

ORDINANCE NO. _____

An ordinance amending Article I, sections 6.1, 7.2, 7.3, 8, 9.3, 9.4, 9.5, 10, 13.1, 13.2.3, 13.6, 13.9.1, 15, 18.4, 19.2, 19.5, 19.7.2, 19.9, of the Sanitary Code for Thurston County, repealing Ordinance No. H-2-2021, and repealing Thurston County Code chapter 2.03.

WHEREAS, the Thurston County Board of Health adopts the following findings:

1. Article I of the Sanitary Code for Thurston County (Sanitary Code) establishes administrative rules and procedures that apply throughout the Sanitary Code to hearings, code enforcement, appeals, permit applications, waivers, and other processes.
2. Electronic means of serving and receiving documents and conducting hearings have proven effective in many situations.
3. The rules and processes in Article I should be updated to reflect current practices and use of technologies proven effective during the COVID-19 pandemic that often improve communications with the public, provide greater efficiency, and reduce costs.
4. To better respond to states of emergency declared by the Thurston County Board of County Commissioners, the Sanitary Code should authorize time periods established in the Code to be extended when appropriate to the emergency conditions.
5. With the adoption of this Ordinance, the emergency provisions set forth in Ordinance No. H-2-2021 are no longer needed and should be repealed.
6. The composition of the Board of Health will expand effective July 1, 2022, as set forth in Ordinance No. 16150, dated April 19, 2022, adopting Thurston County Code chapter 2.07, and the newly composed Board of Health will have authority to establish its meeting schedule.
7. Thurston County Code chapter 2.03, adopted by the Board of Health in Ordinance No. 15141, dated June 8, 2015, establishing the meeting schedule of the Board of Health should be repealed when expansion of Board of Health takes effect July 1, 2022.
8. The Thurston County Board of Health has the authority to enact local rules and regulations as are necessary in order to preserve, promote and improve the public health and to establish fees pursuant to RCW 70.05.060.

NOW, THEREFORE, THE THURSTON COUNTY BOARD OF HEALTH hereby ordains as follows:

SECTION 1. Article I, section 6.1 of the Sanitary Code for Thurston County is amended to read as follows:

6.1 **Applications.** All applications for a license, permit, certificate, inspection or written approval by the health officer shall be made upon forms, including electronic methods where available, provided by the Department and shall be signed by the applicant or the applicant's authorized agent who shall be the person responsible for conformance to the conditions of the license, permit, certificate, inspection or written approval. Applications shall contain all data, information, plans and specifications required by the health officer.

SECTION 2. Article I, section 7.2 of the Sanitary Code for Thurston County is amended to read as follows:

7.2 **Service.** The health officer shall serve the notice of violation upon the person to whom it is directed, ~~either personally, or~~ by mailing a registered or certified copy of the notice of violation to such person at their last known address, or by email to any person who has provided their email address to the department. 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 department may also post a notice on the property of the person with the alleged violation requesting that telephone or mail contact be initiated in order to resolve alleged Code violations. Any other means of service shall be considered adequate if the addressee provides written confirmation of receipt of service.

SECTION 3. Article I, section 7.3 of the Sanitary Code for Thurston County is amended to read as follows:

7.3 **Emergency.** Whenever the health officer finds that a health hazard resulting from a violation of this Code exists which requires immediate action to protect the public health ~~he/she~~ the health officer may, without notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as ~~he/she may~~ the health officer deems 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 Section 7.2. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the health officer as provided in Section 8, shall be afforded a hearing as soon as possible. In the case of a food establishment, an expedited hearing may be requested in accordance with Section 8.10. Any appeal of an emergency order shall not act as a stay of the required action.

SECTION 4. Article I, section 8 of the Sanitary Code for Thurston County is amended to read as follows:

SECTION 8 ADMINISTRATIVE HEARING.

8.1 **Right to Administrative Hearing.** Administrative hearings may be convened for the following causes:

- (a) Any aggrieved person may appeal any order, requirement, permit, decision or determination made by the health officer or an administrative official in the administration or enforcement of the Sanitary Code; or
- (b) other appropriate reason set forth in this Code or in Washington State laws and regulations administered by the health officer, or
- (c) upon request of the health officer, the hearing officer may convene a hearing to review a food establishment's operating conditions and compliance with applicable laws, rules, or permit requirements.

8.1.1 A request for a hearing shall be filed in writing with the department accompanied by required fees 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 order issued under 7.3 (Emergency) of this Article. 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.

8.2 Content of Administrative Hearing Request. Any person requesting a hearing pursuant to Section 8.1 shall provide the following information to the department:

- (a) name, telephone number and mailing address;
- (b) permit applicant's name and mailing address, if applicable;
- (c) if real property is involved, the address and parcel number of the property, and the property owner's name and mailing address;
- (d) a statement setting forth how the person is aggrieved and has standing to request a hearing;
- (e) a summary of the nature of the dispute or reason for the request;
- (f) a summary of the relief or remedy requested; and
- (g) a copy of the decision, notice, order, or determination being appealed, if applicable.

8.3 Notification of Administrative Hearing. Notice of an administrative hearing shall be given to the person requesting the hearing, the applicant and property owner, as applicable. Administrative hearings may be conducted telephonically, or by other electronic means at the discretion of the hearing officer. Such notice shall:

- (a) be in writing;
- (b) include a brief and concise description of the cause for the hearing;
- (c) state the date, time and location or means of conducting the administrative hearing; and

- (d) be served upon the person in the manner provided in Section 7.2.

8.4 Prehearing Conference with Hearing Officer. The hearing 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 electronically, telephonically, or, at the discretion of the hearing officer, in any manner that provides for affected parties to participate 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.

8.5 Settlement. If settlement is reached at any time prior to the hearing before the Hearing Officer, a written settlement agreement may be issued in lieu of a written decision by the hearing 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 at least seven calendar days prior to the Hearing Officer conducting the hearing, 80% of any appeal or hearing fee paid shall be refunded.

8.6 Administrative Hearing Procedures. The administrative hearing shall be an open record hearing presided over by the hearing officer. The administrative hearing shall be recorded. The administrative hearing shall be opened with a recording of:

- (a) the place or means of conducting the hearing, time and date of the hearing;
- (b) a recording of the parties and their representatives present; and
- (c) a statement of the cause for the hearing.

The hearing officer shall then swear in all potential witnesses. The persons to whom notice of the administrative hearing was given and the health officer may offer such evidence as they deem necessary and shall produce such evidence as the hearing officer may deem necessary to obtain an understanding and determination of the issues, provided that the hearing officer may establish deadlines requiring the parties to submit their documents prior to the hearing. The hearing officer shall determine the relevancy and materiality of the evidence offered and 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, when offered, may be considered as evidence. Affidavits and documents may be considered as evidence but shall be given only such weight as is deemed proper after consideration of any objections made to their admission. Testimony of witnesses may be presented. The hearing 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. The hearing may be continued from time to time without further mailed or delivered notice. The hearing officer shall maintain an audio ~~tape~~ recording of the hearing and a record of the documents presented.

8.7 Failure to Attend. If any party who requests an administrative hearing fails to attend or participate in a hearing or pre-hearing conference, the hearing 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.

8.8 Decision by Hearing Officer. The hearing officer shall render a written decision ~~upon the appeal~~ within fifteen calendar days from the conclusion of the hearing, unless a longer period is agreed upon by the parties and the hearing officer, as follows:

- (a) The decision shall contain a synopsis of the testimony and arguments presented, the hearing officer's findings of fact and conclusions of law, and a statement of the decision or order.
- (b) Within five calendar days of its issuance, copies of the decision shall be mailed or delivered to the last known address or email address, if provided, of the applicant, the appellant, the property owner, the Clerk and all parties of record.

8.9 Reconsideration or Clarification by Hearing Officer.

- (a) **Reconsideration.** Any party of record may file a written request for reconsideration within ten calendar days of the date of the hearing officer'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 officer. Within fifteen calendar days of receiving the request the hearing officer 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. Any hearing shall be conducted in accordance with Section 8.6. The hearing officer's decision shall be issued within fifteen calendar days after a hearing or any deadline to submit a response.
- (b) **Clarification.** Any party of record may request clarification of the hearing officer's decision at any time except when appeal or review of the decision is pending. The party requesting clarification 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 officer. Within fifteen calendar days of receiving the request for clarification, the hearing officer shall issue a clarification, deny the request or notify the parties of a timeline to submit a response. The hearing officer's decision shall be issued within fifteen calendar days after any deadline to submit a response.

8.10 Food Establishment Expedited Hearing. If an emergency order issued pursuant to section 7.3 or an order of immediate suspension or revocation of a food establishment permit is issued to a food establishment, the holder of the food establishment permit or person in charge of the food establishment may submit a written request for an expedited hearing along with the applicable fee within three calendar days of service of the order. Upon receipt of a timely request for an expedited hearing, a hearing shall be held within one business day of the request, unless a longer period is agreed upon by the parties and the hearing officer.

- 8.10.1 Notice of the date, time, and location or means of conducting the hearing shall be given to the permit holder and the health officer by telephone, e-mail, fax, or other manner deemed appropriate by the hearing officer.

- 8.10.2 The hearing shall be informal without the requirement for procedural formalities and all relevant information presented will be considered by the hearing officer. Upon conclusion of the hearing, the hearing officer shall issue a summary decision within 48 hours affirming, modifying or reversing the order, without the need for findings of fact and conclusions of law.
- 8.10.3 There shall be no right of appeal of the hearing officer's expedited hearing decision. Any party may, however, request a full hearing pursuant to section 8.1 by filing the hearing request in accordance with section 8.1.1 within fifteen calendar days of the date of the initial emergency order, permit revocation or permit suspension.

SECTION 5. Article I, section 9.3 of the Sanitary Code for Thurston County is amended to read as follows:

9.3 Content of Notice of Appeal to the Board. The notice of appeal shall concisely specify the appellant's issues on appeal stating the specific exceptions and objections to the hearing officer's decision being appealed, and shall cite by reference to section, paragraph and page, the provisions of the hearing officer's decision which are being appealed and the specific relief requested. The Notice of Appeal shall also clearly state how the appellant is aggrieved by the hearing officer's decision and demonstrate that ~~she or he~~ the appellant has standing to appeal. A written memorandum that the appellant may wish considered by the Board may accompany the notice.

SECTION 6. Article I, section 9.4 of the Sanitary Code for Thurston County is amended to read as follows:

9.4 **Notice of Closed Record Appeal Meeting Before the Board.** The Clerk shall schedule a closed record appeal hearing before the Board, which shall be held no later than 50 calendar days following the date the appeal was filed. The Clerk shall notify parties of record that an appeal has been filed and that copies of the Notice of Appeal and appellant's memorandum may be obtained from the Clerk. The notice to the parties shall also state the date, time, and place or means of conducting the hearing at which the closed record appeal meeting will be held, and that the parties of record wishing to respond to the request may submit written memoranda to the Board of Health within fourteen calendar days from the date of the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the hearing officer. Any party may submit a written request to the Board for an extension of time within which the memorandum may be filed; provided that the request for extension is made no later than the last date the memorandum would otherwise be due. The appellant may submit a responsive memorandum within seven calendar days from the date that memoranda from parties of record are due.

SECTION 7. Article I, section 9.5 of the Sanitary Code for Thurston County is adopted to read as follows:

9.5 No Ex Parte Contact. In order to assure the appearance of fairness in matters on appeal to the hearing officer or the Board, no person shall have ex parte (one sided) contact with the hearing officer or any member of the Board regarding the matter on appeal, and no person, including government officials and employees, shall attempt to interfere with or influence the hearing officer or board outside an appeal public hearing.

SECTION 8. Article I, section 10 of the Sanitary Code for Thurston County is adopted to read as follows:

SECTION 10 JUDICIAL REVIEW. An appeal of the decision of the Board of Health must be initiated as follows:

- (a) any decision of the Board of Health that is a land use decision as defined in RCW 36.70C.020(1) shall be filed and served in accordance with chapter 36.70C RCW.
- (b) an appeal of any other Board of Health decision shall be filed with the Superior Court and served on all parties within twenty-four calendar days from the date the Board of Health's written decision was ~~mailed or personally served~~ pursuant to section 7.2, or is thereafter barred.

Such appeals shall not operate as a stay of any required action or approval contained in the decision of the Board of Health.

SECTION 9. Article I, section 13.1 of the Sanitary Code for Thurston County is adopted to read as follows:

13.1 Information Required for the Submission of a Request for Waiver of Code Provisions. A waiver request shall include the following information:

- (a) requestor's name, telephone number and mailing address;
- (b) permit applicant's name and mailing address;
- (c) property owner's name and mailing address, if applicable;
- (d) specific code provision requested to be waived;
- (e) a detailed explanation of the request, including the reasons that the code provision cannot be met;
- (f) permit type, permit number, parcel number and address or legal description if real property is involved;
- (g) explanation and details of any alternatives that exist for the issue;
- (h) a detailed explanation as to how the waiver satisfies the approval standards set forth in subsection 13.4-;

- (i) a statement of whether a hearing is requested; and
- (j) a list of all persons required to be notified of the waiver request and their addresses as set forth in Section 13.2, if applicable.

SECTION 10. Article I, subsection 13.2.3 of the Sanitary Code for Thurston County is adopted to read as follows:

13.2.3 Contents of Notification. The notification of waiver request shall contain the following information:

- (a) name and address of person requesting a waiver;
- (b) permit type, permit number, parcel number and address of the property;
- (c) a brief description of the waiver request;
- (d) a statement that comments may be submitted within 15 calendar days of the date of the notice, unless a longer time period is specified in the notice;
- (e) a statement that an administrative hearing may be requested; and
- (f) the address or email address and contact information where comments are to be submitted.

SECTION 11. Article I, section 13.6 of the Sanitary Code for Thurston County is adopted to read as follows:

13.6 **Notice of Decision.** A copy of the decision shall be transmitted, within five calendar days of issuance, to the person who requested the waiver, to each person required to be notified who has submitted comment, and to each person who ~~or has~~ requested a copy of the decision.

SECTION 12. Article I, subsection 13.9.1 of the Sanitary Code for Thurston County is adopted to read as follows:

13.9.1 **Supplemental Process for Solid Waste Permit Variance.** The foregoing process shall be supplemental to the variance guidelines for solid waste permit variances contained in WAC 173-350-710. Any request for a solid waste permit variance must include the information specified in Section 13.1, and must also address the standards in WAC 173-350-710~~(7)~~(8)(a) by setting forth facts showing that:

- (i) The solid waste handling practices or location will not endanger public health, safety or the environment; and
- (ii) Compliance with the provision from which the variance is sought would produce hardship without equal or greater benefits to the public.

SECTION 13. Article I, section 15 of the Sanitary Code for Thurston County is adopted to read as follows:

SECTION 15 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. If Thurston County offices are not open on the last day, the time period runs until the next day that Thurston County offices are open. During a state of emergency declared by the Board of County Commissioners, the health officer or hearing officer may extend any time period as appropriate to the circumstances of the emergency.

SECTION 14. Article I, section 18.4 of the Sanitary Code for Thurston County is adopted to read as follows:

18.4 Identification of Violators. An enforcement officer issuing a notice of civil infraction shall require the person receiving the notice to identify ~~himself or herself~~**themselves** by producing a valid driver's license or identicard. If the person receiving the notice is unable to produce such a card, the enforcement officer shall require the person to give name, address and date of birth. If the person is unable or unwilling to give such information, the enforcement officer may, with the assistance of a deputy sheriff, detain such person for a period of time not longer than is reasonably necessary to identify the person.

SECTION 15. Article I, section 19.2 of the Sanitary Code for Thurston County is adopted to read as follows:

19.2 Contents. 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) required corrective action and a date and time by which the correction must be completed; and
- (e) the amount of the penalties and the dates they will accrue and a statement of any costs and expenses expended by the county that are assessed in accordance with this Code; and
- (f) a statement indicating the right to file an appeal and request a hearing before the hearing officer; and
- (g) the number of days, up to a maximum of 30 days, that civil penalties will be assessed.

SECTION 16. Article I, section 19.5 of the Sanitary Code for Thurston County is adopted to read as follows:

19.5 Monetary Penalty Schedule.

Civil penalties shall be assessed as set forth in the following schedules, provided that each notice of civil penalties may assess penalties for a maximum of 30 days. The health officer may impose additional notices of civil penalties if the violation has not been fully corrected.

19.5.1 Civil penalties for violations of Article III shall be assessed pursuant to the schedule listed in Article III, Section 8.4.

19.5.2 Civil penalties for violations of Article IV shall be assessed pursuant to the schedule listed in Article IV, Section 26.2.

19.5.3 Civil Penalties for violations of Article V shall be assessed pursuant to the schedule listed in Article V, Section 27.2.

SECTION 17. Article I, subsection 19.7.2 of the Sanitary Code for Thurston County is adopted to read as follows:

19.7.2 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 to the County as directed in the notice issued pursuant to Section 19.7.1 or the hearing officer's decision within ~~ten~~ thirty calendar days from the date of mailing of the notice or hearing officer's decision or such longer time period that is stated in the notice that the penalties are due.

SECTION 18. Article I, section 19.9 of the Sanitary Code for Thurston County is adopted to read as follows:

19.9 Decision of the Hearing Officer.

19.9.1 The hearing officer shall issue a decision within fifteen calendar days of the conclusion of the appeal hearing, unless a longer period is agreed upon by the parties and the health officer. The hearing officer shall determine whether the health officer has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the health officer's decision regarding the alleged violation and/or the required corrective action, with or without written conditions.

19.9.2 The hearing officer's decision shall contain the following:

- (a) the decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
- (b) the required corrective action;
- (c) the date and time by which the correction must be completed;

- (d) the monetary penalties assessed based on the criteria in Section 19.10;
- (e) the date payment is due, and directions for making payment ~~in person or by mail~~; and
- (f) the date and time after which the County may proceed with abatement of the unlawful condition if the required correction has not been completed.

19.9.3 Within five calendar days of its issuance, a copy of the decision shall be ~~mailed to~~ reserved on the appellant in any manner authorized in Section 19.3.

SECTION 19. Ordinance No. H-2-2021 is hereby repealed.

SECTION 20. Thurston County Code chapter 2.03 is repealed effective July 1, 2022.

SECTION 21. SEVERABILITY. If any provision of this Ordinance or its application to any person or circumstance is, for any reason, declared invalid, illegal or unconstitutional in whole or in part, the remainder of this Ordinance or the application of the provision to other persons or circumstances shall not be affected.

SECTION 22. EFFECTIVE DATE. This Ordinance shall take effect immediately upon adoption, except for Section 20 which shall take effect July 1, 2022.

Adopted: _____

ATTEST:

BOARD OF HEALTH
Thurston County, Washington

Clerk of the Board

Tye Menser, Chair

APPROVED AS TO FORM:

JON TUNHEIM
PROSECUTING ATTORNEY

Carolina Mejia, Vice-chair

Jane Futterman
Sr. Deputy Prosecuting Attorney

Gary Edwards, Commissioner