

ORDINANCE NO. 159 -15

**AN ORDINANCE AMENDING REGULATION OF FOOD SERVICE ESTABLISHMENTS,
AMENDING ORDINANCE #143-06**

WHEREAS, the Wahkiakum County Department of Health enforces regulations protecting the health, safety, and welfare of patrons of food service establishments; and

WHEREAS, such regulations are required to be in step with modern federal and state guidelines; and

WHEREAS, such guidelines have advanced and elaborated since the last time the Board of Commissioners adopted food service regulations in Ordinance #143-06; and

WHEREAS, it is therefore in the best interests of the County and its citizens for the Board to revisit and modernize food service regulations;

NOW THEREFORE BE IT HEREBY ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF WAHAKIAKUM AS FOLLOWS:

1. Ordinance #143-06 is hereby amended; and chapter 70.09 of the Wahkiakum County Code is hereby amended by being replaced in its entirety with the content of the attached Exhibit 1, which is incorporated herein by this reference as though fully set out.
2. This Ordinance shall take effect immediately.

DULY PASSED AND ADOPTED this 17 day of February, 2015.

**BOARD OF COUNTY COMMISSIONERS
OF WAHAKIAKUM COUNTY, WASHINGTON**

ATTEST:

Marsha LaFarge
Marsha LaFarge
Clerk of the Board

Mike Backman
Mike Backman, Chairman

Blair H. Brady
Blair H. Brady, Commissioner

APPROVED AS TO FORM this 27th day of January, 2015:
Daniel H. Bigelow
Daniel H. Bigelow, Prosecuting Attorney

Daniel L. Cothren
Daniel L. Cothren, Commissioner

EXHIBIT A

Chapter 70.09

REGULATION OF FOOD SERVICE ESTABLISHMENTS

70.09.010 MINIMUM PERFORMANCE STANDARDS.

A. Any person owning, operating or working in a food establishment must comply with and is subject to:

1. The requirements of Chapters 1 through 8 of the 2009 Food Code published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration; and
2. The other provisions of this chapter.

B. If a provision or definition of the Food Code is inconsistent with a provision or definition otherwise established under this chapter, the requirement established under this chapter shall apply.

70.09.020 DEFINITIONS.

A. This section establishes definitions that are additional to those in the Food Code or that modify definitions in the Food Code.

B. Abbreviations.

1. "FDA" means United States Food and Drug Administration.
2. "HACCP" means hazard analysis, critical control point.
3. "PPM" means parts per million.
4. "USA" means United States of America.
5. "USDA" means United States Department of Agriculture.
6. "WSDA" means Washington State Department of Agriculture.

C. "Adulterated" means the altered condition of food including:

1. Bearing or containing any poisonous or deleterious substance in a quantity rendering food injurious to health;
2. Bearing or containing any added poisonous or deleterious substance where no safe tolerance has been established by regulation, or exceeding such tolerance if one has been established;
3. Consisting in whole or in part of any filthy, putrid, or decomposed substance, or otherwise being unfit for human consumption;
4. Processing, preparing, packing, or holding potentially hazardous foods under improper time-temperature conditions or under other conditions increasing the probability of food contamination with excessive microorganisms or physical contaminants;
5. Processing, preparing, packing, or holding food under insanitary conditions increasing the probability of food contamination or cross-contamination;
6. Holding or packaging food in containers composed, in whole or in part, of any poisonous or deleterious substance rendering the contents potentially injurious to health; or
7. Containing any product of a diseased animal, or an animal dying by means other than by slaughter.

D. "Approved" means acceptable to the health officer based on his/her determination regarding conformance with appropriate standards and public health practice.

E. "Approved source" means foods which are obtained by the food service establishment owner from persons who comply with applicable federal, state and local laws, ordinances and regulations.

F. "Aquatic foods" mean foods grown in or harvested from water, including all types of fish, shellfish and mollusks, edible crustacea, reptiles, amphibians, and mixtures containing aquatic foods and synthetic foods, such as surimi.

G. "Base of operation" means an approved site for servicing, cleaning, sanitizing, supplying and maintaining a mobile food unit.

H. "Bed and breakfast operation" means a private home or inn offering one or more lodging units on a temporary basis to travelers.

I. "Bulk food" means processed or unprocessed food in containers where consumers withdraw desired quantities.

J. "Catering operation" means a person contracted to prepare food in an approved

food establishment for final cooking or service at another location.

K. "Commissary" means an approved food establishment where food is stored, prepared, portioned, or packaged for service elsewhere.

L. "Corrosion-resistant" means a material maintaining original surface characteristics under prolonged contact with food, cleaning compounds or sanitizing solutions.

M. "Cross-contamination" means the process where disease-causing organisms are transferred from raw or other foods to equipment or ready-to-eat foods.

N. "Department" means the Washington State Department of Health.

O. "Donated food distributing organization" means a charitable nonprofit organization under Section 501(c) of the federal Internal Revenue Code that distributes food free of charge and includes any nonprofit organization that distributes food free of charge to the public.

P. "Donor" means a person, corporation, association, or other organization that donates food to a donated food distributing organization under the provisions of Chapter 69.80 RCW, known as the Good Samaritan Food Donation Act.

Q. "Donor kitchen" means a kitchen that is used by a donor to handle, store or prepare food for donation to needy persons through a donated food distributing organization and which is not a residential kitchen in a private home.

R. "Drinking water" means potable water that is supplied in compliance with Chapters 246-290 and 246-291 WAC.

S. "Durable" means capable of withstanding expected use and remaining easily cleanable.

T. "Easily cleanable" means readily accessible with materials and finish fabricated to permit complete removal of residue by normal cleaning methods.

U. "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, guinea or any other species of fowl.

V. "Equipment" means all stoves, ovens, ranges, hoods, slicers, mixers, meat blocks, tables, counters, refrigerators, sinks, dish machines, steam tables and similar items used in the operation of a food service establishment.

W. "Extensive remodel" means construction in a food service establishment requiring a building permit or plumbing permit, except for signs and fences.

X. "Food" means any raw, cooked, or processed edible substance, ice, beverage, or

ingredient used or intended for use or for sale, in whole or in part, for human consumption.

Y. "Food additive" means substances added directly or indirectly to food.

Z. "Food Code" means the 2013 edition of the Food Code of the United States Public Health Service, Food and Drug Administration.

AA. "Food service establishment" is amended in Food Code subparagraph 1-201.10(B) to not mean:

1. An establishment that offers only nonpotentially hazardous foods prepackaged in a licensed food establishment or food processing plant;
2. An establishment that offers only nonpotentially hazardous, nonready-to-eat, minimally cut, unprocessed fruits and vegetables;
3. A food processing plant or other establishment for activities regulated by the Washington State Department of Agriculture or the U.S. Department of Agriculture;
4. An establishment that offers only nonpotentially hazardous, ready-to-eat foods, produced in a licensed food establishment or food processing plant (such as premixed soda pop, powdered creamer, pretzels, cookies, doughnuts, cake, or meat jerky) that are served without direct hand contact, with limited portioning, directly onto or into sanitary single use articles from the original package;
5. An establishment that offers only nonpotentially hazardous hot beverages (such as coffee, hot tea or hot apple cider) served directly into sanitary single-service articles;
6. An establishment that offers only dry, nonpotentially hazardous, nonready-to-eat foods (such as dry beans, dry grains, in-shell nuts, coffee beans, tea leaves, or herbs for tea);
7. An establishment that offers only prepackaged frozen confections produced in a licensed food establishment or food processing plant;
8. A residential kitchen in a private home or other location, if only foods that are nonpotentially hazardous baked goods are prepared and wrapped in a sanitary manner for sale or services by a nonprofit organization operating for religious, charitable, or educational purposes and if the consumer is informed by a clearly visible placed at the sales or services location that the foods are prepared in a kitchen that is not inspected by a regulatory authority;
9. A location where foods that are prepared as specified in (BB)(7) of this section are sold or offered for human consumption;

10. A kitchen in a private home operated as an adult family home as defined in RCW 70.128.010, used only to prepare food for residents and other people for whom the operation is licensed to provide care;
11. A private home that receives catered or home-delivered food;
12. A private home or other location used for a private event;
13. A donor kitchen; and
14. A location used for a potluck.

BB. "Food worker card" means a food and beverage service worker's permit as required under Chapter 69.06 RCW.

CC. "Game meat" means warm-blooded and cold-blooded animals, excluding fish and meat food animals as defined by USDA, noncommercially raised and processed without continuous regulatory surveillance, including, but not limited to:

1. Mammals such as deer, elk, antelope, buffalo and bear;
2. Birds; and
3. Reptiles such as alligator.

DD. "Hazard analysis critical control point (HACCP)" means a method used to reduce the risk of foodborne illness by:

1. Identifying hazards of high risk foods;
2. Assessing the hazards posed by each preparation step;
3. Determining the critical points for controlling hazards;
4. Monitoring a critical control point or points; and
5. Implementing immediate and appropriate corrective action when control criteria are not met.

EE. "Health officer" means the Wahkiakum County Health Officer, or such the Wahkiakum County Health Officer's authorized representative.

FF. "Hermetically sealed container" means a properly designed container intended to keep the contents free of contamination by microorganisms and to maintain the commercial

sterility of its contents after thermal processing.

GG. "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

1. A breakdown or lack of equipment or power causing improper temperature control for potentially hazardous foods;
2. A lack of water preventing adequate handwashing or equipment cleaning and sanitizing;
3. An emergency situation including fire, flood, building collapse, or similar accident or natural disaster;
4. A sewage backup or sewage contamination within a food service establishment;
or
5. An occurrence of an outbreak of foodborne illness linked to the food service establishment.

HH. "Immediate service" means foods served to the public within thirty minutes of preparation.

II. "Local Board of Health" means the County Board of Health.

JJ. "Local health officer" means the legally qualified physician who has been appointed as the health officer for the County Public Health Department.

KK. "Menu" means a written or graphic description of foods prepared and offered for sale or service by a food service establishment.

LL. "Mislabeled" means the presence of any false or misleading written, printed, or graphic material upon or accompanying food or food containers.

MM. "Mobile food unit" means a readily movable food service establishment.

NN. "Modified atmosphere packaging" means a process that completely encases food in an impermeable or partially permeable membrane, with either a partial or complete vacuum, or a gas or mixture of gases surrounding the food. Hermetically sealed containers are not considered to be modified atmosphere packaging.

OO. "Owner" means a person owning and/or responsible for the operation of a food service establishment.

PP. "Perishable food" means foods, other than potentially hazardous foods, where deterioration or spoilage due to loss of moisture or growth of molds and bacteria may occur.

QQ. "Person" means any individual, partnership, corporation, association, or other legal entity or agency of state, County, or municipal government, or agency of the federal government which is subject to the jurisdiction of the state.

RR. "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time.

SS. "pH" means a measure of the amount of acid in a food product.

TT. "Potluck" means an event where:

1. People are gathered to share food;
2. People attending are expected to bring food to share;
3. There is no compensation provided to people for bringing food to the event;
4. There is no charge for any food or beverage provided at the event; and
5. The event is not conducted for commercial purposes.

UU. "Preschool" means a program that provides organized care and education for children below the age required for kindergarten entry. A PRESCHOOL operates for two or more days per week with no child enrolled on a regular basis for more than four hours per day. A preschool does not include:

- (1) Programs where the parent or guardian is present at each session;
- (2) Parent-child classes where the focus is on parent education;
- (3) Short-term parks and recreation programs;
- (4) Informal parent and child groups;
- (5) Irregular babysitting;
- (6) Licensed child care; or
- (7) food preparation and service operations otherwise under permit or license by the regulatory authority.

VV. "Private event" means a private gathering restricted to members and guests of members of a family, organization, or club; where the event is not open to the general public; and where food is provided without compensation.

WW. "Public water system" means a drinking water system that is operated in compliance with Chapters 246-290 and 246-291 WAC.

XX. "Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment. The local Board of Health, acting through the local health officer, is the regulatory authority for the activity of a food establishment, except as otherwise provided by law.

YY. "Restructured" means potentially hazardous foods processed and formed so surface contaminants may become incorporated inside the final product.

ZZ. "Sanitary design" means smooth, nonabsorbent and easily cleanable.

AAA. "Sanitized" means effective bactericidal treatment by a process providing enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on food contact surfaces.

BBB. "Sealed" means free of cracks or other openings permitting entry or passage of moisture or air.

CCC. "Self-service" means any site within a food service establishment where customers dispense their own food or beverages.

DDD. "Served" means offered to a person for consumption.

EEE. "Service animal" means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental or physical disability.

FFF. "Single service articles" mean utensils designed, fabricated and intended by the manufacturer for one-time use.

GGG. "Sulfiting agents" mean chemicals used to treat food to increase shelf life and enhance appearance including:

1. Sulfur dioxide;
2. Sodium sulfite;
3. Sodium bisulfite;
4. Potassium bisulfite;

5. Sodium metabisulfite; and

6. Potassium metabisulfite.

HHH. "Temporary food service establishment" means a food service establishment:

1. Operating at a fixed location, 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
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.

III. "Time/temperature" means the relationship between the length of time and the specific temperatures to which potentially hazardous foods are subjected during storage, transportation, preparation, cooking, reheating, dispensing, service, or sale.

JJJ. "Utensil" means any food contact implement used in storing, preparing, transporting, dispensing, serving or selling of food.

KKK. "Water activity(A_w)" means a measure of the amount of moisture available for bacterial growth in a food.

LLL. "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

70.09.030 EMPLOYEE HEALTH AND HYGIENE.

This section contains regulations governing employee hygiene. Wahkiakum County hereby adopts Sections 246-215-02200 to 246-15-02415 of the Washington Administrative Code by reference.

70.09.040 EMPLOYEE AND ESTABLISHMENT SUPERVISION.

This section contains regulations governing employee and establishment supervision. Wahkiakum County hereby adopts sections Sections 246-215-02100 to 246-215-02120 of the Washington Administrative Code by reference.

70.09.050 FOOD SUPPLIES.

This section contains regulations governing the food supplies to be used by food service establishments. Wahkiakum County hereby adopts Sections 246-15-03100 to 246-15-03800 of the Washington Administrative Code by reference.

70.09.060 EQUIPMENT AND UTENSILS.

This section contains regulations governing the display and services of equipment and utensils by food service establishments. Wahkiakum County hereby adopts Section 246-215-04100 to 246-215-04945 of the Washington Administrative Code by reference.

70.09.070 WATER, PLUMBING AND WASTE.

This section contains regulations governing water, plumbing and waste. Wahkiakum County hereby adopts Section 246-215-05100 to 246-215-05595 of the Washington Administrative Code by reference.

70.09.080 POISONOUS OR TOXIC MATERIALS.

This section contains regulations governing poisonous or toxic materials. Wahkiakum County hereby adopts Section 246-215-07100 to 246-215-07300 of the Washington Administrative Code by reference.

70.09.090 PHYSICAL FACILITIES.

This section contains regulations governing the permit handler. Wahkiakum County hereby adopts Section 246-215-06100 to 246-215-6570 of the Washington Administrative Code by reference.

70.09.100 MOBILE FOOD UNITS.

This section contains regulations governing to the mobile food units. Wahkiakum County hereby adopts Section 246-215-09100 to 246-15-09180 of the Washington Administrative Code by reference.

70.09.110 TEMPORARY FOOD ESTABLISHMENTS.

This section contains regulations governing the temporary food establishments. Wahkiakum County hereby adopts Section 246-215-09200 to 246-215-09240 of the Washington Administrative Code by reference.

70.09.120 BED AND BREAKFAST OPERATION.

This section contains regulations governing the bed and breakfast operation. Wahkiakum County hereby adopts Section 246-215-09300 to 246-215-9310 of the Washington Administrative Code by reference.

70.09.130 DONATED FOOD DISTRIBUTING ORGANIZATIONS.

This section contains regulations governing the donated food distributing organizations.

Wahkiakum County hereby adopts Section 246-09400 to 246-215-09435 of the Washington Administrative Code by reference.

70.09.140 PRESCHOOLS.

This section contains regulations concerning preschools. Wahkiakum County hereby adopts Section 246-215-09500 to 2460215-09515 of the Washington Administrative Code by reference.

70.09.140 COMPLIANCE AND ENFORCEMENT.

This section contains regulations governing the compliance and enforcement for food services establishments. Wahkiakum County hereby adopts Section 246-215-08100 to 246-215-08610 of the Washington Administrative Code by reference.

70.09.160 PERMITS REQUIRED, SUSPENSION, REVOCATION, ENFORCEMENT.

This section contains regulations governing permits required, suspension, revocation, and enforcement for food services establishments. Wahkiakum County hereby adopts Section 246-215-08100 to 246-15-08610 of the Washington Administrative Code by reference.

70.09.170 SEVERABILITY CLAUSE.

If any section, paragraph, clause or phrase of these rules and regulation be declared unconstitutional or invalid for any reason, the remaining rules and regulations will not be effected.

70.09.180 VARIANCES.

The health officer, upon written petition of the owner of the food service establishment, may grant a variance to any provision of this chapter covering physical facilities, equipment standards and food source requirements when:

- A. No health hazard would exist as a result of this action; and
- B. The variance is consistent with the intent of this chapter.

70.09.190 ENFORCEMENT.

- A. It shall be the duty of the County Health Officer to enforce this chapter.

B. For purposes of issuing a notice of corrective action or notice of civil infraction pursuant to Chapter 7.80 RCW for violations of this chapter, the following persons are designated "enforcement officers" and are authorized to enforce the civil provisions of this chapter: the Wahkiakum County Health Officer, the Administrative Officer of the Wahkiakum County Health Department, any Environmental Health Specialist employed by the Wahkiakum County Health Department.

70.09.200 VIOLATIONS--PENALTIES.

A. Any person operating a food service establishment without a valid permit issued by the health officer is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than Twenty-Five Dollars nor more than One Hundred Dollars, or to imprisonment in the County Jail for not more than ninety days, or to both such fine and imprisonment.

B. Except as provided in subsection A of this section, any violation of any provision of this chapter is a Class 1 civil infraction that will be heard and determined by the Wahkiakum County District Court in accord with the provisions of Chapter 7.80 of the Revised Code of Washington as now or hereafter amended. The maximum penalty and the default amount for a Class 1 civil infraction shall be Two Hundred Fifty Dollars, not including statutory assessments. In the case of a continuing violation of any provision of this chapter, every day's continuance shall be a separate and distinct violation.

70.09.210 FAILURE TO PAY MONETARY PENALTIES--PUNISHMENT.

Whenever a monetary penalty is imposed by the court pursuant to this chapter and Chapter 7.80 RCW, it is immediately payable. Willful failure to pay the penalty constitutes a misdemeanor. If a penalty is not paid on or before the time established for payment, the Prosecuting Attorney may proceed to collect the penalty in the same manner as other civil judgments.

70.09.220 VIOLATIONS--INJUNCTIONS AND LEGAL PROCEEDINGS AUTHORIZED--PUBLIC NUISANCE ABATEMENT.

The health officer for Wahkiakum County may bring an action to enjoin a violation of any of the provisions of this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the Superior Court for Wahkiakum County. Continuing violations of the provisions of this chapter are declared to be public nuisances. The health officer may commence a civil action for abatement of such public nuisances in the Superior Court for Wahkiakum County.

70.09.230 FEES.

The Wahkiakum County Health Department shall assess fees for permits, inspections and services rendered pursuant to this chapter in accord with the Health Department's fee schedule as adopted and revised from time to time by resolution of the Board of County Commissioners.

NOTICE OF PUBLIC HEARING ON AN ORDINANCE
AMENDING REGULATION OF FOOD SERVICE ESTABLISHMENTS

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Wahkiakum County, Washington, will hold a public hearing commencing: February 17, 2015, at 10:15 a.m. in the Commissioners' public meeting room, 3rd floor, Wahkiakum County Courthouse, 64 Main Street, Cathlamet, Washington, for the purpose of determining whether or not an ordinance amending regulation of food service establishments, amending ordinance #143-06 shall be adopted, and at which hearing any person may appear and be heard for or against said ordinance. A complete copy of said ordinance can be view at the county's website: www.co.wahkiakum.wa.us or by requesting a copy from the Clerk of the Board by phone: 360-795-8048 or by email: lafargem@co.wahkiakum.wa.us.

DATED this 3rd day of February, 2015.



Mike Backman, Chairman

Published: February 5 and 12, 2015

Posted on County's Website: February 3, 2015