

**KITSAP PUBLIC HEALTH BOARD**

**ORDINANCE 2022-XX**

**FOOD SERVICE**

**REGULATIONS**

**EFFECTIVE XXXXX, 2022**

**TABLE OF CONTENTS**

<b><u>SECTION 1:</u></b>	<b><u>AUTHORITY, PURPOSE AND OBJECTIVES .....</u></b>	<b><u>2</u></b>
<b><u>SECTION 2:</u></b>	<b><u>ADMINISTRATION.....</u></b>	<b><u>2</u></b>
<b><u>SECTION 3:</u></b>	<b><u>DEFINITIONS.....</u></b>	<b><u>3</u></b>
<b><u>SECTION 4:</u></b>	<b><u>JURISDICTION AND APPLICABILITY .....</u></b>	<b><u>4</u></b>
<b><u>SECTION 5:</u></b>	<b><u>LOCAL POLICIES – ADOPTION BY REFERENCE.....</u></b>	<b><u>4</u></b>
<b><u>SECTION 6:</u></b>	<b><u>MINIMUM STANDARDS FOR FOOD SERVICE.....</u></b>	<b><u>4</u></b>
<b><u>SECTION 7:</u></b>	<b><u>ENFORCEMENT .....</u></b>	<b><u>8</u></b>
<b><u>SECTION 8:</u></b>	<b><u>APPEALS .....</u></b>	<b><u>13</u></b>
<b><u>SECTION 9:</u></b>	<b><u>IMMUNITY FROM LIABILITY .....</u></b>	<b><u>15</u></b>
<b><u>SECTION 10:</u></b>	<b><u>SEVERABILITY .....</u></b>	<b><u>15</u></b>

DRAFT

## **SECTION 1: AUTHORITY, PURPOSE AND OBJECTIVES**

- A. Pursuant to Chapters 43.20.050(5), 70.05.060, 70.46.060 Revised Code of Washington (RCW), and Chapter 246-215 Washington Administrative Code (WAC), the purpose of these regulations is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.
- B. It is expressly the purpose of these regulations to provide for, and promote the health of, the general public and not to create or otherwise establish or designate any particular class or group of persons who will, or should be, especially protected or benefited by the terms of these regulations.
- C. Nothing contained in these regulations is intended to be, nor shall be construed to create or form, the basis for any liability on the part of the Kitsap Public Health Board or the Kitsap Public Health District or its officers, employees, or agents, for any injury or damage resulting from the failure of any person subject to these regulations to comply with these regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these regulations on the part of the Kitsap Public Health District.
- D. These regulations are intended to coordinate with other applicable state and local rules for water supply; sewage conveyance, treatment, and disposal; solid and hazardous waste handling; smoking in public places; and building, plumbing, and mechanical.

## **SECTION 2: ADMINISTRATION**

- A. The Health Officer shall administer and enforce these regulations under the authority of 70.05.070 RCW.
- B. The Health Officer is authorized to take other such actions as he or she deems necessary to maintain public health and sanitation and to carry out the purpose of this ordinance.
- C. The Public Health Board may charge fees for the administration of this ordinance under the authority of RCW 70.05.060 and WAC 246-215.
- D. The Health Officer may charge fees for the administration of this ordinance under authority of chapters 70.05.060(7) RCW and WAC 246-215.

### **SECTION 3: DEFINITIONS**

The definitions in WAC 246-215, *Washington State Retail Food Code*, are hereby adopted by reference. Unless specified herein, all words and terms shall be defined by their common dictionary definition.

Change of Ownership --- When the owner of a food establishment changes to a different individual, partnership, corporation, association, or other legal entity; neither the menu nor equipment within the establishment have changed from the time the previous owner was operating the establishment; and there is no interruption of the ongoing operation of the establishment.

Health Officer --- The legally qualified physician who has been appointed by the Kitsap Public Health Board as the health officer of the Kitsap Public Health District, or their designated representative.

Health District --- The Kitsap Public Health District.

Menu --- A list of food prepared by and served at a food establishment, the style of food served at a food establishment, and the method of preparation to serve that style of food.

Permanent Food Establishment Permits --- The type of permit issued when the food service operation does not qualify for a Temporary Food Establishment Permit.

Probation--- A period of observation, following a notice and warning, to determine improvement or compliance with the regulation.

Public Health Board --- The Kitsap Public Health Board, formed under, and subject to, Chapters 70.05 and 70.46 RCW to protect the public health of Kitsap County.

Seasonal Food Establishment --- A food establishment that operates not more than nine consecutive months within a twelve-month period.

Valid Permit --- Current, written approval to operate a food establishment by the Health Officer.

**SECTION 4: JURISDICTION AND APPLICABILITY**

- A. These regulations shall apply to all food establishments in all territory within the boundaries of Kitsap County, except actions by persons on lands under the jurisdiction of the Federal Government or recognized Native American Nations and Tribes.
- B. The requirements of these regulations apply to an operation that meets the definition of a “food establishment” or “temporary food establishment” as defined in WAC 246-215.

**SECTION 5: LOCAL POLICIES - ADOPTION BY REFERENCE**

- A. The Health Officer shall have the authority to interpret these regulations and may develop and implement policy, within the scope of these regulations, as they determine necessary to protect public health.
- B. Local Standards and Policies, as they now exist or are hereafter amended, are hereby adopted by reference and expressly made part of these regulations.

**SECTION 6: MINIMUM STANDARDS FOR FOOD SERVICE**

The rules and regulations of the Washington State Board of Health for food service, as set forth in WAC 246-215, or as amended, are hereby adopted and incorporated herein by reference.

- A. Permanent Food Establishment Permits
  - 1. Permit required
    - a. A valid permit from the Health Officer is required to operate a food establishment. No person shall operate a food establishment without a valid permit from the Health Officer unless specifically exempted by these regulations, or the Health Officer, to do so.
    - b. A food establishment shall not be remodeled (i.e., altered, modified, or expanded) without review and approval by the Health Officer. A person proposing the remodel of a food establishment shall apply for a permit in accordance with these regulations.
    - c. The menu for a food establishment shall not be changed without review and approval by the Health Officer. An applicant shall

apply for a menu change in accordance with these regulations unless otherwise approved by the Health Officer.

- d. The equipment for a food establishment shall not be changed without review and approval by the Health Officer. An applicant shall apply for an equipment review in accordance with these regulations unless otherwise approved by the Health Officer.

## 2. Permit issuance

A permit to operate a food establishment shall be issued to the applicant by the Health Officer when the Health Officer has determined that:

- a. A complete, accurate, and factual application has been received by, and is on file with, the Health District;
- b. The permit applicant has demonstrated compliance with these regulations; and
- c. The permit applicant has made payment to the Health District for any and all fees required by these regulations. Permit application fees are non-refundable.

## 3. Period of permit validity

- a. A permit is valid for up to one calendar year, generally July 1 through June 30, and all permits shall expire on June 30<sup>th</sup> of each calendar year. In extenuating circumstances, the Health Officer may alter the date of the permit expiration date.
- b. The Health Officer may, at their discretion, prorate permit application fees on a semi-annual basis depending on the date of submittal.

## 4. Conditions for permit retention

- a. Upon acceptance of the permit issued by the Health Officer, the permit holder shall comply with these regulations and WAC 246-215.
- b. It is the permit holder's responsibility to notify the Health District of changes in contact information, ownership, or food preparation and service.

5. Permit transfer

Permits are not transferable from person-to-person nor location-to-location.

6. Permit renewal

- a. A permit holder may apply to renew an expiring permit by submitting the appropriate and designated permit fee to the Health District prior to the expiration of the valid permit.
- b. The Health Officer may renew a permit in accordance with Section 6.A.2.

7. Denial of a permit application

The Health Officer may deny a permit application in accordance with these regulations and WAC 246-215.

8. Changes of ownership

- a. The new permit holder shall submit an application for a permit, and other forms required by the Health Officer, made on forms, or by means, specified by the Health Officer within 30 days of the change of ownership effective date. An applicant shall submit the designated fee(s) with the application(s).
- b. After the effective date of a change of ownership, the food establishment will be reviewed to ensure compliance with these regulations, WAC 246-215, and other applicable environmental regulations under the authority of the Health District.
- c. The Health Officer will submit in writing to the person-in-charge of the food establishment a summary of renovations, menu changes, or equipment changes necessary for the food establishment to be brought into compliance with current rules and regulations per Section 6.A.8.b. Changes cannot be made without Health Officer review and approval. An applicant shall apply for plan review, menu change, or equipment review in accordance with these regulations unless otherwise approved by the Health Officer.

B. Temporary Food Establishment Permits

1. Permit required

- a. A valid permit from the Health Officer is required to operate a temporary food establishment. No person shall operate a temporary establishment without a valid permit from the Health Officer unless specifically exempted by these regulations, or the Health Officer, to do so.
- b. A menu for a temporary food establishment shall not be changed without review and approval by the Health Officer.
- c. A temporary food establishment shall operate only at locations, times, and public events approved by the Health Officer.

## 2. Application for permit

An applicant shall submit an application for a permit to the Health Officer at least 14 calendar days before the date planned for operating a temporary food establishment. Application for a permit shall be made on forms, or by means, specified by the Health Officer. An applicant shall submit the designated fee with an application for permit.

## 3. Permit issuance

A permit to operate a temporary establishment shall be issued to the applicant by the Health Officer when the Health Officer has determined that:

- a. A complete, accurate, and factual application has been received by, and is on file with, the Health District;
- b. The permit applicant has demonstrated compliance with these regulations; and
- c. The permit applicant has made payment to the Health District for any and all fees required by these regulations. Permit application fees are non-refundable.

## 4. Period of permit validity

A permit for a temporary food establishment is valid until the expiration date noted by the Health Officer.

## 5. Conditions for permit retention



Upon acceptance of the permit issued by the Health Officer, the permit holder shall comply with these regulations and WAC 246-215.

6. Permit transfer

Permits are not transferable from person-to-person nor location-to-location.

7. Denial of permit application

The Health Officer may deny a permit application in accordance with these regulations and WAC 246-215.

C. Access and inspection required

a. Plan Review Site Inspection

A plan review site inspection by the Health Officer shall be completed before the plan review approval is issued. The Health Officer may, at their discretion, waive the requirement for a plan review site inspection.

b. Pre-operational Inspection

A pre-operational inspection by the Health Officer shall be completed before a permit is issued to operate a food establishment. The Health Officer may, at their discretion, waive the requirement for a pre-operational inspection.

c. Reinspection

A reinspection may be required by the Health Officer, or requested by the permit holder, in accordance with these regulations.

**SECTION 7: ENFORCEMENT**

A. The Health Officer may suspend or revoke any permit to operate a food establishment for failure to submit required fees.

B. Any person whose food establishment permit has been suspended or revoked may make written application to the Health Officer for reinspection, a hearing, or a new application in accordance with WAC 246-215. The written application for reinspection, hearing, or new application shall be made on forms, or by other means, specified by the Health Officer and shall include the applicable fee.

- C. As an alternative to the enforcement provisions set out above, the Health Officer may determine that the violation of any provision of these regulations is designated as a Class 1 civil infraction pursuant to RCW 7.80, *Civil Infractions*.
- D. The Health Officer may issue a notice of civil infraction if he or she has reasonable cause to believe that a person has violated any provision of these regulations or has not corrected a violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard, and determined as described in RCW 7.80 and any applicable court rules.
- E. Violations, Notice, Remedies, and Penalties.
  - 1. Violations.
    - a. Violations of these regulations may be addressed through the remedies and penalties provided in these regulations.
    - b. Each violation of these regulations shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.
    - c. The Health Officer may investigate alleged or apparent violations of these regulations. Upon request of the Health Officer, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves.
  - 2. Notice and Order to Correct Violation.
    - a. Issuance. Whenever the Health Officer determines that a violation of these regulations has occurred or is occurring, they may issue a written notice and order to correct violation to the food establishment owner, or to any person causing, allowing, or participating in the violation.
    - b. Content. The notice and order to correct violation shall contain:
      - a. The name and address of the food establishment owner or other persons to whom the notice and order to correct violation is directed;
      - b. The street address, tax assessor account number, or other description for identification of the building, structure, or land upon or within which the violation has occurred or is occurring;

- c. A description of the violation and a reference to that provision of these regulations which has been, or is being, violated;
  - d. A statement of the action, or actions, required to be taken to correct the violation and a date or time by which the correction is to be completed;
  - e. A statement that each violation of this regulation shall be a separate and distinct offense, and in the case of a continuing violation that each day's continuance shall be a separate and distinct violation;
  - f. A statement that the failure to obey this notice may result in the issuance of a notice of civil infraction, and/or the assessment of an administrative remedy, and/or, if applicable, the imposition of criminal penalties; and
  - g. A statement that the person to whom the notice and order is directed can appeal the order to the Health Officer in accordance with the appeal procedures of these regulations.
- c. Receipts and/or Reports of Corrective Actions Completed. The notice and order to correct violation may also include a statement requiring the person to whom the notice and order to correct violation is directed to produce documentation to demonstrate compliance with an order issued by the Health Officer.
- d. Service of Order. The notice and order to correct violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order by first class and/or certified mail postage prepaid, return receipt requested, to such person at his/her last known address.
- e. Extension. Upon written request received prior to the correction date or time, the Health Officer may extend the date set for corrections for good cause. The Health Officer may consider completed or proposed mitigation measures, substantial completion of the necessary correction, and/or unforeseeable circumstances that render completion of correction impossible by the date or time established as a good cause.
- f. Supplemental Order to Correct Violation. The Health Officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be

governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations.

- g. Enforcement of Order. If, after the order is duly issued by the Health Officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer may:
  - a. Utilize any remedy or penalty specified within these regulations; and/or
  - b. Abate the health violation using the procedures of these regulations; and/or
  - c. Pursue any other appropriate remedy at law or equity.

### 3. Remedies.

- a. Written Assurance of Compliance. The Health Officer may accept a written assurance of compliance with the remedies outlined in the notice of order to correct violation. Failure to comply with the written assurance of compliance without pursuing an alternative remedy shall be a further violation of these regulations.
- b. Written Assurance of Discontinuance. The Health Officer may accept a written assurance of discontinuance of any act in violation of these regulations from any person who has engaged in such act. Failure to comply with the written assurance of discontinuance shall be a further violation of these regulations.
- c. Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of these regulations, or rules and regulations adopted under them, or any state health law or regulation, or that otherwise threatens public health.
- d. Notice of Violation or Order - Failure to Respond or Appear. Unless contested or appealed in accordance with these regulations, any notice of violation or order issued by the Health Officer represents a determination that the person to whom the notice or order was issued committed the violation.

### 4. Penalties.

a. Civil Penalties.

- a. The violation of any provision of these regulations is designated as a Class 1 civil infraction pursuant to RCW 7.80, *Civil Infractions*.
- b. The Health Officer may issue a notice of civil infraction pursuant to RCW 7.80 if the Health Officer has reasonable cause to believe that the person has violated any provision of these regulations, or has not corrected the violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard, and determined as described in RCW 7.80, and any applicable court rules.

b. Criminal Penalties.

- a. Except as otherwise provided for in these regulations or under State law, any person violating any provision of these regulations is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars (\$25), nor more than one-thousand dollars (\$1,000), or to imprisonment in the county jail not to exceed ninety (90) days, or to both fine and imprisonment.
- b. Any person who fails, neglects, or refuses to comply with an order of the Health Officer to correct a violation of these regulations pursuant to Section 7.E.2. shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than one-thousand dollars (\$1,000), or imprisonment in the county jail not to exceed ninety (90) days, or both. The court may also impose restitution.
- c. Any person who fails, neglects, or refuses to comply with a written assurance of discontinuance or a voluntary correction agreement pursuant to Section 7.E.3. shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than one-thousand dollars (\$1,000), or imprisonment in the county jail not to exceed ninety (90) days, or both. The court may also impose restitution.

c. Noncompliance Fees.

- a. Pursuant to the most current Health District fee schedule as adopted by the Board of Health, the Health Officer may assess an hourly noncompliance fee to any person who has been found

guilty of committing a violation of these regulations for Health Officer oversight, review, and/or inspections performed to determine compliance with its permit, applicable regulations, or correction / compliance specified in a notice and order to correct violation, civil infraction, misdemeanor, or court ordered compliance date.

- b. Whenever a noncompliance fee is assessed by the Health Officer, the fee shall be due and payable 30 days after receipt of the invoice by the violator.

## **SECTION 8: APPEALS**

### **A. Appeal of Health District Action – Administrative Review Conference with Environmental Health Director.**

1. Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation, or by any inspection or enforcement action conducted by the Health District under this regulation, may submit a written request for an Administrative Review Conference with the Environmental Health Director, or their designee. The request shall be submitted on forms designated for use by the Health Officer along with the applicable fee, and shall detail and specify the reason why the appellant is assigning error to the Health District and requesting the action to be reviewed.
2. Timelines for Appeal. A written application for administrative review shall be submitted to the Health Officer within 10 business days of the enforcement action, except for suspensions or revocations of a Health Officer-granted certification. A request for administrative review of a certification suspension or revocation shall be submitted to the Health Officer within five (5) business days of the action. Upon receipt of such request together with hearing fees, the Environmental Health Director shall notify the person of the time, date, and location of such hearing, which shall be set at a mutually convenient time not less than five (5) business days or more than 15 business days from the date the request was received. The Environmental Health Director may extend this timeline, for good cause, for up to an additional 15 days. The Environmental Health Director will issue a written decision concerning the disposition of the administrative review within 10 business days of the conference date, and may require additional actions as part of the decision.

3. A request for administrative review is at the option of the aggrieved person. A request for administrative review shall in effect constitute a stay of the appeal process for the Health Officer Administrative Hearing and preserve all rights and timelines associated with the appeal process. The timelines for appeal shall become effective upon issuance of the written decision from the administrative review conference.
- B. Appeal of Health District Action – Health Officer Administrative Hearing.
1. Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation, or by any inspection or enforcement action conducted by the Health District under this regulation, may submit a written request for a hearing before the Health Officer, or their designee. The request shall be submitted on forms designated for use by the Health Officer along with the applicable fee, and shall detail and specify the reason why the appellant is assigning error to the Health District action being appealed.
  2. Timelines for Appeal. A written application for appeal shall be submitted to the Health Officer within 10 business days of the action appealed for all Health District actions, except for suspensions or revocations of a Health Officer-granted certification. An appeal of a certification suspension or revocation shall be submitted to the Health Officer within five (5) business days. Upon receipt of such request together with hearing fees, the Health Officer shall notify the person of the time, date, and location of such hearing, which shall be set at a mutually convenient time not less than five (5) business days or more than 15 business days from the date the request was received. The Health Officer may extend this timeline, for good cause, for up to an additional 15 days. The Health Officer will issue a written decision concerning the disposition of the appeal within 10 business days of the hearing date, and may require additional actions as part of the decision.
  3. Incomplete or Untimely Appeals. Incomplete appeal requests, or appeal requests that do not meet the specified timelines for appeal, shall not constitute a legal appeal under these regulations.
- C. Appeal of Administrative Hearing Decision – Board of Health Hearing.
1. Any person aggrieved by the findings, decision, or required actions of an administrative hearing shall have the right to appeal the matter by

requesting a hearing before the Board of Health. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer, and shall be accompanied by the applicable hearing fee. The appellant and the Health Officer may submit additional information to the Board of Health for review and consideration.

2. Timelines for Appeal to Board of Health. A written application of appeal shall be presented to the Health Officer within five (5) business days of the findings and actions from the administrative hearing. Upon receipt of a timely written notice of appeal together with hearing fees, the Health Officer shall set a time, date, and location for the requested hearing before the Board of Health, and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than five (5) business days or more than 30 business days from the date the appeal request was received by the Health Officer. Any decision of the Board of Health shall be final and may be reviewed by an action filed in superior court. Any action to review the Board of Health's decision shall be filed within 21 business days of the date of the decision.
  3. Stay of Action. Any orders issued concerning the alleged violation shall remain in effect during the appeal to the Board of Health. Any person affected by an order to correct violation may make a written request for a stay of the decision to the Health Officer within five (5) business days of the Health Officer's decision. The Health Officer shall notify the appellant in writing of their decision to grant or deny the stay request within five (5) business days of receipt of the request.
- D. Judicial Review. All decisions of the Board of Health shall be final unless review is sought by filing an action in any court of competent jurisdiction, as provided by the laws of this State.

#### **SECTION 9: IMMUNITY FROM LIABILITY**

Inspections, rules, and orders of the Health Officer resulting from the exercise of the provisions of these regulations shall not in any manner be deemed to impose liability upon the Health District, or its employees, for any injury or damage resulting from the administration and enforcement of these regulations. All actions of the Health Officer shall be deemed an exercise of the police power of the state.

#### **SECTION 10: SEVERABILITY**



If any provision of these regulations or its application to any person or circumstance is held invalid, the remainder of these regulations, or the application of the provision to other persons or circumstances shall not be affected.

DRAFT