

## **Ordinance 23-01**

**AN ORDINANCE OF THE GRANT COUNTY HEALTH DISTRICT RELATING TO FOOD SERVICE SANITATION. BE IT ORDAINED BY THE BOARD OF HEALTH OF GRANT COUNTY HEALTH DISTRICT AS FOLLOWS:**

### **Section 1.0 FINDINGS**

1.1 The Board of Health finds that chapter 246-215 WAC has been established by the Washington State Board of Health to provide standards for food service under RCW 43.20.050 to promote and protect the health, safety, and well-being of the public and to prevent the spread of disease by food.

1.2 The Board finds that the following rules and regulations are to be adopted to allow for:

- defining food, potentially hazardous food, food service establishment, temporary food service establishment, utensils, equipment, etc.;
- providing for the sale of only unadulterated, wholesome, and properly labeled food;
- regulating the sources of food;
- establishing sanitation standards for food, food protection, food service personnel, food service operations, food equipment and utensils, sanitary facilities and controls, and other facilities;
- requiring permits for the operation of food service establishments;
- regulating the inspection of such establishments;
- providing for the examination and condemnation of food;
- providing for the enforcement of these rules and regulations, and providing penalties and superseding existing Grant County Health District rules and regulations, and ordinances or resolutions in conflict herewith.

### **Section 2.0 ADOPTION OF STATE REGULATIONS**

2.1 All provisions of Chapter 246-215 WAC are hereby adopted by reference as now enacted or hereafter amended.



### **Section 3.0 DEFINITIONS**

**“Food Code”**: Chapter 246-215 WAC.

**“GCHD”**: Grant County Health District.

**“Seasonal Food Establishment”**: A food establishment that is closed during the entire month of January. This does not include temporary food establishments or recurring temporary food establishments.

**“Regulatory Authority”**: Local, state or federal enforcement body or authorized representative having jurisdiction over the food establishment. Grant County Health District, acting through the Local Health Officer, is the regulatory authority for the activity of a food establishment within Grant County, except as otherwise proved by law. This includes any employee who is authorized by GCHD to enter a food establishment with the purpose of inspection, investigation and/or education regarding food safety sanitation.

### **Section 4.0 INSPECTIONS AND ENFORCEMENT**

4.1 Whenever the Regulatory Authority makes an inspection of a food establishment and discovers any requirements of the food code or this ordinance 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.

4.2 Whenever the Regulatory Authority finds unsanitary or other conditions in the operation of a food establishment which, in his/her judgment, constitute an imminent hazard to the public health, he/she may without warning, or notice of hearing, issue a written notice to the permit holder or operator citing such conditions, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and if deemed necessary, such order shall state that the permit is immediately suspended, and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the Regulatory Authority, shall be afforded a hearing. Imminent health hazards shall be defined as the following:

- a) A breakdown or lack of equipment or loss of power causing improper temperature control for potentially hazardous food.
  - b) A lack or loss of water service preventing adequate hand washing, equipment cleaning, or sanitizing. (i.e. loss of hot water throughout a facility).
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- c) An emergency situation caused by accident or natural disaster, such as fire, flood, or building collapse.
- d) A sewage backup or sewage contamination within a food product.
- e) An occurrence of an outbreak of foodborne illness linked to the food establishment.
- f) Misuse of toxic or poisonous materials.
- g) Any circumstance that may endanger public health.

4.3 Interference by the permit holder/person in charge, or employee with the Regulatory Authority in the performance of his/her duty shall result in the suspension of the food establishment permit.

4.4 The Regulatory Authority shall document on the inspection report form the items found out of compliance (violations), assign point values in accordance with the Grant County Health District Food Establishment Inspection Report form and apply the following provisions:

- a) Blue Item violations (items 28-50 and S2 on the inspection form) shall be corrected by the time of the next routine inspection, or as otherwise required by a compliance schedule, if a compliance schedule is established and approved by the Regulatory Authority. Failure to follow a compliance schedule may result in permit suspension.
- b) Red Item violations (items 1-27 and S1) must be corrected immediately when the Regulatory Authority determines the item is immediately correctible.
- c) In the case of temporary food establishments, all red item violations must be corrected immediately. Blue item violations will be corrected immediately when the Regulatory Authority determines the item is immediately correctible. Failure to comply may result in suspension of the permit to operate.

4.5 Reinspection Thresholds and Procedures

- a) Failure of a routine inspection occurs when:
    - i. the total of red item violations is greater than 25 red points, or
    - ii. a single 25 red item is found to be repeated from the last routine inspection, or
    - iii. a violation as described in section 4.2 of this ordinance is found, or
    - iv. a violation as described in section 4.9 of this ordinance is found.
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- b) Failure of a routine inspection will require a first reinspection, which is usually conducted within 20 days.
- c) Failure of a reinspection occurs when:
  - i. the total of red item violations equals 25 points or greater, or
  - ii. a single red item violation of 10 points or greater is found to be repeated from the previous inspection or reinspection, or
  - iii. a violation as described in section 4.2 of this ordinance is found, or
  - iv. a violation as described in section 4.9 of this ordinance is found.
- d) Failure of a first reinspection will require a second reinspection which is usually conducted within 15 days.
- e) Failure of a second reinspection will result in the following:
  - i. The permit holder or its authorized representative will be required to submit a written food safety compliance plan within five (5) working days of the second reinspection. The plan must be designed to help maintain compliance and improve food safety with emphasis on the items in violation and it must be acceptable to the assigned inspector, in consultation with the Environmental Health Manager/Director or a second Environmental Health Specialist in the absence of the Manager/Director. If the permit holder or authorized representative fails to respond to, follow, or agree upon the plan, the permit to operate shall be suspended upon written notice.
  - ii. A 3<sup>rd</sup> reinspection will be required and will usually occur within ten (10) days after the second reinspection. Failure of the 3<sup>rd</sup> reinspection will result in permit suspension.
  - iii. The food establishment will be placed in probationary status for the next two (2) routine inspections. While in probationary status, if the food establishment receives a routine inspection which requires a reinspection as described in section 4.5 (a) of this ordinance, the permit to operate shall be suspended.
- f) During a reinspection, the Regulatory Authority is not limited to reviewing only violations noted on the previous inspection. The Regulatory Authority is responsible to report all observed violations and has the discretion to conduct a complete inspection.
- g) There will be a fee for all reinspections conducted, per the current fee schedule.

4.6 If the permit is suspended, the food establishment must discontinue operation. If the permit holder wishes to have the permit reinstated, the permit holder or its authorized representative must schedule an administrative hearing with the assigned inspector and one other GCHD staff

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member with knowledge of the food program. The permit holder must give reasons that the permit should be reinstated. The cost of the hearing will be based on the current fee schedule. All fees owed to GCHD must be paid before reinstatement can occur.

4.7 GCHD staff may conduct non-regulatory visits to the food establishment or in the GCHD office for educational purposes at its discretion and after consultation with the Environmental Health Manager/Director. GCHD staff will provide a written report documenting the educational visit. Point values will not be assigned to the report and no enforcement actions will result, with the exception of an observed imminent health hazard, and then section 4.2 will apply. There is a maximum of one educational visit per calendar year per establishment.

4.8 Three (3) red violation points shall be assigned for each food worker allowed by the person in charge to work without a valid food worker card, up to 15 points. The food establishment shall not be considered in compliance until it has been demonstrated that all food workers have a valid food worker card as described in WAC 246-215-02120 or food workers without valid food worker cards have been removed from the work schedule.

4.9 Evidence of the permit holder or person in charge permitting smoking or vaping (use of electronic vapor device) by the public or employees in any portion of the food establishment shall be considered a 15 point red item violation which shall be included with the total points of food code violations. Smoking/vaping by the public or employees permitted by the permit holder or person in charge closer than 25 feet to the doorway, window, or ventilation source of a licensed food establishment will likewise be considered a 15 point red item violation unless a proposal to allow a lesser distance has been formally accepted by the Grant County Health Officer, in which case the lesser distance will be applied.

- a) Failure to post signs prohibiting smoking as required by RCW 70.160.050 shall be a five (5) point blue item violation.

4.10 Individual, disposable towels are the only approved hand drying device for handwashing sinks in food preparation areas.

## **Section 5.0 PERMITS AND FEES**

5.1 No one may operate a food establishment without a valid permit to operate issued by the Regulatory Authority. If a person operating a food establishment or their representative fails to obtain a food establishment permit or fails to renew a food establishment permit within the permit renewal time they may be ordered to close. Anyone failing to comply with the closure order shall be considered in violation of this ordinance and subject to Section 8.o.

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5.2 The fee for Food Establishment permits shall be determined by the current fee ordinance. Said permits shall expire on December 31 and shall be renewed each year. Permits shall not be transferable between people or locations.

5.3 Permits for annual food establishment operations shall be obtained by January 1. If the permit fee and application for an annual food establishment are received after January 31 (must be received in the office by 5 pm, or postmarked by, January 31) a fee equivalent to the amount of the permit will be levied, and if received after February 28 (or 29) the food establishment shall be considered in violation of this ordinance and subject to Section 8.0.

5.4 If the new owner of a permitted and currently operating food establishment does not obtain a permit within thirty (30) days after taking over the food establishment, a fee equivalent to the amount of the permit will be levied, and if more than sixty (60) days delinquent, the food establishment shall be considered in violation of this ordinance and subject to Section 8.0.

5.5 If the food establishment which has a new owner is not currently in operation (closed), the new owner must obtain a permit before operating or opening. If the new owner fails to obtain a permit before opening, a fee equivalent to the amount of the permit will be levied and if more than thirty (30) days delinquent, the operation shall be considered in violation of this ordinance.

5.6 The permit for a Seasonal Food Establishment shall be obtained before the opening of business. If a Seasonal Food Establishment fails to obtain a permit prior to opening, a fee equivalent to the amount of the permit will be levied, and if more than (thirty) 30 days delinquent, the operation shall be considered in violation of this ordinance.

5.7 If a food establishment has reinspection fees that are more than forty-five (45) days delinquent, its permit to operate may be suspended upon written notice. If a food establishment has reinspection fees that are more than ninety (90) days delinquent, its permit to operate shall be suspended upon written notice.

5.8 The name posted on the outside of the food establishment shall be the name on the permit issued by GCHD and it must be written using at least 2 inch lettering. Mobile Food Units shall have the name of the food establishment on at least two sides of the unit.

5.9 If the Regulatory Authority suspends or revokes a food establishment permit, the time the establishment is closed shall not be less than 2 hours.

5.10 Operations defined as a "Food Establishment" by the definition in WAC 246-215-01115 are required to obtain a permit to sell food or prepare food, with the exception of foods listed in WAC 246-215-08305, which may be exempted from permit subject to the following conditions:

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- a) All food safety rules must be followed as required by the Food Code
- b) For temporary food establishments offering only exempt foods, a Certificate of Exemption must be obtained annually from GCHD.
- c) For permanent businesses/facilities offering only exempt foods, a Certificate of Exemption which does not expire annually will be obtained from GCHD and will be subject to periodic review as determined by the Regulatory Authority.

## **Sections 6.0 TEMPORARY FOOD PERMITS**

6.1 Permits for temporary food establishments shall be applied and paid for not less than ten (10) working days before the requested date of operation. Monday – Friday, including holidays that fall on those days, will be considered working days for the purposes of this section. Applications and payment must be received ten (10) working days or postmarked twelve (12) working days or greater before the requested date of operation or the applicant will be subject to a late fee per the current fee schedule.

6.2 A temporary food establishment found in operation, set up with intent to operate or making payment/partial payment in the field without prior application and full payment for a temporary food permit on 3 or more occasions during any 12 month period shall be considered in violation of this ordinance. The violator must pay a \$500 administrative fee before any further temporary food permits can be issued. Any additional instances of operation of a temporary food establishment without prior application and payment shall be subject to a doubling of the penalty provided for in section 8.0 of this ordinance.

## **Section 7.0 CERTIFIED FOOD PROTECTION MANAGER**

7.1 All food establishments must have at least one certified food protection manager on staff as evidenced by a valid certificate available from an accredited program. The following food establishment types are exempt from this requirement, unless deemed necessary by the Regulatory Authority:

- a) Risk Level 1 Food Establishments
  - b) Intermittent Food Establishments
  - c) Temporary Food Establishments
  - d) Recurring Temporary Food Establishments
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## **Section 8.0 PENALTY**

8.1 Anyone failing to comply with any of the terms of this ordinance shall be in violation of this ordinance. The Regulatory Authority may proceed to commence a civil action to recover a penalty of \$500.00 for each violation of this ordinance. Each day a continuing violation exists shall be considered a separate violation.

8.2 In conjunction with, or as an alternative to, civil action allowed in Section 8.1 the Regulatory Authority may move to enjoin any violations of this ordinance.

## **Section 9.0 APPEALS**

9.1 Any person requesting appeal of an action by GCHD staff regarding the administration of this ordinance may appeal in writing to the Grant County Health Officer within ten (10) days of a written notice or directive of GCHD staff. If the written appeal does not provide sufficient evidence for the Grant County Health Officer to change the GCHD staff decision:

- a. First Appeal- Within 30 days after receipt of an appeal, the Grant County Health Officer may conduct an investigation in the disputed matter.
  - i. The investigation may include an administrative hearing. The investigation may include taking evidence orally and written from GCHD staff, the party aggrieved, and witnesses.
  - ii. A decision will be given in writing to the person or party making the appeal.
  - iii. Such investigation and/or hearing may take place sooner than 30 calendar days if the aggrieved party shows extraordinary hardship or duress caused by the GCHD staff decision
- b. Second Appeal- Following a written request to the Grant County Health Officer, within ten (10) days of the Grant County Health Officer's written decision, any person not satisfied with the Grant County Health Officer's decision or the results of the investigation shall make a written request for a meeting with the Grant County Board of Health.
  1. The appellant will be provided the opportunity to address the Board of Health at the next regularly scheduled meeting, or sooner if the aggrieved party demonstrates extraordinary hardship or duress caused by the Grant County Health Officer's decision.
  2. The matter under appeal will be decided by a majority vote of the Board of Health.

9.2 Hearings shall be conducted as defined in WAC 246-215-08610. Pending hearings or appeals shall not stay the orders of the Regulatory Authority.

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9.3 Failure to comply with conditions established and agreed to as the result of an appeal shall be considered a violation of this ordinance and may be subject to the Penalties provided by Section 7.0.

**Section 10.0 REPEALER**

10.1 Ordinance 22-07 of the Grant County Health District relating to food service sanitation ordained and adopted by the Board of Health of Grant County Health District on January 11, 2023 and any other ordinance, resolution, rule, or regulation of the Grant County Health District in conflict with this ordinance are hereby repealed with the effective date of this ordinance.

**Section 11.0 SEVERABILITY**

11.1 Should any section of this ordinance be declared unconstitutional or invalid for any reason such declaration shall not affect the validity of the remainder.

**Section 12.0 EFFECTIVE DATE**

12.1 This ordinance shall take effect on January 12, 2023 after its passage, approval, and execution.

PASSED by the Grant County Board of Health and signed by its Chair this 11<sup>th</sup> day of January 2023.

ATTEST:

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Rita Morfin, Clerk of the Board

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Tom Harris, Chair

Approved as to form:

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Katherine Kenison, Health District Attorney

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