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RESOLUTION NO. 04-10-2020

A RESOLUTION TO ENACT FOOD ESTABLISHMENT REGULATIONS AND FEE SCHEDULE FOR SERVICES RENDERED BY THE MINERAL COUNTY ENVIRONMENTAL HEALTH AND PLANNING DEPARTMENT

WHEREAS, Local boards of health may adopt regulations that do not conflict with rules adopted by the Department of Health and Human Services for the control of communicable diseases; for the removal of filth that might cause disease or adversely affect public health; and to implement public health law is provided in 50-2-116, MCA's;

WHEREAS, A retail food establishment or temporary food establishment located in Mineral County shall comply with the Administrative Rules of Montana, Title 37, Chapter 110, Subchapter 2, as authorized by Montana Code Annotated, Title 50, Chapter 50 concerning Food Service Establishments;

WHEREAS, A wholesale food establishment shall comply with the Administrative Rules of Montana, Title 37, Chapter 110, Subchapters 1 and 3, as authorized by Montana Code Annotated, Title 50, Chapter 57 concerning Wholesale Food Establishments;

WHEREAS, A cottage food operation shall comply with the Administrative Rules of Montana, Title 37, Chapter 110, Subchapter 5.

WHEREAS, the Mineral County Environmental Health and Planning Department receives requests by individuals, and businesses related to food establishments and services; and

WHEREAS, the adopted Fee Schedule for food establishments will provide Mineral County with a Fee Schedule that reflects surrounding counties Fee Schedules; and

WHEREAS, the fees enacted by this resolution will be reviewed when deemed necessary by the Mineral County Board of Health; and

WHEREAS, a public hearing was held by the Board of Health on January 24, 2020 in order to give the public an opportunity to be heard regarding the proposed regulations and fee schedule resolution.

NOW THEREFORE IT IS HEREBY RESOLVED, the Mineral County Board of Health hereby approves and adopts this Resolution to become effective April 10, 2020 to adopt new Mineral County Food Establishment Regulations and Fee Schedule, as shown in Appendix A.

PASSED AND APPROVED by the Mineral County Board of Health on the 10th day of April, 2020,

Duane H. Simons

Duane Simons, Chairman
Mineral County Board of Health

Laurie Johnston

Laurie Johnston, Member

Roman Zylawy

Roman Zylawy, Member

Peggy Temple

Peggy Temple, Member

Gloris Castles

Gloris Castles, Member



Attest:
Kelann McClees
Kelann McClees, Clerk and Recorder

0121290

APPENDIX A

FOOD ESTABLISHMENT REGULATIONS

Effective April 10, 2020

Table of Contents

1.	Purpose	Page	2
2.	Authority	Page	2
3.	Regulations and Guidelines Adopted by Reference	Page	2
4.	Definitions and Acronyms	Page	2
5.	General Requirements	Page	4
6.	Food Handling Practices and Restrictions	Page	6
7.	Temporary Food Establishments	Page	6
8.	Mobile Food Establishments	Page	7
9.	Inspections	Page	8
10.	Refusal to Validate Licenses	Page	8
11.	Discontinuing and Resuming Operations	Page	8
12.	Training and Certification	Page	9
13.	Plan Review	Page	10
14.	Circumvention and Enforcement	Page	10

0121290

1. **Purpose.** The purpose of these regulations is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.
2. **Authority.** Authority for this rule is provided in 50-2-116, MCA, under which local boards of health may adopt regulations that do not conflict with rules adopted by the Department of Health and Human Services for the control of communicable diseases; for the removal of filth that might cause disease or adversely affect public health; and to implement public health laws.
3. **Regulations and Guidelines Adopted by Reference.**
 - (A) A retail food establishment or temporary food establishment located in Mineral County shall comply with the Administrative Rules of Montana, Title 37, Chapter 110, Subchapter 2, as authorized by Montana Code Annotated, Title 50, Chapter 50 concerning Food Service Establishments.
 - (B) A wholesale food establishment shall comply with the Administrative Rules of Montana, Title 37, Chapter 110, Subchapters 1 and 3, as authorized by Montana Code Annotated, Title 50, Chapter 57 concerning Wholesale Food Establishments.
 - (C) A cottage food operation shall comply with the Administrative Rules of Montana, Title 37, Chapter 110, Subchapter 5.
4. **Definitions and Acronyms.**
 - (A) **ARM** means the Administrative Rules of Montana.
 - (B) **Baked Goods** means products that may be cooked in an oven including: loaf breads, rolls, biscuits, quick breads, and muffins; cakes; pastries or scones; cookies or bars; crackers; cereals, trail mixes or granola; nuts and nut mixes; snack mixes; pies (except that custard style pies, pies with fresh fruit that is unbaked or pies that require refrigeration after baking).
 - (C) **Caterer / Catering** means a person who prepares food in a licensed food establishment and transports and serves at private or public events.
 - (D) **Catering Kitchen** means the activity of providing food wholly or in part owned by the caterer for a specific event at a location other than the licensed food establishment or food service establishment on a contractual, prearranged basis to a specific subset of the public, such as invited guests to a wedding or similar celebration, or to participants in an organized group or activity. A catering kitchen is not the same activity as a contract cook.

0121290

- (E) **Certified Food Protection Manager** means an individual who operates a food establishment or manages a food establishment who has successfully completed a test through an accredited program required under 2-102.12 (A) of the Food Code.
- (F) **Change of Use** means the existing facility is not currently operated as a food establishment. Change of use also means a menu change in an existing food establishment.
- (G) **Food Code** means regulations and rules adopted by the State of Montana and Mineral County for Retail, Wholesale, and Cottage Food establishments.
- (H) **Commissary** means "servicing area" as defined in ARM 37.110.260 (1) (a), (1-201.10).
- (I) **DPHHS or MDPHHS** means the Montana Department of Public Health and Human Services.
- (J) **Establishment** means either a retail food establishment as defined in 50-50-102(21), MCA, or a wholesale food establishment as defined in 50-57-102(4), MCA.
- (K) **Farmers' Market** means an operation as defined at 50-50-102 (8), MCA.
- (L) **FCSS** means the DPHHS Food and Consumer Safety Section.
- (M) **FDA** means the United States Food and Drug Administration.
- (N) **High-Risk Violation** means a risk factor or intervention violation identified in ARM Title 37, Chapter 110, Subchapter 2, or similar violation for wholesale food establishments in any of the following categories:
 - (1) Time and Temperature Controls
 - (2) Personal Hygiene and Employee Health Controls
 - (3) Controlling Hands as a Vehicle of Contamination: Handling and Handwashing
 - (4) Cross-Contamination Prevention
 - (5) Cleaning and Sanitizing
 - (6) Safe Sources
 - (7) Water/Sewage
 - (8) Demonstration and Knowledge
- (O) **MCA** means Montana Code Annotated.
- (P) **Mobile Food Establishment** means a food operation as defined at 50-50-102 (13), MCA.

0121290

- (Q) **Multiple Day Event** means a celebration or event that takes place over 2 or more consecutive days.
- (R) **Nonprofit Organization** means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.
- (S) **Plan Review Application** means the materials and information required for completion and submittal to the Mineral County Environmental Health Department or FCSS which are required before construction, alteration, change in use, change in ownership, or operation of a food establishment.
- (T) **Private, Religious, Fraternal, Youth, Patriotic, or Civic Organization** means a not-for-profit group that serves food to promote the public good or raise money for a charitable purpose.
- (U) **Recurring Event** means a celebration or event that takes place on non-consecutive days or occurs more than once in a single year. Examples include a food and music series that repeats every Wednesday through the summer or a concert series that takes place on several dates throughout the year.
- (V) **Remodel** means the installation of any major piece of food service equipment including, but not limited to cooking and dishwashing equipment; it also includes altering the structural configuration of the facility in which the food establishment is located, such as removal of walls or a change in the designated use of the facility.
- (W) **MCEH&PD** means the Mineral County Environmental Health and Planning Department.
- (X) **Self-Contained** means mobile food establishment as defined in 50-50-102 (13), MCA that meets the following conditions:
- (1) Has its own power supply; and,
 - (2) Has all equipment and sinks mounted in a fixed configuration in or on the mobile establishment; and,
 - (3) Travels and operates as one unit.
- (Y) **Self-Sufficient** means a self-contained mobile food establishment that does not need to rely on a commissary to support the menu.
- (Z) **Temporary Food Establishment** means a food operation as defined in 50-50-102(22), MCA, or a non-profit temporary food establishment as outlined in 50-50-102(21)(c)(xiii).

0121290

5. **General Requirements**

- (A) A person may not operate an establishment in Mineral County without a valid license as required in 50-50-201, MCA, or 50-57-201, MCA.
- (B) A person may not operate a temporary food establishment in Mineral County without a valid permit as required in 50-50-201, MCA.
- (C) A person may not operate a cottage food operation in Mineral County without a valid registration as required in 50-50-117, MCA.
- (D) A catering endorsement cannot be used to serve food directly to the public when there is no catering contract with a specific party or when a separate food service license or endorsement is required.
- (E) Licenses, permits, and registrations are not transferable from one owner to another or from one location to another. Owners shall notify MCEH&PD when they permanently close their operation.
- (F) New owners or operators may not operate until the establishment, temporary food establishment, or cottage food operation:
 - (1) Meets all current, applicable health standards or a schedule of compliance has been approved by the MCEH&PD; and,
 - (2) Has completed a change of ownership review, including any necessary pre-opening inspections; and
 - (3) Has a valid license, permit, or registration.
- (G) Mobile establishments shall obtain a license and complete a MCEH&PD Mobile Establishment Plan Review Application.
- (H) Obtaining a food establishment license does not relieve the applicant from satisfying applicable requirements from other federal, state, or local agencies. These may include building code permits and inspections (building, plumbing, mechanical, and electrical); fire and life safety inspections; private or public water supply system or sewage treatment system permits or inspections; or occupational health and safety requirements.
- (I) Establishments owned or operated by the State or a political subdivision of the State that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of Title 50 Chapter 50 MCA and rules promulgated thereto.
- (J) Tribal Licenses. DPHHS licensing is not required for Tribal Members and descendants that have a valid food establishment license from the Salish and Kootenai Tribe Environmental Health Department.

0121290

- (K) Temporary Food Establishments shall obtain a MCEH&PD permit and complete a MCEH&PD Temporary Food Establishment Plan Review Application.
 - (1) Nonprofit Organizations. Temporary Food Establishments operated by a nonprofit organizations, under certain conditions, are exempt from the permit fee. However, nonprofits are still required to complete the local plan review form and comply with all state and local rules pertaining to Temporary Food Establishments.
- (L) Bake Sales. Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they complete a MCEH&PD Bake Sale Waiver at least two weeks prior to the event.
- (M) Farmers' Markets. A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products or whole shell eggs at a Farmers' market. Farmers' Markets must meet applicable requirements of 50-50-202 MCA and rules and guidelines promulgated thereto.
 - (1) Farmers' Markets must complete a MCEH&PD Farmers' Market application at least two weeks prior to the first Market.
- (N) A Private, Religious, Fraternal, Youth, Patriotic, or Civic Organization that serves food for no more than four days in a 12-month period does not need to get a license, permit, or cottage food registration providing:
 - (1) The organization notifies the MCEH&PD with sufficient information to establish that the organization qualifies for this exemption; and,
 - (2) The organization notifies the MCEH&PD in advance of their menu, setup, and dates of operation, and receives food safety guidance; and,
 - (3) They serve at an event where the organization is the only food vendor.

6. **Food Handling Practices and Restrictions.** Except as specified 3-303.11 of the Food Code, food employees shall not contact ready-to-eat foods with their bare hands.

7. Temporary Food Establishments

- (A) The MCEH&PD shall issue a temporary food service permit following the submittal of fees, a complete application, and an approved plan review demonstrating compliance with applicable regulations.
- (B) Permit Types
 - (1) The MCEH&PD may issue a temporary food service permit in one of three categories:
 - (a) Single Day Event permit; or,
 - (b) Multiple Day Event permit; or,

0121290

- (c) Recurring Event permit.
- (2) A multiple day event is limited to 21 consecutive days at a fixed location.
- (3) A recurring event is limited to a total of 45 days in a calendar year with a fixed menu. The location may change if the event takes place in more than one location within the county.
 - (a) At least 10 days before the first date of the recurring event, the coordinator shall submit to the MCEH&PD a list of dates that the event will take place and a list of vendors who will be at the event. Additional dates may be approved after the recurring event begins if submitted to the MCEH&PD at least 30 days before the date to be added.
 - (b) The coordinator or the coordinator's representative must be available during each event to respond immediately to problems affecting food service;
 - (c) At least 5 working days before each event date, the coordinator shall submit a list of any new participating food vendors to the MCEH&PD;
 - (d) The coordinator must ensure that a temporary food establishment has an approved temporary food establishment permit before it operates at the recurring event.
- (4) Event Series. A series of events put on by a single organization may qualify as a recurring event for the purpose of permitting if a single coordinator will oversee the entire series.

(C) General

- (1) A person may not create an event or celebration in order to circumvent the requirements of the state and local food regulations. The MCEH&PD has the sole discretion to determine whether an event or celebration qualifies under this regulation.
- (2) If an event or celebration is longer than the limitations listed in (B), a person operating a temporary food establishment shall designate which days he or she will operate before the Department may approve the permit.
- (3) A person may not obtain more than one temporary food establishment permit for a single event in order to operate longer than allowed in (B).
- (4) If a single entity has more than one temporary food establishment location at a single event, each location must be permitted, except as provided in 50-50-201, MCA.
- (5) A temporary food establishment permit is valid in the calendar year issued. If an event spans more than one calendar year, a separate permit is needed to operate in each year.
- (6) Changes to the approved menu(s), setup, or location may require additional plan review, and if extensive, a new permit.
- (7) A temporary food establishment that operates without a permit may be charged a plan review fee and two times the cost of permitting fees. Failure to pay these fees is a violation of this code and the MCEH&PD may withhold approval for future permits until the fees are paid.

0121290

(D) Menu and Operational Requirements

- (1) A temporary food establishment's menu must be simple and onsite food preparation must be limited to quick cook-and-serve and simple assemble-and-serve;
- (2) All other food preparation must be done in an approved commissary;
- (3) During transport and at the event, food must be held and dispensed in such a way as to prevent contamination and equipment and utensils must be clean, sanitized, food-grade and in good repair; and,
- (4) Appropriate hot holding and refrigeration equipment must be used to keep the food in allowable temperature ranges unless time is being used as a control. Mechanical refrigeration may be required for raw animal products.
- (5) Reheating at the event site is allowed only if appropriate equipment designed for rapid reheating is used.

(E) Booth Requirements

- (1) A temporary food establishment may operate from a booth without sides if there is minimal risk from pests or inclement weather, and food can be secured from tampering and protected from contamination.
- (2) If the booth will be left up overnight:
 - (a) The booth must include walls; and,
 - (b) All food contact surfaces must be cleaned and sanitized before beginning operation and after ending operation each day; and
 - (c) Food must be secured and stored in such a way as to prevent contamination, tampering or rodent/pest infestation.

8. Mobile Food Establishments

- (A) A mobile food establishment must be self-contained. Separate tables for cash boxes, point of sale systems, customer dining, or other functions not related to food service, prep or storage, may be used without additional permitting.
- (B) If a mobile food establishment is not self-sufficient, the operator shall use a licensed commissary for preparation and storage.
- (C) A mobile food establishment must have permanently mounted water and wastewater tanks unless it is designed as a pushcart or otherwise approved by the MCEH&PD.
- (D) A mobile food establishment operator shall maintain a servicing log that documents where and when they obtain fresh water and dispose of wastewater.
- (E) A mobile food establishment that alters its menu or setup so that it is no longer self-contained must obtain a temporary food service permit.

0121290

9. **Inspections.** Mineral County shall conduct food establishment inspections under Cooperative Agreement with the DPHHS-FCSS.
10. **Refusal to Validate Licenses**
 - (A) MCEH&PD or DPHHS may, in accordance with ARM 37.110.238, after providing opportunity for hearing, cancel or refuse to validate a license for serious or repeated violations of any of the requirements of the Food Code or for interference with the MCEH&PD, DPHHS, or other authorized persons in the performance of duty.
11. **Discontinuing and Resuming Operations.** No person shall operate a food establishment when operations have been discontinued.
 - (A) A permit holder shall immediately discontinue operations and notify the MCEH&PD if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.
 - (1) Operations discontinued as a result of an imminent health hazard, or otherwise according to Law, shall not resume operations until the approval is obtained from the MCEH&PD.
 - (B) The Health Officer shall order operations to be discontinued under the following conditions;
 - (1) If a food borne illness outbreak is likely associated with the establishment and the Health Officer determines that closure is necessary to protect public health and correct the circumstances contributing to the outbreak; or
 - (2) If a High-Risk violation creates an imminent danger to public health and is not corrected immediately or an approved alternative procedure is not initiated immediately by the Person-in-Charge. An imminent health hazard may exist because of an emergency; or
 - (3) When a follow-up inspection of a food establishment yields two (2) or more of the same High-Risk violations noted on a previous inspection and the establishment has been notified closure may be a consequence of noncompliance; or
 - (a) Before the MCEH&PD closes an establishment based on repeat High-Risk critical violations, the MCEH&PD shall notify the establishment in writing that it may be closed to the public and a closure notice placed at each customer entrance if two (2) or more of the same High-Risk violations remain on the follow-up inspection to be conducted within 72 hours.
 - (4) When the food service establishment is operating without a valid license.

0121290

- (C) Notice of Closure shall be administered by the MCEH&PD, including;
 - (1) The MCEH&PD shall deliver a written explanation of the reasons for closure and a copy of any pertinent inspection forms to the operator or person in charge; and,
 - (2) The closure order is effective upon delivery of the notice and no new customers may be served food or drink. The MCEH&PD may require the operator to notify any current customers of the closure; and,
 - (3) A conspicuous notice of closure must be posted at each customer entrance by a police officer, sheriff, or sanitarian; and,
 - (4) No person, except under the direction of the MCEH&PD, may remove or alter the notice of closure.

- (D) Resuming operations may occur when The Health Officer or designee finds that;
 - (1) The Person-in-Charge has submitted an acceptable written Plan of Correction to MCEH&PD specifying the corrections to be made and the time limits for their completion; and,
 - (2) The Plan of Correction is approved by MCEH&PD; and,
 - (3) A Special Inspection shows no High-Risk violations not already covered by the Plan of Correction; and,
 - (4) A Special Inspection fee is paid to MCEH&PD for a third and each subsequent inspection; and,
 - (5) If the above conditions are met, the Establishment may be reopened and the Notice of Closure Signs removed by the Health Officer or designee.

- (E) Once an establishment resumes operations, the MCEH&PD shall:
 - (1) Conduct additional inspections as necessary to evaluate whether the Plan of Correction is being followed and whether any High-Risk violations exist; and,
 - (2) The MCEH&PD may require an operator modify a plan of correction; and,
 - (3) Establishment operations may be discontinued again if the MCEH&PD finds:
 - (a) Any original High-Risk violations recur or exist; or,
 - (b) The Plan of Correction is not being followed.

12. Training and Certification

- (A) Establishments shall have a certified food protection manager in accordance with ARM 37.110.260 (1) (b), 2.102.12.

- (B) Establishment employees must complete a four (4) hour food safety training course and show proficiency by passing a test that is part of a DPHHS-approved program.
 - (1) Unless the employee has a valid training certificate, training must be obtained within ninety (90) days of being hired by the current

0121290

establishment.

13. Plan Review

- (A) A person owning an establishment, including one in conjunction with a school or public accommodation, must submit properly prepared plans and specifications to the MCEH&PD for review and approval before construction, remodeling or change of use of an existing structure, major equipment installation, or before making significant changes to a menu.
 - (1) The MCEH&PD may require a full Plan Review at change of ownership if there will be equipment or significant menu changes.
 - (2) An operator of temporary food establishment must submit an Application to Operate a Temporary Food Establishment and applicable fees to the MCEH&PD. A temporary food establishment may not begin operation until the Plan Review is approved.
 - (3) An Organizer of a temporary event must submit an Event Organizer Application to Operate Temporary Food Establishments to the MCEH&PD at least two weeks prior to the event.
 - (4) Plan review fees established by the Board of Health shall be charged.
 - (5) Failure to comply with plan review requirements is a violation of the Food Code and may result in MCEH&PD refusal to validate the license.

14. Circumvention and Enforcement

- (A) These regulations, and violation thereof, shall be enforced in accordance with 50-1-103, MCA.
- (B) A person may not knowingly make false statements, representations, or certifications in, or omit information from, or knowingly alter, conceal, or fail to file or maintain any notice, application, record, report, permit, plan or other document required to be filed or maintained in order to evade these regulations.
- (C) A person may not create contracts, alter facilities or operations, install equipment outside of facility, or operate in a manner which evades these or other applicable regulations.