

BEFORE THE BOARD OF
PACIFIC COUNTY
COMMISSIONERS/BOARD OF HEALTH

ORDINANCE NO. 132

RULES & REGULATIONS
OF THE
PACIFIC COUNTY
BOARD OF HEALTH
GOVERNING
FOOD SERVICE ESTABLISHMENTS

The Pacific County Board of Commissioners, by ordinance reproduced herein, establishes the Pacific County rules and regulations governing food service establishments, adopts WAC 246-215 by reference, establishes administrative compliance procedures, and penalties for violations thereof, and repeals ordinances inconsistent therewith.

PACIFIC COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
Environmental Health Division
P.O. Box 68
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RULES AND REGULATIONS OF THE
PACIFIC COUNTY BOARD OF HEALTH
GOVERNING FOOD ESTABLISHMENTS

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**RULES AND REGULATIONS OF THE PACIFIC COUNTY
BOARD OF HEALTH GOVERNING FOOD ESTABLISHMENTS**

The following rules and regulations are adopted by the Pacific County Board of Health pursuant to the authority vested in it by RCW 70.05.060, Chapter 70.46 RCW and Chapter 246-215 WAC.

- I. **SCOPE AND PURPOSE.** These regulations are adopted to protect the health, safety, and well-being of the public and to prevent the spread of disease and apply to all food service establishments located in Pacific County.

- II. **DEFINITIONS.** The following definitions shall apply in the interpretation and enforcement of these rules and regulations.
 - A. **Critical Items:** are those items on the state approved form dealing with time-temperatures, personal hygiene of foodworkers, approved source of foods, and/or protection of food from contamination, which if violated, will contribute to the causation of a foodborne illness.

 - B. **Food Service Establishment:** shall mean, a place location, operation site, or facility where food is manufactured, prepared, processed, packaged, dispensed, distributed, sold, served, or offered to the consumer regardless of whether or not compensation for food occurs, including but not limited to: restaurants, snackbars, cafeterias, taverns, bars, retail food stores, supermarkets, retail meat markets, retail fish markets, retail bakeries, delicatessens, institutional operations, central preparation sites, caterers, satellite servicing locations, temporary food service establishments, mobile units, bed and breakfast operations, remote feeding sites, and vending machines dispensing potentially hazardous foods.

 - C. **Health Officer:** shall mean the Health Officer of Pacific County or his/her authorized representative as defined by RCW 70.56.

 - D. **High priority establishments:** shall mean any food service establishment that has had its permit suspended by Pacific County for violation of food service sanitation regulations or any food service establishment that has exceeded 60 total demerit points (rating score below 85%) or 49 critical item points on any inspection.

- E. Inspection: shall mean a routine inspection or reinspection to determine compliance with established standards within the food regulations.
- F. Package date: shall mean the date the product was packaged for retail sale at the retail establishment.
- G. Perishable food: shall mean foods where deterioration or spoilage due to loss of moisture or growth of molds and bacteria may occur including, but not limited to: sandwiches, fresh meat, poultry and fish, salads, etc.
- H. Permit: shall mean the written authorization by the Health Officer which designates such food service establishments as one having met the requirements of these regulations.
- I. Person: shall mean an individual of a firm, a corporation, a trusteeship, an association, or any public or private entity.
- J. Probation Period: shall be a period up to six (6) months imposed by the Health Officer at an administrative hearing. The purpose of the probationary period is to allow the establishment operator to demonstrate satisfactory compliance with the regulations.
- K. Reinspection: shall mean a follow up inspection to determine if a violation noted on a previous inspection has been corrected.
- L. Routine inspection: shall mean regular inspections conducted at a frequency set by the Pacific County Board of Health.

III. PERMITS.

- A. Permits Required: No person shall operate a food service establishment who does not have a valid permit issued to him/her by the Health Officer.
- B. Permits Non-Transferable: No permit shall be transferable or assignable nor shall any permit entitle the holder thereof to conduct the business in any place other than that specified on the permit.
- C. Issuance of Permits: Any person desiring to operate a food service establishment shall make written application for a permit on forms provided by the Health Officer. An inspection will be required by the Health Officer prior to opening for all new establishments to determine compliance with these regulations.

- D. Fees: The permit/reinspection fees for food service establishments shall be established by the Pacific County Board of Health/Board of County Commissioners.

IV. SUSPENSION OF PERMITS.

- A. Suspension of the permit by the Health Officer shall mean that all food service operations shall cease immediately and the food service establishment shall close. The Health Officer shall suspend the food service establishment permit when:
1. The holder of the permit or the operation of the establishment does not comply with the requirements of these regulations.
 2. The Health Officer finds that critical items are in violation and have been found to be in violation on previous inspections.
 3. The holder of the permit fails to comply with the time limits set by the Health Officer for correction of violations as specified in Section VIII(C) and (D) of these regulations.
- B. Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing, and/or the notice shall be served on the premises, that the permit is, upon service of the notice, immediately suspended. An opportunity for hearing will be provided if a written request for hearing is filed with the Health Officer by the holder of the permit within five (5) working days. If no written request for hearing is filed within five (5) working days, the suspension is sustained.
- C. Any person whose permit has been suspended, may at any time make application for a reinspection for the purpose of reinstatement of the permit. Upon receipt of a written request for reinspection, which must include a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the Health Officer shall make a reinspection. If the applicant is complying with the requirements of these regulations, the permit shall be reinstated.

V. REVOCATION OF PERMITS:

- A. The Health Officer may, after providing opportunity for a hearing, revoke a permit for repeated violations of critical items, or for repeated violations of any of the requirements of these regulations, or for failure to

satisfactorily meet conditions of the probation period, or for interference with the Health Officer in the performance of duty.

- B. Prior to revocation, the Health Officer shall notify, in writing, the holder of the permit or the person in charge of:
1. The specific reason(s) for revocation.
 2. The effective date of revocation, which is ten (10) working days following service of this notice, unless a written request for a hearing is filed with the Health Officer within the ten (10) day period.
- C. Any person whose permit has been revoked may, after six months, make a written application for the purpose of obtaining a new permit. A hearing will be provided before the Health Officer to determine if a new permit shall be issued.

VI. SERVICE OF NOTICE.

Any notice provided for in these regulations is properly served when it is delivered to the holder of the permit, the person in charge, posted on the premises, or when it is sent by registered or certified mail, return receipt requested to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Health Officer.

VII. ADMINISTRATIVE HEARINGS.

- A. **CAUSES.** Administrative hearings shall be convened for the following causes:
1. Failure to perform the corrective action within the specified time as noted in a notice of violation.
 2. Failure to comply with the terms and conditions for continued operation as specified in the findings and actions of a previous administrative hearing.
 3. Violation by a food service establishment of the terms and conditions of a probation period as per Section VIII(E).
 4. Findings of misrepresentation, negligence, or incompetency pursuant to any permit governed by these regulations.

5. Upon appeal by a person aggrieved by any notice of violation, or by any portion of these regulations or by any inspection or enforcement action conducted by the Environmental Health Division of the Department of Community Development.
 6. To determine if a food service permit should be revoked.
 7. Other appropriate reason consistent with these regulations.
- B. Notification. Notice of an administrative hearing shall be given to the person who is the owner or operator of the source of the violation, the person in possession of the property where the violation occurs, the person otherwise causing or responsible for the violation or the person holding the license or permit subject to the administrative hearing. Such notice shall:
1. be in writing;
 2. include a brief and concise description of the cause for the administrative hearing;
 3. state the date, time and location of the administrative hearing;
 4. be served upon the person in the manner provided in Section VI.
- C. Procedures. The hearings provided for in these regulations shall be conducted by the Health Officer or designee at a time and place designated by him/her. The administrative hearing may be recorded. The administrative hearing may be opened with a recording of the place, time and date of the hearing, a recording of those present and a statement of the cause for the hearing. The person to whom notice of the administrative hearing was given and the Health Officer may offer such evidence as they deem necessary and shall produce such evidence as the Health Officer may deem necessary to an understanding and determination of the facts of the allegation. The Health Officer shall determine the relevancy and materiality of the evidence offered and conformance to legal rules of evidence shall not be required. All evidence shall be taken in the presence of all parties recorded as present. Exhibits, when offered, may be considered as evidence. Affidavits and documents may be considered as evidence but shall be given only such weight as is deemed proper after consideration of any objections made to their admission. Testimony of

witnesses may be presented. Prior to closing of the administrative hearing the Health Officer shall inquire of all the parties whether they have further proof to offer or witnesses to be heard. The Health Officer shall establish a time limit not to exceed thirty (30) working days within which he/she is required to make a decision regarding the alleged violations and to initiate any appropriate action.

- D. Findings. The Health Officer shall determine from the evidence presented at the administrative hearing whether or not a violation has or is occurring and/or the cause for the administrative hearing has been substantiated. If it is determined that a violation has or is occurring or that cause for hearing has been substantiated, the Health Officer will initiate a course of action which may include the suspension or revocation of the affected permit or license; placement on probationary period status; the authorization for continued operation subject to specific terms and conditions or other appropriate action. The findings and actions shall be transmitted in writing to the person to whom notice of administrative hearing was given. The findings and action transmittal will include the effective date of any such action. The findings and actions will be served in the manner set forth in Section VI.

VIII. INSPECTIONS.

Any inspection of a food service establishment shall be performed at any reasonable time after providing notice to the operator/owner or person in charge. Such inspection shall be as often as is necessary in the opinion of the Health Officer, for the enforcement of these regulations.

- A. Access. The Health Officer, after presentation of proper identification, shall be permitted to enter any food service establishment, at any reasonable time after providing notice to the owner/operator or person in charge, for the purpose of making inspections to determine compliance with these regulations. The Health Officer shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used and to any person employed and to interview any employee of the establishment to obtain pertinent information regarding an illness investigation or other matters which may affect health or the enforcement of these regulations.
- B. Report of Inspection. Whenever an inspection of a food service establishment is made, the findings shall be recorded on any inspection report form approved by the

Washington State Department of Health (DOH). A copy of the completed inspection report form shall be furnished to the person in charge of the food service establishment at the conclusion of the inspection and shall constitute legal notice. The completed inspection report form shall state specific violations found and establish a specific and reasonable period of time for correction.

- C. Critical Items in Violation. All critical items as noted on the inspection form must be corrected immediately and said food establishment may, at the discretion of the Health Officer, be reinspected within ten (10) working days to determine compliance. When, in the Health Officer's opinion, the critical items in violation have been satisfactorily corrected during the inspection, reinspection may be waived.
- D. Other Items in Violation. All other items in violation will be corrected prior to the next routine inspection, unless a compliance schedule is established. A compliance schedule will list items to be corrected with specific and reasonable time periods allowed to correct said items. The compliance schedule will be dated and signed by the Health Officer and the owner/operator or person in charge of said food service establishment.

A compliance schedule is a contract and is considered to be a binding agreement between the food service establishment and Pacific County.

- E. Probation Period. When the Health Officer finds a food service establishment to have consecutive violations of critical items on repeated inspections the Health Officer may require said food service establishment owner/operator or person in charge to attend an administrative hearing. The purpose of the hearing is to determine if the food service establishment should be placed on a probation period. When the Health Officer orders the food service establishment to be on a probation period, the Health Officer sets the frequency of reinspection and conditions of the probation period as determined in the hearing. If conditions of the probation period are not fulfilled, a subsequent hearing may be scheduled for permit revocation. For those reinspected, a reinspection fee shall be paid by the owner/operator, or a person in charge of the food service establishment, for the increased cost of surveillance during the probation period. The length of the probation period shall be determined by the Health Officer and may not exceed a period of six (6) months.

IX. EXAMINATION - HOLD ORDERS - CONDEMNATION - DESTRUCTION OF FOOD.

Food may be examined or sampled by the Health Officer as often as necessary for enforcement of these regulations. The Health Officer may, upon written notice to the owner or person in charge, place a written hold order on any food which he/she determines or has probable cause to believe to be unwholesome, or otherwise adulterated, mislabeled, contaminated, spoiled, or stored at temperatures not in compliance with these regulations, or from an unapproved source. The Health Officer shall tag, label or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The Health Officer shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction will be ordered and accomplished.

The hold order shall state that a written request for hearing may be filed with the Health Officer within ten (10) calendar days, and that if no hearing is requested and if the Health Officer does not vacate the hold order, then the food shall be destroyed under supervision of the Health Officer. On the basis of evidence produced at the hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of these regulations.

X. EMERGENT HEALTH HAZARD.

In the event of a fire, flood, extended loss of power, sewage system failure or back up, or similar event that might result in the contamination of food, or that might prevent potentially hazardous and/or perishable food from being held at required temperatures, the person in charge shall immediately contact the Health Officer. Upon receiving notice of these occurrences, the Health Officer shall take whatever action he/she deems necessary to protect the public health.

XI. PROCEDURE WHEN INFECTION IS SUSPECTED.

When the Health Officer suspects that a food service establishment, or its employees may be a source of a foodborne illness, the Health Officer shall take appropriate action to control the transmission of disease. Such actions shall include any or all of the following:

- A. The securing of a morbidity history of the suspected employee(s).

- B. The immediate exclusion of the employee(s) for employment in food service establishments.
- C. The immediate suspension of the permit of the food service establishment concerned until, in the opinion of the Health Officer, no further danger of disease outbreak exists.
- D. The restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease.
- E. The requiring of adequate medical and laboratory examinations of the employee and of other employees and of his/her or their body discharges to take place.
- F. Securing records that may enable identification of persons potentially exposed to the disease, and/or require additional assistance in locating such persons.

XII. REVIEW OF PLANS.

Properly prepared plans and specifications together with proposed menu shall be submitted to the Health Officer for approval before a food service establishment is constructed or remodeled and whenever an existing structure is converted for use as a food service establishment. The plans and specifications shall indicate the proposed layout; arrangement; mechanical plans; construction materials of work areas; floor, wall and ceiling materials of all areas; the type, make, and model of all fixed equipment and facilities.

XIII. PACKAGE DATE.

- A. For consumer information, a package date shall be required on all perishable food packaged for retail sale at the retail establishment except modified atmosphere packaged foods shall have a pull date as required by WAC 246-215-060(4).
- B. The package date shall consist of the day and month or, when frozen, the day, month, and year.
- C. No person shall rewrap or repack any packaged perishable food goods with the intention of placing a package date thereon which is different from the original.

XIV. HIGH PRIORITY ESTABLISHMENTS.

- A. A food service establishment becomes a high priority establishment when the permit has been suspended for

violation of food service sanitation regulations or an inspection score on any inspection has exceeded 60 total demerit points (rating score below 85%) or 49 critical item points using the Washington State DOH approved form.

- B. When an establishment is placed in the high priority category, routine inspections must be performed once every two months with reinspection as needed.
- C. An establishment will be removed from the high priority category when two consecutive routine inspections each having total demerit scores of less than 21 points (rating score of 95% or above) are attained.

XV. APPEALS PROCEDURES.

- A. Appeal of department action. Any person aggrieved by the contents of a notice of violation, any portion of these regulations, or by any inspection or enforcement action conducted by Pacific County, may request, in writing, a hearing before the Health Officer or designee. Such request shall be presented to the Health Officer within ten (10) days of the action appealed; except in the case of a suspension, the request for a hearing must be made within five (5) days as provided in Section 4(C). Upon receipt of such request the Health Officer shall notify the person of the time and date of such hearing, which shall be set at a mutually convenient time not less than five (5) working days nor more than fifteen (15) working days from the date the request was received. The hearing shall be conducted pursuant to Section VII.
- B. Appeal from administrative hearing. Any person aggrieved by the findings or required actions of an administrative hearing shall have the right to appeal the matter by requesting a hearing before the Board of Health. Such notice of appeal shall be in writing and presented to the Health Officer within five (5) calendar days of service of the findings and actions from the administrative hearing.
 - 1. Stay of Action. Notice of appeal shall operate as a stay of the required action pending outcome of the Board of Health hearing except in those cases where the Health Officer determines that failure to take the required action constitutes an imminent health hazard. If a stay is not granted, the Health Officer shall so notify the appellant, in writing, at the time of notification of the hearing date and time. The Health Officer must set forth, in writing, the reasons why a stay is denied.

2. Hearing Date. Upon receipt of an appeal pursuant to this section the Health Officer shall set a time and place for the requested hearing before the Board of Health and shall give the appellant written notice thereof. The hearing shall be commenced within thirty (30) days of the Health Officer's receipt of the appeal.

XVI. BOARD OF HEALTH HEARING PROCEDURES.

Board of Health hearings shall be open to the public and presided over by the Chairman of the Board of Health. Such hearings shall be recorded. Board of Health hearings shall be opened with a recording of the time, date and place of the hearing; and a statement of the purpose of the hearing. The Chairman shall then swear in all potential witnesses. The Health Officer shall then present the department's case. The appellant may then present his/her case. At the discretion of the Board of Health, the Health Officer and the appellant may present counter arguments. The Board may question either party. The Board shall allow both parties the opportunity for a closing statement or summation. Evidence, exhibits, affidavits, documents, and testimony shall be considered by the Board in the same manner as described in Section VII. General rights of the parties include:

- A. may be represented by an attorney;
- B. may present witnesses;
- C. may cross-examine witnesses;
- D. may object to evidence for specific grounds;
- E. may not be compelled to give any information that is recognized as privileged in a court of law.

Within thirty (30) days of the hearing, the Board of Health shall determine whether the alleged violation of the code has or is occurring and, if so, uphold the required action or modify it as appropriate. Written notice of the findings and actions of a Board of Health hearing shall be served on the person consistent with the process described in Section VI.

XVII. JUDICIAL REVIEW.

Any person aggrieved by a decision of the Board of Health may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this state.

XVIII. ADOPTION OF WAC 246-215 BY REFERENCE.

These rules and regulations do hereby adopt as minimum requirements the WAC 246-215 Rules and Regulations of the State Board of Health for Food Service Sanitation adopted May 1992, and any subsequent amendments. When a section of these regulations conflict with WAC 246-215, the Pacific County Board of Health regulations shall apply.

XIX. VARIANCE CLAUSE.

The Health Officer, upon written petition of the food service establishment, may grant a variance to any section or sections of these regulations covering physical facilities and equipment standards when no health hazard would exist as a result of this action and the variance is consistent with the intent of these regulations and Chapter 246-215 WAC.

XX. INTERPRETATION.

These regulations shall be enforced by the Health Officer in accordance with the interpretations contained in the 1976 edition of the United States Public Health Service, "Food Service Sanitation Manual," where applicable. When a section of these regulations conflicts with the "Food Service Sanitation Manual" or WAC 246-215, these regulations shall apply.

XXI. SEVERABILITY CLAUSE.

Should any section, paragraph, clause, or phrase of these rules and regulations be declared unconstitutional or invalid for any reason, the remainder of said rules and regulations shall not be affected thereby.

XXII. PENALTY CLAUSE.

Any person violating or refusing or neglecting to comply with these regulations, and upon conviction, shall be guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day or portion thereof during which the violations of these regulations continue. Penalty upon conviction shall be punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment.

XXIII. REPEAL SECTION.

Any ordinance, resolution, or section thereof in conflict with this ordinance shall hereby be repealed upon adoption of this ordinance.

PASSED and ADOPTED by the Board of County Commissioners/Board of Health this
24th day of August, 1993.

2 AYE; 0 NAY 0 ABSTAIN; 1 ABSENT

BOARD OF COUNTY COMMISSIONERS/
BOARD OF HEALTH
PACIFIC COUNTY, WASHINGTON

Pat Hamilton
Chairperson

Robert M. Gibson
Commissioner

Commissioner

ATTEST:

Kathy Aren
Deputy Clerk of the Board

APPROVED AS TO FORM:

Bruce Dany
Deputy Prosecuting Attorney

