

## DRAFT PROPOSAL 2017-01

### Health Code Chapter 2

#### Regulations for Licensing and Inspection of Establishments and Facilities Including Retail Food, Wholesale Food, Cottage Food, Hotels, Motels and Rooming Houses, Public Pools, Trailer Courts and Campgrounds, Tattooing and Body Piercing Establishments

##### Section 1 GENERAL PROVISIONS

- 1.1 The Board is formed in accordance with Sec. 50-2-106, MCA and has the powers and duties set forth in Sec. 50-2-116, MCA.
- 1.2 The authority and scope of these regulations are based on various provisions of Montana law set forth in Title 50, MCA. The intent the Board is to adopt regulations that do not conflict with applicable law.
- 1.3 Purposes:
  - A) The Board finds that health and safety risks are associated with persons providing retail (sold directly to the consumer) and wholesale food (not directly sold or distributed to the consumer) to the public and that regulation is required to prevent and eliminate conditions and practices that endanger public health. It is therefore the Board's intent to set forth processes and standards that are necessary for the prevention of the transmission of food borne illnesses in order to safeguard public health so that food does not become a vehicle in a disease outbreak or in the transmission of disease, such as botulism and Hepatitis A. These regulations also intend to prevent other types of potentially life threatening situations, such as physical or chemical contamination of food and to require retailers and wholesalers provide safe, properly protected, and honestly presented foods.
  - B) The Board finds that sanitation and safety of public accommodations including hotels, motels, and rooming houses affect the public health and it is necessary to adopt regulations to prevent and control the spread of disease and encourage safety and welfare of the public. In addition, the Board, by adopting these regulations wishes to encourage conditions and practices in public accommodations that do not endanger public health.
  - C) The Board finds that sanitation and safety of public swimming pools and public bathing places affect public health and safety. The Board finds it necessary to adopt regulations for processes and standards necessary for the prevention of transmission of disease including the promotion of water clarity, water disinfection, proper pH levels and bacteriological standards for the prevention of pathogenic organisms and to minimize the risk of injury from factors including physical entrapment, toxic chemical exposure and by use of adequate lifesaving and safety equipment.

- D) The Board finds that health and safety risks are associated with persons providing food in a temporary manner or cottage food products to the public and that regulation is required to prevent and eliminate conditions and practices that endanger public health. It is therefore the Board's intent to set forth processes and standards that are necessary for the prevention of the transmission of food borne illnesses in order to safeguard public health so that food does not become a vehicle in a disease outbreak or in the transmission of disease, such as botulism and Hepatitis A. The Board finds it is beneficial to the health of the public to regulate these operations in order to prevent or eliminate unsanitary and unhealthful conditions and practices that may endanger public health, undisclosed allergens and other potentially life threatening situations.
- E) The Board finds that public health and safety risks are associated with operating certain campgrounds, trailer courts, work camps, and youth camps. The Board finds it is necessary to adopt regulations to set forth processes and standards necessary for the prevention of transmission of disease and to prevent or eliminate unsanitary or unhealthful conditions, such as contaminated drinking water and inadequate sewage disposal along with other conditions and practices that may endanger public health.
- F) The Board finds that health and safety risks associated with the procedures and practices of tattooing and body piercing modification exist. Safe and sanitary conditions of tattoo, piercing and other body modification practices are necessary for the prevention of the transmission of blood-borne pathogens such as Hepatitis B and Human Immunodeficiency Virus as well as other potentially life threatening diseases. These regulations, intend to protect public health, safety and welfare by setting forth processes and standards for the practice of tattooing and piercing.

1.4 These regulations apply to Gallatin County, Montana.

1.5 In order to implement public health laws of the State of Montana, the Board adopts the following, in its current edition, by reference, unless otherwise specified herein, and also prospectively adopts any amendments made thereto:

A) Chapters 110, 111, and 115 of Title 37, ARM (hereinafter "State Regulations") and the legislative authority for such State Regulations. If applicable, the phrase "department" in any State Regulations may also mean the Board or Health Officer. The State Regulations and corresponding statutory authority set forth in the MCA (Title and Chapter) is also adopted herein as those provisions pertain to the regulation of:

- i. Retail Food Establishments (50-50)
- ii. Temporary Retail Food Establishments (50-50)
- iii. Hotels, Motels and Rooming Houses (50-51)
- iv. Public Pools and Swimming Areas (50-53)
- v. Tourist Campgrounds and Trailer Courts (50-52)
- vi. Wholesale Food Establishments (50-57)

- 1.6 For the purpose of the Board regulating Tattooing and Body Piercing Establishments, Chapter 112 of Title 37, ARM of the State Regulations is adopted by reference pursuant to Sec. 50-48-203, MCA, in its current edition, unless otherwise specified herein, and the Board also prospectively adopts any amendments made thereto. The legislative authority for such State Regulations is also adopted. If applicable, the phrase "department" in any State Regulations may also mean the Board or Health Officer.
- 1.7 The Board regulates Cottage Food Operations through Registration and pursuant to Secs. 50-50-116, 117, 121, MCA
- 1.8 The Board authorizes the Health Officer, as defined herein, to administer and enforce these regulations.
- 1.9 This Regulation contains a Fee Schedule for services where the Board has authority to regulate. The Fee Schedule shall be adopted simultaneously with this Regulation by resolution of the Board. Amendments may be made by resolution upon proper notice pursuant to Sec. 7-1-2121, MCA. Fees are set by statute, other applicable law or shall be reasonable and related to the cost of providing the service including the actual costs incurred for licensure, inspection, enforcement, training, or administration.
- 1.10 For orderly administration and enforcement of these regulations the Board may adopt policies consistent with these regulations and Montana law.
- 1.11 The Health Officer may develop procedures consistent with these regulations and Board policies to provide the means and methods for EHS to assist in the administration and enforcement of these regulations.
- 1.12 Unless otherwise defined in State Regulations or otherwise defined in these regulations, the following definitions apply throughout:

**"Apply" or "Application"** is the act of any person or individual in the attempt to obtain any Validation, License, permit, Registration or authorization. A request from DPHHS for Validation is considered an Application.

**"Applicant"** is a person or individual who Applies or makes Application, or an agent thereof.

**"ARM"** is the Administrative Rules of Montana.

**"Board"** is the Gallatin City-County Board of Health.

**"Cottage Food Operation"** is the provision, manufacture, or packaging of Cottage Food Products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in this state by an individual.

**"Cottage Food Products"** are foods that are not potentially hazardous and are processed or packaged in a Cottage Food Operation, including jams, jellies, dried fruit, dry mixes, and baked goods.

**“DPHHS”** is the department of public health and human services for the State of Montana as provided for in Section 2-15-2201, MCA.

**“EHS”** is the Gallatin City-County Health Department, Environmental Health Services, an agent of the Health Officer.

**“Establishment”** is a specific geographic location or specific facility open to the public or private offering goods or services for which an Application is made, for which a person obtains a License or Registration or which is subject to these regulations or Montana law. Establishment may be further defined in State Regulations.

**“Health Officer”** is the individual appointed by the Board as the Health Officer pursuant to Section 50-2-116(1)(a), MCA or an agent of the Health Officer.

**“License”** means a written document issued by DPHHS and validated by the Health Officer authorizing operation of an Establishment or a written document issued by Board through the Health Officer authorizing operation of an Establishment.

**“Licensee”** is a person who obtains a License.

**“MCA”** means Montana Code Annotated.

**“Person (person)”** an individual, business association, limited liability company, partnership, corporation, government, or other legal entity.

**“Registration (Registered)”** means the act of the Health Officer after a person applies for registration for a Cottage Food Operation pursuant to Sec. 50-50-117, MCA.

**“Registered Area”** means the portion of a domestic residence that has been Registered in which food ingredients intended for Cottage Food Products are transported or stored or the domestic residence kitchen where Cottage Food Products are processed, packaged, or stored.

**“Temporary food establishment”** means a retail food establishment that either: (a) operates at a fixed location for no more than 21 days in conjunction with a single event or celebration; or (b) uses a fixed menu and operates within a single county at a recurring event or celebration for no more than 45 days.

**“Validation”** is the act of the Health Officer to recognize, establish or affirm a License issued by DPHHS as required by law.

1.13 A person violates these regulations or does not comply with the rules set forth in these regulations if the person:

- A) Operates or uses an Establishment without a License or Registration.
- B) Acts in a manner or that does not comply with these regulations, State Regulations or Montana law.

- 1.14 A Validation, Registration or License may be denied if an Applicant does not comply with other agencies, districts, or other governmental entity's bylaws, ordinances, laws, rules or regulations.
- 1.15 In any case where a provision of these regulations conflicts with a provision of any law, zoning, building, fire, safety or health ordinance, regulation or code of the federal, state or a local government, the Health Officer shall interpret these regulations to establish the greater protection of public health, safety and welfare.
- 1.16 If any section, subsection, paragraph, sentence, clause, or phrase of the regulation should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of these regulations, which shall remain in full force and effect.
- 1.17 These regulations supersede and replace Chapter 2 of the Gallatin City-County Health Code on the date they are adopted and in effect. These regulations repeal all of Chapter 4 of the Gallatin City-County Health Code on the date they are adopted and in effect.

## Section 2

### APPLICATION, AUTHORIZATION, LICENSING AND VALIDATION PROCESS

- 2.1 In order to obtain a License or Registration an Applicant must Apply on forms provided by DPHHS or the Health Officer and pay all fees.
- 2.2 The Health Officer will first determine if an Application is complete. If the Application is complete it will be processed and evaluated in accordance with law. The Health Officer will issue a Validation, Registration or License upon determination that the Application complies with these regulations or Montana law.  
  
Any Validation, Registration or License may be reasonably conditioned by the Health Officer if such conditions are consistent with State Regulations and state and federal law including requirements for certain Licensees, Applicants or those with a Registration to display the common name of any food item and all contact information for the Licensee, Applicant or those with a Registration.
- 2.3 The Health Officer may invalidate, revoke or recommend revocation any License, Registration, Validation. Registration or authorization upon good cause shown that a provision of these regulations, State Regulations, local ordinances or state and federal law have not been followed. The Health Officer may deny an Application, Registration or Validation or may invalidate, revoke, recommend revocation, suspend, or modify any Validation, Registration or License, permit, authorization, approval, or registration for any person who has:
  - A) Failed or refused to comply with the provisions of these regulations or any other law; or
  - B) Obtained or attempted to obtain a permit or any other required certificate or approval by fraud, misrepresentation, purposeful omission or submits false or inaccurate information in support of its Application.

**Section 3**  
**SUBSTANTIVE PROVISIONS**

3.1 Temporary Food Establishments

- A) Temporary food establishments shall be operated in compliance with the State Regulations and the corresponding statutory authority set forth in these regulations and shall Apply for a License as set forth in these regulations.
- B) Bona fide nonprofit entities are exempt from fee and Registration if such entity is only operating the equivalent of a Cottage Food Operation.

3.2 Food Hazards

- A) The Board finds it necessary to protect against public health hazards by imposing the following specific requirements. The Board will document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to any Applicant upon request and shall be maintained in files maintained by EHS for the Board.
  - i. Any fresh squeezed juices must be discarded within 24-hours.
  - ii. The Board finds the following products are potentially hazardous and may impose reasonable conditions upon any Licensee or those with a Registration:
    - a) ~~wild-harvested mushrooms.~~

3.3 Body Art

- A) The Health Officer on behalf of the Board shall report annually to DPHHS on the number of establishments that it licenses and regulates.

3.4 General Substantive Provisions and Clarifications

- A) In order to comply with State Regulations, Retail Food Establishments must have sewage and drinking water systems and that are approved in accordance with applicable local and state statutes, regulations and ordinances. Any approval by the Health Officer under any regulations of the Board may be conditioned on:
  - i. written documentation or records to ensure that the sewage system is functioning and maintained properly including all necessary permits or approvals from State and local entities.
  - ii. adequate equipment or procedures to properly collect and dispose of fats, oils and grease. The Health Officer may approve the location, size, applicability of minimum plumbing standards and the type of grease separation unit.

- iii. approval of a public water system under applicable local and state statutes, regulations and ordinances.
- iv. written documentation or records to ensure that any water system is functioning and maintained properly including permits under applicable local and state statutes, regulations and ordinances.

#### Section 4 INSPECTIONS AND ENFORCEMENT

- 4.0 The Health Officer may ask for assistance from the Gallatin County Code Compliance Specialist for investigation of violations of these regulations.
- 4.1 The Health Officer may conduct inspections in accordance with relevant law or at times in which to protect the introduction and spread of disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health.
- 4.2 In enforcement of these regulations, the Health Officer may:
  - A) Convene a meeting with an Applicant, Licensee or other person operating an Establishment where an Establishment does not conform with these regulations.
  - B) Issue enforcement notices or orders directed to an Applicant, Licensee or other person operating an Establishment causing or responsible for the violation of these regulations including:
    - 1) Ordering corrective measures necessary to effect compliance with these regulations which may include a compliance schedule;
    - 2) Ordering work to stop on or the use of any Establishment until all necessary Licenses, permits, approvals and registrations are obtained; or
    - 3) Invalidation, denial, suspension, modification, or revocation of Licenses, permits, approvals, or Registrations.
  - C) Initiate civil or criminal actions, including a request for the assessment of penalties or fines allowed by law.
  - D) Report violations to DPHHS for enforcement.
- 4.3 Any enforcement order issued under this section shall:
  - A) Be in writing and may contain a basic legal property description of the parcel(s) of land upon which the Establishment is located.
  - B) Name the person or persons to whom the order is directed.
  - C) Briefly describe each action or inaction constituting a violation of these regulations or other relevant law.
  - D) Specify any required corrective action, if applicable.
  - E) Specify the effective date of the order, with time or times of compliance.
  - F) Provide notice of the consequences of failure to comply. Such notices may include a statement that continued or repeated violation may subject the violator to:

- 1) Invalidation, denial, suspension, or revocation of any License, permit, approval, or Registration;
  - 2) Request for civil enforcement and prosecution in court; or
  - 3) Other appropriate remedies including a report of violation to DPHHS.
- G) Provide the name, business address, and phone number of an appropriate staff person who may be contacted regarding an order.

4.4 Enforcement orders should be served in the manner of service of a summons in a civil action or sent by certified mail or in another manner showing proof of receipt.

4.5 The Board shall hear appeals which allege error of any written decision of the Health Officer. Appeals shall be conducted in accordance with regulations, rules and policies the Board establishes for that purpose. An appeal to the Board must be made within 30 days after receiving written notice of the Health Officer and the Board shall either affirm, modify or reverse the decision of the Health Officer.

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