

PACIFIC COUNTY BOARD OF HEALTH ORDINANCE 6A

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

WHEREAS, under the provisions of Chapter 70.05 RCW, the Pacific County Board of Health is charged with the duty of protecting the public health of Pacific County by ensuring food establishments provide a safe and sanitary environment for the preparation of food for public consumption;

WHEREAS, CHAPTER 70.05.030 RCW directs the Board of Health to enforce public health rules in the incorporated and unincorporated areas of Pacific County;

WHEREAS, the current Pacific County Ordinance No. 132 pertaining to food service is outdated and needs to be updated to reflect recent State rule changes; and

WHEREAS, the Washington State Board of Health enacted rules and regulations for Food Service in Chapter 246-215 WAC which incorporate the 2001 edition of the Food Code of the United States Public Health Service, Food and Drug Administration; and

WHEREAS, Pacific County Board of Health Ordinance No. 6 was passed by the Board of Health on July 11, 2006 but never went into effect, now therefore;

NOW THEREFORE, IN ACCORDANCE WITH CHAPTER 70.05.060 RCW AND CHAPTER 246-215 WAC, IT IS HEREBY ORDAINED BY THE PACIFIC COUNTY BOARD OF HEALTH THAT BOARD OF HEALTH ORDINANCE NO. 6A, IS ADOPTED AS FOLLOWS:

SECTION 1 – PURPOSE AND APPLICABILITY

- 1.1 **AUTHORITY.** Pursuant to 70.05.060 RCW and Chapter 246-215 WAC, these regulations are adopted to promote and protect the health, safety and well-being of the public and prevent the spread of disease through food.
- 1.2. **SCOPE.** These regulations apply to all food establishments located in Pacific County, including the incorporated jurisdictions of Ilwaco, Long Beach, Raymond and South Bend.

SECTION 2 - ADMINISTRATION

- 2.1 The Administrative Officer for the Board of Health shall be the Administrator of this Ordinance and shall be responsible for administering the provisions and requirements of this Ordinance.
- 2.2 The Health Officer shall act under the direction of the Board of Health or the Administrative Officer. The Health Officer shall have the power and duties enumerated in RCW 70.05.070.
- 2.3 The Health Officer or his/her designee shall be responsible for administering the provisions and requirements of this Ordinance.
- 2.4 The Administrative Officer is hereby authorized to formulate administrative rules, which are consistent with and effectuate the purpose of this Ordinance. Any such rules must be approved by resolution of the Board. Any activity pertaining to Food Establishments shall conform to any such administrative rules that are formulated by the Administrative Officer and approved by the Board.
- 2.5 The Rules and Regulations of the Washington State Board of Health for Food Service, as set forth in Chapter 246-215 WAC, and the 2001 edition of the *Food Code* of the United States Public Health Service, Food and Drug Administration, as amended by Chapter 246-215 WAC, are adopted and incorporated herein by reference.
- 2.6 The Administrative Officer is hereby authorized to develop a fee schedule to cover all of the activities delineated in this Ordinance. Any proposed fees shall not become effective until approved by resolution of the Board of Health. Pacific County shall not accept for review any material supplied by an applicant, nor issue any license, nor in any manner take any official action, until the appropriate fees are paid.
- 2.7 Where the provisions of any local, State, or Federal regulation shall conflict with this Ordinance, the more strict regulation shall apply.

SECTION 3 - DEFINITIONS

- 3.1 Administrative Officer – “Administrative Officer” means the Administrative Officer appointed by the Board of Health under RCW 70.05.040.

- 3.2 Blue Demerit Points – “Blue Demerit Points” means those items identified as blue points on the current food establishment inspection form published by the Washington State Department of Health.
- 3.3 Board of Health - "Board of Health" means the Pacific County Board of Health.
- 3.4 County – "County" means Pacific County.
- 3.5 Food Code – “Food Code” means the 2001 edition of the *Food Code* of the United States Public Health Service, Food and Drug Administration, and as amended by Chapter 246-215 WAC.
- 3.6 Food Employee – “Food Employee” means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. Also known as a “Food Worker.”
- 3.7 Food Establishment - "Food Establishment" means 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 the food occurs, including but not limited to:
- 3.7.1 Restaurants, snack bars, cafeterias, taverns, bars;
 - 3.7.2 Retail food stores, supermarkets, retail meat markets, retail fish markets, retail bakeries, delicatessens;
 - 3.7.3 Institutional operations such as schools, hospitals, jails, prisons, and child care facilities;
 - 3.7.4 Central preparation sites, including caterers;
 - 3.7.5 Satellite servicing locations;
 - 3.7.6 Temporary food service establishments or mobile food units;
 - 3.7.7 Bed and breakfast operations;
 - 3.7.8 Remote feeding sites; and
 - 3.7.9 Vending machines dispensing potentially hazardous foods.

The following shall not be considered food establishments for the purposes of this Ordinance:

- 3.7.10 Private homes where food is prepared or served for consumption by household members and/or guests;
 - 3.7.11 Establishments offering only commercially prepackaged non-potentially hazardous foods;
 - 3.7.12 Commercial food processing establishments licensed and regulated by the USDA, FDA, or WSDA; and
 - 3.7.13 Farmers exempt from licensure under RCW 36.71.090.
- 3.8 Health Hazard – “Health Hazard” means a condition or situation where disease potential exists, and if left unabated the disease potential will increase and may result in a public health emergency.
 - 3.9 Health Officer – “Health Officer” means the Health Officer appointed by the Board of Health pursuant to RCW 70.05.050, or a representative authorized by and under the supervision of the appointed Health Officer.
 - 3.10 Owner – “Owner” means a person owning and/or responsible for the operation of a food service establishment.
 - 3.11 Red Demerit Points – “Red Demerit Points” means those items identified as red points on the current food establishment inspection form published by the Washington State Department of Health.
 - 3.12 Temporary Food Establishment – “Temporary Food Establishment” means a food establishment:
 - 3.12.1 Operating at a fixed located, with a fixed menu, for not more than twenty-one consecutive days in conjunction with a single event, or celebration, such as a fair or festival; or
 - 3.12.2 Operating not more than three days a week at a fixed location, with a fixed menu, in conjunction with an approved recurring, organized event, such as a farmers market.

SECTION 4 - FOOD ESTABLISHMENT LICENSE

- 4.1 License Required. No person shall operate a food establishment without a valid food establishment license issued by the Health

Officer. Only a person who complies with the requirements of this Ordinance shall be entitled to receive or retain such a license.

- 4.2 License Application. Any person desiring to operate a food establishment shall submit a completed application for a license on forms provided by the Health Officer. The following shall be provided:
 - 4.2.1 The information listed in Section 8-201.12 of the *Food Code*;
 - 4.2.2 The information listed in Section 8-301.14 of the *Food Code*;
 - 4.2.3 The dates of operation, if the application is for a temporary food establishments;
 - 4.2.4 Applicable fees as established by resolution of the Board of Health; and
 - 4.2.5 Any other information that the Health Officer deems necessary for the proper review of the proposed construction, conversion, modification or procedures for operating a food establishment.
- 4.3 Pre-Application Review. An application for a new establishment, change in ownership or change in type of establishment shall be subject to pre-application review (plan review), unless waived by the Health Officer. An applicant for a pre-application review shall submit a completed pre-application review form, and any other items required by the Health Officer. The Health Officer may modify requirements for pre-application materials and may conduct a pre-application review with less than all of the required information. However, failure to provide all of the required information may prevent the Health Officer from identifying all applicable issues or providing the most effective pre-application review.
- 4.4 License Issuance. A license shall be issued by the Health Officer when the application and an inspection of the food establishment establishes compliance with the provisions of this Article. A license shall be issued for each calendar year, or part thereof, and shall terminate on the 31st day of December in the year in which it is issued.
- 4.5 License Fees. An annual license fee shall be charged as specified in Subsection 4.2.4. Yearly license renewal fees which are not paid prior to January 1, will also include a late fee as specified in

subsection 4.2.4. Food establishments which continue operations past January 31st without a valid license shall be ordered CLOSED by the Health Officer until such time as a license is applied for and obtained.

4.6 License Transfer. License transfers shall not be allowed. Any changes in the type of operation, in the type of establishment or in the ownership requires review and licensing by the Health Officer pursuant to the license application process enumerated in subsections 4.1 - 4.4 of this Ordinance, or any amendments thereto.

4.7 Probation. A food establishment license may be placed on probation for a specified period of time by the Health Officer or Administrative Officer as a result of an administrative hearing conducted in accordance with Section 12 of this Ordinance, or any amendments thereto. During the probation period, the food establishment shall comply with specific conditions and requirements established in the administrative hearing decision in order to retain the food establishment license. Failure to comply will result in revocation of the license and closure of the food establishment. The violator(s) shall be subject to the sanctions contained in Section 13 and Board of Health Ordinance No. 1, or any amendments thereto.

SECTION 5 - TEMPORARY FOOD ESTABLISHMENT LICENSES

5.1 License Required. No person shall operate a temporary food establishment without a valid temporary food establishment license issued by the Health Officer. Only a person who complies with the requirements of this Ordinance shall be entitled to receive or retain such a license.

5.2 License Application. Any person desiring to operate a temporary food establishment shall submit a completed application for a license on forms provided by the Health Officer at least two weeks prior to the scheduled event. License applications received less than two weeks prior to the event will be charged a late fee as per this Ordinance. Failure to submit the license application prior to the opening day of the event will result in the closure of the temporary food establishment. The following information/materials shall be provided:

5.2.1 The information listed in Section 8-201.12 of the *Food Code*;

5.2.2 The information listed in Section 8-301.14 of the *Food Code*;

- 5.2.3 The dates of operation, if the application is for a temporary food establishment;
 - 5.2.4 Applicable fees as established by resolution of the Board of Health; and
 - 5.2.5 Any other information that the Health Officer deems necessary for the proper review of the proposed construction, conversion, modification or procedures for operating a food establishment.
- 5.3 License Issuance. A license shall be issued by the Health Officer when the application and an inspection of the temporary food establishment establishes compliance with the provisions of this Ordinance. The Health Officer may modify specific requirements for physical facilities when in his/her opinion no health hazard will result, or may impose additional requirements to protect against health hazards related to the operation of the temporary food establishment.
- 5.4 License Duration. A temporary food establishment license shall be issued for each event or for the calendar year, or part thereof. The licenses issued for an individual event shall terminate on the last day of the event whereas those licenses issued for the calendar year, or part thereof shall terminate on the 31st day of December in the year in which it is issued.
- 5.5 License Suspension. A temporary food establishment license may be suspended as follows:
- 5.5.1 Red demerit point items must be corrected immediately, if practically feasible, or according to a compliance schedule established by the Health Officer; all blue demerit point items must be corrected within a specific period not to exceed 24 hours. Failure to comply shall result in suspension of the operating license and closure of the food establishment.
- 5.6 License Fees. Temporary food establishment license application fees shall be established by resolution of the Board of Health.

SECTION 6 - CATERING OPERATIONS

- 6.1 Catering Operations. Any catering operation serving food within Pacific County must obtain either a food establishment permit or a

temporary permit from the Health Officer. All foods must be prepared in an approved food establishment, and facilities must be available to transport and hold the foods at all times at required temperatures. A temporary food service establishments that is operated by a licensed caterer shall submit an abbreviated application form provided by the Health Officer and is subject to permit fees as established by resolution of the Board of Health.

SECTION 7 - INSPECTIONS

- 7.1 Inspections Required. The Health Officer shall periodically inspect each food establishment located in Pacific County for compliance with this Ordinance, or any amendments thereto, and the Rules and Regulations of the Washington State Board of Health for Food Service, as set forth in Chapter 246-215 WAC, and the 2001 edition of the *Food Code* of the United States Public Health Service, Food and Drug Administration, as amended by Ch. 246-215 WAC.
- 7.2 Report of Violation and Correction Requirements. Whenever the Health Officer inspects a food establishment and discovers that any of the requirements of Chapter 246-215 WAC or this Ordinance, or any amendments thereto, have been violated, he/she shall notify the permit holder or person in charge of such violations by means of an Inspection Report Form or other written notice. In such notification, the Health Officer shall:
- 7.2.1 Set forth the specific violations found and the required corrective action, together with the demerit score of the establishment; and
- 7.2.2 Establish a specific and reasonable period of time for the correction of the violation(s) found in accordance with the following provisions:
- 7.2.2.1 All **blue** demerit points must be corrected according to a compliance schedule established by the Health Officer.
- 7.2.2.2 All **red** demerit points must be corrected immediately, if practically feasible, or according to a compliance schedule established by the Health Officer.
- 7.3 Reinspection. A reinspection of a food establishment shall be required, in addition to the minimum required inspection schedule, if any of the following circumstances occur:

- 7.3.1 Any establishment receives an inspection score of over 45 red demerit points, or over 65 total demerits points on any routine inspection; in such cases the re-inspection shall occur within ten business days;
 - 7.3.2 An administrative hearing under Section 12 of this Ordinance requires re-inspection as a condition of this order; or
 - 7.3.3 The Health Officer determines that a reinspection is necessary in order to assure protection of public health.
- 7.4 Reinspection Fees. If a reinspection of a food establishment is required, a fee for reinspection shall be charged according to the fee schedule adopted by the Board of Health.

SECTION 8 - EXAMINATION AND CONDEMNATION OF FOOD

- 8.1 General. Food may be examined or sampled by the Health Officer as often as necessary for enforcement of this Ordinance, or any amendments thereto. When the Health Officer suspects a food item to be adulterated or mishandled, he/she may, upon written notice to the owner or person in charge specifying the reasons therefore, place a hold order on such food. 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 shall be ordered and accomplished. The hold order shall state that a request for a hearing may be filed within 48 hours and that if no hearing is requested, the food may be destroyed. If a hearing request is received, a hearing shall be held according to Section 12 of this Ordinance, or any amendments thereto. On the basis of evidence produced at that hearing, the hold order may be vacated, or the owner may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Ordinance.
- 8.2 Food and Food Contact Surface Sampling. Sampling procedures and laboratory procedures shall conform to those outlined in the latest edition of the *Bacteriological Analytical Manual* published by the United States Food and Drug Administration.
- 8.3 Reimbursement. For those foods determined to be adulterated or in some other way mishandled, any samples collected by the Health Officer shall be taken at the establishment's or owner's

expense. For those items sampled on a routine basis where no mishandling or adulteration is suspected, a prorated reimbursement, upon owner request, will be made by the Health Officer. This may involve the purchase of food items at the retail price by the Health Officer.

SECTION 9 - FOOD WORKER CARDS

- 9.1 Food Worker Cards. No food employee shall work, or be employed, in a food establishment without a valid food worker card obtained through the local health jurisdiction. All food employees are required to have a food handler card within 14 days of hire.
- 9.2 Replacement of Current Card. Any person who misplaces or loses a current card can replace such card if records are available to confirm that a card has been issued to that person. The cost of the replacement card shall be established in the fee resolution adopted by the Board of Health.
- 9.3 Temporary Food Worker Card. All temporary food establishments shall have at least one person on duty at all times with a valid Washington State food worker card. The person with the food worker card shall be responsible to ensure that all other food workers follow proper procedures.
- 9.4 Revocation of Card. A food worker card may be revoked by the Health Officer upon evidence indicating repeated or continuing violations of accepted procedures and practices in the preparation, service, or storage of food or beverage offered for public consumption, or upon a determination of the presence of a communicable disease in the infectious state, or upon the infectious condition of potential hazard to the public or to the persons' co-workers, or upon the falsification of information required for issuance of the card.

SECTION 10 - SUSPENSION OF LICENSES.

- 10.1 Suspension of Licenses. The Health Officer may, with written notice, immediately suspend any license to operate a food establishment if the holder of the license does not comply with the requirements of this Ordinance. Suspension shall be effective upon service of the notice. When a license is suspended, food service operations shall cease immediately.

- 10.2 Notification of Suspension. Whenever a license is suspended, the holder of the license or the person in charge shall be notified in writing that the license is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided in accordance with Section 12 of this Ordinance. The specific reasons for the license suspension shall also be given in writing.
- 10.3 Causes for License Suspension. A license may be suspended for one of the following reasons:
- 10.3.1 When the Health Officer's inspection of the establishment shows an accumulation of over 45 red demerit points, or over 65 total demerit points for the second time within a one-year period.
 - 10.3.2 Failure to comply with the time limits set for the correction of violations as specified in Section 7. (Failure to meet the established time limits for corrections may result in an administrative hearing as described in Section 12 of this Ordinance, or any amendments thereto).
 - 10.3.3 A violation of this Ordinance which, in the opinion of the Health Officer, constitutes a health hazard as described in this Ordinance, or any amendments thereto.

SECTION 11 - WAIVER OF CODE PROVISIONS

- 11.1 Physical Facilities and Equipment Standards. The Health Officer, upon written application of the food establishment, may grant a waiver modifying any section or sections of these regulations covering physical facilities and equipment standards when no health hazard or nuisance would exist as a result of this action and the waiver is consistent with the intent of this Ordinance and Chapter 246-215 WAC. The information required by section 8-103.11 of the *Food Code* must be included with the application. Requests for a waiver under this section will be decided by the Health Officer through the formal administrative hearing process enumerated in Section 12.
- 11.2 Strict Interpretation. Whenever a strict interpretation of this Ordinance would result in a significant hardship, a person may request a waiver of the provisions causing the hardship pursuant to the waiver process outlined in Subsection 11.1.

SECTION 12 - ADMINISTRATIVE HEARINGS

- 12.1 Any action which is taken that requires a valid license when no such license has been issued, or when the license has expired, or when the license is suspended or revoked, is subject to the sanctions listed in Section 13 and Board of Health Ordinance No. 1, or any amendments thereto. A person who violates any provision of this Ordinance, or who fails to comply with any of its requirements, shall be subject to the procedures and sanctions set forth in Section 13 and Board of Health Ordinance No. 1, or any amendments thereto.
- 12.2 A person aggrieved by any action taken by the authorized designee of the Health Officer pertaining to the activities listed in this Ordinance may request an administrative hearing before the Health Officer. Such request shall be filed in writing with the Health Officer within ten (10) business days of the date of the action being challenged. Upon receipt of such request, the Health Officer shall notify the person aggrieved 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, unless a later date is agreed to by all parties.
- 12.3 The administrative hearing shall be conducted in an informal manner. The Rules of Evidence shall not apply. All relevant evidence is admissible which, in the opinion of the Health Officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. The person aggrieved may be represented by a lawyer.
- 12.4 The Health Officer shall decide disputed matters based on a preponderance of the evidence. The Health Officer shall determine whether the explanation of the events by the person aggrieved justifies modifying or reversing the initial decision. The decision of the Health Officer to affirm, reverse, or modify the initial decision shall be in writing and shall be issued within thirty (30) days after the close of the hearing. The decision shall be justified with written findings of fact and shall be promptly sent to the person aggrieved.
- 12.5 If the person who requested the administrative hearing disagrees with the final decision of the Health Officer, he/she may appeal the decision to the Administrative Officer. The decision of the Administrative Officer shall constitute final agency action.

SECTION 13 - PENALTIES AND ENFORCEMENT

- 13.1 A person who violates the provisions of this Ordinance or who fails to comply with any of its requirements shall be subject to the procedures and sanctions set forth in Board of Health Ordinance No. 1, or any amendments thereto.
- 13.2 In addition to the civil penalty provisions provided in Board of Health Ordinance No. 1 or any amendments thereto, any person who violates any of the provisions of this Ordinance is guilty of a misdemeanor, and each day or portion thereof during which a violation is committed, continued, or not permitted shall constitute a separate offense. The penalty for each violation is a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than ninety (90) days or both. The principles of liability contained in Chapter 9A.08 RCW, including, but not limited to, liability for conduct of another shall apply to the enforcement of this Ordinance as shall all judicial interpretations thereof.
- 13.3 When a Court determines that a person has committed a civil infraction under this Ordinance and Ordinance No. 1, or any amendments thereto, Pacific County may collect penalties, assessments, costs, and/or fines by any procedure established for the collection of debts that are owed to the Board of Health.
- 13.4 Any disposition of a violation pursuant to this Ordinance and Board of Health Ordinance No. 1, or any amendments thereto, shall not absolve a person from correcting or abating a violation and shall not prevent the prosecuting authority from pursuing criminal prosecution, other civil action including, but not limited to, injunctive relief, license revocation, and abatement, or all of the above. If Pacific County prevails in a separate civil action, the Court may award the County reasonable costs including, but not limited to, the costs of the responsible officials' time, witness fees, attorney fees, court costs, and the costs to the County of abatement or of enforcement of an injunction, or both.
- 13.5 Any or all of the remedies articulated in Section 13 PENALTIES AND ENFORCEMENT may be used by the Board of Health to enforce this Ordinance. Nothing contained in this Ordinance shall prevent the Board of Health from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 14 - SAVINGS AND SEVERABILITY

14.1 If any provision, or portion thereof, contained in this Ordinance is held to be unconstitutional, invalid, or unenforceable, said provisions, or portion(s) thereof, shall be deemed severed and the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

SECTION 15 - EFFECTIVE DATE

15.1 Pacific County Board of Health Ordinance No. 6A shall take effect May 1, 2007. Notice of the effective date of this Ordinance shall be published in Pacific County's official legal newspaper at least (5) days before the effective date.

SECTION 16

16.1 Pacific County Board of Health Ordinance No. 6 is hereby declared to be null and void.

PASSED by the Pacific County Board of Health in regular session at South Bend, Washington, by the following vote, then signed by its membership and attested to by its Clerk in authorization of such passage the ____ day of _____, _____.

_____ AYE; _____ NAY; _____ ABSTAIN; _____ ABSENT

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Jon Kaino, Chairman

Norman "Bud" Cuffel, Commissioner

Clay Harwood, Commissioner

ATTEST:

Kathy Noren
Clerk of the Board