

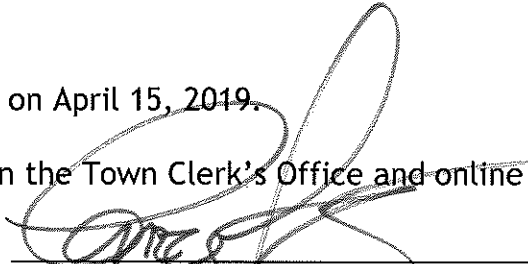
LEGAL NOTICE  
TOWN OF CROMWELL

Please take notice that the Town Council of the Town of Cromwell approved amending the Code of the Town of Cromwell at their meeting held on March 13, 2019:

§137 -Food Establishments

The Ordinance shall become effective on April 15, 2019.

Copies of the Ordinances are on file in the Town Clerk's Office and online at [www.cromwellct.com](http://www.cromwellct.com).



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Enzo Faienza, Mayor  
For the Cromwell Town Council

# Chapter 137. Food Establishments

[HISTORY: Adopted by the Town Council of the Town of Cromwell 4-6-2016.[1] Amendments noted where applicable.]

## CHARTER REVISION

Effective with the general election held in November 2013, the Town changed to a Town Council/Town Manager form of government. According to Charter § 11.04, any references in Town ordinances to the "First Selectman" or to the "Board of Selectmen" shall now be deemed to refer to the "Town Manager" or the "Town Council," as appropriate.

## GENERAL REFERENCES

Alcoholic beverages — See Ch. 76.

Civil emergencies — See Ch. 110.

Health standards — See Ch. 146.

Peddling and soliciting — See Ch. 178.

Sanitation — See Ch. 189.

Zoning — See Ch. 236.

Farmers' markets — See Ch. 179

[1]

Editor's Note: This ordinance also superseded former Ch. 137, Food Establishments, adopted BOS 9-9-1980, as amended.

## § 137-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

### CERTIFIED AGENT

One who has been certified by the State of Connecticut as a food service establishment inspector.

### DIRECTOR OF HEALTH

The Director of Health for the Town of Cromwell or the Registered Sanitarian, who is his authorized agent, who shall enforce this chapter.

### FARMERS' MARKET

As defined in Chapter 179: An approved, formally organized and regularly scheduled event for the sale of local food produce and products in a common marketplace which is certified and operated under the general guidelines and auspices of the State Department of Agriculture.

### FOOD

Any raw, cooked or processed edible substance, beverage or ingredient, including ice, used or intended for use, in whole or in part, for human consumption.

### FOOD CLASSES

As defined by the State of Connecticut Public Health Code and Regulations in accordance with Connecticut General Statutes, § 19a-36g as amended.

#### A.

~~Class I is a food service establishment with commercially packaged foods and/or hot or cold beverages only. No preparation, cooking or hot holding of potentially hazardous foods is included except that commercially packaged precooked foods may be heated and served in the original package within four hours.~~

#### B.

~~Class II is a food service establishment using cold or ready to eat commercially processed food requiring no further heat treatment and/or hot or cold beverages. No cooking, heating or~~

~~hot holding of potentially hazardous foods is included, except that commercially packaged precooked foods may be heated and served in the original package within four hours, and commercially precooked hot dogs, kielbasa and soup may be heated if transferred directly out of the original package and served within four hours.~~

C.

~~Class III is a food service establishment having on the premises exposed potentially hazardous foods that are prepared by hot processes and consumed by the public within four hours of preparation.~~

D.

~~Class IV is a food service establishment having on the premises exposed potentially hazardous foods that are prepared by hot processes and held for more than four hours prior to consumption by the public.~~

FOOD ESTABLISHMENT

Any vehicle or place where food or beverage intended for human consumption is manufactured, prepared, stored, offered for sale, sold, served or given to the public or nonmembers, including farmers' markets. For purposes of clarification, nothing in this chapter shall include any religious ceremony, functions at private homes or affairs in establishments which cater exclusively to members and their guests.

FOOD VENDING MACHINE

A device automatically operated to supply food without the direct supervision of a human being.

ITINERANT FOOD ESTABLISHMENTS

Commercial food vendors preparing and selling food from a truck, trailer, tent or other movable venue.

**§ 137-2. License required; conditions of license; posting required.**

It shall be unlawful for any person to operate a food establishment within the Town of Cromwell without possessing a valid license or a written determination from the Director of Health that no license is required. Only a person who complies with the requirements of the Public Health Code of the State of Connecticut shall be entitled to receive and retain such a license. Licenses shall not be transferred from one person to another person or from one location to another. Unless a different timeline is provided for in the license, all licenses shall expire on June 30 of each year. The owner or proprietor of a food establishment or a food vending machine shall keep a valid license posted in a conspicuous public location visible to the patrons of the establishment, protected against defacement or damage at all times.

**§ 137-3. Exemptions.**

Residents of the Town of Cromwell offering fresh fruits and vegetables grown on and sold from their own property shall be exempt from this chapter.

**§ 137-4. Application procedure; fees.**

A.

Any person desiring to operate a food establishment (including participation in a farmers' market) shall make application to the Director of Health. Such application shall be made at the time of submission of an application to any other Town agency if such an application is required for the planned activity or use or at least five days prior to the intended opening or change of ownership of such an establishment. The application

shall be on a form provided by the Department of Health, and it shall be within the Director's discretion to determine whether a license and/or plan review fee is required.

B.

Plan review fee. There shall be a nonrefundable application fee of \$100 payable at the time of application, unless exempt. Proposed food establishments that are exempt from a plan review fee include:

(1)

Farms and gardeners of the Town of Cromwell selling homegrown produce, homemade prepared foods and samples at a farmers' market.

(2)

Cromwell-licensed food establishments intending to participate in a farmers' market.

(3)

Charitable, philanthropic, ecclesiastical and civic organizations regularly organized and/or functioning in the Town.

C.

Such application form shall require, at a minimum:

(1)

The name, post office address and telephone number of the owner, owners or partners who shall be considered the applicant. The same information must be provided for the manager, who shall be responsible for the day-to-day operation of the establishment.

(2)

The location, type of proposed food operation that is intended and relevant plans for the construction and operation of the establishment.

(3)

The signature of the applicant and the application fee, if applicable.

(4)

Any other information deemed required by the Director of Health.

**§ 137-5. License procedure; fees; renewal.**

A.

It shall be within the discretion of the Director of Health to determine whether a license is required and the appropriate licensing fee in accordance with the following license fee schedule.

B.

License fee schedule. License fees shall be paid as follows:

(1)

Food establishment fees per class, including itinerant vendors:

(a)

Class I: \$100.

(b)

Class II: \$125. \$150.

(c)

Class III: \$150. \$200.

(d)

Class IV: \$200.

(e)

Temporary license, seven days or less: \$50.

(f)

For all food vending machines owned by one vendor at one location: \$10.

(g)

Food service plan review for extensive remodeling: \$50.

(h)

Public schools, nonprofit charitable and religious organizations and civic groups: no fee.

(i)

Local produce sold directly from a commercial garden or farm: no fee

(j)

Farms with a valid food establishment license issued by another health district or municipality: no fee.

(k)

Food establishments already holding a valid food establishment license from the Town of Cromwell: no fee.

(l)

Itinerant food establishments: an amount equal to the fee for that food establishment class.

(2)

Where there has been a failure to file the required application within the five-day period specified and the establishment has commenced and/or continued to operate without the required approval or license, there shall be a penalty which shall be added to and collected with all the other fees required. The penalty shall be 50% of the fees required, if any, or \$10, whichever is greater, for every seven calendar days or part thereof during which the establishment shall have operated without an appropriate approval or license from the Director of Health. This penalty shall be doubled for every additional week or part thereof during which operation of the establishment unlawfully continues. The imposition or payment of this penalty shall not be deemed to excuse the operation of a food establishment without the required approval or license or to prevent the imposition of any other penalty prescribed by this chapter or other provision of law.

(3)

Renewal of license. The holder of a valid food establishment license may submit an application, amended with the current date, if necessary, 30 days prior to the expiration of the current license. The license holder has the obligation to initiate the renewal request.

(4)

Duties of Director of Health in issuing license. After submission of a completed application and after investigation, the Director of Health shall determine whether a license is required and issue that license if the food establishment conforms to the requirements of this chapter and the regulations of the appropriate state agencies that are incorporated into this chapter. If the Director of Health finds that the establishment is incomplete or fails to meet these requirements or if the establishment does not comply with other municipal codes or regulations, the license may, at the discretion of the Director of Health, be either denied without prejudice, or action may be suspended for a stated period not to exceed 30 days for such compliance to be accomplished.

### **§ 137-6. Inspection; procedure upon discovery of violations.**

A.

The Director of Health or his certified agent shall inspect and reinspect each food establishment within the Town of Cromwell as is necessary for the enforcement of this chapter.

B.

After proper identification, the Director of Health or his certified agent shall be permitted to enter at any reasonable time any food establishment, licensed or not, for the purpose of determining compliance with this chapter. Inspections necessary after business hours shall be allowed upon reasonable notice to the license holder or manager.

C.

The Director of Health or his certified agent shall be permitted to examine all areas of the food establishment and its surroundings and all employment and business records of the establishment to obtain pertinent information pertaining to the equipment, food and supplies purchased, received and used as well as the health and hygiene of the persons employed.

D.

The Director of Health or his certified agent may condemn, upon immediate notice, foods, foodstuffs and other related substances which have been subjected to fire, smoke, flooding, loss of refrigeration or other gross mistreatment. The Director of Health or his certified agent shall make an itemized list of such destroyed items to be kept as a record, a copy of which shall be made available to the license holder upon request.

E.

The Director of Health or his certified agent may, without prior written notice, obtain a sample and/or place a hold order upon any food, foodstuff or substance which he has determined or has probable cause to believe unwholesome, deteriorated, adulterated or otherwise potentially unsafe for consumption or use.

F.

The Director of Health or his certified agent will confirm such action with written notice to the license holder by means of an inspection report or notice of violation.

G.

Under a hold order such foods or other substances shall be suitably stored to maintain the conditions as originally found so long as adequate safeguards can be maintained against the removal or misuse of the items in question. No foodstuffs or the containers thereof shall be relabeled, repacked, reprocessed, altered or disposed of or used without the written permission of the Director of Health.

**§ 137-7. Notice of violation; reinspection.**

A.

Whenever the Director of Health or his certified agent makes an inspection and finds a violation of the Public Health Code or of this chapter, he shall make notice of such violation by means of an inspection report or other written notice. In any such notice of violation, there shall be stated:

(1)

The specific violation.

(2)

A definite and reasonable time for its correction, considering the duration of the operation of the food establishment, the hazard to the public and the complexity of the correction.

(3)

The consequence of failure to correct the violation.

(4)

A statement that an opportunity for an administrative hearing before the Department of Public Health can be requested to contest the notice of the violation or hold order if such a written request is submitted by the license holder to the Department of Public Health within three business days of the first knowledge of the notice, either written or oral.

B.

Whenever a reinspection is made subsequent to an initial inspection which resulted in the issuance of a notice of violation and the investigator finds that the violation(s) has not been corrected, an inspection fee of \$75 shall be paid and collected for each such reinspection required.

C.

The imposition of this fee or its payment shall not be deemed to excuse any violation found pursuant to this chapter or to prevent the imposition of any penalty prescribed by this chapter or other provision of law.

**§ 137-8. Suspension of license.**

A.

A license may be temporarily suspended by the Director of Health upon violation by the food establishment or its operators of any requirement of this chapter, for any condition that is deemed by the Director of Health to be an imminent health hazard, for serious or repeated violations or for interference with the Director of Health or his certified agent in the performance of his duties.

B.

Notice of suspension of a license must be given orally, but must be followed within 18 hours by written notice or confirmation. Said written notice must contain the reasons for the action and shall direct the operators of the establishment to immediately discontinue all food service operations. Said notice shall also inform the license holder of his right to a hearing before the Commissioner of Health if written request for such hearing is submitted to the Department of Public Health within three days of the notice of suspension.

C.

Any person whose license has been suspended may make written request for a reinspection. Such request must contain a signed statement that the cited violations have been corrected. A reinspection shall be made within five days of receipt of such a request, and if the violations have been corrected, the license will be reinstated.

D.

Upon receipt of an order of suspension, the license holder shall post a copy of said order upon the inner surface of a glass panel facing outwards onto the public entity to the establishment so that the public may have notice of the suspension of the license to operate. Failure to post said copy or to remove the same shall be an assumption of full liability for any cause of action, public or private, based upon defiance of said order, and the license holder and those having notice of said order shall hold the Town of Cromwell blameless.

**§ 137-9. Revocation of license.**

A.

A food establishment license may be revoked by the Director of Health for refusal to comply with an order of suspension or the regulations of the Public Health Code or for repeated violations which demonstrate an inability to provide wholesome and hygienic foods to the public. A license can only be revoked after an opportunity for a hearing has been provided before the Department of Public Health. Notice of a revocation of a license shall provide at least 12 working days before the date of delivery of the notice and the date of its effect. Said notice will be in writing and signed by the Director of Health.

B.

In accordance with Connecticut General Statutes, § 12-146a, a food establishment license may be denied or revoked by the Director of Health for any premises for which personal property taxes due on such property, used in a business enterprise located on the premises for which such license for food establishment is sought, are delinquent, as follows:

(1)

Such taxes remain unpaid, in whole or in part, for one year past the date upon which such taxes were due; and

(2)

The total unpaid taxes, for the current and any prior tax period(s) combined, exceed 50% of the current annual taxes due for such business personal property used by the business seeking such license for food establishment.

C.

All other procedures for revocation shall be as described in § 137-9, except that any person aggrieved by the denial or revocation pursuant to the preceding Subsection B may appeal such decision as provided in this Subsection C. Hearings concerning any denial or revocation of any food establishment license hereunder shall be in accordance with Connecticut General Statutes, § 7-152c, as the same may be amended from time to time. The Town Manager shall appoint not more than two persons to serve as hearing officers. No such hearing officer shall be a police officer or employee or person who issues citations. The compensation of the hearing officers shall be set by the Town Council. In addition to the requirements of Connecticut General Statutes, § 7-152c, all hearings under this chapter shall conform to the requirements for fundamental fairness, rules of evidence, and other procedures required by law for administrative hearings involving the denial or revocation of licenses.

D.

Except for a revocation pursuant to Subsection B above, a license holder or establishment that has had its license revoked shall not be eligible for consideration of a new application for a food establishment license until 30 days have elapsed after the correction of all defects and violations noted in prior inspection reports and notices of violations.

#### **§ 137-10. Communications; appeals.**

A.

All communications to the license holder shall be properly delivered and served when a copy of the inspection report or other notice has been left with the operator of the establishment, or in the door if the establishment is closed, or has been personally delivered or mailed by certified mail to the license holder as specified by name and address on the current license application. The term "operator" shall include the senior employee on the premises at the time of delivery.

B.

Any person aggrieved by a regulation or by an action of the Director of Health shall have the right to a review by the superior of that party. If such a review is not forthcoming or is unsatisfactory, the aggrieved party can petition for an appeal before the Commissioner of Health.

#### **§ 137-11. Standards; limitation on appeals.**

A.

The Director of Health is authorized to establish requirements for food establishments and vending machines beyond those requirements currently in effect as the regulations of the Connecticut Department of Health and the Department of Consumer Protection, which are herein incorporated into this chapter.

B.

The right to appeal is limited to 20 days after the enactment of the regulation.

#### **§ 137-12. Submission of plans of new or renovated structures.**

A.

When food establishments are hereafter constructed, renovated or remodeled, or when existing structures are to be converted for use as a food establishment, or when a change is to be made in the menu requiring a change in equipment or operation of an existing food establishment, such intentions shall require the submission of



detailed plans to the Director of Health prior to the obtaining of any other required permits and prior to the start of alterations.

B.

Such plans shall show the layout, construction materials, arrangement of work and storage areas, the location, size and type of fixed equipment and facilities. The menu, service expectations and any other information necessary to evaluate the proposed construction or alteration may be required for submission and evaluation.

**§ 137-13. Violations and penalties.**

Any person who shall violate any provision of this chapter shall, in addition to any other penalties or fees provided herein, be subject to a fine of not less than \$50 nor more than \$200 and/or imprisonment for up to 30 days for each day that an offense continues between the date of notice of violation and the date of correction, as known by reinspection or the date of disposition by a court of competent jurisdiction.

**§ 137-14. Suspension of provisions.**

During emergencies and disasters, the provisions of this chapter may be waived.

**§ 137-15. Failure of Town to act on applications for temporary licenses.**

If an application for a temporary license is submitted and not acted upon within 10 days, then the intended opening and operation of such establishment shall not be delayed by the Town.