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Clinic Service (206) 339-5220  
Sanitation Program (206) 339-5270  
HIV/AIDS Program (206) 339-5251

Administration Office (206) 339-5210  
Community Health Division (206) 339-5230  
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**SNOHOMISH HEALTH DISTRICT  
RESOLUTION OF THE BOARD OF HEALTH**

95-16

**RESOLUTION NUMBER: 95-16**

**RESOLUTION SUBJECT: REVISING THE SANITARY CODE OF SNOHOMISH HEALTH DISTRICT: CHAPTER 1.9.1 RIGHT OF APPEAL; CHAPTER 8.1.6 ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE APPEALS PROCEDURE; CHAPTER 10.2 ENFORCEMENT PROCEDURES OF THE FOOD PROGRAM**

WHEREAS the Board of Health of the Snohomish Health District conducts supervision and maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction, and provides for the control and prevention of any dangerous, contagious or infectious disease within its jurisdiction, and provides for the prevention, control and abatement of nuisances detrimental to the public health, and

WHEREAS, the Board of Health of Snohomish Health District enforces through the Health Officer the public health statutes of the State and rules promulgated by the State Board of Health and the Secretary of Health, and

WHEREAS the Board of Health of Snohomish Health District has adopted such local rules and regulations necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof in a document titled Sanitary Code of Snohomish Health District, and

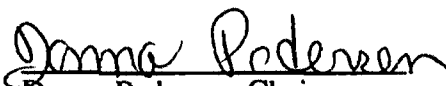
WHEREAS the Sanitary Code of Snohomish Health District makes provision for the appeal of certain permit application denial actions through the administrative appeals procedures contained therein, and

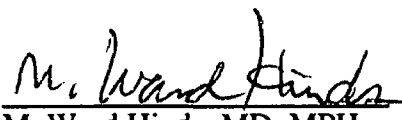
WHEREAS the submittal of an appeal of a permit decision should always be in a written format to identify the specific areas of difference and provide the best means of presenting clarification together with supporting information, and

WHEREAS in addition, the avenue for appeal of a specific action of denial of a new food establishment permit is not otherwise stated in Chapter 10 of the Snohomish Health District Sanitary Code relating to Food Safety,

NOW THEREFORE the Board of Health of Snohomish Health District does adopt the amendments to three chapters of the Sanitary Code of Snohomish Health District, as shown in bold type on the attached copies of Chapter 1.9.1 and Chapter 8.1.6 which will require notice of an appeal when submitted to the Snohomish Health District to be in writing, and to specify in Chapter 10.2 that for any appeal of a permit denial for a food establishment the Right of Appeal, Chapter 1.9.1 shall be the proper and designated means of appeal.

ADOPTED this 9th day of May, 1995.

  
Donna Pedersen, Chair  
Board of Health

ATTEST:   
M. Ward Hinds, MD, MPH  
Health Officer

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 1.9.1      RIGHT OF APPEAL

The following Administrative Appeals Procedure is adopted.

- 1.9.1.1 Purpose:** The purpose of this Appeals Procedure is to establish a system which will aid in resolving conflicts arising from the administration of these regulations where not otherwise specified and to ensure procedural due process and fairness in such administration.
- 1.9.1.2 What may be appealed:** Any decision or order of the Health District with respect to applications for permits made pursuant to these rules and regulations may be appealed.
- 1.9.1.3 Who may appeal:** Any bona fide party of interest feeling aggrieved by a decision or order of the Health District made pursuant to these rules and regulations pertaining to a facility in which the person has an interest may file an appeal.
- 1.9.1.4 Pre-appeal conference recommended:** Although not required for the purpose of initiating the Appeal Procedure, any bona fide party of interest feeling aggrieved by the decision of the Environmental Health Staff is encouraged to avail himself/herself of the opportunity to request an office conference with the sanitarian who made the decision under dispute. Such conference will permit a free exchange of viewpoints. The sanitarian will be expected to discuss and clarify the reason(s) for the decision and the regulations which are applicable. The individual dissatisfied with the decision may present his position and submit any information he/she feels has not been adequately considered in making the decision. An Environmental Health Supervisor may attend such conference. If the individual presents information not previously available or raises issues not previously addressed, the department may undertake an additional review of the matter following the conference.
- 1.9.1.5 Appeal Procedure: GENERAL INFORMATION**
- A. The Appeal Procedure shall consist of STEP ONE and STEP TWO.
  - B. STEP ONE shall be an Administrative Review conducted by the Environmental Health Division.
  - C. STEP TWO shall be conducted by a Hearing Examiner.
  - D. The Appeal Procedure shall be initiated by the appellant within twenty (20) calendar days of the date of the decision under dispute.
- 1.9.1.6 Appeal Procedure: STEP ONE**
- A. General: STEP ONE shall be an Administrative Review conducted by supervisory staff of the Environmental Health Division with the STEP ONE decision to be rendered by the Director of Environmental Health or the Assistant Director of Environmental Health. Depending upon the circumstances of the individual case under appeal, the Health Officer may be consulted in the STEP ONE procedure.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 1.9.1      RIGHT OF APPEAL, continued

- B. Initiation of STEP ONE: The person feeling aggrieved (hereinafter referred to as appellant) shall initiate the Appeal Procedure in writing on forms supplied and prescribed by the Health Officer. Appellant must provide the Health District with a copy of the written notice of the appeal either by hand delivery to the Environmental Health Division Office (Attention: Assistant Director of Environmental Health) or sent by certified mail within the time period set forth in **Chapter 1.9.1.5 (D)**. The appellant shall state the decision being appealed; the reason(s) for the appeal, and cite the regulations which the appellant feels have not been followed or correctly interpreted by the Health District.
- C. STEP ONE review procedure: The Director of Environmental Health (or Assistant Director) shall perform an Administrative Review within twenty (20) working days. Such review shall consist of a review of information relevant to the matter under appeal including, but not limited to: (a) review of Health District records; (b) review of information submitted by the appellant; (c) determination of what regulations/laws are applicable; (d) onsite inspection of the property in question if deemed appropriate; (e) meeting with the appellant if such meeting has been requested in the appellant's request for STEP ONE Appeal Procedure. If the Director (or Assistant Director) feels that additional studies are indicated, the STEP ONE review period may be extended by ten (10) working days if necessary in order to have such studies performed.
- D. STEP ONE decision: The Director (or Assistant Director) shall inform the appellant in writing of the decision to the STEP ONE Appeal Procedure. Such decision will indicate whether the original decision is upheld, overruled, or whether the Health District is willing to consider other alternatives. A copy of the decision shall be filed with the Health Officer.

### **1.9.1.7 Appeal Procedure: STEP TWO**

- A. General: STEP TWO shall be a hearing conducted by a Hearing Examiner. STEP TWO shall follow STEP ONE of this Appeal Procedure if the appellant is dissatisfied with the STEP ONE decision.
- B. Initiation of STEP TWO: The appellant shall initiate the STEP TWO Appeal Procedure by submitting a fully completed request for appeal on forms supplied and prescribed by the Health Officer. Such request may be delivered to the Environmental Health Office (Attention: Assistant Director of Environmental Health) or sent by registered mail within twenty (20) calendar days after the date the STEP ONE decision was rendered.
- C. Fee required: The request for the STEP TWO Appeal Procedure shall be accompanied by payment of a fee as established by the Board of Health in the fee schedule.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 1.9.1      RIGHT OF APPEAL, continued

### D. Hearing Examiner

1. Selection: The Health Officer shall appoint a Hearing Examiner from one of the following: (a) any Hearing Examiner employed or retained by Snohomish County; (b) any Hearing Examiner employed or retained by any city or town within Snohomish County; (c) any attorney who has served as a judge pro-tem; (d) any other individual who possesses qualifications to serve as Hearing Examiner and who has been approved by the Board of Health.
2. Qualifications: Examiners shall be appointed solely with regard to their qualifications for the duties required and will have such experience and training as to qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon them. Hearing Examiners will not be current or past employees or consultants for Snohomish Health District.
3. Discontinuation of services: The service of any Examiner employed or retained by the Health District may be discontinued by action of the Board of Health.
4. Freedom from improper influence: No person, including Health District employees and/or members of the Board of Health, shall attempt to influence a Hearing Examiner in any matter pending before the Examiner, except at a public hearing duly called for such purpose, or to interfere with an Examiner in the performance of his/her duties in any way; PROVIDED, that this section shall not prohibit the Health District's attorneys from rendering legal service to the Examiner nor shall it prohibit Snohomish Health District staff from providing support services to the Examiner upon request.
5. Conflict of interest: No Examiner shall conduct or participate in any hearing, decision or recommendation in which the Examiner has a direct or indirect substantial financial or familial interest or concerning which the Examiner has had substantial pre-hearing contacts with proponents or opponents. Nor, on appeal from an Examiner decision, shall any member of the Board of Health who has such an interest or has had such contact participate in consideration thereof.
6. Hearing rules/procedures: The Board of Health shall adopt rules for the conduct of hearings and other procedural matters related to the duties of Hearing Examiners. In adopting such rules and procedures, the Board shall take into consideration recommendations of persons serving as Hearing Examiners.
7. Powers and duties: Hearing Examiners shall receive and examine available information, conduct hearings, prepare records thereof, and enter decisions on STEP TWO appeal procedures. The Hearing Examiner shall have no authority to authorize the issuance of a permit contrary to the laws of the State of Washington, Washington Administrative Code (WAC), the Sanitary Code of Snohomish Health District or applicable local rules and regulations of the Board of Health of the Snohomish Health District.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 1.9.1

## RIGHT OF APPEAL, continued

### E. STEP TWO hearing:

1. **Scheduling:** The Health Officer shall, upon receiving a request from an appellant for a STEP TWO hearing, appoint a Hearing Examiner and schedule such hearing within a reasonable time after receipt of their request for appeal. Appellant shall receive written notice of the time and place of the hearing not fewer than fourteen (14) days prior to the date of the hearing.
2. **Notice:** Notice of the time and place of the public hearing will be sent by certified mail to the appellant by the Health Officer.
3. **Information for Hearing Examiner:** Health District staff shall coordinate and assemble a factual statement with attached relevant documentation, along with the position statement of the Health District staff relative to said appeal, all to be delivered or mailed by certified mail to the Hearing Examiner and the appellant not fewer than seven (7) days prior to the scheduled hearing.
4. **Information/Documentation/Admission by Appellant:** Appellant shall assemble and submit any factual statement and copies of all documents or exhibits which appellant intends to submit at said hearing, together with Appellant's position statement to the Hearing Examiner and to the Snohomish Health district not fewer than three (3) days prior to the scheduled hearing. To the extent that the factual statement and/or documentation would be repetitious with the submission of the Health District staff, Appellant shall not re-submit such factual statements or documentation; unless necessary for a sense of continuity to Appellant's position statement.
5. **Conduct of public hearing:** The Examiner shall conduct the public hearing following the general rules and procedures which have been adopted by the Board of Health as per **Chapter 1.9.1.7.(D)(6)**.
6. **Examiner's decision:** Within fifteen (15) calendar days of the conclusion of a hearing, unless a longer period is agreed to in writing or verbally on the record at the public hearing by the appellant, the Examiner shall render a written decision which shall include at least the following:
  - (a) Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would conform to the applicable regulations.
  - (b) A decision on the appeal which may be to grant, grant in part, return to the appellant for modification, deny or grant with such conditions, modifications, restrictions as the Examiner finds necessary to comply with the applicable regulations.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 1.9.1 RIGHT OF APPEAL, continued

- (c) A statement which indicates the procedure for appealing the Examiner's decision. The Examiner's decision shall be mailed to the appellant, the Health Officer, and any other person who specifically requested notice of the decision by signing a register provided for such purpose at the hearing.

### F. Appeal from Examiner's decision:

1. General: The decision of the Examiner shall be final and conclusive unless appealed by the appellant or Health Officer to the Board of Health.
2. Initiation of appeal to Board of Health/Appellant: Any appellant wishing to appeal the decision of the Hearing Examiner to the Board of Health must file in writing a statement with the Health Officer within fifteen (15) calendar days of the date of the decision of the Hearing Examiner. Such notice may be delivered personally to the Administration Office of Snohomish Health District (Attention: Health Officer) or sent by certified mail. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Examiner, and which shall be accompanied by a fee as established by the Board of Health in the fee schedule.
3. Initiation of appeal to Board of Health/Health Officer: The Health Officer may appeal the decision of the Hearing Examiner to the Board of Health if the Health Officer believes that the Examiner's decision may jeopardize the public health or is contrary to the applicable regulations. The notice of appeal by the Health Officer shall be filed with the Chairman (or Vice-Chairman in absence of the Chairman) of the Board of Health in writing within fifteen (15) calendar days of the date of the decision of the Hearing Examiner. Such notice shall contain a statement of the reason why the Health Officer believes that the Examiner made an error in issuing the decision. The Health Officer shall send a copy of the notice of appeal to the appellant by certified mail.
4. Stay of Examiner's decision: When an appeal of the Examiner's decision is made to the Board of Health, the filing of such appeal shall stay the effective date of the Examiner's decision until such time as the appeal is adjudicated or withdrawn.
5. Board of Health consideration:
  - (a) An Examiner's decision which has been timely appealed shall be reviewed by the Board of Health at a regularly scheduled meeting within forty-five (45) days of the receipt of the appeal notice. Both parties shall be notified of the date of review by the Board of Health. Both parties may submit additional written information, if desired, for review by Board members. Such information must be received by the Health Officer not fewer than five (5) working days prior to the hearing to permit copying and mailing to Board members.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 1.9.1

## RIGHT OF APPEAL, continued

(b) At the Board of Health Meeting referenced in the section above, the Board of Health shall take one of the following actions:

- (1) Concur with the findings and conclusions of the Examiner and decline to hear an appeal.
- (2) Determine to hear the appeal at a public hearing to be established at a later date.
- (3) Remand a decision to the Hearing Examiner for further hearing and specifically identify for the Hearing Examiner the grounds for the remand.

At such meeting, staff shall provide an oral summary of the decision, and respond to any questions of the Board. Except as requested by the Chair, no additional comments or testimony from the appellant, public, or witnesses shall be taken on the subject matter for purposes of the decision to be made by the Board at said meeting.

(c) In those instances in which the Board of Health determines to conduct a public hearing, such hearing shall be scheduled within thirty (30) calendar days of the Board of Health meeting referenced in **Section F.5.(a)**, above, and all parties given notice of the date of the scheduled hearing. Procedures for the conduct of public hearings will be pursuant to the format identified in Snohomish Health District Environmental Health Hearing Rules of Procedure, and the Chairman of the Board of Health shall coordinate the presentation of evidence and the decision. The issue before the Board will be limited to a determination of whether the Hearing Examiner erred in making his/her decision. If the Board determines that an error did occur, it may issue a new decision or modify the decision rendered by the Examiner. The decision of the Board of Health shall be supported by findings and conclusions.

(d) Staff shall provide appellant with written notice of the action taken by the Board hereunder.

6. Effect of Board of Health's decision: The Board's decision not to hear an appeal or the Board's decision after public hearing on an appeal, shall be final and conclusive unless an application is made to a court of competent jurisdiction by writ of certiorari, writ of prohibition or writ of mandamus within thirty (30) calendar days of final Health District action.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 8.1.6

## ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE APPEALS PROCEDURE

Pursuant to WAC 246-272-200 (formerly WAC 248-96-150) the following Administrative Procedure is adopted.

1. **Purpose:** The purpose of this Appeals Procedure is to establish a system which will aid in resolving conflicts arising from the administration of these regulations and to ensure procedural due process and the appearance of fairness in such administration.
2. **What may be appealed:** Any decision or order of the Health District with respect to applications for on-site sewage disposal permits made pursuant to these rules and regulations and made on or after July 1, 1984 may be appealed.
3. **Who may appeal:** Any bona fide party of interest feeling aggrieved by a decision or order of the Health District made pursuant to these rules and regulations pertaining to land in which the person has an interest may file an appeal.
4. **Pre-appeal conference recommended:** Although not required for the purpose of initiating the Appeal Procedure, any bona fide party of interest feeling aggrieved by the decision of the Sanitation Staff is encouraged to avail himself/herself of the opportunity to request an office conference with the sanitarian who made the decision under dispute. Such conference will permit a free exchange of viewpoints. The sanitarian will be expected to discuss and clarify the reasons(s) for the decision and the regulations which are applicable. The individual dissatisfied with the decision may present his position and submit any information he/she feels has not been adequately considered in making the decision. An Environmental Health Supervisor may attend such conference. If the individual presents information not previously available or raises issues not previously addressed, the Sanitation Office may undertake an additional review of the matter following the conference.
5. **Appeal Procedure: General information.**
  - a. The Appeal Procedure shall consist of STEP ONE and STEP TWO.
  - b. STEP ONE shall be an Administrative Review conducted by the Environmental Health Division.
  - c. STEP TWO shall be conducted by a Hearing Examiner.
  - d. The Appeal Procedure shall be initiated by the appellant within twenty (20) calendar days of the date of the decision under dispute.
6. **Appeal Procedure: STEP ONE.**
  - a. General: STEP ONE shall be an Administrative Review conducted by supervisory staff of the Environmental Health Division with the STEP ONE decision to be rendered by the Director of Environmental Health Division or, if for some reason the Director cannot be available during the time period permitted, the decision will be rendered by the Assistant Director of Environmental Health. Depending upon the circumstances of the individual case under appeal, the Health Officer may be consulted in the STEP ONE procedure.



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ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE  
APPEALS PROCEDURE, continued

- b. Initiation of STEP ONE: The person feeling aggrieved (hereinafter referred to as appellant) shall initiate the Appeal Procedure in writing on forms supplied and prescribed by the Health Officer. Appellant must provide the Health District with a copy of the written notice of the appeal either by hand delivery to the Sanitation Office (Attention: Assistant Director of Environmental Health) or sent by certified mail within the time period set forth in Section 5.d. of this Chapter. The appellant shall state the decision being appealed, the reason(s) for the appeal, and cite the regulations which the appellant feels have not been followed or correctly interpreted by the Health District.
- c. STEP ONE review procedure: The Director of Environmental Health (or Assistant Director) shall perform an Administrative Review within twenty (20) working days. Such review shall consist of a review of information relevant to the matter under appeal including, but not limited to: (1) Review of Health District records; (2) Review of information submitted by the appellant; (3) Determination of what regulations/laws are applicable; (4) On-site inspection of the property in question if deemed appropriate; (5) Meeting with the appellant if such meeting has been requested in the appellant's request for STEP ONE Appeal Procedure. If the Director (or Assistant Director) feels that additional studies (such as by a soil scientist) are indicated, the STEP ONE review period may be extended by ten (10) working days if necessary in order to have such studies performed.
- d. STEP ONE decision: The Director (or Assistant Director) shall inform the appellant in writing of the decision to the STEP ONE Appeal Procedure. Such decision will indicate whether the original decision is upheld, overruled, or whether the Health District is willing to consider other alternatives. A copy of the decision shall be filed with the Health Officer.

**7. Appeal Procedure: STEP TWO.**

- a. General: STEP TWO shall be a hearing conducted by a Hearing Examiner. STEP TWO shall follow STEP ONE of this Appeal Procedure if the appellant is dissatisfied with the STEP ONE decision.
- b. Initiation of STEP TWO: The appellant shall initiate the STEP TWO Appeal Procedure by submitting a fully completed request for appeal on forms supplied and prescribed by the Health Officer. Such request may be delivered to the Environmental Health Office (Attention: Assistant Director of Environmental Health) or sent by registered mail within twenty (20) calendar days after the date the STEP ONE decision was rendered.
- c. Fee required: The request for STEP TWO Appeal Procedure shall be accompanied by payment of a fee as established by the Board of Health in the fee schedule.
- d. Hearing Examiner.
  - (1) Selection: The Health Officer shall appoint a Hearing Examiner from one of the following: (a) Any Hearing Examiner employed or retained by Snohomish County; (b) Any Hearing Examiner employed or retained by any city or town within Snohomish County; (c) Any attorney who has served as a judge protem; (d) Any other individual who possesses qualifications to serve as Hearing Examiner and who has been approved by the Board of Health.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 8.1.6

## ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE APPEALS PROCEDURE, continued

- (2) Qualifications: Examiners shall be appointed solely with regard to their qualifications for the duties required and will have such experience and training as to qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon them. Hearing Examiners will not be current or past employees or consultants for Snohomish Health District.
  - (3) Discontinuation of services: The service of any Examiner employed or retained by the Health District may be discontinued by action of the Board of Health.
  - (4) Freedom from improper influence: No person, including Health District employees and/or members of the Board of Health, shall attempt to influence a Hearing Examiner in any matter pending before the Examiner, except at a public hearing duly called for such purpose, or to interfere with an Examiner in the performance of his/her duties in any way; PROVIDED, that this section shall not prohibit the Health District's attorneys from rendering legal service to the Examiner upon request.
  - (5) Conflict of interest: No Examiner shall conduct or participate in any hearing, decision or recommendation in which the Examiner has a direct or indirect substantial financial or familial interest or concerning which the Examiner has had substantial prehearing contacts with proponents or opponents. Nor, on appeal from an Examiner decision, shall any member of the Board of Health who has such an interest or has had such contact participate in consideration thereof.
  - (6) Hearing rules/procedures: The Board of Health shall adopt rules for the conduct of hearings and other procedural matters related to the duties of Hearing Examiners. In adopting such rules and procedures, the Board shall take into consideration recommendations of persons serving as Hearing Examiners.
  - (7) Powers and duties: Hearing Examiners shall receive and examine available information, conduct hearings, prepare records thereof, and enter decisions on STEP TWO appeal procedures. The Hearing Examiner shall have no authority to authorize the installation of on-site sewage disposal systems contrary to the laws of the State of Washington, Washington Administrative Code (WAC) Chapter 246-272 (248-96) as now or hereafter amended and/or applicable local rules and regulations of the Board of Health of the Snohomish Health District governing on-site sewage disposal systems or otherwise authorize matters relative to on-site sewage disposal systems which shall jeopardize the public health, safety and welfare.
- e. STEP TWO hearing:
- (1) Scheduling: The Health Officer shall, upon receiving a request from an appellant for a STEP TWO hearing, appoint a Hearing Examiner and schedule such hearing within a reasonable time after receipt of their request for appeal. Appellant shall receive written notice of the time and place of the hearing not fewer than fourteen (14) days prior to the date of the hearing.
  - (2) Notice: Notice of the time and place of the public hearing will be sent by certified mail to the appellant by the Health Officer.

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ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE  
APPEALS PROCEDURE, continued

- (3) Information for Hearing Examiner: Health District staff shall coordinate and assemble a factual statement with attached relevant documentation, along with the position statement of the Health District staff relative to said appeal, all to be delivered or mailed by certified mail to the Hearing Examiner and the appellant not fewer than seven (7) days prior to the scheduled hearing.
  - (4) Information/Documentation/Admission by Appellant: Appellant shall assemble and submit any factual statement and copies of all documents or exhibits which appellant intends to submit at said hearing, together with Appellant's position statement to the Hearing Examiner and to the Snohomish Health District not fewer than three (3) days prior to the scheduled hearing. To the extent that the factual statement and/or documentation would be repetitious with the submission of the Health District staff. Appellant shall not re-submit such factual statements or documentation; unless necessary for a sense of continuity to Appellant's position statement.
  - (5) Conduct of public hearing: The Examiner shall conduct the public hearing following the general rules and procedures which have been adopted by the Board of Health as per **Section 7.d.(6)** of this Chapter.
  - (6) Examiner's decision: Within fifteen (15) calendar days of the conclusion of a hearing, unless a longer period is agreed to in writing or verbally on the record at the public hearing by the appellant, the Examiner shall render a written decision which shall include at least the following:
    - (a) Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would conform to regulations governing on-site sewage disposal.
    - (b) A decision on the appeal which may be to grant, grant in part, return to the appellant for modification, deny or grant with such conditions, modifications, restrictions as the Examiner finds necessary to comply with regulations governing on-site sewage disposal.
    - (c) A statement which indicates the procedure for appealing the Examiner's decision. The Examiner's decision shall be mailed to the appellant, the Health Officer, and any other person who specifically requested notice of the decision by signing a register provided for such purpose at the hearing.
- f. Appeal from Examiner's decision:
- (1) General: The decision of the Examiner shall be final and conclusive unless appealed by the appellant or Health Officer to the Board of Health.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 8.1.6

## ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE APPEALS PROCEDURE, continued

- (2) Initiation of appeal to Board of Health/appellant: Any appellant wishing to appeal the decision of the Hearing Examiner to the Board of Health must file in writing a statement with the Health Officer within fifteen (15) calendar days of the date of the decision of the Hearing Examiner. Such notice may be delivered personally to the Administration Office of Snohomish Health District (Attention: Health Officer) or sent by certified mail. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Examiner, and which shall be accompanied by a fee as established by the Board of Health in the fee schedule.
- (3) Initiation of appeal to Board of Health/Health Officer: The Health Officer may appeal the decision of the Hearing Examiner to the Board of Health if the Health Officer believes that the Examiner's decision may jeopardize the public health or is contrary to regulations governing on-site sewage disposal. The notice of appeal by the Health Officer shall be filed with the Chairman (or Vice Chairman in absence of the Chairman) of the Board of Health in writing within fifteen (15) calendar days of the date of the decision of the Hearing Examiner. Such notice shall contain a statement of the reason why the Health Officer believes that the Examiner made an error in issuing the decision. The Health Officer shall send a copy of the notice of appeal to the appellant by certified mail.
- (4) Stay of Examiner's decision: When an appeal of the Examiner's decision is made to the Board of Health, the filing of such appeal shall stay the effective date of the Examiner's decision until such time as the appeal is adjudicated or withdrawn.
- (5) Board of Health consideration:
  - (a) An Examiner's decision which has been timely appealed shall be reviewed by the Board of Health at a regularly scheduled meeting within forty-five (45) days of the receipt of the appeal notice. Both parties shall be notified of the date of review by the Board of Health. Both parties may submit additional written information, if desired, for review by Board members. Such information must be received by the Health Officer not fewer than five (5) working days prior to the hearing to permit copying and mailing to board members.
  - (b) At the Board of Health Meeting referenced in the section above, the Board of Health shall take one of the following actions.
    - 1) Concur with the findings and conclusions of the Examiner and decline to hear an appeal.
    - 2) Determine to hear the appeal at a public hearing to be established at a later date.

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ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE  
APPEALS PROCEDURE, continued

- 3) Remand a decision to the Hearing Examiner for further hearing and specifically identify for the Hearing Examiner the grounds for the remand.

At such meeting, staff shall provide an oral summary of the decision, and respond to any questions of the Board. Except as requested by the Chair, no additional comments or testimony from the appellant, public, or witnesses shall be taken on the subject matter for purposes of the decision to be made by the Board at said meeting.

- (c) In those instances in which the Board of Health determines to conduct a public hearing, such hearing shall be scheduled within thirty (30) calendar days of the Board of Health meeting referenced in **Section 7.f.(5)(a)**, above, and all parties given notice of the date of the scheduled hearing. Procedures for the conduct of public hearings will be pursuant to the format identified in Snohomish Health District Environmental Health Rules of Procedure, and the Chairman of the Board of Health shall coordinate the presentation of evidence and the decision. The issue before the Board will be limited to a determination of whether the Hearing Examiner erred in making his/her decision. If the Board determines that an error did occur, it may issue a new decision or modify the decision rendered by the Examiner. The decision of the Board of Health shall be supported by findings and conclusions.
- (d) Staff shall provide appellant with written notice of the action taken by the Board hereunder.
- (6) Effect of Board of Health's decision: The Board's decision not to hear an appeal or the Board's decision after public hearing on an appeal, shall be final and conclusive unless an application is made to a court of competent jurisdiction by writ of certiorari, writ of prohibition or writ of mandamus within thirty (30) calendar days of final Health District action.

# SNOHOMISH HEALTH DISTRICT SANITARY CODE

## CHAPTER 10.2

## ENFORCEMENT PROCEDURES OF THE FOOD PROGRAM

### **I. Inspection Frequency/Inspection Form.**

- A. Inspection Frequency: Food establishments will be inspected as often as required according to frequencies set by the Health Officer. Establishments with identified problems and establishments about which complaints are received will be subject to a more frequent inspection schedule.
- B. Inspection Form: Form titled "Food Service Establishment Inspection Form", DOH 334-001, will be the form used. This form sets forth violations as red critical items (items directly related to foodborne illness) and as blue items (items related to sanitation, design and maintenance).

### **II. Types of Closures of Food Establishments.**

Food establishments may be closed in the following three ways:

- A. Permit Suspension: By suspension of the food establishment permit.
- B. Permit Revocation: By revocation of the food establishment permit.
- C. Closure Order/Lack of Valid Permit: By Health Officer's Order when a valid food establishment permit does not exist.

### **III. Suspension of Food Establishment Permits.**

- A. Reasons for Permit Suspension: Food establishment permits shall be suspended for any of the following reasons.
  - 1. Existing Immediate Health Hazard. When an immediate health hazard exists for which there is no acceptable corrective remedy other than immediate closure of the food establishment.  
  
Examples: Loss of refrigeration capacity or power; sewer backup and flooding; damage to the structure caused by accident or construction so that sanitary conditions cannot be maintained; loss of potable water supply; communicable disease in food workers of a severity, in the judgment of the Health Officer, to cause a serious public health hazard; red item violations (regardless of hazard points) not immediately corrected or correctable; other situations deemed by the Health Officer to represent an immediate health hazard with the potential to cause foodborne illness.
  - 2. Ongoing and Repeated Violations. When there exists ongoing and repeated violations of food service regulations, of a nature and severity to warrant enforcement action, and when reasonable effort has been made to achieve voluntary compliance.

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3. Hazard Points Following Office Conference. When, after an office conference has been conducted, follow-up inspection at any time results in 100 or more total hazard points or 75 or more red item hazard points.

### B. Procedures for Permit Suspension.

1. Existing Immediate Health Hazard. When the food program sanitarian determines that an immediate health hazard exists at a food establishment and suspension of the permit immediately is indicated, the sanitarian will confirm this opinion by calling the office and obtaining authorization to close the food establishment from a member of the environmental health supervisory staff. The food program sanitarian will then complete the "Interim Health Officer's Order" form and issue to the person in charge at the time at the food establishment. The interim order will be followed by a confirming Health Officer's Order delivered in the same manner as set forth in the following paragraph.
2. Ongoing and Repeated Violations. When the food program sanitarian determines that an ongoing and repeated violation of a significant nature has occurred in a food establishment and suspension of the permit is indicated, the sanitarian will confirm this opinion by calling the office and obtaining authorization to close the food establishment from a member of the environmental health supervisory staff. The food program sanitarian will then complete the "Interim Health Officer's Order" form and issue it to the person in charge at the time at the food establishment. The interim order will be followed by a confirming Health Officer's Order mailed to the permit holder both by regular and certified mail. Notice by mail will be considered acceptable service if for some reason the order cannot be delivered to the establishment.
3. Hazard Points Following Office Conference. When an inspection shows the existence of 100 or more total hazard points or 75 or more red item hazard points and the red item hazard points are corrected, an office conference will be scheduled within five (5) days' time. The problems in food handling identified by the inspection will be reviewed with the operator who will be advised that subsequent findings of a like nature, 100 or more total or 75 or more red items, will result in automatic closure. Such closure will follow the same procedures as outlined in B. 2. of this section. Each owner will be allowed one office conference (provided red items and significant blue items are immediately corrected), the purpose of which will be educational and instructional in nature in lieu of automatic closure. Office conferences will be followed by additional inspections beyond the routine inspection schedule as established by the Food Program Supervisor. A fee, as established by the Board of Health, will be charged for office conferences and additional inspections necessitated by high hazard points.

### C. Procedures for Reinstatement of Suspended Permit.

1. Notice to Health District. The food establishment permit holder will notify the Health District when the violations causing the suspension of the permit have been corrected and request a reinspection. Such notification can be made by telephone.

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2. Reinspection. The Health District will arrange for reinspection as soon as possible and not later than 48 hours after receiving notice from the permit holder. No reinspection will be made the same day as the day of permit suspension and in no instance will permit reinstatement become effective the same day as the day of permit suspension. No permit reinstatement will occur until after a successful reinspection, and permit reinstatement will be considered interim until such time as the Permit Reinstatement Fee is paid.
3. Permit Reinstatement Fee. A permit reinstatement fee, as established by the Board of Health, will be required to reinstitute a food establishment permit after the establishment has been closed by Health Officer's Order. Payment must be received in the Health District's Environmental Health Division office not later than the close of business (5:00 p.m.) on the first business day following the interim permit reinstatement or the permit will be considered invalid and the establishment immediately subject to Section V. of these procedures.

D. Hearings on Suspension.

1. Request for Hearing. Any food establishment permit holder who feels that suspension of a permit is an incorrect action may request a hearing. Such request must be filed with the Health Officer not later than ten (10) calendar days, with the date of suspension counting as the first day. The request for a hearing must specifically state which violations cited by the food program sanitarian were incorrectly cited, or which portions of the enforcement procedures were incorrectly applied. Issues not addressed in the request for a hearing will not be considered at the time of the hearing.
2. Conduct of Hearings. The Health Officer will arrange for a hearing to be conducted by the Health Officer or the Health Officer's designee. The time and place of the hearing will be designated by the Health Officer and be within thirty (30) calendar days of receipt of the request for a hearing. The Health Officer or designee shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or record considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the Health Officer or designee.
3. Food Establishment Permit Remains Suspended. The request for a hearing will not stay the suspension of the food establishment permit.

IV. Revocation of Food Establishment Permits.

- A. Reasons for Permit Revocation. Food establishment permits may be revoked for any of the following reasons.
  1. Serious and/or Repeated Violations. When enforcement efforts have failed and serious and/or repeated violations of WAC 246-215 continue and such violations represent a serious public health hazard or represent continued poor sanitary and maintenance practices of a serious nature, the permit may be revoked by the Health Officer.



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2. Interference with Food Program Staff. When interference has occurred in the performance of duty of Health District staff, the permit may be revoked by the Health Officer.
3. Operation in Defiance of Closure Order. Food service operations that continue to serve food to the public without a valid permit and in defiance of a Health Officer's Order to suspend permitted operations shall be subject to permit revocation for a period of not less than five (5) days.

**B. Procedures for Permit Revocation.**

1. Hearing. The Health Officer will not revoke a food establishment permit until an opportunity has been provided for a hearing before the Health Officer or the Health Officer's designee. Written notification of the hearing, including the time and place of the hearing, shall be made to the permit holder within thirty (30) days of the last inspection or field visit relative to the action. The Health Officer or designee shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or record considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the Health Officer or designee.
2. Health Officer's Order. Permits shall be revoked through issuance of a Health Officer's Order, said order to be delivered to the establishment and a copy mailed to the permit holder both by regular and certified mail. Notice by mail will be considered acceptable service if for some reason the order cannot be delivered to the establishment.
3. Application for New Permit. A permit holder whose food establishment permit has been revoked may make a written application for the purpose of obtaining a new permit. A hearing will be provided before the Health Officer or designee to determine if a new permit should be issued. In no case will a permit be issued for a food establishment during a period of revocation imposed for noncompliance with these procedures.

**V. Food Establishment Closures/Lack of Valid Permit.**

- A. Reasons for Closure Order. Failure to obtain a food establishment permit, failure to renew a food establishment permit within the permit renewal time, or failure to pay a permit reinstatement fee.
- B. Procedures for Closure.
  1. Health Officer's Order. Closure of a food establishment lacking a valid food establishment permit shall be accomplished through issuance of a Health Officer's Order, said order to be prepared and delivered to the establishment and a copy mailed to the owner and operator both by regular and certified mail. Notice by mail will be considered acceptable service if for some reason the order cannot be delivered to the establishment.

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2. Permit Fee for Reopening. A food establishment closed due to lack of a valid food establishment permit may be opened upon obtaining such permit. The permit fee following closure due to lack of a valid permit shall be double the usual fee.

**VI. Other Procedures.****A. Red Item Violations.**

1. Notification to Food Establishment. The food program sanitarian will notify the owner/operator of the existence of red item violations by noting such on the inspection form and discussing with the person in charge of the food establishment's operation at the time of the inspection.
2. Disposition of Red Item Violations. The food program sanitarian will note on the inspection form the disposition of all red item violations, corrective actions taken, and dates of reinspection.
3. Failure to Correct Red Item Violations. Failure to correct red item violations immediately (or within seventy-two (72) hours when allowed for a specific item) will result in suspension of the food establishment permit. The food program supervisor may allow an additional time for correction in unusual circumstances when correction cannot be made in the time allocated and when a serious public health hazard does not result from such extension.

**B. Blue Item Violations.**

1. Notification to Food Establishment. The food program sanitarian will notify the owner/operator of the existence of blue item violations by noting such on the inspection form and discussing with the person in charge of the food establishment's operation at the time of the inspection.
2. Correction of Blue Item Violations. Blue item violations that are judged to represent a serious hazard or to present direct jeopardy to the safety of food preparation will be treated like red item violations (example, lack of hot water). Blue item violations judged not to present an immediate public health hazard including those requiring major physical alteration and remodeling will be placed upon a schedule of compliance, established through discussion between the Health District and the operator.

**C. Appeal of Permit Denial**

1. Any decision of the Health District with respect to applications for food establishment permits made pursuant to these rules and regulations may be appealed.
2. Any appeal of a decision of the Health District with respect to applications for permits under these regulations must be done in accordance with Chapter 1.9.1 Right of Appeal.