



Tacoma-Pierce County Board of Health

Environmental Health Code



Environmental Health Code

Chapter 1

General Provisions

Board of Health Resolution No. 2010 – 4221
Adopted February 3, 2010

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SECTION 1: Title

These regulations of the Tacoma-Pierce County Health Department (Health Department), including all present chapters and those chapters subsequently adopted or amended, shall be collectively known as the “Environmental Health Code” (code).

SECTION 2: Authority

The Tacoma-Pierce County Health Department Board of Health (Board of Health or BOH) enacts these regulations under the general authority of Article 11, §11 of the Washington Constitution, RCW 70.05.060 and RCW 43.20.050.

SECTION 3: Purpose

The purposes of this Environmental Health Code are to:

- A. Protect, preserve, promote, and improve public health and safety in Pierce County; and
- B. Provide broad powers of regulation to the Health Department and its appointed health officer to administer and enforce these regulations, in a fair and equitable manner, in order to protect, preserve, promote, and improve the public health and safety in Pierce County.
- C. The Board of Health intends that all persons subject to the Environmental Health Code are provided fair, equitable, and reasonable treatment, and that the health officer shall be allowed discretion in the application of these regulations as may be necessary to protect, preserve, promote, and improve public health and safety in Pierce County.

SECTION 4: Applicability

The provisions of the Environmental Health Code shall apply and be in force within the boundaries of Pierce County, including all cities and towns therein.

SECTION 5: Administration

- A. The health officer shall administer and enforce these regulations under the authority of chapter 70.05 RCW.
- B. The health officer is authorized to charge fees for the administration of these regulations and the requirements thereof. Fees shall be consistent with the most current fee schedule approved by the Board of Health. The health officer is authorized to withhold, suspend, or rescind reviews, approvals, permits or other services pending receipt of fees.

- C. The Environmental Health Code and any amendments thereto shall only be adopted after a public hearing and shall be effective immediately upon adoption unless provided otherwise. Notice of the hearing on the Environmental Health Code or any amendments thereto shall be published in the official County newspaper at least 10 calendar days prior to the hearing and shall include the time and place of the hearing and the subject of the provisions to be adopted. Copies of the proposed text shall be available upon request.

- D. Amendments and additions to the Environmental Health Code may be adopted without notice and hearing whenever the Board of Health finds that the immediate adoption of the amendment(s) or addition(s) is necessary for the preservation of the public health, safety, or general welfare. Any such emergency provision shall not remain in effect for longer than forty-five (45) calendar days after adoption.

SECTION 6: Definitions

All words used in this chapter shall have their common definition, as used in context, unless a specific definition is set forth herein. The definitions set forth in this chapter shall control, followed by the common definition. The definitions used in this chapter are intended to be used specific to this chapter and other chapters constituting the Environmental Health Code.

Aggrieved Person: A person whose interests are, or will likely be, specifically and perceptibly harmed by a requirement, permit, decision determination or order made by the health officer or his/her designee, and where a decision in favor of that person would substantially eliminate the harm caused, or likely to be caused, by the requirement, permit, decision or determination or order.

Board of Health: The Tacoma-Pierce County Board of Health, formed pursuant to Chapter 70.05 RCW.

Certificate of Non-Compliance: A notice, recorded with the Pierce County Auditor on the title of a parcel, noting the presence of one or more violations of the Environmental Health Code, a public nuisance in accordance with chapter 7.48 RCW, or conditions otherwise posing a threat to the health, safety, or property of the public or persons residing on the property.

Certificate of Compliance: A notice, recorded with the Pierce County Auditor on the title of a parcel, documenting that the condition or conditions on the parcel that led to the filing of a Certificate of Non-Compliance has/have been corrected.

Emergency: An imminent threat to public health, safety, or environmental damage resulting from a violation of the Environmental Health Code.

Health Department or Department: The Tacoma-Pierce County Health Department.

Health Officer: The health officer of the Tacoma-Pierce County Health Department as provided for in RCW 70.05.050 or his/her designee.

Hearing Examiner: The person(s) appointed by the Board of Health to exercise the authority and perform the duties of hearing examiner set forth in this Code.

Person: Any individual, corporation, company, association, society, firm, partnership, joint stock company or any branch of federal, state or local government or any other entity, or the authorized agent of these entities.

Public nuisance: A public nuisance consists in unlawfully doing an act, omitting to perform a duty, or permitting an action or condition to occur or exist which act or omission either unreasonably annoys, injures or endangers the comfort, repose, health or safety of others, unreasonably offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. See chapter 7.48 RCW.

Variance: An alternative method of meeting a specific requirement or requirements of the Environmental Health Code and which provides equivalent or superior protection of public health, safety and/or the environment; requires approval by the health officer via an administrative process.

Waiver: Allowing regulated actions or activities that do not meet one or more requirements of the Environmental Health Code; requires approval by the health officer via an administrative process.

SECTION 7: Supplement to Other Regulations

The regulations of this code shall be supplemental to the rules and regulations of the Washington State Board of Health, and other Washington laws and regulations. Except as otherwise provided, this code shall supersede all prior rules, regulations, and standards of the Health Department relating to infectious waste, on-site sewage, underground storage tanks, contaminated properties, and drinking water. In the event of a conflict between these and any other local or state regulations, the more stringent shall apply.

SECTION 8: Licenses, Permits, Certifications, Inspections and Approvals

- A. All applications for a license, permit, certificate, inspection, or written approval by the health officer shall be made upon forms provided by the Health Department and shall be signed by the applicant or the applicant's authorized agent who shall be the person responsible for conforming to the conditions of the license, permit, certificate, inspection, or written approval. Applications shall be considered complete when all required data, information, plans, and specifications have been received by the health officer.
- B. Except as otherwise provided by this code, a license, permit, certificate, or written approval issued to a particular person or for a designated place, purpose or vehicle shall not be valid for use by any other person or for any other place, purpose, or vehicle other than that designated therein.

- C. Such license, permit, certificate, inspection, or written approval by the health officer may contain general and specific conditions and every person who shall have obtained a license, permit, certificate, or written approval by the health officer as herein required shall conform to the conditions prescribed in said license, permit, certificate, or written approval and to the provisions of this code. Every such license, permit, certificate, or written approval shall expire as stated on the license, permit, certificate, or written approval and may be renewed, suspended, or revoked by the health officer as provided in this code.

SECTION 9: Notice of Violation and Order to Correct

- A. Notice of violation and order to correct.
1. Whenever the health officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this code or other regulation under the jurisdiction of the health officer, the health officer shall give notice to:
 - a. The person who is the owner or operator of the source of the violation;
 - b. The person in possession of the property where the violation originates;
 - c. The person otherwise causing or responsible for the violation; and/or
 - d. The person holding the license or permit in question.
 2. Such notice shall:
 - a. Be in writing;
 - b. Include a statement that the health officer has found the person to be in violation of the code;
 - c. Contain a brief description of the conditions found to be in violation;
 - d. Include a statement of the required corrective action(s);
 - e. Allow a reasonable time for the performance of any act required;
 - f. Be served upon the person in the manner set forth below; and
 - g. Contain provisions for appeal.
 3. The health officer may commence enforcement action and resort to any of the remedies or penalties set forth in this chapter without issuing a notice of violation when:

- a. A person has been issued a notice of violation of the same provision of this code within the previous 12 months;
 - b. The violation cannot be undone; or
 - c. The health officer has found the conditions to be in violation of RCW 64.44.030(2) (Contaminated Properties).
- B. The health officer shall serve the notice of violation upon the person to whom it is directed, either personally or by mailing via first-class and/or certified mail, return receipt requested, a copy of the notice of violation/order to such person at their last known address. In case of service by mail, such service shall be regarded as complete upon deposit in the U.S. mail, properly stamped and addressed. The Health Department may also post a notice/order on the property of the person with the alleged violation requesting that telephone or mail contact be initiated in order to resolve the alleged code violation(s).
- C. Upon request received prior to the correction date or time, the health officer may for good cause extend the date set for corrections. The health officer may consider completed or proposed mitigation measures, substantial completion of the necessary correction, obtaining a work contract with an appropriately licensed or certified contractor, and/or unforeseeable circumstances that render completion of correction impossible by the date or time established as a good cause.
- D. The health officer may at any time add to, rescind in part, or otherwise modify a notice of violation and order to correct. The supplemental order shall be governed by the same procedures applicable to all procedures for notices of violation and orders to correct contained in this code.
- E. Emergency.
1. Whenever the health officer finds that an imminent threat to public health, safety, or environmental damage resulting from a violation of this code exists which requires immediate action to protect the public health he/she may, without notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as he/she may deem necessary to meet the emergency including the suspension of any license, permit or certificate. Notwithstanding any other provisions of this code, such order shall be effective immediately upon service as provided in this chapter.
 2. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the health officer as provided in this chapter, shall be afforded a hearing as provided in this chapter.
 3. Any orders issued concerning the alleged violation shall remain in effect during the hearing or appeal process.

F. Failure to comply.

1. It is unlawful for any person to fail to take corrective action or otherwise fail to comply with the terms and conditions specified in a notice of violation and order to correct issued by the health officer.
2. Each and every day that a person fails to comply with the terms of a notice of violation and order to correct shall be a separate and distinct violation.
3. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered in violation of this code.
4. Any person in violation of this section shall be subject to enforcement and penalties pursuant to section 11 of this code.

G. Enforcement of "Notice of Violation and Order to Correct."

If, after the notice of violation and order to correct is duly issued by the health officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the health officer may:

1. Utilize any remedy or penalty as set forth in this code;
2. Abate the health violation using the procedures of this code; and/or
3. Pursue any other appropriate remedy at law or equity.

SECTION 10: Remedies

- A. The health officer may accept a written assurance of discontinuance of any act in violation of these regulations from any person who has engaged in such act. Failure to comply with the written assurance of discontinuance shall be a further violation of these regulations.
- B. Written voluntary correction agreement/compliance schedule.
 1. The health officer may accept a written voluntary correction agreement/compliance schedule to attempt to secure voluntary correction of the violation from the person committing, or responsible for, the violation. Failure to comply with the written voluntary correction agreement/compliance schedule shall be a further violation of these regulations.
 2. The written voluntary agreement/compliance schedule is a contract between the health officer and the persons responsible for the violation in which such person agrees to abate the alleged violation within a specified time frame and according to specific conditions.

3. The written voluntary correction agreement/compliance schedule will be in lieu of the issuance of further citations, or other actions as allowed by these regulations, so long as the written voluntary correction agreement/compliance schedule is adhered to as determined by the health officer.
4. By entering into a written voluntary correction agreement/compliance schedule, the person responsible for the alleged violation shall waive the right to a hearing before the health officer under these regulations or otherwise, regarding the alleged violation.
5. The health officer may grant an extension in time, or a modification in the terms, of the agreement if the person responsible for the alleged violation has shown progress towards correction of the violation and no threat to public health is determined to exist.
6. The written voluntary correction agreement/compliance schedule shall include the following:
 - a. The name and address of the person responsible for the alleged violation;
 - b. The street address, assessor's tax identification number, or other description sufficient for identification of the building, structure, premises, or land upon which, or within, the alleged violation has occurred or is occurring;
 - c. A description of the alleged violation and a reference to the regulation that has been violated;
 - d. The specific actions to be taken, and a date or time by which each action must be completed;
 - e. An agreement by the responsible person that the health officer may enter the property, building, structure, or premises and inspect as necessary to determine compliance with the written voluntary correction agreement/compliance schedule;
 - f. An agreement by the responsible person that the health officer may enter the property, building, structure, or premises to abate the violation and recover its costs and expenses from the responsible person if the terms of the written voluntary correction agreement/compliance schedule are not satisfied; and
 - g. An agreement that by entering into the written voluntary correction agreement/compliance schedule, the responsible person waives the right to a hearing before the health officer under these regulations or otherwise, regarding the matter of the alleged violation and/or required corrective action(s).

7. If all the terms of the written voluntary correction agreement/compliance schedule are not met, the health officer may use any remedy or penalty under this chapter to enforce the terms of said agreement and the person responsible for the alleged violation shall be assessed all costs and expenses of abatement, including staff time.
- C. Stop work orders.
1. The health officer may cause a stop work order to be issued whenever the health officer has reason to believe that a violation of this code is occurring. The effect of the stop work order shall be to require the immediate cessation of such work or activity that has contributed to the violation until such time that the health officer has removed the order.
 2. A stop work order shall include the following:
 - a. The name and address of the property owner or other persons to whom the notice of violation and order to correct is directed;
 - b. The street address, tax assessor account number, or other description for identification of the building, structure, or land upon or within which the violation has occurred or is occurring;
 - c. A description of the violation and a reference to that provision of this code which has been, or is being, violated;
 - d. A statement of the action, or actions, required to be taken to correct the violation and a date or time by which the correction is to be completed;
 - e. A statement that each violation of this code shall be a separate and distinct offense, and in the case of a continuing violation that each day's continuance shall be a separate and distinct violation;
 - f. A statement that the failure to obey this stop work order notice may result in the issuance of a notice of civil infraction, and/or the assessment of an administrative remedy, and/or, if applicable, the imposition of criminal penalties; and
 - g. A statement that the person to whom the stop work order is directed can appeal the order to the health officer in accordance with the appeal procedures of this code.
 3. The health officer shall serve the stop work order in the same manner as described in section 9.B, above.
 4. In addition to the service of order as described above, an additional notice shall be posted on the property in substantially the following form:

Under the authority of Tacoma-Pierce County Board of Health Resolution XXX, *Environmental Health Code*, you are hereby required to immediately

STOP WORK

This order is in effect at this property for all work and activities that relate to violations of Tacoma-Pierce County Board of Health Resolution XXX, *Environmental Health Code*, and remains in effect until removed by the Health Department.

It is a violation of these regulations to remove, deface, destroy, or conceal a posted Stop Work Order. **FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE ISSUANCE OF A CIVIL INFRACTION OR CIVIL PENALTY OR CRIMINAL PROSECUTION.**

- D. Suspension of permit.
1. The health officer may suspend any permit issued under this code for failure of the permit holder to comply with the terms of the permit and the requirements of this chapter;
 - a. Comply with any notice of violation and order to correct related to a permitted activity;
 - b. Comply with a stop work order related to a permitted activity;
 - c. Timely pay any Health Department fees associated with the permit, these regulations, or enforcement thereof; or
 - d. Refrain from interfering with the health officer.
 2. The health officer may also suspend any permit if he/she deems that continued operations pose an immediate threat to human health or the environment.
 3. The permit suspension, if applicable, shall be contained in the notice of violation, or amendments thereto. Any person whose permit has been suspended has the right to appeal the agency's determination, as set forth in this chapter. The permit shall remain in effect pending a final resolution of the appeal unless the health officer determines that there is a significant danger to public health or the environment. Upon the health officer's determination that a significant danger to public health or the environment exists, all permit-related activity shall cease until further notice from the Health Department.

E. Revocation of Permit.

1. The health officer may, after providing opportunity for appeal and hearing under a permit suspension action, permanently revoke a permit for serious or repeated failure of the permittee to:
 - a. Comply with the requirements of the permit and these regulations,
 - b. Comply with any notice of violation related to a permitted activity;
 - c. Comply with a stop work order related to a permitted activity; or
 - d. Comply with condition(s) issued under a permit suspension action.
2. Prior to revocation, the health officer shall provide the permittee with a written explanation of the specific reason(s) for which the permit is to be revoked. Upon formal notification of a revocation the permittee shall immediately cease all activity regulated under this chapter. A person whose permit has been revoked may submit a written application to the health officer for the purpose of obtaining a new permit, provided that an administrative hearing shall occur before the health officer determines if a new permit shall be issued, and if so, any conditions pertaining thereto.

F. Recording on property title.

1. The health officer may record notice on the title to property in accordance with this section. Notice of the right to record the notice to title shall be included in the notice of violation and order to correct. Notice to title shall not be recorded prior to the expiration of the period to appeal the order or while an appeal of the order is pending.
2. When a condition constitutes a violation of this code, a public nuisance in accordance with chapter 7.48 RCW, or otherwise poses a threat to the health, safety, or property of the public or persons residing on the property, the health officer may cause a "Certificate of Non-Compliance" to be recorded on the title of the property where the violation is occurring.
3. The certificate of non-compliance shall identify the violation(s) occurring on the property.
4. The certificate of non-compliance shall be filed with the Pierce County Auditor.
5. When the violation is occurring on a property consisting of more than one parcel the health officer may cause a certificate of non-compliance to be recorded on the title of each parcel.
6. A "Certificate of Compliance" may be issued after the health officer has verified that the condition causing the violation(s), public nuisance, or threat to the health,

safety, or property of the public or persons residing on the property, has been corrected and all applicable fees have been paid.

G. Abatement orders.

1. When the health officer has determined that a violation of these regulations has occurred or is occurring, or a public nuisance exists, in accordance with chapter 7.48 RCW, the health officer may issue an abatement order to the person responsible for the alleged violation. The abatement order shall require the responsible person to abate the violation or public nuisance within a reasonable period of time as determined by the health officer.
2. If the abatement order is not commenced or complied with within the specified time period, the health officer may proceed to abate the violation and cause work to be done in this regard.
3. Absent conditions that pose an immediate threat to the public's health, safety, or welfare, abatement orders shall be utilized by the health officer only after the civil penalties or civil infraction process under this code has been attempted as a means to correct the alleged violations, but the violations have not been adequately corrected as determined by the health officer.
4. The abatement order shall include the following:
 - a. The name and address of the person responsible for the alleged violation;
 - b. The street address, assessor's tax identification number, or other description sufficient for identification of the building, structure, premises, or land upon which, or within, the alleged violation has occurred or is occurring;
 - c. A description of the alleged violation and a reference to the regulation that has been violated;
 - d. The specific actions to be taken, and a date or time by which each action must be completed;
 - e. A statement that the costs and expenses incurred by the health officer, pursuant to this code, may be assessed against a person to whom the abatement order is directed; and
 - f. A statement that the person to whom the abatement order is directed can appeal the abatement order to the health officer in accordance with this code.
5. Service of order.
 - a. The health officer shall serve the abatement order upon the owner of the property where the alleged violation occurred, or is occurring, either

personally or by mailing a copy of the order by regular and certified or registered mail, with a five (5)-day return receipt requested, to the owner at their last known address.

- b. The health officer shall make a reasonable attempt to serve the order on each of the following if known to the health officer or disclosed from public records:
 - i. The holder of any mortgage or deed of trust or other lien or encumbrance of record;
 - ii. The owner of record and the holder of any other recorded estate or legal interest of record in, or to, the property or any structures on the property.
 - iii. The occupant(s) of the property.
 - c. The failure of the health officer to serve any person as required herein shall not invalidate any proceedings hereunder as to any other person or relieve any such person from any duty or obligation imposed by the provision of this section.
 - d. A copy of the abatement order may also be posted on the property where the alleged violation occurred or is occurring.
6. Upon issuance of an abatement order, the health officer may, by any lawful means, enter the subject property and may cause to be removed or corrected the condition that is subject to the abatement.
7. The costs of correcting a condition which constitutes a violation of this code, including all incidental expenses and attorney's fees, shall be billed to the owner of the property upon which the alleged violation occurred or is occurring, and shall become due within 30 calendar days of the date of mailing the billing for abatement.
8. The costs and expenses of correcting a condition, which constitutes a violation of this code shall constitute a personal obligation of the person to whom the abatement order was/is directed. The health officer shall send, within 45 days of abating the violation, to the person named in the abatement order a bill that details the work performed, materials used or removed, labor used, and the costs and expenses related to those tasks as well as any other costs and expenses incurred in abating the violation.
- H. Notice to vacate.
- 1. When a condition constitutes a violation of this code and poses a threat to the health, safety, or property of the public or persons residing on the property, the health officer may issue a notice to vacate. A notice to vacate shall include the following:

- a. The name and address of the person responsible for the alleged violation;
 - b. The street address, tax assessor account number, or description sufficient for identification of the building, structure, premises, or land upon which the alleged violation has occurred or is occurring;
 - c. A description of the violation constituting an immediate threat to health, safety, or property of the public or persons residing on the property and a reference to the provision of this code that is being violated;
 - d. A date, determined by the health officer and commensurate with the severity of violation and threat to public health, by which any persons must vacate the premises in order to mitigate/eliminate the violation. In cases of an extreme threat to health or safety to persons or property, immediate vacation of the premises may be required;
 - e. The corrective actions required to be completed prior to re-occupancy of the premises;
 - f. A statement that the person to whom the notice to vacate is directed can appeal the order to the health officer in accordance with these regulations; and
 - g. If applicable, a statement declaring the property unfit and prohibiting its use pursuant to RCW 64.44.030 (1).
2. The health officer shall serve the notice to vacate order as described in section 9.B, above.
 3. In addition to the service of order as described above, an additional notice shall be posted conspicuously on the property in substantially the following form:

Under the authority of Tacoma-Pierce County Board of Health Resolution XXX, *Environmental Health Code*, and effective **(INSERT DATE/TIME)** you are hereby required to:

VACATE THE PROPERTY

No persons shall remain in or enter the building, structure, or property which has been posted for vacation except to make the specified correction actions listed in the notice to vacate. This order is in effect at this property for all work and activities that relate to violations of Tacoma-Pierce County Board of Health Resolution XXX, *Environmental Health Code*, and remains in effect until removed by the Health Department.

It is a violation of these regulations to remove, deface, destroy, or conceal a posted Notice To Vacate order. **FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE ISSUANCE OF A CIVIL INFRACTION OR CIVIL PENALTY OR CRIMINAL PENALTY**

4. No person shall remain in or enter any building, structure, or property which has been posted for vacation except to make the specified corrective actions listed in the notice to vacate. No person shall remove or deface a vacate notice posting without the permission of the health officer. Health officer review, inspection, and approval of the completed corrective action is required before the notice to vacate order shall be removed
- I. Health order.
 1. If a breach of any provision of this code presents an immediate threat to the public health, then the health officer may issue an ex parte health order. The health order shall:
 - a. Cite the applicable law or regulation;
 - b. State the facts giving rise to the immediate threat to the public health;
 - c. Identify one or more remedies to correct the immediate threat;
 - d. List the consequences of noncompliance;
 - e. Describe the process and schedule for responding;
 - f. Provide the person to whom the health order is addressed at least three days in which to acknowledge the health order and to either comply with the health order or deny the allegations;

- g. Notify the person to whom the health order is addressed that failure to respond within three days is itself a civil infraction and/or may give rise to the imposition of administrative civil penalties; and
 - h. Identify a point of contact at the Health Department from whom the person addressed in the health order may obtain further information.
- J. Other Remedies. Notwithstanding the existence or use of any other remedy, the health officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of this code, or rules and regulations adopted under them, or any state health law or regulation, or that otherwise threatens public health.

SECTION 11: Penalties

- A. Administrative civil penalties.
 - 1. The health officer may impose administrative civil penalties for violations of this code or for refusal to comply with lawful orders written pursuant to this code. Such penalties shall be issued and be in accordance with the provisions contained in this chapter.
 - 2. Administrative civil penalties shall be pursuant to the schedule listed below. In addition, the Health Department shall be entitled to recover the cost of enforcing these regulations including but not limited to attorney fees and the cost of collection.
 - a. First week of violation up to \$100.00 per day
 - b. Second week of violation up to \$200.00 per day
 - c. Third week of violation up to \$300.00 per day
 - d. Fourth week of violation up to \$400.00 per day
 - e. Each Additional week of violation beyond 4 weeks up to \$500.00 per day
 - 3. The health officer may issue a notice of civil penalty without first issuing a notice of violation and order to correct as provided in this chapter, under the following circumstances:
 - a. when an emergency exists;
 - b. when a repeat violation occurs within a 24-month period;
 - c. when the violation creates a situation or condition which cannot be corrected; or

- d. when the person knows or reasonably should have known that the action is in violation of this code.
4. The notice of civil penalty shall include the following:
 - a. The name and address of the person responsible for the violation; and
 - b. The street address or description sufficient for identification of the premises or land upon or with which the violation has occurred or is occurring; and
 - c. A description of the violation and a reference to the provision(s) of this code which has been violated; and
 - d. The amount of the penalty, the date payment is due, and a statement of any costs and expenses expended by the Health Department that are assessed in accordance with this code; and
 - e. A statement indicating the right to file an appeal and request a hearing before the health officer, as described below.
5. Service of notice.
 - a. The health officer shall serve the notice of civil penalty upon the person to whom it is directed, either personally or by mailing via first-class and certified mail, return receipt requested, a copy of the notice of civil penalty to such person at their last known address.
 - b. If the person to whom it is directed cannot, after due diligence be personally served within Pierce County, and if an address for mailed service cannot, after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil penalty conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.
6. No extension of any deadline specified in the notice of civil penalty may be granted, unless set forth in writing by the health officer, or in a written decision of the hearing examiner.
7. Payment of a monetary penalty pursuant to this code does not relieve the person to whom the notice of civil penalty was issued of the duty to correct the violation.
8. Collection of Monetary Penalty.
 - a. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil penalty is directed. Any monetary penalty

assessed must be paid in full to the Health Department within 10 calendar days as directed in the notice issued pursuant to this section or in any decision issued following an appeal, as described below.

- b. After the due date for payment of the penalties, the health officer is authorized to take appropriate action to collect the monetary penalty.

9. Appeal or Mitigation of administrative civil penalty.

- a. A person may appeal the assessment of civil penalty by filing a written notice of appeal with the health officer within fifteen calendar days of the date of the notice of civil penalty. The appeal process shall be in accordance with section 12 (Administrative Hearing).

- b. Mitigation. On appeal, the health officer or hearing examiner may consider the following factors in regards to the monetary penalty assessment:

- i. The person's efforts to correct the violation and whether corrective action has been completed;
- ii. Whether the person failed to appear at the hearing;
- iii. Whether the violation was a repeat violation;
- iv. Whether the person showed due diligence and/or substantial progress in correcting the violation;
- v. The amount of time and resources expended to abate the violation;
- vi. Whether a genuine code interpretation issue exists; and
- vii. Any other relevant factors.

B. Civil infractions.

- 1. The violation of any provision of this code is designated as a class 1 civil infraction pursuant to chapter 7.80 RCW (Civil Infractions).
- 2. The health officer may issue a notice of civil infraction pursuant to chapter 7.80 RCW if the health officer has reasonable cause to believe that the person has violated any provision of this code, or has not corrected the violation as required by a written notice of violation and order to correct. Civil infractions shall be issued, heard, and determined as described in chapter 7.80 RCW, and any applicable court rules.

C. Criminal penalties.

1. Except as otherwise provided for in these regulations or under state law, any person violating any provision of these regulations is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars (\$25), nor more than one-thousand dollars (\$1,000), or to imprisonment not to exceed ninety (90) days, or to both fine and imprisonment.
2. Any person who fails, neglects, or refuses to comply with an order of the health officer to correct a violation of this code pursuant to this chapter, shall be, upon conviction, guilty of a misdemeanor.
3. Any person who fails, neglects, or refuses to comply with a written assurance of discontinuance or a voluntary correction agreement pursuant to this chapter shall be, upon conviction, guilty of a misdemeanor.

SECTION 12: Administrative Hearing

- A. Right to administrative hearing.
 1. Administrative hearings may be convened for the following causes:
 - a. Any aggrieved person may appeal any order, notice of violation, administrative civil penalty assessment, requirement, permit, decision or determination made by the health officer or an administrative official in the administration or enforcement of the Environmental Health Code; or
 - b. Other appropriate reason set forth in this code or in Washington State laws and regulations administered by the health officer including but not limited to chapter 64.44 RCW (Contaminated Properties).
 2. A request for a hearing shall be filed in writing with the department and the applicable fee shall be paid within fifteen calendar days of the date of the notice of the decision being appealed, on a form provided by the department. The hearing request shall operate as a stay of the required action or decision, except in the case of an emergency order issued under this chapter. The hearing shall be conducted within thirty calendar days of filing the request for hearing, unless alternative scheduling is agreed to by mutual agreement of the parties.
 - B. Notice of an administrative hearing shall be given to the person requesting the hearing, the applicant, and property owner, as applicable.
 - C. The health officer may require the parties to attend a prehearing conference at least three (3) calendar days prior to the scheduled hearing. The prehearing conference may be conducted over the telephone. The purpose of the prehearing conference is to discuss process, settlement and/or summary disposition, clarification and jurisdiction of issues raised in the request for hearing.
 - D. If settlement is reached at any time prior to the hearing before the health officer, a written settlement agreement may be issued in lieu of a written decision by the health
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officer. All parties must sign the settlement agreement. A settlement agreement shall be final and may not be appealed. If a settlement agreement is reached seven or more calendar days prior to the health officer conducting the hearing, 80% of any appeal or hearing fee paid shall be refunded.

E. Administrative hearing procedures.

1. The administrative hearing shall be an open record hearing presided over by the health officer and shall be either tape recorded or video recorded at the discretion of the health officer. Evidence shall not be accepted after the hearing is closed unless expressly permitted by the presiding officer or by a written agreement of the parties.
2. The persons to whom notice of the administrative hearing was given and the Health Department staff may offer such evidence as they deem necessary and shall produce such evidence as the health officer may deem necessary to obtain an understanding and determination of the issues.
3. The burden of establishing a violation shall be on the Department; and shall be established by a preponderance of the evidence.
4. The health officer shall determine the relevancy and materiality of the evidence offered. Conformance to legal rules of evidence shall not be required. All evidence shall be taken in the presence of all parties recorded as present. Exhibits, affidavits, and documents may be considered as evidence but shall be given only such weight as the health officers deems proper.
5. Testimony of witnesses may be presented. The health officer shall determine from the evidence presented at the administrative hearing whether or not the notice, decision, or determination that is being appealed should be affirmed, modified, or reversed.
6. The hearing may be continued from time to time without further mailed or delivered notice.
7. The health officer shall maintain a record of the documents presented.

F. If any party who requests an administrative hearing fails to attend or participate in a hearing or pre-hearing conference, the health officer may enter a decision denying the party's request, or may conduct the hearing without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

G. The health officer shall issue a written decision concerning the disposition of the administrative hearing within 10 business days of the hearing date, and may require additional actions as part of the decision.

The health officer shall not grant a request of relief from any order, notice of violation, requirement, permit, decision or determination if the requested relief is either based

solely or principally upon aesthetic or economic factors, or is more likely than not to cause or allow adverse public health or environmental impacts.

- H. All decisions of the health officer shall be final unless review is sought by filing an appeal with the hearing examiner in accordance with section 13 (Appeals to the Hearing Examiner) within 10 days from the date of the decision.

SECTION 13: Appeals to the Hearing Examiner

A. Hearing examiner.

1. The Director of the Health Department may recommend and the Board of Health may appoint a hearing examiner and one or more alternate hearing examiner.
2. The hearing examiners shall continue to serve at the pleasure of the Board of Health or until their resignation and shall be compensated while hearing appeals and drafting decisions.

B. Jurisdiction of the hearing examiner.

1. An appeal may be convened for the following causes:
 - a. Any aggrieved person may appeal an administrative hearing decision issued under Section 12, above; or
 - b. If both the health officer and the aggrieved person agree to bypass the administrative hearing process described in Section 12, above.

C. Filing.

1. The appeal shall be commenced by filing a written request on forms prescribed by the Health Department and must be filed with the health officer within 10 days of the date of the decision or order which is the subject of the appeal.
2. The appeal must cite with particularity the order or decision appealed from and the reasons for the appeal. A copy of the order or decision appealed from should be attached to the appeal.
3. The appeal filing shall be accompanied by the applicable filing fees as described below.

- D. The hearing examiner shall have authority to determine initially whether any such appellant has standing to challenge a decision or final order of the health officer and whether such appeal was timely filed.

- E. The hearing examiner may join appeals that present substantially similar issues that arise from approval of the same permit or modification, or that otherwise reasonably should be joined.

- F. As provided by RCW 70.05.060(7), the fee for an appeal shall be the cost of the hearing examiner's services for that appeal. A party that appeals a decision of the Health Department to the hearing examiner shall pay a deposit of \$1,000, or an alternative amount as established by the Board of Health via the current fee schedule, with the papers seeking the appeal. Upon receiving the hearing examiner's final invoice for the appeal, the Health Department shall either refund any unused part of the deposit or bill the appellant for the balance of the cost of the hearing examiner, which shall be a personal obligation of the appellant and shall be paid within 30 days of the date of receipt. In the event the hearing examiner concludes that the appellant is the prevailing party, then the Health Department shall be responsible for the cost of the appeal and shall make full refund of the appellant's deposit.
- G. The filing of the appeal shall stay the health officer's approval of a permit. All other orders and decisions of the health officer shall remain in effect during the pendency of appeals until reversed in a final decision. If the appeal challenges the health officer's decision to grant a permit, then the permit applicant shall receive the same notice and have the same opportunity to be heard afforded the appellant and shall be considered a party to the appeal for all purposes.
- H. Upon receipt of an appeal, the health officer shall forward the appeal to the hearing examiner who shall set a time and place for a hearing and shall give the appellant at least 21 days written notice thereof. If the hearing examiner is unable to hear the appeal, the hearing examiner shall promptly forward the appeal to an alternate hearing examiner.
- I. The appellant, the applicant, if different or the health officer may ask the hearing examiner in writing to postpone the hearing. Following an opportunity for the other parties to comment on the request in writing, the hearing examiner shall respond in writing including the reasons for granting or denying the request.
- J. At the hearing, the hearing examiner shall provide each party an opportunity to be heard, to present evidence, and to show why the health officer's order or decision should be sustained, modified, or reversed.
- K. Process for hearings
1. In conducting hearings, the hearing examiner shall not be bound by the regular rules of evidence pertaining to superior court trials. Within this framework, the hearing examiner shall make such rulings on evidence and procedure as he/she deems appropriate and may develop guidelines for the conduct of such hearings.
 2. The record made at all hearings shall be capable of being transcribed at the request of the parties or the hearing examiner.
 3. Where not specifically covered herein or in rules and procedures adopted by the hearing examiner, the hearing examiner shall be guided by the rules and procedures of the Washington State Administrative Procedures Act, chapter 34.04 RCW.

- L. Standard of review.
1. The hearing examiner may grant, modify, or reverse the order or decision of the health officer if and only if he/she finds that such order or decision is either arbitrary and capricious or contrary to law.
 2. The hearing examiner may not grant relief that will in any way either tend to jeopardize the public health, safety, or welfare or authorize actions contrary to the laws of the State of Washington.
- M. After the hearing, the hearing examiner shall enter a written decision together with Findings of Fact and Conclusions of Law and an appropriate order sustaining, modifying, or reversing the order or decision of the health officer and serve them on all the parties within 35 days of the close of the hearing.
- N. All decisions of the hearing examiner shall be final unless an aggrieved person files an appeal with the Superior Court for the Pierce County within 21 days from the date of decision. Such appeals to the Superior Court shall be on the record and neither new testimony nor evidence shall be taken. Such appeals shall not operate as a stay of any required action or approval contained in the decision of the hearing examiner.
- O. Reconsideration.
1. Any party of record may file a written request for reconsideration within ten calendar days of the date of the hearing examiner's decision. The reconsideration request must state a specific error of fact or law and must state the basis for the reconsideration request. The party requesting reconsideration must serve a copy of the request on all other parties of record. No party may file a response to the request unless requested by the hearing examiner.
 2. Within fifteen calendar days of receiving the request the hearing examiner may deny the request, revise the decision based on the record without additional hearing, or schedule an additional hearing or timeline for the parties to submit a response.
 3. Upon receipt of the hearing examiner's reconsidered decision or order, a person with standing to appeal may bring an appeal to the superior court within 21 days.
- P. Failure to comply.
1. It is unlawful for any person to fail to comply or otherwise violate a decision or order resulting from a hearing examiner.
 2. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be a separate and distinct violation.
 3. Any person in violation of this section shall be subject to enforcement and penalties pursuant to this chapter.

SECTION 14: Variance or Waiver

Whenever a strict interpretation of these code provisions would result in a hardship, a person may seek a variance or waiver from the health officer to allow regulated actions or activities that do not meet one or more requirements of the code. Persons seeking a variance or waiver shall propose an alternative method of meeting the objective(s) of the code and the alternative method shall provide equivalent or superior protection of public health, safety and/or the environment as the standard from which a variance or waiver is sought. Persons seeking a variance or waiver shall demonstrate why a specific requirement or requirements of the code should not apply and that waiving enforcement of the specific requirement(s) will not decrease protection of public health, safety, and/or the environment compared to the standard from which a variance or waiver is sought.

- A. The general standards and the process described in this section shall apply to any request for a variance or waiver from the Environmental Health Code except where superseded by standards or a process contained in a particular chapter of the code.
- B. Any person filing a request for a variance or waiver of a code provision(s) shall provide the following information and shall submit the applicable variance or waiver fee. A request for a variance or waiver that is incomplete shall be denied.
 - 1. Requester's name, telephone number, and mailing address;
 - 2. Permit applicant's name and mailing address;
 - 3. Property owner's name and mailing address;
 - 4. Code provision(s) from which a waiver or variance is requested;
 - 5. Reasons that the code provision can not be met;
 - 6. Permit type, permit number, parcel number, and address or legal description if real property is involved;
 - 7. A summary of the nature of the request;
 - 8. A summary of alternatives (e.g. design) that exist for this issue;
 - 9. A summary of how the specific proposal would result in equivalent or superior protection of the public health or would not otherwise decrease the public health;
 - 10. As applicable, site map(s) and diagram(s) clearly showing the area(s) affected by the application and variance or waiver request;
 - 11. Any additional information that, in the opinion of the health officer, is required to review the variance or waiver request;
 - 12. A statement of whether a hearing is requested; and

13. A list of all persons required to be given notice of the variance or waiver request, as set forth below, and their addresses, if applicable.
- C. Notice of a variance or waiver request shall be given as set forth herein whenever a variance or waiver involves the following:
1. For a variance or waiver of a set-back to either a) a neighbor's water source; or b) a neighboring property, all property owners whose property would be directly affected by the variance or waiver shall be notified of the request for variance or waiver;
 2. For variance or waiver of the requirements for an infectious waste permit, or exemption or deferral of said requirements, property owners within 300 feet of the subject property shall be notified of the request for variance or waiver and notice of the request shall be posted on the property; or
 3. For a variance or waiver of water quality or quantity standards, construction standards for a public water source, or variance or waiver of the requirements applicable to a community on-site sewage system, all owners of connections, each residence served by the system, and each consumer shall be notified.
 4. Any person required to be notified as described above may request a hearing on the variance or waiver request and may submit written comments to the health officer. Comments or a hearing request must be submitted to the health officer within 15 calendar days of the date of the notice, unless a longer time period is specified in the notice.
 5. The notice of variance or waiver request shall contain the following:
 - a. Name and address of person requesting the variance or waiver;
 - b. Permit application number;
 - c. A brief description of the waiver request;
 - d. A statement that written comments may be submitted;
 - e. A statement that an administrative hearing may be requested; and
 - f. A statement of where comments or an administrative hearing request must be received and notice that any comments or hearing request must be submitted within 15 calendar days of the date of the notice, unless a longer time period is specified in the notice.
 6. Notice shall be deemed complete when a written notice to the person's last known address has been deposited in the U.S. Mail.
- D. The health officer shall conduct an administrative hearing if requested by the person seeking the variance or waiver, by a person required to be notified of such variance or

waiver request, or at the discretion of the health officer. An administrative hearing shall be conducted in accordance with the procedures described above. Notice of the hearing shall be given to the person requesting the variance or waiver and any person required to be notified of the variance or waiver request. The administrative hearing shall be conducted within thirty calendar days of receipt of a hearing request, or the deadline for notified persons to respond, whichever is later.

- E. The health officer may decide the issue without an administrative hearing if neither the person requesting the variance or waiver nor any person notified requests a hearing. Such decision shall be issued within 15 calendar days of receipt of the request or the deadline for notified persons to respond, whichever is later.
- F. The health officer may consider, but is not obligated to make a determination based upon economic factors. A variance or waiver request based solely upon economic factors shall be denied.
- G. The health officer may charge for technical consultation prior to submittal or impose additional fees for complex applications that require additional staff review time.
- H. The health officer shall consider all the evidence and testimony pertaining to the request for a variance or waiver and may approve the variance or waiver request, or a portion thereof, upon finding:
 - 1. Compliance with the code provisions would result in a significant hardship;
 - 2. The approval is consistent with the intent of this code; and
 - 3. Any one of the following is established:
 - a. The requested variance or waiver would result in equivalent or superior protection of public health, safety and/or the environment as the applicable code standard from which a variance or waiver is sought;
 - b. The requested variance or waiver would not decrease protection of public health, safety, and/or the environment; or
 - c. The action or activity for which a variance or waiver is requested is subject to other regulations or requirements that, in the opinion of the health officer, result in equivalent or superior protection of public health, safety, and/or the environment compared to the applicable code standard from which a variance or waiver is sought.
- I. Approval or denial of variance or waiver.
 - 1. A decision to approve or deny a variance or waiver shall be in writing.
 - 2. A decision to approve or deny a variance or waiver shall be issued only when all applicable fees have been received.

3. A requested variance or waiver may be approved or denied in part or in whole.
 4. All variance or waivers are subject to conditions set forth by the health officer.
 5. A copy of the decision shall be transmitted to the requestor of the variance or waiver and to each person who submitted comments or has requested a copy of the decision within 5 calendar days of the date of the decision.
- J. Any person who a) requested a variance or waiver; or b) is entitled to notice as set forth above and who submitted written comments or testified at the hearing on the variance or waiver request and who is aggrieved by the decision regarding the variance or waiver request may appeal the decision to the hearing examiner in accordance with the requirements for appeals set forth in this chapter.
- K. The approval of a variance or waiver shall be immediately revoked if, in the determination of the health officer, either:
1. Any conditions established as a condition of the approval of the variance or waiver are not met;
 2. Information is discovered by or provided to the health officer subsequent to the approval of a variance or waiver that substantially contradicts the information provided in the variance or waiver application; or
 3. Information is discovered by or provided to the health officer that indicates the information included in the variance or waiver application, or in support thereof, is fraudulent in any manner.
- L. A request for a variance or waiver from any provision of state law or regulation under the jurisdiction of the Health Department shall be considered according to the procedures for variance or waiver set forth in this section and any applicable requirements set forth in state law or regulations. A variance or waiver from state law or regulations shall not be complete and in effect until the requestor has obtained the written concurrence of the state agency with statutory authority to regulate the subject of the variance or waiver request.
- M. If the variance or waiver request is such that notice to third parties is not required as set forth above, then the health officer, in his sole discretion, may grant a variance or waiver without requiring the requestor to comply with the procedures in this section; provided, in such cases, the health officer shall prepare a written statement setting forth the justification and/or adequate mitigation.

SECTION 15: Right of Entry

- A. Right of entry.
1. Whenever necessary to make an inspection to enforce or determine compliance with the provisions of this code, and other relevant laws and regulations, or

whenever the health officer has cause to believe that a violation of these regulations has or is being committed, the health officer may, in accordance with federal and state law, request entry of any building, structure, property or portion thereof, at reasonable times to inspect the same.

2. Prior to entering the building, structure, property or portion thereof, the health officer shall attempt to secure the consent of the owner, occupant, or other person having apparent charge or control of said building, structure, property or portion thereof.
 - a. In attempting to contact the owner, occupant or other persons having apparent control of said building, structure, property or portion thereof, the health officer may approach said building, structure, property or portion thereof, by a recognizable access route leading to said building or structure.
 - b. If such building, structure, property or portion thereof, is occupied, the health officer shall present identification credentials, state the reason for the inspection, and request entry.
3. If consent to the building, structure, property or portion thereof, is not provided by the owner, occupant, or other person having apparent control of said building, structure, property or portion thereof, the health officer shall have recourse to any remedies provided by law to secure entry, including but not limited to administrative search warrants.
4. Absent consent or a warrant, no entry should be made onto private property without first consulting legal counsel for the Health Department.

SECTION 16: Time Computations

Any time period established in this code shall be computed by excluding the first day from which the time period begins and counting the last day. All references are to calendar days unless specified otherwise. If the Health Department is not open on the last day, the time period runs until the next day that the Department is open.

SECTION 17: Severability

If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause, or phrase of this chapter.