



# CONSUMER NEWS

## SAN DIEGO CITY ATTORNEY'S OFFICE

### Food Safety

November 2011

There have been several outbreaks of food-borne illnesses reported in the news recently. This newsletter explains the laws that regulate businesses that sell food. The City Attorney's Office has handled several cases involving violations of selling or offering for sale adulterated or misbranded food. These cases are brought to us by the regulatory agencies that are responsible for ensuring our food supply is safe.

#### *FOOD MANUFACTURERS AND SELLERS MUST BE LICENSED:*

The San Diego Municipal Code requires anyone who operates a health regulated business to have a health permit issued by the County Dept. of Environmental Health. Health regulated businesses include restaurants, vessels, cafeterias, soft drink stands, fruit or produce stands, groceries, bakeries, bottled

water establishments, candy factories, packing plants, concessions (temporary or permanent), wineries, liquor establishments, fish markets, vending vehicles, vending machines, mobile food units, pushcarts, caterers, and other places where food or beverages are prepared for sale, or are sold, stored, distributed or displayed for sale, or are caused or permitted to be given away. Health regulated businesses do not include private homes.

It is a misdemeanor to operate a health regulated business without first obtaining a permit.

Those businesses holding health permits are required to submit to inspections by health inspectors. It is a misdemeanor for a food

facility to refuse to allow an inspection.

#### *PROHIBITION AGAINST SELLING ADULTERATED FOOD:*

The California Sherman Food, Drug and Cosmetic Act regulates anyone who manufactures, sells or gives away food in an establishment. This law prohibits the manufacture, sale or giving away of adulterated food.

Food is "adulterated" if it is prepared or held under unsanitary conditions such that it may have become contaminated with filth.

Retail food sellers are required to follow the sanitation requirements set forth in the California Retail Food Code including, among other requirements, the following:

- Protecting food from flies, dirt, dust and waste products;
- Thoroughly cleaning all utensils, machinery, trays, tables, and racks on which food is processed or stored daily;
- Conducting business in a facility that has walls, floors, and counters that are easily cleanable;
- Stocking bathrooms with soap, hot water, and toilet paper;
- Having employees complete a foodhandler’s program to familiarize them with the rules governing the proper handling of food;
- Having employees wash their hands after using the bathroom;
- Prohibiting employees with infectious, contagious, or communicable diseases from working;
- Storing perishable foods at temperatures that prevent the growth of harmful bacteria; and
- Obtaining food only from approved sources (i.e. other facilities that have health permits)

When a business fails to comply with the sanitation requirements above, the food it produces or processes is adulterated.

***PROHIBITION AGAINST SELLING MISBRANDED FOOD:***

The Sherman Act also makes it a crime to manufacture, sell, deliver, hold or offer

misbranded food for sale. Food is “misbranded” if it:

- Has a false or misleading label;
- Is manufactured, packed or held in an unlicensed facility;
- Fails to include required information about the ingredients or nutrient content; or
- It fails to indicate the name and place of business of the manufacturer and its quantity;

***FEDERAL REGULATION:***

In addition to state law, federal law regulates meat products. The U.S. Dept. of Agriculture licenses and inspects meat processing businesses. Meats that are processed in USDA permitted facilities indicate this fact on their package label. Do not purchase meat from a facility that does not have this USDA permit.

***TIPS:***

Here are some helpful tips when shopping for food:

- Avoid purchasing from individuals who offer to sell you food out of the back of a vehicle or similar circumstances;
- Look for a rating card when buying from retail food facilities like restaurants, food trucks, food carts or cafeterias. The health department issues every licensed facility a card with the letters “A”-“C” indicating their sanitation grade after

- each inspection. The best grade is “A;”
- When purchasing items that are not produced on the premises, check the packaging to ensure there is a label indicating the contents of the product, where it was manufactured and who manufactured it; and
- Avoid purchasing perishable foods from anyone who is holding them at room temperature.

***ENFORCEMENT:***

The City Attorney’s Office has handled many cases referred to it by the health department. These included:

- A case against a caterer who mishandled food resulting in attendees of the event getting food borne illnesses;
- A grocery store selling food produced in the backyard of a woman’s home in San Diego under very unsanitary conditions; and
- Food facilities that were so poorly maintained that they had mice and cockroach infestations.

The City Attorney’s Office has also prosecuted individuals for selling meat that was not USDA approved.

When the health department determines that a food facility is so unsanitary that the food must be taken off sale, it has the right to embargo the food and to

order the business to close until it passes an inspection.

If you observe unsanitary conditions or anything that may indicate a violation of a law described in this newsletter, call the San Diego County Dept. of Environmental Health Services at (858) 505-6903.

---

---

**San Diego  
City Attorney's Office  
Consumer and Environmental  
Protection Unit  
(619) 533-5600**

---

---

This newsletter was written by Assistant City Attorney Tricia Pummill.

.....  
Sources: San Diego Municipal Code sections 41.03 and 42.0101; Health & Safety Code sections 111620, 110565, 113700 et.seq. . 11660 et. seq., and the County Dept. of Environmental Health Services website. The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of consumer protection laws, call the City Attorney's Hotline at **(619) 533-5600**.