

ORDINANCE NUMBER O- 19196 (NEW SERIES)

ADOPTED ON JUL 14 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 14, SECTIONS 42.1401, 42.1402, 42.1403, 42.1404, 42.1405, 42.1406, 42.1407, 42.1408, 42.1409, 42.1410, 42.1411, 42.1412, 42.1413, 42.1414, 42.1415, 42.1416, 42.1417, 42.1418, 42.1419, 42.1420, 42.1421, 42.1422, 42.1423, 42.1424, 42.1425, 42.1426, 42.1427, 42.1428, 42.1429, 42.1430, 42.1431, 42.1432, 42.1433, 42.1434, 42.1435, 42.1436, 42.1437, 42.1438, 42.1439, 42.1440, 42.1441, 42.1442, 42.1443, 42.1444, 42.1445, 42.1446, 42.1447, 42.1448, AND 42.1449 RELATING TO FOOD AND HOUSING.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 2, of the San Diego Municipal Code be and the same is hereby amended by adding Division 14, sections 42.1401, 42.1402, 42.1403, 42.1404, 42.1405, 42.1406, 42.1407, 42.1408, 42.1409, 42.1410, 42.1411, 42.1412, 42.1413, 42.1414, 42.1415, 42.1416, 42.1417, 42.1418, 42.1419, 42.1420, 42.1421, 42.1422, 42.1423, 42.1424, 42.1425, 42.1426, 42.1427, 42.1428, 42.1429, 42.1430, 42.1431, 42.1432, 42.1433, 42.1434, 42.1435, 42.1436, 42.1437, 42.1438, 42.1439, 42.1440, 42.1441, 42.1442, 42.1443, 42.1444, 42.1445, 42.1446, 42.1447, 42.1448, and 42.1449 to read as follows:

DIVISION 14

REGULATION OF WHOLESALE FOOD WAREHOUSES

§42.1401 Purpose and Intent

It is the intent of the Council to adopt an ordinance that would provide the County of San Diego with authority to inspect wholesale food warehouses, investigate violations, and educate warehouse owners on regulations. This ordinance gives the County officials the ability to issue permits to wholesale food warehouses and establish administrative remedies for violations.

§42.1402 Definitions

Whenever in this article the following terms are used, they shall have the meanings respectively ascribed to them in this section:

- (a) **ADULTERATED.** Having been made impure by the addition of any poisonous or deleterious substance; or in the case of food, foodstuffs that have been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated or rendered unwholesome, diseased or injurious to health.
- (b) **APPROVED.** Acceptable to the Director based upon a determination of conformity with applicable laws, or in the absence of applicable laws, with current public health principles, practices and generally recognized industry standards that protect the public health.

- (c) **APPROVED SOURCE.** A producer, manufacturer, distributor, or food establishment that is acceptable to the Director based on the determination of conformity with applicable laws, or in the absence of applicable laws, with current health principles and practices, and generally recognized industry standards that protect public health.
- (d) **DIRECTOR.** For the purposes of this chapter, "Director" shall mean the Director of the Department of Environmental Health of San Diego County and his or her designees.
- (e) **EMBARGO.** The legal control exercised by the Director over the use, sale, disposal or removal of any food.
- (f) **EMPLOYEE.** Any person working in a wholesale food warehouse, including managers and/or owners.
- (g) **FOOD.** Any raw or processed substance, ice, beverage, including water, or ingredient intended to be used as food, drink, confection or condiment for human or animal consumption.
- (h) **GOOD MANUFACTURING PRACTICES.** The practices for manufacturing, packing, or holding food described in Title 21 of the Code of Federal Regulations, Part 110.
- (i) **IMMEDIATE DANGER TO THE PUBLIC HEALTH OR SAFETY.** For the purposes of this section, any condition, based upon inspection findings or other evidence that can cause

food infection, food intoxication, disease transmission; a hazardous condition, including, but not limited to, unsafe food temperature, sewage contamination, no potable water supply, and vermin infestation; or an employee who is a carrier of a communicable disease. Any food facility for which the permit is suspended shall close and remain closed until authorized to reopen by the **Director** or **Health Officer**.

- (j) **IMPOUND.** The legal control exercised by the Director over the use, sale, disposal or removal of any equipment or utensil.
- (k) **POTENTIALLY HAZARDOUS FOOD.** Any food that is capable of (1) supporting rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications, or (2) supporting the growth or toxic production of *Clostridium botulinum*. "Potentially hazardous food" does not include foods that have a pH level of 4.6 or below; foods that have a water activity (aw) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage; or food that has been shown by appropriate microbial challenge studies, the results of which are approved by the **Director**, not to support the rapid and progressive growth of infectious, toxigenic microorganisms that may cause food infections or food intoxications, or the growth of *Clostridium botulinum*.

- (l) **REMODEL.** For purposes of this chapter, remodel means any replacement, significant modification, or installation of walk-in refrigerators or freezers, toilet rooms, and sinks used for utensil washing.

- (m) **WHOLESALE FOOD WAREHOUSE.** Any place, building, structure, room or portion thereof, where food is commercially distributed, stored, or held for transfer.

“Wholesale Food Warehouse” does not include food processing establishments, retail food facilities, or warehouses where only packaged beverages or food in sealed cans or bottles are received, stored and shipped in the same package as received, without opening or modifying the original package.

§42.1403 Enforcement Authority

- (a) The Director of the Department of Environmental Health of San Diego County is authorized to administer and enforce the provisions of this Division. The Director or anyone designated by the Director to be an Enforcement Official may exercise any enforcement powers as provided in Chapter 1, Article 2, Division 1, of this Code.

- (b) The Department of Environmental Health is authorized and empowered by the City Manager to make inspections and issue permits to the owners and/or operators of wholesale food warehouses that hold or distribute food at wholesale.

§42.1404 Enforcement Remedies

Violations of the section may be prosecuted as misdemeanors subject to fines and custody provided in San Diego Municipal Code section 12.0201. The Director may also seek injunctive relief and civil penalties in the Superior Court pursuant to San Diego Municipal Code section 12.0202 or pursue an administrative remedy provided in Division 14.

§42.1405 Separate and Distinct Offense

Every day, any violations of this chapter shall continue and shall constitute a separate and distinct offense. Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Division is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

§42.1406 Strict Liability

Violations of this Division shall be treated as strict liability offenses regardless of intent.

§42.1407 Public Nuisance Per Se

Every wholesale food warehouse kept, maintained or operated in violation of this chapter, and all food produced, prepared, manufactured, packed, stored, kept, sold, distributed or transported in violation of this chapter is declared a public nuisance. The Director is authorized and empowered to take such action as is necessary to abate the nuisance. In the event that immediate action is necessary to preserve or protect the public health or safety, the Director is authorized and empowered to summarily abate such nuisance by any reasonable means; otherwise, the Director shall inaugurate

proceedings in accordance with Section 11.116, the Uniform Public Nuisance Abatement Procedure contained in Chapter 2, Division 6, Title 1 (commencing with Section 16.201) of this Code, or shall seek a court order abating the nuisance. Nothing contained in this Code shall be deemed to limit the right and duty of the Director to take immediate action in the interests of the public health, safety and welfare. The remedies authorized by this section are not exclusive, but are cumulative to other remedies provided by law.

§42.1408 Required Compliance

- (a) It is unlawful to operate and maintain a wholesale food warehouse without all necessary permits, including a valid health permit.
- (b) It is unlawful for any person to engage in any of the following activities, or cause any of the following activities to occur in a manner contrary to the provisions of this section:
 - (1) To store, distribute, transport, ship, or otherwise handle food without all necessary permits, including a valid health permit.
- (c) A wholesale food warehouse operating without the requisite permit may be subject to closure.

§42.1409 Plan Review and Permits

Any person proposing to build or remodel a wholesale food warehouse shall submit complete construction plans, drawn to scale, and specifications to the Environmental Health Department for review and approval before starting construction or remodeling. Any construction shall be in accordance with applicable health and building codes. The Building Department shall not issue a building permit for a

wholesale food warehouse until after it has received approval by the Environmental Health Department. Those facilities constructed prior to January 1, 2003 shall not be subject to plan review and construction upgrades unless the equipment, building or facilities are in disrepair, creating a public health nuisance, or undergoing remodeling.

§42.1410 Posting of Permit

It is unlawful for an owner or operator of a wholesale food warehouse to fail to post its health permit for the warehouse in a conspicuous location.

§42.1411 Right to Inspect

The Director may enter and inspect, any wholesale food warehouse or any place suspected of being a wholesale food warehouse and may issue inspection reports, official notices, and secure any sample, photograph or other evidence for the purpose of enforcing this chapter.

§42.1412 Resisting or Disobeying a Director Prohibited

- (a) It is unlawful to refuse, resist or attempt to resist the entry of the Director into any establishment, facility, railway car, stage, vehicle, building, room, lot, place, or portion thereof in the County in the performance of his or her duty.
- (b) It is unlawful to refuse to obey any lawful order of the Director, made in the performance of his or her duties, within the power conferred upon him or her by state law or by this chapter.

§42.1413 Inspection Report and Hearing

The Director shall prepare a written report of inspection and a copy shall be supplied or mailed to the permittee of the facility inspected. If the permittee fails to comply with the requests of the Director, the Director shall issue to the

permittee a notice setting forth the acts or omissions with which the permittee is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or revoked.

§42.1414 Permit Suspension

A health permit may be immediately suspended for repeated violations of this chapter, interference with the Director in the performance of his or her duty, or the presence of an immediate danger to the public health or safety unless the danger is immediately corrected.

§42.1415 Permit Suspension Notice

Whenever a permit is suspended for violating this chapter, the Director shall issue to the permittee a notice setting forth the acts or omissions with which the permittee is charged and informing the permittee of the right to a hearing.

§42.1416 Suspended Permit Reinstatement

A permit that has been suspended for violations of this chapter may be reinstated, if the Director determines that conditions which prompted the suspension no longer exist.

§42.1417 Permit Revocation

The Director may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of this chapter, interference in the performance of the duty of the Director, or an immediate danger to the public health or safety. Any wholesale food warehouse for which the permit has been revoked shall close and remain closed until a new permit has been issued.

§42.1418 Appeal of Revocation

A person aggrieved by the denial of a permit may appeal from such denial to the Board of Supervisors in the manner set forth in San Diego County Code Section 61.126.

§42.1419 Right to Impound

The Director may impound any equipment or utensil in a wholesale food warehouse, which is unapproved, found to be insanitary, or in such disrepair that it may cause food to become contaminated or adulterated. The Director may place a tag on impounded equipment or utensils that shall be removed only by the Director.

§42.1420 Right to Embargo

The Director may embargo any food suspected of being adulterated, unfit for human consumption, misbranded, or falsely advertised. The embargoed food shall be identified with a tag, detained, released or discarded.

§42.1421 Release from Impound or Embargo

The Director shall commence proceedings for the release of any food, equipment, or utensil that has been embargoed or impounded, or to seek administrative or legal remedy for its disposition, within thirty days of such action. It is unlawful for any person to make any disposition of embargoed food or impounded equipment or utensils other than that ordered by the Director.

§ 42.1422 Responsible Person(s)

The owner, manager or operator of any wholesale food warehouse is responsible for any violation of this chapter by his or her employee. The term responsible person is consistent with the definition in San Diego County Code section 11.0210.

§ 42.1423 Hearing Procedures

Hearings shall be held regarding noncompliance with this chapter in the following manner:

- (a) Director requirement. The Director may require the owner, operator or manager of a wholesale food warehouse to attend an administrative hearing to discuss violations of this chapter, disposition of embargoed or impounded items, the suspension or revocation of a health permit, or other significant issue related to food facilities.
- (b) Request of facility owner, operator or manager. The owner, operator or manager of a wholesale food warehouse may request an administrative hearing to discuss events related to the enforcement of the provisions of this chapter at his or her food facility. Such events include notices to comply, permit suspensions, and disposition of embargoed or impounded items. The owner, operator or manager must submit a request for a hearing within 15 calendar days after the event. A failure to request a hearing within 15 calendar days of the event shall be deemed a waiver of the right to a hearing. The hearing shall be held within 15 days of the receipt of the request for a hearing. When circumstances warrant, the hearing officer may order a hearing at a reasonable time within this 15-day period to expedite the permit suspension or revocation process.
- (c) Hearing rules and procedures and appeals are pursuant to San Diego County Code sections 61.125, 61.126, and 61.127.

§44.1424 Food Handling

All food shall be manufactured, produced, prepared, compounded, packed, stored, transported, and kept for sale so as to be pure, free from contamination, adulteration, and spoilage; shall have been obtained from approved sources; shall otherwise be fully fit for human consumption; and shall conform to the applicable federal and state laws and regulations including: Good Manufacturing Practices; the Food Sanitation Act; Sherman Food, Drug and Cosmetic Law; the California Business and Professions Code; and applicable sections of Title 17 of the California Code of Regulations. Preparation of food at wholesale shall only take place within a facility approved by and under the jurisdiction of the appropriate state or federal agency. Preparation of food includes the wholesale packaging or processing of unpackaged food, but does not include the trimming of or packaging of whole uncut produce.

§42.1425 Temperature Requirements

- (a) Potentially hazardous foods shall be maintained at a temperature at or below 41 degrees Fahrenheit or at or above 140 degrees Fahrenheit, except for the following:
- (b) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 45 degrees Fahrenheit.
- (c) Frozen foods shall be maintained in a frozen state.
- (d) Pasteurized milk and pasteurized milk products in original, sealed containers shall not be held at a temperature above 45 degrees Fahrenheit.
- (e) Raw shell eggs shall not be stored or displayed at an ambient temperature above 45 degrees Fahrenheit.

§42.1426 Ice

When ice is used in contact with food, it shall be made from water that is safe and of adequate sanitary quality and shall be used only if it has been manufactured in accordance with Good Manufacturing Practices.

§42.1427 Employee Sanitary Practices

It is unlawful for any person, employees, to commit any act that may result in contamination or adulteration of any food, food contact surface, food packing material, utensil, or equipment.

§42.1428 General Sanitation Requirements

All wholesale food warehouses including all equipment, utensils, facilities, and exterior grounds shall be kept clean, free from vermin, fully operative, and in good repair.

§42.1429 Animals or Fowl Prohibited

It is unlawful for any person to maintain or cause a live animal or fowl to be kept or allowed in any wholesale food warehouse where food is prepared, manufactured, kept, stored, distributed, offered for sale, or sold. This section does not apply to dogs used by the blind, signal dogs, service dogs, such dogs in training under proper supervision, dogs under the control of uniformed law enforcement officers, or dogs under the control of uniformed employees of a private patrol service who are licensed pursuant to Chapter 11.5 (commencing with section 7580) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment as private patrolmen.

§42.1430 Plumbing

Plumbing shall be installed according to the Uniform Plumbing Code and shall be protected from backflow, kept clean, fully operative, and in good repair. An adequate, protected, pressurized, potable water supply shall be provided. The water supply shall be from a water system approved by the Director or the state department.

§42.1431 Sewage Disposal

Sewage disposal shall be made into an approved sewerage system. Wastewater disposal shall comply with National Pollutant Discharge Elimination System (NPDES) and local wastewater treatment district standards.

§42.1432 Sanitary Supplies and Signs

- (a) Toilet tissue shall be made available in permanently mounted dispensers at each toilet.
- (b) Each hand-washing sink shall be provided with a permanently mounted dispenser supplied with single service soap, and a permanently mounted single service towel dispenser or other approved hand-drying device.
- (c) Signs shall be posted directing employees to properly wash their hands after using the toilet.

§42.1433 Rubbish, Offal, Garbage, and Putrescible Matter

- (a) Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize development of odor, minimize the potential for the waste becoming an attractant, harborage, or breeding place for vermin; protect against contamination of food, food contact surfaces, water supplies, and ground surfaces; and prevent the creation of any other nuisance.

- (b) Any garbage and putrescible matter shall be maintained in leakproof receptacles with close-fitting lids. Such receptacles shall be thoroughly cleaned each time their contents are removed.
- (c) Adequate means shall be provided to prevent overflows of the refuse bin containers. Refuse pick-up service shall be regular (not to exceed seven days). The size and/or number of refuse bin containers shall be adequate to prevent the creation of a nuisance.

§42.1434 Returned or Damaged Foods

All returned or damaged food and food products shall be safe and wholesome before return to inventory storage for distribution or sale.

§42.1435 Construction and Equipment

It is unlawful to operate a wholesale food warehouse unless such operation is within buildings capable of being fully enclosed with floors, walls and overhead structure in compliance with this chapter. All buildings shall be of sound construction in accordance with all applicable codes; designed and maintained so as to provide proper drainage, plumbing, lighting, and ventilation.

§42.1436 Floors

The floor surfaces in walk-in refrigerators and freezers, food storage areas, utensil washing areas, refuse or garbage storage areas, and toilet rooms shall be of such construction and material so as to be smooth; impervious to water, grease and corrosives; and easily cleanable. A minimum four-inch (4") high approved coved base with a minimum three-eighths inch (3/8") radius shall be provided at the juncture of the wall and floor, except in refuse or garbage storage and warehouse areas.

§42.1437 Walls

Walk-in refrigerators and freezers, utensil-washing areas and toilet rooms shall have walls which are smooth, nonabsorbent, and have a washable finish.

§42.1438 Ceilings

The ceilings in walk-in refrigerators, walk-in freezers, utensils washing areas and toilet rooms shall be smooth, nonabsorbent and have a washable finish.

§42.1439 Ventilation

- (a) Approved ventilation shall be provided throughout the establishment to keep all areas reasonably free from excessive heat, steam, condensation, smoke, and vapor, and to provide reasonable comfort for all employees.
- (b) Toilet rooms and janitorial rooms shall be provided with an openable screened window, mechanical ventilation, or other approved ventilation system.

§42.1440 Vermin Proofing

It is unlawful to operate or maintain a wholesale food warehouses which is not constructed, equipped, maintained and operated so as to prevent the entrance and harborage of animals, birds, and vermin, including, but not limited to, rodents and insects at all times.

§42.1441 Sanitary Facilities

- (a) Employee handwash lavatories shall be provided within or adjacent to toilet rooms. Warm running water under pressure of at least 100 degrees Fahrenheit shall be provided through a mixing valve or combination faucet. Spring operated faucets are not permitted.
- (b) Separate toilet facilities for each sex are required if there are five or more

employees per shift. Urinals may be substituted for toilets in toilet rooms for males but shall not exceed one-third (1/3) of the required number of toilets. Required number of toilets and hand washing sinks are dependent upon the number of employees in accordance with the Uniform Plumbing Code. Toilet rooms shall be separated from other portions of the wholesale food warehouse by well-fitting, properly labeled, self-closing doors.

- (c) All utensils used for handling unpackaged food or the trimming of produce shall be washed, rinsed, and sanitized in an approved three-compartment utensil-washing sink. A two-compartment sink may be used when alternative approved sanitation methods are used. Utensil-washing sinks shall be equipped with a supply of hot (minimum 120 degrees Fahrenheit) and cold running water under pressure through a mixing valve or combination faucet.

§42.1442 Food Storage

Adequate warehousing/storage facilities shall be provided for the storage or distribution of food. All food shall be properly stored a minimum of six inches (6") above the floor on shelving. Pallets may be used in lieu of shelving if equipment is available on demand to move the pallets. All storage racks and equipment for the storage of food or food products shall be constructed, and all sacks, boxes and other food containers shall be so arranged as to permit and facilitate the flushing with water, other cleaning and inspection of storage room floors and walls. At least twelve inches (12") of unobstructed space from the wall shall be provided in warehouse storage areas.

§42.1443 Janitorial Facilities

The following janitorial facilities are required at a wholesale food warehouse:

- (a) A room, area, or cabinet, separated from any food or utensil-washing area, shall be provided for the storage of cleaning equipment and supplies such as mops, buckets, brooms, and cleaners.
- (b) At least one of the following, provided with hot (at least 120 degrees Fahrenheit) and cold water under pressure through a mixing valve, to be used for general cleaning purposes and for the disposal of mop bucket waste and other liquid wastes:
 - (1) A one-compartment, non-porous janitorial sink/mop sink (stainless steel, porcelain or fiberglass).
 - (2) A slab, basin, or floor constructed of concrete or equivalent material, curbed and sloped to a drain, connected to approved sewerage.

§42.1444 Refrigerators and Freezers

- (a) Each wholesale food warehouse where potentially hazardous food is packaged, stored, distributed, or held for transfer must have adequate approved refrigeration.
- (b) Each refrigeration unit shall be equipped with accurate, readable thermometers.

§42.1445 Ice Machines

All icemakers shall be located within the approved wholesale food warehouse.

Condensate and ice melt shall be drained to an approved floor sink by means of an indirect connection.

§42.1446 Floor Sinks

Floor sinks shall be properly plumbed and installed with the sink top flush with the floor surface. All condensate and similar liquid waste shall be drained by means of a rigid indirectly connected waste lines into open floor sinks, or as approved by the Director. Horizontal runs of drain lines shall be at least six inches (6") off the floor, sloped toward floor sinks at a rate of one-quarter inch (1/4") per foot, and shall terminate at least one inch (1") above the overflow rim of the floor sink. Floor sinks shall be located so that they are readily accessible for inspection, cleaning, and repairs, and not located in a walkway. Waste lines shall not cross any aisle, traffic area, or door opening. Floor sinks are not permitted inside walk-in units unless they are indirectly connected to the sewer system through a legal air gap.

§42.1447 Aisles and Work Space

Aisles or working spaces between equipment or between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties in accordance with local building and fire codes.

§42.1448 Floor Drains

Adequate floor drains shall be provided in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on to the floor.

§42.1449 Transportation of Food

It is unlawful for any person to carry, transport, or convey any food for commercial purposes unless such food is protected from contamination. All potentially hazardous foods shall also be kept at a temperature pursuant to San Diego County Code section

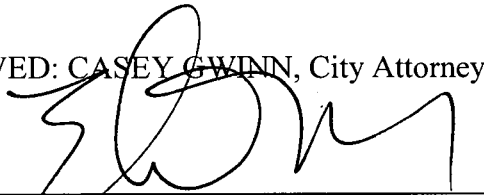
61.232 (TEMPERATURE REQUIREMENTS). All vehicle food compartments shall be maintained clean, sanitary, and in good repair.

Section 2. A full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By



Elmer L. Heap, Jr.
Head Deputy City Attorney

ELH:smf
06/18/03
Or.Dept:Special Projects
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