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Maura J. Rossman, MD, Health Officer

September 23, 2016

TO: Lonnie R. Robbins
Chief Administrative Officer

FROM: Bert Nixon
Director, Bureau of Environmental Health

THRU: Antigone Vickery
Deputy Health Officer

A handwritten signature in black ink, appearing to read 'Bert Nixon', is written over the 'FROM:' line.

Handwritten initials in black ink, possibly 'AV', are written over the 'THRU:' line.

SUBJECT: Update to Howard County Food Service Facility Regulations

Overall Justification:

The Bureau of Environmental Health is seeking to update portions of the *Howard County Health Department Food Service Facility Regulations* (Howard County Regulations). Targeted changes to the Howard County Regulations were last done in 2012. This series of changes will include: incorporating language to make local regulations consistent with the *Code of Maryland Regulations (COMAR) 10.15.03 Food Service Facility Regulations*, adding language based upon FDA (Food & Drug Administration) Food Code guidance to address the Reduced Oxygen Packaging (including Vacuum Packaging) method of cooking, along with minor grammatical and formatting updates. Finally, we are proposing adding new language to provide guidance for setting seating allocations, and ways to negotiate adjustments to seating allocations relative to design capacity for food service facilities utilizing on-site sewage disposal systems.

Overall Impact:

Given that the majority of proposed changes already exist in regulations, and the Department is looking to incorporate those changes already implemented into our local code, that impact is generally viewed as minimal. Incorporating some aspects of the FDA Food Code may establish a transition template that currently doesn't exist until DHMH considers directly adopting those aspects of FDA Food Code into COMAR. Though utilizing existing design criteria, below provides more detail regarding the new language for restaurant seating when on-site systems are involved.

In a June meeting and discussions with the Restaurant Association of Maryland and several individual owners/chefs, a decision was made to remove the reference to the Sous vide method of cooking, with an agreement to work cooperatively to develop language consistent with FDA, while also considering language input from those utilizing this method of cooking. Other items and corrections covering the entire proposed draft changes were discussed and incorporated as necessary. The revised draft has also been shared and reviewed by DHMH's Food Control Program which oversees COMAR 10.15.03. The Restaurant Association has been kept up to date on the status of the planned pre-file for the proposed changes.

Justification for Restaurant Seating Language:

Over the past 1-2 years, the Health Department has needed to address seating expansions relative to design limitations of several restaurant facilities either on an individual on-site sewage disposal system (OSDS) or as a user of a larger OSDS. Instances of overuse, or potential overuse, place the restaurant (along with other tenants utilizing the OSDS) at risk of premature system repair or failure, creating the potential of endangering the continued operation(s) of these businesses.

Language is being added to the "Sewage Disposal" section of the Howard County Regulations to clarify that there is a seating capacity limit or other limitations to a food service facility that is served by an OSDS. An OSDS for a restaurant is typically designed using a maximum seating count that is used to calculate the design flow for sizing the system. Additional seating in a facility above the count used to design the OSDS will likely result in a premature failure of the OSDS and become a potential health hazard. Additional seating also has the potential to increase the volume of wastewater generated beyond what is physically possible of being treated and properly disposed of on the property. The proposed language will require an agreement to be recorded in the County Land Records that sets the maximum seating count or other unique criteria that was used to design an OSDS for a food service facility where the OSDS has been designed using flow figures lower than those that would normally be used on a property without space limitations. This update will clarify *COMAR 10.15.03.18 F* and the Howard County regulation regarding what is approved for disposal in the approved sewage disposal system that is constructed and operated in conformance with applicable State and local laws, ordinances, and regulations.

Impact to Restaurant:

This action will provide clarity to a new or existing restaurant considering expansion. The Land Records requirement alerts new businesses to existing site conditions which if contrary to their business model, will hopefully reduce agreements destined to create problems. Proposed language also allows for the restaurant to demonstrate through metered use, an ability to negotiate an increase to seating if actual water flows come in below assigned seating flow values and remain within the overall OSDS design criteria. This too was discussed with the Restaurant Association of Maryland and feedback was positive.