

Chapter 217

FOOD ESTABLISHMENTS AND VENDORS, RETAIL

GENERAL REFERENCES

Food service personnel — See Ch. 221.

Littering — See Ch. 277.

Street vendors — See Ch. 311, Art. IV.

Solid waste — See Ch. 357.

**Food and beverage vending machines — See
Ch. 407.**

ARTICLE I

**Licensing of Establishments
[Adopted 7-9-1984 by Ord. No. A-10-84]****§ 217-1. Definitions.**

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

RETAIL FOOD ESTABLISHMENT — Any fixed or mobile restaurant; permanent or temporary; coffee shop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial feeding establishment; private, public or nonprofit organization or institution serving food; catering kitchen; commissary; box lunch establishment; retail bakery; meat market; delicatessen; grocery store; public food market or similar place in which food or drink is prepared for retail sale or for service on the premises or elsewhere; and any other retail eating or drinking establishment or operation where food is served, handled or provided for the public, with or without charge, except that agricultural markets, covered dish suppers or similar type of church or non-profit-type institution meal services shall meet the special provisions of Regulation 8. **[Amended 4-9-2012 by Ord. No. O-13-12]**

§ 217-2. License required; fee; term; enforcement.

- A. It shall be unlawful for any person or corporation to conduct a retail food establishment as defined in § 217-1 without first procuring a license from the Division of Health or without complying with any or all of the provisions contained in Chapter 24 of the State Sanitary Code, N.J.A.C. 8:24-1 et seq. **[Amended 5-12-2003 by Ord. No. O-24-03; 4-9-2012 by Ord. No. O-13-12]**
- B. The fee for such license shall be: **[Amended 5-12-2003 by Ord. No. O-24-03]**
- (1) Forty-five dollars for establishments offering prepackaged items (candy/snacks).
 - (2) Sixty dollars for taverns not serving food.
 - (3) Ninety dollars for establishments preparing food without seating facilities (excluding counter service).
 - (4) One hundred and eighty dollars for establishments with a seating capacity of 50 persons or less or less than 2,000 square feet.
 - (5) Two hundred and seventy dollars for establishments with a seating capacity of more than 50 persons or over 2,000 square feet.
 - (6) Forty-five dollars for temporary retail food establishments. **[Added 4-9-2012 by Ord. No. O-13-12]**

- C. All licenses issued hereunder shall expire on the 30th day of June in each year, unless such license is for a temporary retail food establishment and its expiration shall be upon the closing of the event for which it was issued or as otherwise stated on the license. **[Amended 4-9-2012 by Ord. No. O-13-12]**
- D. It shall be the duty of the Division of Health to enforce the provisions of this article and of said code.
- E. All nonprofit charitable organizations shall be exempt from such fees as are referred to in this section.
- F. Applications for temporary retail food establishments must be submitted to the Division of Health or appropriate licensing authority at least 15 days prior to the event. **[Added 4-9-2012 by Ord. No. O-13-12]**

§ 217-3. Suspension or revocation of license.

Any license issued hereunder may be suspended or revoked by the Division of Health for the violation by the licensee of any provision contained in said code or whenever it shall appear that the business has been or is being conducted in a disorderly or improper manner or in violation of any law of the United States, the State of New Jersey or any ordinance of this City or that the person or persons conducting the retail food establishment are of unfit character or for other good and reasonable cause. Before suspension or revocation of a license, the Division of Health shall hold a hearing at which the licensee shall be afforded an opportunity to be heard, and reasonable written notice of such hearing shall be given to the licensee prior thereto.

§ 217-4. Medical examination certificate.

No person whose business or employment requires the handling of or the coming in contact with any food or drink intended for human consumption shall actively engage in or be employed in such business, nor shall any person employ anyone as a food handler, unless such employee shall have first obtained a food handler's certificate from the Division of Health. Such certificate will be issued after presentation by the applicant to the Health Officer of a certificate of examination from a duly qualified physician setting forth that such person is not infected with any communicable disease or upon presentation of a laboratory test result, as required by the Health Officer, from an approved licensed laboratory certifying that the applicant is free from any communicable diseases.

§ 217-5. Violations and penalties.

Any person who violates or neglects to comply with any provision of this article, including Chapter 12 of the State Sanitary Code of New Jersey herein referred to, shall be punished by a fine not exceeding \$500 for each

violation. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

ARTICLE II
Uniform Packaging Requirements
[Adopted 12-9-1996 by Ord. No. O-53-96]

§ 217-6. Findings and purpose.

The Municipal Council finds and declares as follows:

- A. Solid waste management within the City of Rahway is a fundamental concern of the Municipal Council due to the limited landfill space available, rising costs of waste disposal, and impacts on the environment.
- B. Evidence available to the Municipal Council indicates that discarded packaging, especially take-out food service packaging, constitutes the single greatest category of waste within the waste stream of the City of Rahway, the single greatest source of litter within the City of Rahway, and is, therefore, a necessary focus of any effort to reduce the amount of solid waste, as well as reducing the economic and environmental cost of waste management for the citizens of the City of Rahway.
- C. Single use nonrecyclable, nondegradable packaging and plastic containers are considered to be a fundamental cause of problems associated with municipal waste disposal and litter.
- D. Chemical composition and ability of a substance to degrade are meaningful and useful criteria to focus upon when establishing a public policy that is intended to improve the management and disposal of solid waste, reduce the cumulative impact of litter, encourage composting and other forms of recycling, minimize the potential for toxic substances which form if solid waste is burned, reduce the volume of ash by-products that may be created by the burning of waste plastic packaging, and otherwise anticipate environmental problems that may be caused by municipal solid waste disposal programs.
- E. The economic and environmental problems associated with nondegradable substances mixed with degradable substances in the waste stream are so severe that a program to modify the composition of the solid waste in the waste stream thereby reducing the environmental hazards and toxicity associated with solid waste incineration, and encouraging the composting of putrescible biodegradable wastes and encouraging other forms of recycling of solid waste substances is hereby determined to be the policy of the City of Rahway.
- F. That certain retail food establishments within the City of Rahway are the points of origin for a significant volume of packaging waste and, therefore, are particularly susceptible to actions which have significant potential for modifying the composition of this portion of the City of Rahway's solid waste stream thereby improving solid waste management within this city.

- G. The widespread use of plastics, especially polystyrene and polyvinyl chloride, pose a threat to the environment by posing unnecessary taking of landfill space, and/or when incinerated, by the possible introduction of toxic by-products into the atmosphere.
- H. The waste stream within the City of Rahway is so large and diverse that any program to establish policies and laws conducive to any waste management program in lieu of landfilling must identify and set new policy for those specific sources of waste packaging which originate in this city.
- I. The use of polystyrene and polyvinyl chloride for food packaging is problematical because neither of these plastics are readily recyclable; that their abundant commercial use in lieu of other plastics such as polyethylene or polypropylene unnecessarily complicates the chemical composition of the municipal waste and subtracts from the possible emergence of viable plastic recycling programs; and, if burnt together, polystyrene and polyvinyl chloride leave a relatively heavier and, therefore, more expensive ash residue to dispose of, and evidence indicates that the burning of these products creates dioxin, hydrochloric acid, and/or other toxic chemicals that could be admitted into the general environment of the City of Rahway if incinerated.
- J. There are readily available plastic and/or paper product substitutes for most of the polystyrene and polyvinyl chloride retail food packaging now being used in the City of Rahway, the use of which alternatives would be environmentally and economically advantageous to the citizens of the City of Rahway.
- K. Nondegradable plastic bags in the waste stream constitute an impediment to the development of an efficient waste separation, recycling or other waste management program, and are less desirable than paper bags because these plastic bags are neither recyclable nor compostable.
- L. The plastic bags used by retail establishments selling food constitutes a large source of the plastic bags in the waste stream.
- M. It is in the interest of the health, safety, and welfare of all of the citizens of the City of Rahway who live, work or do business in the City that the amount of nonrecyclable, nondegradable packaging be reduced, and that the amount of litter on the public streets, parks and open spaces be reduced.
- N. Therefore, the purpose of this article is, to the maximum extent practical, to eliminate the use of nondegradable packaging originating at retail food establishments in the City of Rahway in order to protect the air, land, and waters of the City of Rahway from environmental contamination and degradation.

§ 217-7. Definitions.

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

DEGRADABLE PACKAGING — Packaging made of cellulose-based substances or other substances which are capable of being readily attached, decomposed, assimilated, and/or otherwise completely oxidized or broken down into its constituent parts by bacteria, natural biological organisms, carbonaceous soil material, water, carbon dioxide; or in the alternative capable of otherwise degrading when exposed to ultraviolet light or other natural processes beginning within a twelve-month period from the date of manufacture or exposure to the environment.

PACKAGING — All food-related wrappings, including but not limited to bags, sacks, wrappings, containers, bowls, plates, trays, cartons, cups or drinking utensils intended for use within the City of Rahway.

RETAIL FOOD VENDOR — All sales outlets, stores, shops, restaurants, or other places of business located within the City of Rahway, which receives more than 20% of its revenues through the sales or conveyances of foods directly to the ultimate consumer, which foods are predominantly contained, wrapped or held in or on packaging. "Retail food vendors" shall include, but not be limited to, any establishment where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including but not limited to any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short order cafe, fast-food outlet, delicatessen, luncheonette, grill, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, inn, roadside stand, takeout prepared food place, industrial feeding establishment, catering kitchen, grocery store, public food market, food stand, or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere and any other establishment or operation, including homes where food is processed, prepared, stored, served or provided to the public for charge, provided said vendor shall derive more than 20% of its gross revenues from the sale of said food or drink.

§ 217-8. Prohibited packaging and utensils.

- A. No retail vendor located and doing business in the City of Rahway shall sell or convey food directly to the ultimate consumer within the City of Rahway unless such food is placed, wrapped or packaged in degradable packaging at the conclusion of the sales transaction. For the purposes of this article, "conclusion of the sales transaction" shall be the point of time at which the possession of the food product passes from the retail food vendor to the ultimate consumer, and the conclusion of the sales transaction need to require the actual payment of consideration for such food product; provided, however, payment is expected from the ultimate consumer prior to the consumer exiting the premises of the retail food vendor.

- B. No retail food vendor located within the City of Rahway shall sell, give or provide eating utensils or food containers to any consumer within the City of Rahway if said eating utensil or food container is composed of polystyrene or polyvinyl chloride.

§ 217-9. Exemptions; documentation required.

- A. Section 217-8B of this article shall not apply to the following items:
- (1) Any flexible transparent covering for uncooked or raw meat, poultry, raw fish, hard cheese, cold cuts, fruit and vegetable produce, baked goods or bread.
 - (2) Any food packaging used at hospitals or nursing homes.
 - (3) Any paper or cellulose-based packaging that is coated with polystyrene plastic on one side only; any plastic covers, covering materials, food containers, lids, eating utensils, straws or other materials that are not made of polystyrene or polyvinyl chloride. The enforcing officer or his authorized representative may exempt an item or type of packaging from the requirements of this section, upon a showing that the item or type has no acceptable equivalent and that imposing the requirements on that item or type would cause undo hardship.
- B. In order to be considered for such exemption, the vendor shall provide the following documentation:
- (1) A list of suppliers contacted and statements signed by said suppliers listing the items that can be supplied which clearly indicates that the item or type of packaging has no acceptable equivalent or substitute; and/or
 - (2) A statement signed by said retail food vendor indicating that he is required to purchase food packaging pursuant to a contract entered into prior to November 1, 1996, and said supplier is unable to supply an item or type that has no acceptable equivalent. Said statement shall be accompanied by a certified copy of the contract in question, and shall indicate the expiration date of said contract.

§ 217-10. Enforcement.

For the purposes of this section, the Director of Health, Welfare and Recreation shall be designated as the enforcing officers. The enforcing officers shall be authorized by the Mayor to designate as many subcode officials as deemed reasonable and necessary to carry out the purposes of this article. The enforcing officer or his designee is authorized to perform as a law enforcement officer solely with respect to the enforcement of the provisions of this article by being empowered to issue summons for any violations of this article in accordance with rules governing the courts of the State of New Jersey. In addition to the Director of Health, Welfare and Recreation and/or his designee, all law enforcement officers, Fire Officials,

Fire Inspectors, Health Officials, Health Inspectors and Alcoholic Beverage Control Officials and Inspectors shall be empowered to enforce the provisions of this article.

§ 217-11. Administration; promulgation of rules and regulations.

The Director of Health, Welfare and Recreation is authorized to issue and promulgate such rules and regulations as may be reasonable and necessary to implement and carry out the provisions of this law.

§ 217-12. Restrictions on purchases by city.

- A. The City of Rahway shall not purchase any food packaging which contains polystyrene or polyvinyl chloride, nor shall it sponsor any event which utilizes such packaging. All food packaging shall be degradable as required by this article.
- B. The City Clerk shall be directed to exclusively advertise for the receipt of bids for degradable plastic materials whenever said bids are required by the City of Rahway.

§ 217-13. Violations and penalties.

Any person found guilty of violating any provision of this article shall be subject to a fine of not less than \$100 for the first conviction and not less than \$200 for the second conviction and each subsequent conviction, but in no event shall the fine exceed the sum of \$1,000. In addition to the aforesaid fines, a person found guilty of violating this article may be subject to up to 45 hours of community service. Each violation and each day a violation is committed or permitted to continue shall constitute a separate violation and shall be punishable as such.

§ 217-14. Article voided or superseded by federal and/or state laws and regulations.

This article shall be void upon the enactment or adoption of any federal and/or state law or regulation restricting the use of polystyrene, polyvinyl chloride or degradable packaging. Any person found guilty of violating any provision of this article prior to the enactment or adopting of any federal and/or state law or regulation shall be subject to the penalty provisions of this article.

§ 217-15. When effective.

This article shall take effect upon final passage and publication according to law but shall apply to retail food transactions consummated on or after January 1, 1997.