



**Environmental Health Division
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**PUBLIC HEALTH AND
SOCIAL SERVICES DEPARTMENT**

Article I

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SANITARY CODE FOR THURSTON COUNTY

ARTICLE I

RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH

GENERAL PROVISIONS

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ARTICLE I

RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH GENERAL PROVISIONS

SECTION 1 TITLE. The rules and regulations of the Thurston County Board of Health including all present articles and those articles subsequently adopted shall be referred to as the "Sanitary Code for Thurston County."

SECTION 2 DEFINITIONS. For the purposes of the Sanitary Code the following definitions shall apply unless the context thereof clearly indicates to the contrary.

2.1 **Aggrieved Person.** A person whose interests are, or will likely be, specifically and perceptibly harmed by a requirement, permit, decision or determination made by the health officer or an administrative official, 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.

2.2 **Board of Health or Board.** The Thurston County Board of Health pursuant to RCW 70.05.030.

2.3 **Clerk.** The Clerk of the Board of Health.

2.4 **Closed Record Appeal.** An administrative appeal on the record to the Board of Health following an open record hearing before the Hearing Officer, with no new evidence or information allowed to be submitted.

2.5 **Department.** The Thurston County Public Health and Social Services Department.

2.6 **Geologically Sensitive Area.** An area of definite boundaries established by the Thurston County Board of Health, which, because of geological conditions, is subject to aquifer, drinking water supply or surface water contamination.

2.7 **Health Hazard.** A condition or situation where disease transmission potential exists and if unabated the disease transmission potential may increase and may result in a public health problem or emergency.

2.8 **Health Officer.** The health officer of the Thurston County Public Health and Social Services Department as provided for in RCW 70.05.050 or his/her designee.

2.9 **Hearing Officer.** The person(s) appointed by the Board of Health to exercise the authority and perform the duties of hearing officer set forth in this Code.

2.10 **License.** A specific written authorization issued by the health officer allowing a person to engage in practices regulated by this Code.

2.11 **Open Record Hearing.** A hearing conducted by the Hearing Officer that creates the record through testimony and submission of evidence and information.

2.12 **Parties of Record.** Persons who have given oral or written comments to the hearing officer; or listed their names, as persons wishing a copy of the hearing officer's decision, on a sign-up sheet which is available during the hearing officer's hearings.

2.13 **Permit.** A specific written authorization issued by the health officer for the performance, operation, use or repair of a function regulated by this Code.

2.14 **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.

2.15 **Revocation.** The rescinding of authorization issued by the health officer relative to a permit, certification, or a license.

2.16 **Sanitary Code or Code.** The Sanitary Code for Thurston County.

2.17 **SSAS.** (Subsurface Soil Absorption System). A system consisting of trenches (three feet or less in width) or beds (more than three feet in width), together with the piping and gravel, designed and installed in original undisturbed soil for the purpose of receiving effluent from a septic tank or other pretreatment device and transmitting it into the soil.

2.18 **Suspension.** Temporary canceling of authorization issued by the health officer relative to a permit, certification, or a license.

SECTION 3 JURISDICTION. The provisions of the Sanitary Code shall be in force within the boundaries of Thurston County including all cities and towns therein.

SECTION 4 ADOPTION OF THE SANITARY CODE.

4.1 **Notice and Hearing.** The Sanitary Code and any amendments or additions 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 Sanitary Code or any amendments or additions thereto shall be published in the official County newspaper at least ten (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 amendments or additions will be available upon request.

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

4.3 **Filing.** The Sanitary Code shall be on file in the Thurston County Auditor's Office and available upon request from the Department for the cost of copying.

SECTION 5 SUPPLEMENTAL TO OTHER REGULATIONS. The regulations of this Code shall be supplemental to the rules and regulations of the State Board of Health and other Washington State laws and regulations. Except as otherwise provided within this jurisdiction, the Code shall supersede all prior rules, regulations and standards of the Board of Health and all local ordinances heretofore or hereafter enacted inconsistent therewith.

SECTION 6 LICENSES, PERMITS, CERTIFICATES, INSPECTIONS AND APPROVALS.

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.

6.2 **Transferability.** Except as otherwise provided by this Code, a license, permit, or certificate 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 than that designated therein.

6.3 **Terms and Conditions.** 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, inspection or written approval by the health officer as herein required shall conform to the conditions prescribed in said license, permit, certificate, inspection or written approval by the health officer and to the provisions of this Code. Every such license, permit or certificate shall expire as stated on the license, permit or certificate and may be renewed, suspended, or revoked by the health officer as provided in this Code.

SECTION 7 VIOLATIONS - CORRECTION OF VIOLATIONS.

7.1 **Notice of Violation.** Whenever the health officer determines that there are reasonable grounds to believe that there has been a violation of any provision of the Sanitary Code or other law under the jurisdiction of the health officer the health officer shall give notice to the person who is the owner or operator of the source of the violation, the person in possession of the property where the violation originates, or the person otherwise causing or responsible for the violation or the person holding the license or permit in question. 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 Sanitary Code;
- (c) contain a brief and concise description of the conditions found to be in violation;
- (d) include a statement of the corrective action required to be taken;
- (e) allow a reasonable time for the performance of any act required;
- (f) be served upon the person; and
- (g) contain provisions for appeal.

7.1.1 Exception. The health officer may commence enforcement action and resort to any of the penalties set forth in Section 12 of this Article without issuing a notice of violation

- (a) when a person has been issued a notice of violation of the same provision of this Code within the previous 24 months; or
- (b) the violation cannot be undone; or
- (c) the violation creates an imminent threat to public health, safety or of environmental damage.

7.2 Service. The health officer shall serve the notice of violation upon the person to whom it is directed, personally, 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.

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 the health officer may, without notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as 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.

7.4 Failure to Comply. It is unlawful for any person to fail to take corrective action or otherwise violate the terms and conditions specified in a notice of violation issued by the health officer. 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. 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. Any person in violation of this section shall be subject to enforcement and penalties pursuant to Section 12 of this article. A violation of this section is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW and Section 18 of this Article.

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.

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.

- (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.

8.2 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. 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 hearing 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 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 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 9 APPEAL TO BOARD OF HEALTH.

9.1 Right of Appeal to the Board of Health. Any party of record who has been aggrieved by a decision of the hearing officer issued under section 8.8 shall have a right to a closed record appeal to the Board of Health of the hearing officer's findings, conclusions, and decision, except for a decision of the hearing officer pursuant to Section 19 of this Article and disciplinary action taken pursuant to Article IV, section 23 (Certification of Designers, Installers, Pumpers, Inspectors, and Maintenance Personnel). The written notice of appeal and the appropriate fee must be filed with the Board of Health within fifteen calendar days of the date of the hearing officer's final written decision. If a timely request for reconsideration of the hearing officer decision is filed, the appeal period will be fifteen calendar days from the date the hearing officer issues a determination of the request for reconsideration. Postmarks are not acceptable. If the notice of appeal and required fee is not timely filed, the Board will not consider the appeal. The deadline will not be extended.

9.2 Stay of the Hearing Officer's Decision. An appeal filed within the specified time period will stay any required action or approval contained in the hearing officer's decision until it is adjudicated by the Board of Health or is withdrawn, except in the presence of an emergent health hazard as described in Section 7.3 of this Article.

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 the appellant has standing to appeal. A written memorandum that the appellant may wish considered by the Board may accompany the notice.

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.

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 hearing.

9.6 Submission of Record. When an appeal has been timely filed and the deadline for receipt of memoranda has expired, the Clerk shall deliver to the board a copy of the record. The record shall include the evidence and all documents presented to the hearing officer, the hearing officer's written decision, an audio recording of the hearing including all testimony before the hearing officer, and the Notice of Appeal and any memoranda or staff reports submitted for the appeal to the Board.

9.7 Board Actions on Appeals.

9.7.1 Scope of Review. The Board's review of facts is limited to evidence presented to the hearing officer. **No new evidence will be allowed to be presented to the Board.**

9.7.2 Board Decision on Appeal. The Board may adopt, amend and adopt, reject, reverse, and amend conclusions of law and the decision of the hearing officer, remand the matter for further consideration, or continue the appeal meeting. The Board's written decision on the appeal shall be issued not later than fifteen calendar days from the conclusion of the meeting, unless the parties to an appeal agree to extend the time period. Within five calendar days of its issuance, copies of the decision shall be served pursuant to section 7.2, on all parties of record and the health officer.

9.8 Reconsideration by Board. The Board's decision is final and no reconsideration requests shall be considered.

9.9 Failure to Comply. It is unlawful for any person to fail to comply or otherwise violate a decision or order resulting from a hearing officer or a Board of Health hearing. 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. 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. Any person in violation of this section shall be subject to enforcement and penalties pursuant to Section 12 of this Article. A violation of this section is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW and Section 18 of this Article.

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 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 11 ENFORCEMENT, INSPECTIONS AND SEARCH WARRANTS.

11.1 Enforcement. It shall be the duty of the health officer to enforce the provisions of the Sanitary Code and other such laws which designate the health officer or jurisdictional health department as the responsible agency. In order to enforce the Sanitary Code and other laws under the jurisdiction of the health officer, the health officer is hereby authorized, subject to the provisions of the Sanitary Code and the laws of the State of Washington, to enter any premises.

11.2 Inspection. All premises covered by the Sanitary Code and other laws which designate the health officer or the jurisdictional health department for enforcement, shall be subject to the inspection of the health officer and if any violation exists on the premises, any license or permit granted by the health officer may be suspended or revoked as provided in this Article. If inspection or entry is refused, the health officer or his or her authorized representative shall have recourse to every remedy provided by the Sanitary Code and other Washington State laws to secure entry.

11.2.1 Disclosure of authorization and limits of inspection. The health officer or his or her designee shall, upon request, disclose to the property owner, or to the person in effective charge of the property, the laws that govern the facilities or systems subject to inspection and these regulations relating to inspections and searches.

11.3 Administrative Search Warrants. The health officer or his or her designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant, authorized by this section, may be issued by the court for the purposes of inspecting or examining property, buildings, premises, place, books, records, or other physical evidence, or conducting tests or taking samples. The warrant shall only be issued upon probable cause supported by affidavit or declaration that particularly describes the place, dwelling, structure, or premises to be inspected and the purpose for which the inspection is made. For purposes of this section, probable cause shall be deemed to exist if either:

- (a) Reasonable legislative or administrative standards for conducting a routine or area inspection, to determine compliance with laws or rules administered by the department, are satisfied with respect to the particular place, dwelling, structure, or premises, provided that if a warrant is sought pursuant to this section, the affidavit or

declaration shall contain a statement that consent to inspect has been sought and refused; or

- (b) With respect to the particular place, dwelling, structure, or premises, the local health officer or his or her designee has reason to believe that a violation of a law or rule administered by the department has occurred, is occurring, or may occur.

11.3.1 Issuance and Contents of Warrant. If the judge or magistrate is satisfied that the proper standard for issuing a warrant has been met, the judge or magistrate shall issue the warrant particularly describing each place, dwelling, structure, or premises, to be inspected and designating on the warrant the purpose and limitations of the inspection, including the limitations required by this section. The judge or magistrate may specify the hours during which the warrant may be executed, and any other reasonable limitations on its execution.

11.3.2 Duration. An administrative search warrant shall be effective for the time specified therein, but not for more than 14 days, unless a longer period is stated in the search warrant, or the period is extended or renewed by the judge or magistrate who signed and issued the original warrant, if that judge or magistrate finds that such extension or renewal is in the public interest. Such administrative search warrant must be executed and returned to the court from which it was issued within the time specified in the warrant or within the extended or renewed time.

11.3.3 Notice of Inspection. Where prior consent has been sought and refused pursuant to subsection 11.3 (a) of this section, notice that a warrant has been issued must be given at least 72 hours before the warrant is executed. The notice shall provide a telephone number and address where the occupant or owner (if there is no occupant) can contact the department to make arrangements for the inspection.

SECTION 12 PENALTIES.

12.1 General. Each violation of this Code shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. Every violation of this Code shall be unlawful and a public nuisance.

12.2 Compliance Actions. Compliance with the Code may be enforced by the Prosecuting Attorney at the request of the health officer. Notwithstanding the existence or use of any other remedy, an action may be brought in superior court seeking legal or equitable relief to enjoin any acts or practices or abate any conditions which constitute or will constitute a violation of this Code.

12.3 Civil Infractions. Violations of the provisions of this Article, Article III, Article IV, Article V, Article VI, or Article VIII of this Code are designated as civil infractions pursuant to Chapter 7.80 RCW and Section 18 of this Article.

12.4 Administrative Civil Penalties. Violations of the provisions of Article III, Article IV, Article V, or Article VIII, with the exception of Section 21 of Article V (Residential Sharps Wastes), may be assessed a civil penalty pursuant to Section 19 of Article I.

12.5 Misdemeanor Penalty. Any person violating this Code, except for Section 4.2 of Article VI, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000.00 or to imprisonment in the county jail not to exceed ninety (90) days or to both fine and imprisonment.

12.6 Revocation or Suspension of Approval. Any permit, approval, certification or license may be revoked or suspended for the violation of any term, condition or requirement of such permit, approval, certification, or license.

SECTION 13 WAIVER OF CODE PROVISIONS.

Any person may request a waiver of a specific requirement of this Code in accordance with this section, with the exception of Article IV (Governing Treatment, Dispersal and Disposal of Sewage) and Article VIII (Governing Smoking and Vaping in Public Places and Places of Employment). The waiver request shall be submitted on a form provided by the health officer along with the applicable fee set forth in Article I, Appendix A. A request for a waiver of any provision of Article IV shall be subject to the provisions of Article IV. An application to rebut the presumptively reasonable minimum distance of twenty-five (25) feet for smoking or vaping shall be subject to the provisions of Article VIII.

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.

13.2 Notification.

13.2.1 Notification of a waiver request must be given as set forth in this subsection whenever a waiver involves the following:

- (a) For a waiver of a set-back to either 1) a neighbor's water source; or 2) a neighboring property, all property owners whose property would be directly involved in such a setback requirement shall be notified of the request for waiver;
- (b) For a waiver of solid waste handling standards for a facility required to have a solid waste permit, exemption or deferral, property owners within 1320 feet (one quarter mile) of the subject property shall be notified of the request for waiver and notice of the request shall be posted on or near the site;
- (c) For a waiver of a water quality or quantity standard or construction standard for a public water source, all owners of connections, each residence served by the system and consumers shall be notified.

13.2.2 Any person required to be notified by this Section may request a hearing on the waiver request and may submit comments for consideration by presenting such comments in writing, to the health officer. Comments or a 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.

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.

13.2.4 Notification shall be deemed complete when a written notice to the person's last known address has been deposited in the U.S. Mail or has been served on the person according to Section 7.2 of this Article.

13.3 Administrative Hearings Regarding Waiver Requests. Administrative hearings shall be conducted if requested by the person desiring the waiver, by the request of any person required to be notified of such a waiver request, by the health officer, or at the discretion of the hearing officer. An administrative hearing shall be conducted in accordance with subsections 8.6 and 8.7 of this Article. Notice of the hearing shall be given to the person requesting the waiver and any person required to be notified of the waiver request who responded in writing. 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.

13.4 Approval Standards. The hearing officer shall evaluate each waiver request and may only approve a waiver if the request satisfies all the following standards:

- (1) the waiver is consistent with the intent of this Code and any applicable statutes, regulations, and policies;
- (2) the approval would not result in a hazard or increase risk to public health or the environment;
- (3) no alternative to the waiver is available that meets all requirements of this Code, or, any available alternative that meets all requirements of this Code provides less protection of public health and the environment than will be achieved by approving the waiver; and
- (4) the requested waiver is the minimum necessary.

13.5 Decisions. The hearing officer shall consider all evidence and, if a hearing is conducted, testimony pertaining to the request for waiver. The hearing officer may approve or deny the waiver request, or a portion of the request, and may set conditions, limitations, and time limits as part of any waiver decision. The hearing officer may only approve a waiver if the approval standards in subsection 13.4 are satisfied.

13.5.1 Hearing Decision. The hearing officer shall issue a decision within 15 calendar days of the conclusion of the hearing, unless the parties agree on a longer time.

13.5.2 Decisions Without a Hearing. The hearing officer may decide the issue without an administrative hearing if neither the waiver request nor any of the

persons notified request a hearing. The decision shall be issued within fifteen calendar days of receipt of the request or the deadline for notified persons to respond, whichever is later, unless person who requested the waiver agrees to a longer time.

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 has requested a copy of the decision.

13.7 Appeal. Any person who is aggrieved by the decision and 1) who requested a waiver; or 2) who is entitled to notification as set forth in Section 13.2.1 of this Article and who submitted written comment on the waiver request; or 3) any person who is entitled to notification under Section 13.2.1 of this Article and appeared to testify at an administrative hearing regarding the waiver request may appeal to the Board of Health pursuant to section 9 of this Article.

13.8 Concurrence. In the event the regulation or code provision to be waived is also a state law or regulation, the concurrence of the Secretary of the Washington State Department of Health or other responsible official must be obtained prior to the waiver being considered complete and in effect.

13.9 Request for Variance from State Law or Regulation. A request for variance from any provision of state law or regulation shall be considered according to the procedures and standards for waivers set forth in this Section 13 and any applicable standards set forth in the state laws or regulations or elsewhere in this Code.

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(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 14 EQUIVALENCY. Alternate methods, techniques and specifications which differ from those set forth in this Code may be allowed by the health officer if it can be demonstrated to the health officer's satisfaction that the alternative provides equivalent performance and public health protection; and, if required, have been approved by the Washington State Department of Health.

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 16 SEVERABILITY. If any provision of this Sanitary Code or its application to any particular person or circumstance is held to be invalid, the remainder of this Code and its application to other persons or circumstances shall not be affected.

SECTION 17 FEES. Fees for the provision of Environmental Health Services shall be charged in accordance with the schedule attached to this Article as Appendix A.

SECTION 18 CIVIL INFRACTIONS.

18.1 Purpose. It is imperative that County health regulations governing the disposal of sewage and the handling of solid waste, animal waste, moderate risk waste, petroleum products and hazardous materials be properly enforced. To better accomplish this goal, the Thurston County Board of Health has designated certain violations of this Sanitary Code to be civil infractions pursuant to Chapter 7.80 RCW. The purpose of this action is remedial. Use of the civil infraction procedure will better protect the public from the harmful effects of violations, will aid enforcement, and will help reimburse the County for the expenses of enforcement.

18.2 Determination of Civil Infractions. Violations of the provisions of Articles I, III, IV, V, VI, and VIII of this Sanitary Code are designated as civil infractions pursuant to Chapter 7.80 RCW. Civil infractions shall be heard and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules.

18.3 Designation of Enforcement Officer. The enforcement officer for violations of the Sanitary Code for Thurston County which are designated as civil infractions is the health officer or his or her designee.

18.4 Identification of Violators. An enforcement officer issuing a notice of civil infraction shall require the person receiving the notice to identify 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.

18.5 Administrative Responsibilities. The Thurston County Health Officer is responsible for assuring County compliance with RCW 7.80.150, (the control and keeping of records of citation books). The custody of these citation books may be further assigned to the Prosecuting Attorney.

18.6 Recording of Civil Infractions.

18.6.1 Notice of civil infraction may be recorded with the Thurston County Auditor against the property on which the violation took place in the following instances:

- (a) The person receiving the notice of civil infraction does not respond as required by RCW 7.80.080;
- (b) The person receiving the notice of civil infraction fails to appear at a hearing requested under RCW 7.80.080(3) or (4);
- (c) The person assessed a monetary penalty for the civil infraction fails to pay such penalty within the time required by law and does not appeal the penalty. If the penalty is appealed, the enforcement officer may record the notice of civil infraction only if a penalty remains unpaid after a final appellate determination has been entered.

18.6.2 The Auditor shall record any notice of civil infraction submitted for recording under this Section.

SECTION 19 ADMINISTRATIVE CIVIL PENALTIES.

19.1 **Issuance.** When the health officer determines that a violation of Article III, IV, Article V, or Article VIII with the exception of Article V, Section 21 ("Residential Sharps Waste"), has occurred, the health officer may issue a Notice of Civil Penalty to the person responsible for the violation.

19.1.1 The health officer may issue a Notice of Civil Penalty without first issuing a notice of violation as provided in Article I, Section 7 under the following circumstances:

- (a) when an emergency exists; or
- (b) when a repeat violation occurs within a 24-month period; or
- (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.

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.

19.3 Service of Notice. The health officer shall serve the Notice of Civil Penalty upon the person to whom it is directed, either personally or by mailing a registered or certified copy of the Notice of Civil Penalty to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within Thurston 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.

19.4 Extension. 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 officer.

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.

19.6 **Continued Duty to Correct.** Payment of a monetary penalty pursuant to this Article does not relieve the person to whom the Notice of Civil Penalty was issued of the duty to correct the violation.

19.7 **Collection of Monetary Penalty.**

19.7.1 If no appeal is timely requested in accordance with Section 19.8.2, the hearing officer shall review the amount of penalties in accordance with section 19.10, and thereafter shall serve a notice of the penalties that are due. The notice shall be served in accordance with Section 7.2 of this Article and shall state the amount of the penalties, the date payment is due, and directions for making payment in person or by mail.

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 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.

19.7.3 After the due date for payment of the penalties, the health officer and/or the prosecuting attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty.

19.8 **Appeal to the Hearing Officer.**

19.8.1 **Right to Appeal.** A person to whom a Notice of Civil Penalty has been issued may appeal the Notice of Civil Penalty to the hearing officer.

19.8.2 **How to Appeal.** A person may appeal the Notice 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.

19.8.3 **Notice.** Notice of the administrative hearing shall be given in accordance with Section 8.3 of this Article.

19.8.4 **Procedure.** The hearing officer shall conduct the hearing on the Notice of Civil Penalty pursuant to Section 8 of this Article. The health officer shall have the burden of proof to demonstrate by preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable.

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; 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 served on the appellant in any manner authorized in Section 19.3.

19.10 Assessment of Monetary Penalty. Monetary penalties assessed by the hearing officer shall be in accordance with the monetary penalty schedule referenced in Section 19.5.

19.10.1 The hearing officer may reduce the amount of the monetary penalties for mitigating circumstances.

19.10.2 In determining the monetary penalty assessment, the hearing officer shall consider the following factors:

- (a) the person's efforts to correct the violation and whether corrective action has been completed;
- (b) whether the person failed to appear at the hearing;
- (c) whether the violation was a repeat violation;
- (d) whether the person showed due diligence and/or substantial progress in correcting the violation;
- (e) the amount of time and resources expended to abate the violation;

- (f) whether a genuine code interpretation issue exists; and
- (g) any other relevant factors.

19.11 **Failure to Appear.** If the person to whom the Notice of Civil Penalty was issued fails to appear at the requested appeal hearing, the hearing officer may issue a decision upholding the Notice of Civil Penalty and assessing the monetary penalty or modifying the monetary penalty amount in accordance with Section 19.10.

19.12 **Appeal to Superior Court.** An appeal of the decision of the hearing officer must be filed with the Superior Court within twenty-four (24) calendar days from the date the hearing officer's decision was mailed to the person to whom the Notice of Civil Penalty was sent, or is thereafter barred.

19.13 **Relation of Civil Penalties to Other Enforcement Procedures.** The Administrative Civil Penalty procedure adopted by this Section provides an additional and independent method of enforcement to procedures found in Article I, Section 12 of this Sanitary Code.

SECTION 20 GEOLOGICALLY SENSITIVE AREAS.

In an area declared by the Board to be "geologically sensitive", the health officer shall require such additional reasonable standards adopted by the Board as are necessary to prevent health hazards and water pollution. All Geologically Sensitive Areas (GSAs) and their standards, as adopted by the Board, shall be set forth in Appendix B of Article I.

Adopted: December 10, 2013

APPENDIX A
SANITARY CODE FOR THURSTON COUNTY
FEE SCHEDULE

For a copy of the Environmental Health Division Fee Schedule, please contact the
Thurston County Permit Assistance Center or visit our web site at

<http://www.co.thurston.wa.us/health/ehadm/pdf/FeeSchedule.pdf>

APPENDIX B
SANITARY CODE FOR THURSTON COUNTY
GEOLOGICALLY SENSITIVE AREAS

A. McALLISTER GEOLOGICALLY SENSITIVE AREA.

1. **Creation of Geologically Sensitive Area.** Pursuant to Chapter 70.05 RCW and Article I, Section 20 in the Sanitary Code for Thurston County, the area described in subsection 2 of this Section constitutes a geologically sensitive area to be known as the McAllister Geologically Sensitive Area (McAllister GSA).

2. **Area of McAllister GSA.** The McAllister GSA comprises the territory shown on the parcel specific map entitled "McAllister Geologically Sensitive Area, August 13, 1990", with a notation referring to Resolution No. H3-90 in the custody of the Thurston County Public Health and Social Services Department.

3. **Sewage Disposal Regulations.** In addition to any other requirements imposed by this Code, the following requirements shall apply within the McAllister GSA:

- (a) Any on-site sewage disposal system for which a permit to install, connect, repair, alter, extend or relocate is issued on or after August 15, 1990:
 - (i) shall contain a pressure distribution system in accord with State Department of Health Technical Review Committee Guidelines;
 - (ii) shall have SSAS trenches or beds no deeper than thirty (30) inches below the surface of the ground;
 - (iii) shall have at least thirty-six (36) inches of separation between the bottom of any SSAS trenches or beds and the maximum seasonal ground water elevation or any impermeable layer. The health officer may require greater vertical separation if necessary, for public health protection.
- (b) Whether or not an operational permit is required, any dwelling unit or other premises where sewage originates within two hundred (200) feet of a public sewer system shall be connected to the sewer system pursuant to Article IV, Section 7.
- (c) Building site approvals may be issued for uses other than single or multi-family residential only if:

- (i) the designed sewage flow is no greater than four hundred and fifty (450) gallons per five (5) acres per day, and
- (ii) the waste entering on the on-site system is equivalent in quality to typical residential waste.

4. Agriculture.

- (a) The Thurston County Cooperative Extension Office is requested annually to review best management practices for the use of pesticides and fertilizers within the McAllister GSA. The procedures used in this review should be submitted to the Board of Health for approval by January 1, 1991.
- (b) The health officer shall work with the North Thurston School District and any public or private agency owning or operating parks within the McAllister GSA to obtain better compliance with best management practices for pesticides and fertilizers.

5. Stormwater and Hazardous Materials.

- (a) Pesticides shall not be used to maintain any County property in the McAllister GSA.
- (b) The health officer shall send letters to the director of the State Department of Transportation and to the governing officials of the Fort Lewis Military Reservation, Nisqually Indian Reservation and Puget Power requesting that chemical methods not be used to maintain any rights-of-way located within the McAllister GSA or over ground water which the health officer deems is connected to the aquifer under-lying the McAllister GSA.
- (c) The health officer shall write a letter to the director of the State Department of Ecology requesting that applications for the use of aquatic pesticides in Lake St. Clair be granted only upon a finding by the health officer that the proposed use will not likely threaten ground water.
- (d) The health officer shall advise Burlington Northern Railroad and Amtrak of the vulnerable nature of ground water in the McAllister GSA and request that each:
 - (i) cease discharging sewage and waste water along tracks within the McAllister GSA, and

- (ii) cease using chemical methods to maintain rights-of-way within the GSA. The health officer shall also request Burlington Northern and Amtrak to coordinate emergency management procedures with the County for spills and accidents within the McAllister GSA.
- (e) By December 31, 1990, the health officer shall review existing and proposed requirements for stormwater management governing public or private developments. If the health officer deems such requirements insufficient to protect ground water in the McAllister GSA, he shall propose stormwater management requirements which are sufficient to that end.

6. **Education** The Office of Water Quality and Resource Management shall conduct a public education program in the McAllister GSA. The purpose of this program shall be to protect ground water by instructing residents in proper lawn care and gardening practices, septic system maintenance, and handling and disposal of household hazardous waste.