

AN ORDINANCE AMENDING CHAPTER 1 OF DIVISION 1 OF TITLE 6 OF THE
COUNTY CODE, AND ENACTING CHAPTER 3 OF THAT DIVISION, REGARDING
FOOD CATERERS AND CATERING

Section 1. Purpose

This ordinance sets out permitting requirements and food safety standards for caterers and catering operations, including restaurants that also cater. For traditional private event catering, only four changes are made to the existing (but uncodified) County program: Caterers will be required to provide written catering operation plans for DEH review and approval. They will be required to provide food safety instructions to customers if food is dropped off, and to keep written records so that food-borne illness outbreaks can be investigated. Also, DEH will begin to do annual inspections of catering operations in the field while food is being served.

The ordinance also expands the scope of allowable catering operations beyond private events, to include direct sales by caterers at separately-permitted host facilities. Because direct-sales catering involves additional food safety risk factors, this ordinance imposes additional food safety requirements on direct-sales catering and catering host facilities: The host facilities must provide specified supporting infrastructure, and the direct-sales caterers must use mechanical refrigeration equipment, full overhead protection, and portable hand-washing sinks within the food preparation area.

The County is enacting this ordinance to increase food safety, to better conform the County's program to the California Retail Food Code (CRFC), and to regulate an increase in food service by caterers from temporary set-ups at wineries, breweries, and other commercial establishments. The ordinance establishes basic food safety requirements, but also provides flexibility through DEH review and approval of equipment lists and standard operating procedures for each caterer. This flexibility is based on section 114335(c) of the Health and Safety Code, which directs enforcement agencies to determine the requirements to be met by specific temporary food facilities based on the food service activity that each permittee plans to conduct. The same approach is appropriate when caterers operate in the field from similar temporary set-ups.

Structurally, the first few sections of this ordinance (amending "Chapter 1" provisions) clarify generally applicable food safety provisions of the County Code. These early sections also further codify DEH's "food equipment rental establishment" program, and its relationship to catering, without making substantive changes to that program.

Next, "Chapter 3" restores catering-specific provisions to the County Code, as sections 61.301 to 61.305. These extensive additions to the County Code closely parallel provisions that were repealed several years ago, in the expectation that a County catering program could be based entirely on the CRFC. But the CRFC does not define catering or specify what requirements apply to catering, so the County's requirements are being restated here with the changes noted above. These requirements are based on the CRFC food safety standards that best fit catering; the County Code provisions include extensive cross-references to the CRFC. Relevant underlying CRFC provisions include certain requirements for permanent and temporary food

facilities, requirements applicable to the transportation of food, and limitations on food preparation outside of a fully-enclosed food facility.

New material in section 61.306 sets out the additional requirements for direct-sales caterers described above, and new material in section 61.307 does the same for catering host facilities.

Section 2. Section 61.101 of the County Code is amended to read as follows:

SEC. 61.101. PURPOSE AND APPLICABILITY.

Part 7 of Division 104 of the California Health and Safety Code (HSC) (sections 113700 et seq.), also referred to as the California Retail Food Code (CRFC), provides Statewide health and sanitation standards for retail food facilities. These sections allow a county to establish some local requirements for retail food facilities and their employees. These sections also provide that a local enforcement agency shall have primary enforcement responsibility for the State regulations in its jurisdiction. The purposes of this Division are to clarify and explain the CRFC for local implementation where necessary, to adopt additional regulations for retail food facilities and their employees to protect the public health and safety in San Diego County, to codify and amend a long-standing County program to regulate caterers, and to appoint the Department of Environmental Health to enforce State and County regulations for retail food facilities and their employees.

Because they are not based on the CRFC, the food facility grading and food handler requirements in this Division (at sections 61.107, 61.108, 61.114 and 61.115) are directly applicable only in the unincorporated portions of San Diego County. However, parallel provisions have been enacted in all of the incorporated cities in the County. Because private event catering is not retail food service as defined in the CRFC, requirements applicable to caterers when preparing and serving food at private events (in Chapter 3 of this Division) are based on County general powers in the unincorporated area (California Constitution, article 11, section 7), and on parallel city ordinances and on State-law health officer powers in incorporated cities. The substantive content of those requirements is based on the CRFC.

Because DEH is the environmental health officer in all incorporated cities in the County (as authorized by State law and by agreement with each city), parallel city ordinance provisions for food facility grading, food handlers and private event caterers are also administered and enforced by DEH. All other provisions of this Division, including all provisions applicable to direct-sales caterers, implement the CRFC and apply County-wide pursuant to the CRFC. All requirements in this Division are administered and enforced by DEH.

This Division does not override any local land use requirement or limitation, or any local regulation on where mobile food facilities may operate.

Section 3. Section 61.102 of the County Code is amended to read as follows:

SEC. 61.102. DEFINITIONS.

The following definitions shall apply to this chapter and to Chapter 3 of this Title:

(a) "CRFC" means the California Retail Food Code, which is codified in the California Health and Safety Code

(b) "DEH" or "Department" means the County Department of Environmental Health.

(c) "Director" means the Director of DEH and any person appointed or hired by the Director to enforce or administer this chapter.

(d) "Equipment" has the same meaning as the term "equipment" in HSC section 113777.

(e) "Food" has the same meaning as the term "food" in HSC section 113781.

(f) "Food equipment rental establishment" means an establishment that provides food service equipment or utensils such as dishes, tableware, pots and pans to food facilities, catering operations, or to the public. Food equipment rental establishments are food facilities under the CRFC. (HSC section 113789(a)(2).)

(g) "Food facility" has the same meaning as the term "food facility" in HSC section 113789, and also includes a "catering operation" or "catering facility" and a "catering host facility" as defined in Chapter 3 of this Title.

(h) "Food handler" means a person who prepares, handles, packages, serves or stores food or handles utensils, or assists another person in any of those tasks at a food facility that requires a permit pursuant to this chapter.

(i) "HSC" means the California Health and Safety Code

(j) "Imminent health hazard" has the same meaning as the term "imminent health hazard" in HSC section 113810.

(k) "Minimal food preparation facility" means for purposes of section 65.107(a), a retail food facility that only serves frozen ice cream, hot dogs, beverages that are not potentially hazardous, coffee or cocoa based beverages that may contain cream, milk or similar dairy products requiring no preparation other than heating, blending, assembly, scooping or dispensing. A minimal food preparation facility also includes an Alcoholic Beverage Control license type 42 or 48 facility, as long as that facility does not engage in slicing, chopping or

grinding of raw potentially hazardous foods, reheating for hot holding, washing of foods, or cooking, baking, barbecuing, broiling, frying or grilling any food.

(l) "Prepare" means to package, process, assemble, portion or engage in any operation that changes the form, flavor or consistency of food, but does not include trimming produce.

(m) "Ready-to-eat food" has the same meaning as the term "ready-to-eat food" in HSC section 113881.

(n) "Tableware" has the same meaning as the term "tableware" in HSC section 113926.

(o) "Utensil" has the same meaning as the term "utensil" in HSC section 113934.

Section 4. Section 61.103 of the County Code is amended to read as follows:

SEC. 61.103. DEPARTMENT OF ENVIRONMENTAL HEALTH TO ENFORCE RETAIL FOOD REGULATIONS.

DEH shall be the local enforcement agency for the CRFC and the regulations adopted in this Division, and for parallel food facility grading, food handler, and caterer requirements adopted by cities within the County.

Section 5. Subsection (a) of section 61.104 of the County Code is amended to read as follows:

SEC. 61.104. PERMIT REQUIRED FROM DEPARTMENT OF ENVIRONMENTAL HEALTH.

(a) A person who is required to obtain a food facility permit pursuant to the CRFC shall submit an application for the permit to DEH on a form provided by the department. Restaurant operators with a food facility permit may cater private events without an additional permit. All other catering requires a catering permit. The application for a permit shall be accompanied by the annual permit fee, if any, required in Title 6, Division 5, Chapter 1. (See County Code section 65.107(a).) Where a plan check or plan consultation is required, the time-based fee specified in Title 6, Division 5, Chapter 1 must be paid before a permit or other approval to operate is issued. (See County Code section 65.107(m).)

Section 6. Section 61.113 of the County Code is amended to read as follows:

SEC. 61.113. RENTING OR LEASING EQUIPMENT AND UTENSILS.

(a) No person shall rent or lease equipment, tableware or utensils to a food facility, catering operation, or to the public without a miscellaneous food facility permit issued by DEH for that operation.

(b) No person shall rent or lease equipment, tableware or utensils to a food facility, catering operation, or to the public unless it complies with the following requirements:

(1) The equipment is stored in a building that complies with the requirements the CRFC requires a food facility to comply with for storing equipment in a building.

(2) The tableware and utensils have been cleaned and sanitized by the same methods the CRFC requires a food facility to follow.

Section 7. Chapter 3 of Division 1 of Title 6 of the County Code is retitled to read as follows:

Chapter 3. CATERING

Section 8. Section 61.301 is added to the County Code to read as follows:

SEC. 61.301. PURPOSE AND APPLICABILITY.

(a) This chapter implements the California Retail Food Code as it applies to direct-sales caterers and catering operations, and reenacts with minor modifications prior County Code requirements for private event catering. The requirements of this chapter are applicable County-wide. Catering operations are also subject to the requirements of Chapter 1 of this division, and to the applicable requirements of the CRFC. In case of any inconsistency between a provision of this chapter and an applicable provision of the CRFC, the CRFC provision takes precedence.

(b) This chapter does not apply to the following food facility operations, which are regulated under the CRFC:

- (1) Food service by a permitted temporary food facility at a community event or swap meet
- (2) Food service by a mobile food facility directly from that facility
- (3) Satellite food service by a permanent food facility
- (4) Cottage food operation

(c) This chapter does not apply to any operation that is expressly excluded within the definition of “food facility” in subsection (c) of section 113789 of the HSC; or to the preparation of food by a cook-for-hire in a private home; or to the preparation of delivery of food that has been ordered by an individual consumer to that consumer at any location for his or her direct consumption.

Section 9. Section 61.302 is added to County Code to read as follows:

61.302. DEFINITIONS

(a) “Approved food preparation” means food preparation approved by DEH pursuant to subsections (b) and (c) of section 61.303, as part of a caterer’s standard operating procedures for additional food preparation at an event site or host facility.

(b) “Caterer” means a catering facility operator or restaurant operator, when catering.

(c) “Catering” means the preparation of food in a permitted kitchen at one location combined with the delivery, additional approved food preparation, and service of that food at a separate location. “Catering” does not include the activities excluded in section 61.301 of this chapter.

(d) “Catering facility” and “catering operation” mean all of the facilities, equipment, utensils and activities directly used by a caterer to store, prepare, transport, finish and serve catered food or used by the caterer to store or clean catering-related utensils or equipment. Facilities and equipment rented to a caterer are part of the catering operation while in the possession of the caterer. A catering facility or catering operation is a “food facility” subject to the CRFC and this chapter when operated for direct-sales catering, and is a food facility subject to this chapter when operated for food service at a private event.

(e) Overhead protection adequate enclosures must be provided during food preparation. (HSC section 114067).

(f) “Catering host facility” means a fixed facility established and regularly operated for purposes other than food service, that meets the requirements of section 61.307 and obtains the permit required by section 61.303. Direct-sales catering food service may only occur at a permitted catering host facility that meets the requirements of section 61.307 at the time the catered food is served.

(g) “Catering vehicle” means a “transporter” as defined in HSC section 113932, when used to transport food, beverages and related food preparation and food serving equipment and utensils to or from a catered function.

(h) “Direct-sales catering” means any catering where food is sold or served to individual consumers as members of the public, i.e., all catering other than private event catering. Direct-sales catering is only allowed at a permitted catering host facility that meets the requirements of section 61.306 at the time the catered food is served.

(i) “Private event catering” means catering where food is served to a predetermined number of guests invited to an event by a sponsor or organizer. Provided that the requirements in subsection (a) of section 61.305 are met, “private event catering” also includes catering at a “social function” or “sponsored commercial function.”

(j) “Social function” means a sponsored pre-arranged gathering of people, who come together based on a common interest other than the food to be served at the social function, during which catered food is served to a pre-determined maximum number of people. An example would be a catered affinity club meeting, or a catered charity benefit event. A “community event” as defined in HSC section 113755 is not a “social function.” (Food service at a “community event” is regulated as provided in the CRFC.)

(k) “Sponsored commercial function” means a function other than normal daily business operations at a commercial establishment or at beer or wine tasting premises (even if locally zoned as “industrial” or “agricultural”), during which catered food is served to a predetermined maximum number of people. An example would be a special event with food service to introduce a new vehicle to potential customers at a car dealership, or a monthly meeting of a winery’s “wine club” at that winery. A “community event” as defined in HSC section 113755 is not a “sponsored commercial function.” (Food service at a “community event” is regulated as provided in the CRFC.)

Section 10. Section 61.303 is added to County Code to read as follows:

61.303. CATERING PERMIT AND HOST FACILITY PERMIT REQUIREMENTS

(a) All catering permits issued by DEH prior to the effective date of this ordinance, and all catering permits not designated by DEH as direct sales catering permits, are private event catering permits. No person shall engage in private event catering without a valid restaurant permit, private event catering permit, or direct sales catering permit. No person shall engage in direct-sales catering without a direct-sales catering permit. No person shall allow direct-sales catering at their facility without a valid catering host facility permit. Applications for private event catering permits, direct-sales catering permits and host facility permits must be made on a form or forms provided by DEH, and the applicable permit fees (if any) set out in section 65.107 of this code must be paid.

(b) The permit application for any catering permit shall require a written description of catering activities the applicant will undertake and the equipment and standard operating procedures the operator proposes to use. A restaurant engaged in private event catering must provide the same information to DEH upon request. At a minimum, the applicant or restaurant must propose equipment and operating procedures that meet the requirements set out in in this Chapter for the type of catering to be conducted.

(c) The Director may deny a catering facility permit to any applicant if the catering equipment or the standard operating procedures for food preparation and service at the kinds of catered functions described by the applicant in the permit application do not comply with this Chapter or are insufficient to ensure food safety.

(d) Catering may not be conducted under a temporary food facility permit. The sale or distribution of food under a temporary food facility permit (aka “temporary event permit” or “annual temporary event permit”) is limited to community events and swap meets. (A temporary food facility is subject to different standards than a caterer, as set out in the CRFC.)

(e) A private event catering permit or restaurant permit may only be used to prepare and serve food at private events, including social functions and sponsored commercial functions that qualify as private events.

(f) A direct-sales catering permit may be used to prepare and serve food at private events (including qualifying social functions and sponsored commercial functions), and to prepare, serve, and sell food at permitted catering host facilities.

(g) A catering host facility permit does not allow direct sales catering at the host facility by private event caterers or by restaurants that do not have a direct-sales catering permit., except at a private event.

(h) Catering permits and catering host facility permits may be modified, suspended, or revoked as provided in the CRFC for all food facility permits.

Section11. Section 61.304 is added to County Code to read as follows:

61.304. OPERATIONAL REQUIREMENTS AND PROHIBITIONS APPLICABLE TO ALL CATERERS

(a) A catering facility operator may not directly or indirectly sponsor a private event, social function or sponsored commercial function at which that caterer prepares or serves food, and may not have a substantial ownership interest in a host facility at which that caterer sells food.

(b) In addition to meeting the requirements set out in this chapter, caterers when catering must consistently use the equipment and implement and maintain the operating procedures approved (or modified and then approved) by the Director.

(c) Prior to any catered function and prior to any catered food service at a catering host facility, all food shall be prepared at the permitted food facility identified in the caterer’s permit application and approved by DEH for use by that caterer. (HSC Sections 113980 and 113984).

(d) All food to be catered shall be stored at the permitted food facility or approved commissary identified in the caterer's permit application and approved by DEH for use by that caterer.

(e) No person or company shall operate or cause to be operated a catering vehicle without complying with the following:

(1) Such person or company shall have a valid caterer's permit or other health permit as required in Sec. 61.104 of this chapter.

(2) Foods and food containers shall be carried in compartments with cleanable interior surfaces.

(3) Vehicles shall be maintained in a clean and sanitary condition.

(4) Compartments used to carry potentially hazardous foods shall be capable of maintaining potentially hazardous foods at or below 41 degrees Fahrenheit or at or above 135 degrees Fahrenheit.

(f) Prepared foods must be held in closed food compartments until served. (A covered chafing or similar dish qualifies as a closed compartment.) (HSC section 114067).

(g) Prior to any catered function, all utensils and equipment shall be washed and stored at the caterer's permitted food facility, or at a food equipment rental establishment that meets the requirements of the CRFC and section 61.103 of this chapter. Prior to transportation, all utensils shall be sanitized as specified in the CRFC. (HSC 114095 – 114109.)

(h) Utensils and equipment shall be protected from contamination.

(i) Utensils that become contaminated during food preparation or service may not be reused unless cleaned and sanitized using sinks and procedures that meet the requirements of HSC sections 114099 and 114099.2.

(j) At all times that the caterer has control over the food, including periods of receiving, storage, preparation, transportation and service, all food shall be adequately protected so as to be maintained pure and free of contamination, adulteration, and spoilage.

(k) The caterer shall not provide home-prepared food at a catered function.

(l) All food handlers shall wash their hands and arms with cleanser and warm water before commencing work, immediately after using the toilet facilities, and as frequently as necessary to prevent contamination of food. Hands shall be washed in properly supplied and stocked hand wash sinks. (HSC 113952 – 113961.)

(m) Toilet facilities shall be available within 200 feet of the catered function. (HSC 114359.)

(n) The caterer shall have at least one food handler who shall have passed an ANSI accredited Food Protection Manager Certification exam and possess a valid certificate or card. (HSC 113947.1(a) and (f) through (i).)

(o) All food handlers must possess a valid County Food Handler Card. (HSC 113948 and County Code section 61.114.)

(p) The caterer must post signs or provide business cards at the event premises stating their business name and address, and caterer's permit number. (HSC 114337.)

(g) When requested by DEH (in order to allow an annual inspection or a reinspection at a function where food is served), the caterer shall provide DEH a list of the events and (if applicable) host facilities at which the caterer will serve food over the following two weeks, including the food service locations and dates and times of service at each location.

(r) Caterers shall maintain a written record of their food service at a private event or host facility for 90 days after each event or day of service. These records shall be provided to DEH upon request to facilitate investigation of a food-borne illness outbreak. The records shall include the event menu, the ingredients used in each food item sold or served, the sources of all ingredients, and the name of and contact information for the event organizer.

Section 12. Section 61.305 is added to County Code to read as follows:

61.305. ADDITIONAL OPERATIONAL REQUIREMENTS AND PROHIBITIONS APPLICABLE TO PRIVATE EVENT CATERERS

(a) Private event catering must be arranged in advance of a private event (including a qualifying social function or sponsored commercial function), between the caterer and the sponsor. The arrangements must set a start time and end time for food service at the event, and must provide for a set quantity of food to be prepared, delivered and served based on the predetermined maximum number of people expected to participate in the event.

(b) In any agreement between a caterer and a private event organizer for catered food to be left at an event site by the caterer to be served by the event organizer, the caterer shall specify the equipment that must be present on-site to meet hot and cold holding requirements for potentially hazardous foods, and the caterer and organizer shall agree on whether the caterer or the organizer will provide that equipment. The caterer shall verify that adequate equipment is on-site when food is delivered.

(c) Any caterer who leaves food at a private event site to be served by the organizer shall provide written instructions on safe food handling and event duration to the organizer, including

instructions to discard uneaten items that are or may contain potentially hazardous foods at the end of the safe duration for the event.

(d) A caterer may not serve or allow catered food to be served to anyone at a private event (including a qualifying social function), other than guests of the sponsor, or to be served to more people at a sponsored commercial function than the predetermined maximum number of participants.

(e) Caterers when engaged in private event catering must hold potentially hazardous foods at or below 41 degrees Fahrenheit or at or above 135 degrees Fahrenheit, except during preparation or cooking or transportation for a period of less than 30 minutes. (HSC sections 114343.) If included and approved as a standard operating procedure a caterer may rely on time as a public health control at functions where food service ends not more than four hours after food is removed from temperature control at the function site.

(f) All potentially hazardous foods not consumed by the guests or by the predetermined number of participants at a private event (including a qualifying social function or sponsored commercial event) must be removed by the caterer for disposal at the agreed time for catered food service to end.

(g) The premises at which catered food is served must be equipped with plumbed potable water or a sufficient supply of tanked or bottled potable water.

(h) The premises at which catered food is served must be equipped with plumbed hand wash sinks with a hot water supply, or with an adequate number of portable auxiliary sinks for hand washing. Other alternate handwashing facilities that meet the requirements for temporary events set out in HSC 114358 are allowable only if described in detail as a standard operating procedure in the catering permit application, and approved by DEH.

(i) Overhead protection must be provided for the food preparation area, except where prohibited by a local building or fire code. (HSC 114341).

Section 13. Section 61.306 is added to County Code to read as follows:

61.306. ADDITIONAL OPERATIONAL REQUIREMENTS AND PROHIBITIONS FOR CATERERS WHEN ENGAGED IN DIRECT-SALES CATERING

(a) Caterers when engaged in direct sales catering must hold potentially hazardous foods at or below 41 degrees Fahrenheit or at or above 135 degrees Fahrenheit, except during preparation or cooking or transportation for a period of less than 30 minutes. (HSC sections 113996(a).)

(b) Caterers when engaged in direct-sales catering must use portable mechanical refrigeration equipment as defined in HSC 113885 at the food service site, to maintain required cold-holding

temperatures for potentially hazardous foods. Reliance on ice, portable cooling blocks, or ice chests or coolers to hold potentially hazardous foods is prohibited.

(c) All potentially hazardous food that were not cold-held at or below 41 degrees Fahrenheit during the entire time the caterer was at the host facility must be discarded by the caterer when food service ends for that day.

(d) Caterers when engaged in direct-sales catering outdoors shall provide overhead protection and full enclosure for food preparation, food display and food storage areas at the food service site, except where prohibited by local building or fire codes. (HSC 113984(b) and (e); HSC 114341(b) and (c).)

(e) Caterers when engaged in direct-sales catering must have an adequate number of portable auxiliary sink carts exclusively for hand washing within the food preparation area at the food service site. The auxiliary sink cart or carts must meet the requirements for warm water and handwashing supplies set out in HSC sections 113953(c) and 113953.2.

Section 14. Section 61.307 is added to County Code to read as follows:

61.307. CATERING HOST FACILITY REQUIREMENTS

(a) Clean toilet rooms that meet local building and plumbing codes shall be in place at the host facility, located not more than 200 feet from the area where the caterer prepares food, and must be accessible to the caterer's food handlers. The toilet rooms can be the same rooms used by the host facility. (HSC section 114250 and 114250.1.)

(b) Warewashing sinks meeting the requirements in HSC section 114099 must be in place at the host facility, accessible to the caterer, and near the area where the caterer prepares food. These sinks can be the same sinks used by the host facility. The host facility shall provide the caterer access to the sinks while food preparation and service by the caterer is ongoing. The host facility does not need to provide access to the sinks to facilitate washing of the caterer's utensils and equipment after food service ends.

(c) A curbed cleaning facility (aka "mop sink") that meets the requirements of HSC section 114279(a) shall be present in the host facility and accessible to the caterer's food handlers at all times.

(d) Handwashing facilities that meet the requirements in HSC sections 113953 through 113953.2 and section 113953.5 shall be present in the host facility and accessible to the caterer's food handlers at all times.

(e) The host facility shall provide sufficient electrical power to operate the caterer's mechanical refrigeration equipment.

(f) The host facility shall provide potable hot and cold water for use by the caterer that meets the requirements in HSC sections 114192 and 114195.

Section 15. Section 61.308 is added to County Code to read as follows:

61.308. COOK FOR HIRE

A cook-for-hire may not store, prepare or otherwise handle food that will be cooked for hire at the cook-for-hire's home; instead all storage, preparation, handling and cooking must be done at the private residence of the hiring party. A cook-for-hire may not sell the food to be cooked to his or her client, but may be reimbursed for the actual cost of food brought to the client's private residence to be prepared or cooked. Provided these conditions are met no health permit is required, because only cooking services, not food, are donated or offered for sale.

Section 16. Section 61.309 is added to the County Code to read as follows:

SEC. 61.309. INSPECTIONS

The Director is authorized to inspect caterers' kitchens and commissaries at any time during normal business hours, and to inspect caterers' food service operations in the field wherever and whenever they occur. The Director shall endeavor to inspect each caterer's fixed facilities and a representative food service operation by that caterer at a food service site at least once per year.

Section 17. Effective Date. This ordinance shall take effect and be in force thirty days after the date of its passage, and before the expiration of fifteen days after its passage, a summary shall be published once with the names of the members voting for and against the same in the Daily Commerce, a newspaper of general circulation published in the County of San Diego.