

**HEALTH AND SAFETY CODE**

ARTICLE 3. FOOD SERVICE ESTABLISHMENTS ..... 1

    CHAPTER 1. GENERAL PROVISIONS ..... 1

        Section 3-101. Definitions. .... 1

        Section 3-102. Regulations. .... 2

    CHAPTER 2. PERMITS; ISSUANCE AND REVOCATION ..... 2

        Section 3-201. Permits Required. .... 2

        Section 3-202. Application for Permit. .... 2

        Section 3-203. New Ownership or Operation. .... 2

        Section 3-204. Structural Modifications. .... 2

        Section 3-205. Granting and Denial; Notice. .... 3

        Section 3-206. Revocation; Notice. .... 3

        Section 3-207. Form of Permits; Renewal; Fees; Waiver. .... 3

        Section 3-208. Disposition of Fees and Fines. .... 3

    CHAPTER 3. INSPECTIONS AND COMPLIANCE ..... 3

        Section 3-301. Inspections. .... 3

        Section 3-302. Inspection Reports. .... 4

        Section 3-303. Warnings. .... 4

        Section 3-304. Suspensions. .... 4

        Section 3-305. Contagion. .... 4

        Section 3-306. Condemnation of Foods. .... 5

    CHAPTER 4. FOOD SERVICE STANDARDS ..... 5

        Section 3-401. Interpretation. .... 5

        Section 3-402. Health and Safety Standards; Waiver. .... 5

        Section 3-403. Handling of Food. .... 6

        Section 3-404. Cleaning Substances. .... 6

        Section 3-405. Clean Equipment. .... 6

        Section 3-406. Employee Cleanliness. .... 6

        Section 3-407. Lockers and Dressing Rooms. .... 7

        Section 3-408. Lighting; Sanitation; Ventilation. .... 7

        Section 3-409. Water; Plumbing; Sewage. .... 8

        Section 3-410. Garbage and Vermin Control. .... 8

        Section 3-411. Disease Control. .... 8

    CHAPTER 5. VIOLATIONS; PENALTIES ..... 9

        Section 3-501. Criminal Penalties. .... 9

        Section 3-502. Civil Penalties. .... 9

        Section 3-503. Civil Liability. .... 10

    CHAPTER 6. ADMINISTRATIVE APPEALS ..... 10

        Section 3-601. Appeals. .... 10

        Section 3-602. Judicial Review. .... 10

## FOOD SERVICE ESTABLISHMENTS

### ARTICLE 3. FOOD SERVICE ESTABLISHMENTS

[NOTE: Except as otherwise noted, the provisions of Article 3 of the Health and Safety Code were enacted on May 14, 1983 by Section 2 of Ordinance No. 83-2.]

#### CHAPTER 1. GENERAL PROVISIONS

##### Section 3-101. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) "Contaminated" means containing any substance in excess of an established tolerance or in a quantity that may be injurious to human health, or containing harmful bacteria or other organisms, as well as any food processed, prepared or packed under unsanitary conditions making contamination likely, or which is produced from an animal that died other than by slaughter, or which is contained in a package composed in any part of toxic substances;
- (2) "Department" means the Department of Health and Social Services of the Colorado River Indian Tribes;
- (3) "Food" includes all substances intended for human consumption, whether nutritive or medicinal;
- (4) "Food service establishments" include restaurants, cafeterias, and other places where food is prepared for immediate consumption, with or without charge, excluding private households, but including places which operate temporarily in connection with a rodeo, fair or other public event, as well as any place where food is cleaned, processed or packaged for sale elsewhere, or where uncooked meats, fruits, vegetables, fish or dairy products are offered for sale;
- (5) "Food service worker" includes anyone who handles, processes or serves food or handles utensils in a food service establishment;
- (6) "Health Inspector" means the Service Unit Director of the United States Public Health Service, Indian Health Service, Colorado River Service Unit at Parker, or his authorized representative, or some other person designated by Resolution of the Tribal Council;
- (7) "Infectious or contagious disease" means any communicable disease except those which may from time to time be listed by the Department as exceptions from the requirements of this Article;
- (8) "Inspected food processing establishment" means an establishment producing packaged food for resale by food service establishments, which is regularly inspected and approved by tribal, state or federal agencies satisfactory to the Department;
- (9) "Misbranded" means bearing an identifying label which is illegible, deceptive or misleading, or which omits a material fact, as to the condition, nature, components, or quantity of food offered for sale;
- (10) "Permit" means a food service permit issued pursuant to this Article;

## HEALTH & SAFETY

(11) "Tolerance" means a maximum concentration or amount of a food coloring, food additive, pesticide or other substance established by the United States Food and Drug Administration and published in the Federal Register, or any additional or more restrictive standard established by the Department;

(12) "Tribal Council" means the Tribal Council of the Colorado River Indian Tribes;

(13) "Tribal Court" means the Tribal Court of the Colorado River Indian Tribes.

### **Section 3-102. Regulations.**

(A) The Department may adopt regulations for the review of applications for permits, for the conduct of inspections, and for procedure in appeals; may establish guidelines for the interpretation of the standards contained in Chapter 4 of this Article; and may establish tolerances for food colorings, food additives, pesticides and other substances.

(B) Proposed regulations, guidelines and tolerances must be published for public review and comment for at least thirty (30) days prior to their adoption by the Department.

## **CHAPTER 2. PERMITS; ISSUANCE AND REVOCATION**

### **Section 3-201. Permits Required.**

No one may operate a food service establishment within the exterior boundaries of the Colorado River Indian Reservation without a valid food service permit issued in accordance with this Article.

### **Section 3-202. Application for Permit.**

(A) Application for a food service permit must be made in writing to the Department on the forms it prescribes, and shall include the name, address and signature of the applicant, the name and address of the food service establishment and a legal description of its location, a description of the type of food processing or service to be provided, financial references and specific identification of the applicant's previous experience if any in the operation of food service establishments.

(B) The Department will grant the permit only if it is satisfied, after reviewing the application and an inspection report submitted by the Health Inspector, that operation of the establishment in the manner proposed will comply with Chapter 4 of this Article.

### **Section 3-203. New Ownership or Operation.**

Application for a new permit must be made within ten (10) days of any change in the ownership or operation of a food service establishment. Failure to apply within this period may result in revocation of any existing permit, and may be grounds for refusal by the Department to issue a new permit.

### **Section 3-204. Structural Modifications.**

Prior to any significant structural alteration or addition to a food service establishment, the permittee

## FOOD SERVICE ESTABLISHMENTS

must file two (2) copies of the plans and specifications to the Department for review by the Health Inspector. Failure to obtain Departmental approval for structural changes may result in revocation of any existing permit.

### **Section 3-205. Granting and Denial; Notice.**

(A) An applicant must be notified within ten (10) days of any decision by the Department to grant or deny a permit.

(B) Notice of denial shall be in writing and is effective when personally delivered to the applicant, upon receipt by certified mail by the applicant, or when posted conspicuously at the food service establishment.

### **Section 3-206. Revocation; Notice.**

(A) A permit may be revoked as provided under this Article. Revocation of a permit is effective upon notice, unless a later date is specified in the notice of revocation.

(B) Notice of revocation shall be in writing and is effective when personally delivered to the permittee, upon receipt by certified mail by the permittee, or when posted conspicuously at the food service establishment.

### **Section 3-207. Form of Permits; Renewal; Fees; Waiver.**

(A) Each permit shall expire on December 31 of the calendar year in which it is issued.

(B) The permittee must keep the permit posted at all times in a conspicuous place at the establishment for which it has been issued.

(C) An application for the renewal of a permit shall be treated as an application for a new permit.

(D) An application for a permit must be accompanied by a nonrefundable application fee of Twenty-five Dollars (\$25.00). No further fees will be charged for the issuance of a permit. Fees will be waived for applications for permits to operate temporarily in connection with a rodeo, fair, or other public event.

### **Section 3-208. Disposition of Fees and Fines.**

All permit fees and fines or other monies received by the Department pursuant to this Article shall be deposited in the general account of the Tribes.

## **CHAPTER 3. INSPECTIONS AND COMPLIANCE**

### **Section 3-301. Inspections.**

(A) The Health Inspector may enter a food service establishment at any time food service workers are present to examine equipment and procedures, and to obtain samples of food or other substances for

## HEALTH & SAFETY

laboratory analysis.

(B) Any attempt by the owner, operator, or employees of a food service establishment to prevent, obstruct or restrict an inspection will result in revocation of any existing permit.

(C) Inspections of food service establishments will be made at least twice yearly, and as often as the Health Inspector and Department deem advisable for the protection of public health and safety.

### **Section 3-302. Inspection Reports.**

Before leaving a food service establishment, the Health Inspector will leave one (1) copy of his report with the owner, operator, or food service workers. A second copy will be filed with the Department with the Health Inspector's recommendations.

### **Section 3-303. Warnings.**

(A) On the recommendation of the Health Inspector following an inspection, the Department may issue a written warning to the permittee identifying corrective actions that must be taken within a specified time to avoid permit revocation.

(B) Notice of warning is effective when personally delivered to the permittee, upon receipt by certified mail by the permittee, or when posted conspicuously at the food service establishment.

(C) If re-inspection does not satisfy the Health Inspector and Department that all corrective actions identified in a warning have been taken within the time specified, the food service permit for the establishment will be revoked with prejudice to any future application.

### **Section 3-304. Suspensions.**

(A) In instances of immediate and unavoidable danger to public health and safety, the Department may, on the recommendation of the Health Inspector following an inspection, order suspension of a food service permit at once. An order of suspension is effective upon notice.

(B) Notice of suspension shall be in writing and is effective when personally delivered to the permittee, upon receipt by certified mail by the permittee, or when posted conspicuously at the food service establishment.

(C) A suspension remains in effect until the permittee satisfies the Health Inspector and Department that adequate measures have been taken to correct the conditions which resulted in the order.

### **Section 3-305. Contagion.**

(A) On the recommendation of the Health Inspector that a food service worker is likely to communicate a contagious or infectious disease to patrons or employees of a food service establishment, the Department may:

## FOOD SERVICE ESTABLISHMENTS

- (1) Order suspension of a food service permit under Section 3-304.
- (2) Order the immediate exclusion of the food service worker from all food service establishments by notice to those establishments.
- (3) Require medical examinations of the food service worker and others with whom he recently worked as a condition for their continued employment or re-employment.

(B) An order of exclusion of a food service worker is effective upon notice.

(C) Notice of an exclusion order shall be in writing and is effective when personally delivered to a permittee or posted conspicuously at a food service establishment and shall be deemed effective with respect to a food service worker when posted conspicuously at his last place of food service employment.

### **Section 3-306. Condemnation of Foods.**

(A) On the recommendation of the Health Inspector, the Department may direct law enforcement officials of the Colorado River Indian Tribes to seize and destroy food which is contaminated or misbranded.

(B) Any attempt by the owner, operator, or employees of a food service establishment to prevent the seizure of contaminated or misbranded food may result in revocation of any existing permits.

(C) Before removing seized food from a food service establishment, law enforcement officials will leave an itemized receipt with the owner, operator, or food service employees present, or by posting conspicuously at the establishment.

(D) No seized food may be destroyed until at least ten (10) days after its seizure, or during an appeal under Section 3-601, unless it contains infectious or contagious bacterial or other organisms and poses an immediate danger to public health and safety.

## **CHAPTER 4. FOOD SERVICE STANDARDS**

### **Section 3-401. Interpretation.**

Where not inconsistent with this Article, or with the regulations, guidelines and tolerances adopted by the Department, the Food Service Sanitation Manual of the United States Public Health Service will be used as a guide in the interpretation of the standards contained in this Chapter.

### **Section 3-402. Health and Safety Standards; Waiver.**

(A) As a condition of the privilege of operating a food service establishment, permittees must conduct their business in a safe, sanitary and conscientious manner, and at all times comply with the particular standards contained in this Chapter.

(B) Where it is impracticable for a permittee or proposed permittee to comply strictly with particular

## HEALTH & SAFETY

standards contained in this Chapter, the Health Inspector or the Department may waive compliance with such standards if to do so will not endanger or adversely affect the health and safety of food service workers or the public.

### **Section 3-403. Handling of Food.**

- (A) All food must be obtained from inspected food processing establishments. No contaminated or misbranded food may be used, and raw, unprocessed fruits and vegetables must be washed before use.
- (B) Food must be stored in a manner that minimizes spoilage, ordinarily at a temperature of forty-five degrees Fahrenheit (45° F.) or less, and adequately covered or contained against dust, dirt and other contamination.
- (C) Poultry, pork, and stuffed meats must be cooked through to an internal temperature of at least one hundred and eighty degrees Fahrenheit (180° F.) before serving.
- (D) Individual portions of food, once served to a patron, must not be served again unless they were hermetically sealed and were not opened or unwrapped.

### **Section 3-404. Cleaning Substances.**

- (A) Toxic substances must not be used or stored in the establishment, except for substances needed to clean and disinfect equipment, facilities and utensils.
- (B) Substances used for cleaning and disinfection must be identified plainly by conspicuous labels, stored in sealed containers in a room separate from food handling and food storage areas, and used only in a manner that eliminates all possibility of contact with food.

### **Section 3-405. Clean Equipment.**

- (A) All equipment and utensils must be smooth-surfaced, durable, and easily cleaned, and must be kept in a clean and sanitary condition. When not in use, utensils must be stored in a clean, dry place.
- (B) All food-contact surfaces must be corrosion-resistant, nonabsorbent (except for wooden surfaces used exclusively for baking), and readily accessible for cleaning, and must be kept free from garbage and unwashed utensils.
- (C) All utensils and food-contact surfaces must be cleaned thoroughly after each use. Cooking surfaces must be cleaned at least once daily.
- (D) Establishments which lack adequate facilities for cleaning and disinfecting eating utensils must use only single-service or disposable eating utensils, and must use each utensil only once.

### **Section 3-406. Employee Cleanliness.**

- (A) The establishment must provide an adequate number of conveniently located hand-washing facilities

## FOOD SERVICE ESTABLISHMENTS

for food service workers, including at a minimum both hot and cold running water, soap or detergent, and sanitary paper towels or warm-air hand dryers.

(B) Food service workers must maintain a high degree of personal cleanliness, wear outer garments laundered daily, and wash their hands before beginning each shift at work and as often during each shift as may be reasonable to minimize the possibility of contamination of food. Food service workers must wash their hands after using the toilet room.

(C) The establishment must provide conveniently-located toilet facilities for food service workers. Toilet rooms must have self-closing doors, hand-washing facilities with sanitary paper towels or warm-air hand dryers, and supplies of toilet tissue and feminine hygiene products, with adequate closed containers for disposal of paper rubbish. Toilet rooms must be thoroughly cleaned and disinfected daily.

(D) The Health Inspector may waive the requirements of Subsections (A) or (C) of this Section in individual cases of temporary food service establishments at fairs, rodeos, or other public events, provided that comparable public facilities for maintaining personal cleanliness are located reasonably nearby.

### **Section 3-407. Lockers and Dressing Rooms.**

(A) Adequate facilities must be provided for the orderly storage of food service workers' clothing and personal belongings separate from food preparation, food storage and food service areas, and from places where utensils are washed or stored.

(B) If food service workers routinely change clothes at the establishment, an adequate number of dressing rooms or areas must be provided separate from food preparation, food storage and food service areas, and from places where utensils are washed or stored. Dressing rooms or areas must be cleaned at least once weekly.

### **Section 3-408. Lighting; Sanitation; Ventilation.**

(A) Walls in areas where food is prepared, or where utensils or hands are washed, must be smooth, nonabsorbent, light-colored and readily accessible for cleaning, and must have washable surfaces wherever they may be splashed or sprayed.

(B) Floors in areas where food is prepared or stored, including refrigerated storage rooms, or where utensils or hands are washed, as well as all dressing rooms, locker areas, and toilet rooms, must be smooth, nonabsorbent and washable. Floor drains must be provided if floors are washed by flooding or hosing.

(C) Enclosed areas where food is served and eaten must be maintained in a clean and orderly condition, with a minimum of twenty-five (25) square feet of floor space per person served. Walls and ceiling must be constructed of materials that minimize dust and noise and are non-toxic, and which can be cleaned or painted.

(D) All areas where food is prepared or stored, or where utensils or hands are washed, as well as all

## HEALTH & SAFETY

dresser rooms, locker rooms, toilet rooms, and exterior garbage and rubbish storage areas must be well lighted and ventilated. Ventilation hoods and fans must be designed to prevent condensation from falling onto food, utensils, or food-contact surfaces. Air filters, if used, must be cleaned or replaced frequently, and external vents must direct exhaust away from public walkways and streets.

### **Section 3-409. Water; Plumbing; Sewage.**

(A) The establishment must have an adequate, safe and sanitary supply of water. Hot and cold running water under pressure must be provided in all areas where food is prepared, and where utensils are washed. If not available from a public water pipeline, water may be transported to the establishment and stored there in closed containers, provided containers are thoroughly cleaned before each use.

(B) Ice used for any purpose in the establishment must be made from safe, sanitary water, and must be transported, stored and handled in a manner that prevents contamination of food.

(C) Plumbing must be closed, corrosion-resistant, and located so that condensation does not fall on food, utensils, or food-contact surfaces.

(D) All sewage must be disposed of into a public water-carried sewerage system, or else into a septic tank sufficiently distant from the establishment which has been approved by the Department.

### **Section 3-410. Garbage and Vermin Control.**

(A) All discarded wastes and residues from food and cleaning substances must be kept in leakproof, rodent-proof and nonabsorbent containers, tightly covered except when empty or in continuous use, until removed or destroyed. Other discarded material may be stored in an orderly manner in containers or rooms adequately separated from food preparation and food storage areas.

(B) Food grinders and trash compactors, if used, must be adequately separated from food preparation and food storage areas, and in a manner that facilitates cleaning and maintenance.

(C) Discarded food wastes and other material must not be allowed to accumulate in a manner that attracts rodents or insects, and must be removed or destroyed frequently.

(D) Effective measures must be taken to prevent rodent and cockroach infestations, and to minimize the presence of flies and other insects both in food preparation and food service areas. Under no circumstances may dogs, cats, birds or other animals be permitted in areas where food is prepared or where utensils or hands are washed.

### **Section 3-411. Disease Control.**

(A) No one may work in a food service establishment while suffering from, or while a carrier of, any infectious or contagious disease.

(B) If the owner, operator or manager of an establishment has reason to believe that a food service worker is suffering from, or is a carrier of an infectious or contagious disease, he must notify the Health

## FOOD SERVICE ESTABLISHMENTS

Inspector promptly, either verbally or in writing, and furlough the food service worker until his condition is no longer contagious.

### **CHAPTER 5. VIOLATIONS; PENALTIES**

#### **Section 3-501. Criminal Penalties.**

(A) Any person who operates a food service establishment without a valid permit, or under a suspended or revoked permit, is guilty of an offense and shall be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment for not more than ten (10) days, or both. Each day during which such unlawful operation shall continue shall constitute a separate offense, punishable as herein provided.

(B) Any person who knowingly operates a food service establishment in which contaminated food is served or sold, or in which food service workers suffer from or are carriers of infectious or contagious disease, is guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than thirty (30) days, or both. Each day during which such unlawful operation shall continue shall constitute a separate offense, punishable as herein provided.

(C) Any person who prevents or obstructs an inspection conducted under Section 3-301, or the seizure of food under Section 3-306, or who employs a diseased food service worker in defiance of an exclusion order under Section 3-305, is guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than thirty (30) days, or both. Each day during which a diseased food service worker is employed in defiance of an exclusion order shall constitute a separate offense, punishable as herein provided.

(D) Any person who knowingly misbrands food, or knowingly sells or serves misbranded food in a food service establishment, is guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than six (6) months, or both, depending on the nature and extent of the offense. Each day during which misbranded food is knowingly sold or served in a food service establishment shall constitute a separate offense, punishable as herein provided.

#### **Section 3-502. Civil Penalties.**

(A) Any person who operates a food service establishment without a valid permit, or under a suspended or revoked permit, shall forfeit to the Colorado River Indian Tribes a sum of not more than One Hundred Dollars (\$100.00) for each offense. Each day during which such unlawful operation shall continue shall constitute a separate civil violation of this Subsection.

(B) Any person who operates a food service establishment in which contaminated food is served or sold, or in which food service workers suffer from or are carriers of infectious or contagious disease, shall forfeit to the Colorado River Indian Tribes a sum of not more than Five Hundred Dollars (\$500.00) for each offense. Each day during which such unlawful operation shall continue shall constitute a separate civil violation of this Subsection.

(C) Any person who prevents or obstructs an inspection conducted under Section 3-301, or the seizure of food under Section 3-306, or who employs a diseased food service worker in defiance of an exclusion

## HEALTH & SAFETY

order under Section 3-305, or who knowingly misbrands food, or sells or serves misbranded food in a food service establishment, shall forfeit to the Colorado River Indian Tribes a sum of not more than Five Hundred Dollars (\$500.00) for each offense. Each day during which such diseased food service worker shall be employed in defiance of an exclusion order, and each day that such misbranded food shall be sold or served, shall constitute a separate civil violation of this Subsection.

### **Section 3-503. Civil Liability.**

Anyone injured by reason of a violation of this Article by a food service establishment, or by consumption of any contaminated or misbranded food negligently processed or prepared by a food service establishment, may recover actual and punitive damages from the owner of the establishment in Tribal Court.

## **CHAPTER 6. ADMINISTRATIVE APPEALS**

### **Section 3-601. Appeals.**

(A) The decision of the Department to deny a food service permit, to revoke or suspend a permit, to issue a warning, to exclude a food service worker from employment, or to seize contaminated or misbranded food may be appealed by filing a written petition with the Department within ten (10) days of notice of the decision, or, in case of seizures, within ten (10) days of the seizure.

(B) Revocation of a permit under Sections 3-203 or 3-204, warnings under Section 3-303, and the destruction of food seized under Section 3-306, except as provided therein, will be stayed automatically pending an appeal.

(C) Appeals from decisions to suspend a permit, exclude a food service worker from employment, or from a seizure of contaminated or misbranded food will be heard and determined within seventy-two (72) hours. All other appeals will be heard and determined within ten (10) days. These times may be extended at the petitioner's request.

(D) Hearings on appeal will be public and of record. The petitioner has a right to counsel at his own expense, to produce evidence, and to obtain a written transcript of the proceedings at his own expense.

### **Section 3-602. Judicial Review.**

(A) Anyone aggrieved by a determination of the Department under Section 3-601 may appeal such determination within twenty (20) days to the Tribal Court. The Tribal Court may stay any action of the Department pending review. The Tribal Court may grant declaratory or injunctive relief from an arbitrary or unreasonable decision, or unlawful action, but may not assess damages or costs against the Department or the Tribes.

(B) For purposes of this Section only, the Tribes waive their immunity from suit.

\* \* \*