>th</sup> day of June 2015 by the Board of Supervisors of Alameda County, California.

AYES: Supervisors Miley, Valle, Chan, Carson and President Haggerty - 5

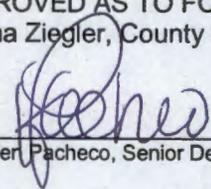
NOES: None

EXCUSED: None



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Scott Haggerty,  
PRESIDENT, BOARD OF SUPERVISORS

APPROVED AS TO FORM: .  
Donna Ziegler, County Counsel

By: \_\_\_\_\_  
Kathleer Pacheco, Senior Deputy County Counsel