Southeast Utah Health Department

Health Regulation

FOOD ESTABLISHMENT
REGULATION

Adopted by the Southeast Utah Board of Health
September 25,
2018

Under Authority of Section 26A-1-114
Utah Code Annotated, 1953, as amended
1. PURPOSE & APPLICABILITY OF REGULATION

1.1. The purpose of this regulation is to minimize exposure of the public to any communicable, infectious disease, illness, or unsanitary condition that may be imposed upon them as guests of a Food Establishment. The purpose of this regulation is also to minimize guests’ exposure to unsafe conditions or circumstances that may cause physical injury.

1.2. This regulation applies uniformly to the repair, maintenance, use, operation, and occupancy of all new and existing Food Establishments designed, intended for use, or used for the sale of ready to eat foods, irrespective of when or under what laws such Food Establishments were originally constructed or rehabilitated.

2. FOOD ESTABLISHMENT SANITATION

2.1. All Food Establishments shall comply with Utah Administrative Code R392-100 Food Service Sanitation and R392-102 Food Truck Sanitation.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Southeast Utah Health Department (Department).

3.1.1. This regulation is promulgated by the Southeast Utah Board of Health (Board) as authorized by Section 26A-1-121(1), Utah Code Ann., 1953 as amended.

3.1.2. The Department is empowered to enforce this regulation in all incorporated and unincorporated areas served by the Department as authorized by Section 26A-1-114(1)(a), Utah Code Ann., 1953 as amended.

3.2. It shall be unlawful for any person not to comply with any regulation promulgated by the Department unless granted an express variance by the Board.

3.3. Compliance with this regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.

3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.

3.5. Nothing in this regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Carbon, Emery or Grand Counties or any municipality located within Carbon, Emery or Grand Counties, or any state or federally issued law, including common law. However, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.
3.6. Verbal or contractual obligations shall not diminish or remove the owner’s or other responsible person’s obligation to comply with this regulation.

3.7. Severance. If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this regulation.

4. **FOOD ESTABLISHMENT PROVISIONS**

4.1. Food Establishment Permits.

4.1.1. Food Establishment Permits. No person shall operate a Food Establishment without written approval and a corresponding valid Food Establishment permit from the Department.

4.1.2. Permit Application, Duration, and Renewal.

(i) Application for a Food Establishment Permit shall be made upon a form provided by the Executive Director of the Southeast Utah Health Department (Director).

(ii) Permit Duration and Renewal. The Food Establishment Permit shall be issued annually and shall expire on December 31st. It is the responsibility of the owner or operator of the Food Establishment to pursue permit renewal through appropriate channels.

4.1.3. Food Establishment Plan Review. A Food Establishment permit applicant or a Food Establishment permit holder may be required to submit to the Department properly prepared plans and specifications for review and approval before:

(i) The construction of a Food Establishment;

(ii) The conversion of an existing structure for use as a Food Establishment; or

(iii) The remodeling of a Food Establishment if the Department determines that plans and specifications are necessary to ensure compliance with this regulation.

4.2. Closing Substandard Food Establishments.

4.2.1. A Food Establishment which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates or may create a hazard to the health or safety of the occupants or of the public may be deemed unfit for the sale of food, closed, and its permitted use may be suspended until all violations have been abated. Lack of electricity, illumination, ventilation, sanitation facilities adequate to protect the health or safety of the employees and/or general public, potable water, heating facilities, or sewer service may be considered prima facie evidence
5. Licenses, Permits, & Regulatory Fees

4.2.2. Vacating Required Upon Closure. Any Food Establishment deemed unfit to serve food and resulting in a permit suspension shall be vacated by the general public immediately as ordered by the Director.

4.2.3. Approval Required Prior to Permit Reinstatement. It shall be unlawful for general public to occupy any Food Establishment that has been deemed unfit for the sale of food until approval of the Director is given.

4.2.4 A Food Establishment may have its permit permanently revoked upon a second closure or permit suspension at the discretion of the Director.

5. Licenses, Permits, & Regulatory Fees

5.1. The Department may establish and collect appropriate fees for licenses and permits as set out in this regulation. The Department may collect appropriate fees as set out in this regulation for the performance of services, including plan reviews. If information on a license or permit application changes, the applicant shall notify the Department in writing within 20 calendar days.

5.2. Food Establishment Permit Fees. The fees for a Food Establishment Permit shall be paid to the Department at the time of application. It shall be based upon the reasonable expenses incurred by the Department to review plans and specifications, conduct inspections, and act upon the permit application. The annual fee for a Food Establishment Permit shall be consistent with the current fee schedule approved by the Board.

5.3. Follow-Up Inspection Fee. The Department will charge a follow-up fee to the owner, permit holder or other person in charge of a Food Establishment when conditions found during an inspection require a follow-up inspection to ensure compliance. The re-inspection fee for a Food Establishment Permit shall be consistent with the current fee schedule approved by the Board.

5.4. Late Fees.

5.4.1. The Department may impose upon any party subject to this regulation penalties and charges for failure to timely pay service and license or permit fees as set out in the current fee schedule approved by the Board. Attorney’s fees and collection fees may also be applied.

5.4.2. Failure to pay the fees and additional charges after 100 days of the due date will result in suspension of the permit and the right to operate.

5.5. Unless otherwise provided for in this regulation or approved by the Director in the Department’s Fee Standard, all fees collected by the Department are non-refundable. All licenses and permits issued by the Department are non-transferable.
5.6. Suspension or Revocation of License or Permit. Any permit applied for or issued pursuant to this regulation may be denied, suspended, or revoked by the Director for any of the following reasons:

5.6.1. Failure of the application, plans, or specifications to show that the Food Establishment will be operated or maintained in accordance with the requirements and standards of this regulation;

5.6.2. Submission of incorrect or false information in the application, plans, or specifications;

5.6.3. Failure to operate or maintain the Food Establishment in accordance with the application, report, plans, and specifications approved by the Director;

5.6.4. Failure of the owner or operator to permit or allow the Department to conduct inspections necessary to determine compliance with this regulation;

5.6.5. Operation of the Food Establishment in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;

5.6.6. Violation of this regulation or any other restrictions or requirements adopted by the Board;

5.6.7. Violation of any condition upon which the permit was issued;

5.6.8. Failure to pay the permit fee or any late fees within 100 days of the permit fee’s due date; or

5.6.9. Failure to supply updated information.

6. INSPECTIONS & INVESTIGATIONS

6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.

6.2. Authority for Department to Enter Premises.

6.2.1. Regulated Commercial Premises. Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the division of Occupational and Professional Licensing.

6.2.2. Consent by License or Permit. The Department may require licensees or permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the license or permit may
result in the suspension or revocation of the license or permit.

6.3. The owner or other responsible person may request information gathered by the Department during an investigation, inspection or review as authorized by the Government Records Access and Management Act, §§ 63-2-101 to 63-2-1001 Utah Code Ann., 1953 as amended.

7. **ENFORCEMENT MECHANISMS.** If the Department has investigated or inspected any Food Establishment and believes the property owner or other responsible party is in violation of this regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this regulation or that the property owner or otherwise responsible party is not in compliance with this regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

7.1. Criminal Enforcement Actions. The Department may recommend criminal prosecution for environmental violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the County Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors.

7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;

7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance or it involved a pattern of conduct or a common attitude of illegal conduct;

7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the department;

7.1.4. The degree to which prosecution might deter future violations;

7.1.5. The person’s actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;

7.1.6. The person’s willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;

7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and

7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.
7.2. Civil Enforcement Actions. The Department may request that the County Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

7.3. Administrative Actions – Notice of Violation (NOV).

7.3.1. If the Director has inspected any Food Establishment and has found and determined that it is in violation of this regulation or has reasonable grounds to believe that there has been a violation of any part of this regulation, he shall give notice of the violations to the owner or other responsible person thereof.

7.3.2. Service of NOV. The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.

7.3.3. Contents of NOV. The NOV shall:

(i) Describe the property and the persons believed to be in violation; (ii) Describe the violation;

(iii) Describe remedial action that will comply with the provisions of this regulation;

(iv) Set a reasonable time for the performance of any required remedial action(s);

(v) Describe the procedure to contest the NOV and the time limits for such a contest; and

(vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. Challenging an NOV. As detailed in the Department’s Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. Departmental Conference, Settlement Agreements, and Stipulations & Orders.

(i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the
Department. No hearing officer will be present. The process of requesting a Departmental Conference are more fully described in the Department Adjudicative Hearing Procedures.

(ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the County Attorney’s Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further Department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. Hearings & Appeals. Parties Aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the Department’s Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the SLVHD’s Adjudicatory Hearing Procedures.

7.3.7. Failing to respond to an NOV. If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. Additional Administrative Enforcement Authority.

7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.

7.4.2. Any variances allowed by the Department to the requirements of this regulation shall be only by written approval of the Board.

7.4.3. Exercise of Physical Control. The Department may establish, maintain, and exercise physical control over property and over individuals as the Department finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Department’s Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it.

7.4.4. Emergency Enforcement. If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice
or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Department’s Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

8. **CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES**

8.1. Criminal Penalties.

8.1.1. Any person who is found guilty by a court of violating any of the provisions of this regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended.

8.1.2. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

8.1.3. Each day such violation is committed or permitted to continue shall constitute a separate violation.

8.2. Civil & Administrative Penalties.

8.2.1. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:

(i) The violator’s history of compliance or non-compliance;

(ii) The violator’s economic benefit of non-compliance;

(iii) The documented costs associated with environmental or health damage;

(iv) The violator’s degree of willfulness or negligence; and

(v) The violator’s good faith efforts to comply and cooperate.

8.2.2. The Director may multiply the penalty by the number of days the violation occurred.

8.3. Recovery of Investigation & Abatement Costs

8.3.1. The Department may recover its inspection, investigative and abatement expenses
and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator’s property to recover its expenses and costs.
9. EFFECTIVE DATE

9.1. These rules and regulations shall become effective upon its enactment by the Southeast Utah Board of Health.

APPROVED AND ADOPTED this 25th day of September, 2018.

SOUTHEAST UTAH BOARD OF HEALTH

By: ____________________________
   Mary Ann Cunningham

ATTEST:

By: ____________________________
   Bradon Bradford
   Executive Director
   Southeast Utah Health Department