

**PACIFIC COUNTY BOARD OF HEALTH
ORDINANCE NO. 1**

AN ORDINANCE WHICH PERTAINS TO CIVIL INFRACTIONS

WHEREAS, the Washington State Legislature enacted a law effective in 1995 which gives the Pacific County Board of Health jurisdiction in the entire County, including the incorporated cities of Raymond, South Bend, Ilwaco and Long Beach;

WHEREAS, CHAPTER 70.05.030 RCW directs the Board of Health to enforce public health rules in the incorporated and unincorporated areas of Pacific County;

WHEREAS, the Pacific County Board of Health Ordinance No. 1 which pertains to civil infractions has enhanced the Board of Health's ability to enforce public health rules in the incorporated and unincorporated areas of the County;

WHEREAS, the Pacific County Board of Health is adopting Ordinance No. 8, Provision of Potable Water, in response to a need to ensure new development has access to potable water prior to undertaking construction; and

WHEREAS, Ordinance No. 1 as amended by Ordinance Nos. 1A, 1B, 1C and 1D needs to be rescinded and merged into a new primary Ordinance No. 1;

NOW THEREFORE IN ACCORDANCE WITH CHAPTER 70.05 RCW AND CHAPTER 246-272 WAC, IT IS HEREBY ORDAINED BY THE PACIFIC COUNTY BOARD OF HEALTH THAT PACIFIC COUNTY BOARD OF HEALTH ORDINANCE NO. 1, AND ITS ASSOCIATED AMENDMENTS, IS REPLACED BY A NEW PACIFIC COUNTY BOARD OF HEALTH ORDINANCE NO. 1, WHICH IS ADOPTED AS FOLLOWS:

I. CIVIL INFRACTIONS

A. Legislative Finding

The Board of Health finds that it is imperative to enforce litter, sewage, nuisance, food establishment/handling, water recreation facilities, potable water and recreational vehicles/camping regulations. The Board of Health also finds that it is in the best interests of the Board of Health to adopt its own civil infraction system.

B. Purpose of this Ordinance

The purpose of this Ordinance is to better protect the public from harmful effects associated with violations of litter, sewage, nuisance, food establishment/handling, water recreation facilities, potable water and recreational vehicles/camping regulations. This Ordinance enhances the enforcement of such violations, provides a mechanism to reimburse the Board of Health for the expenses of enforcement, and articulates procedures for processing violations and appeals.

C. Definitions

1. Board of Health - "Board of Health" means the Pacific County Board of Health.
2. County – "County" means Pacific County.
3. Court – "Court" means a court of limited jurisdiction organized pursuant to RCW Title 3.3.
4. Defendant – "Defendant" means a person named in a notice of infraction.
5. Enforcement Officer - "Enforcement Officer" means a person authorized to enforce the provisions of this Ordinance, including the prosecuting authority.
6. Health Hazard - "Health Hazard" means a condition or situation where disease potential exists and if left unabated the disease potential will increase and may result in a public health emergency.
7. Health Officer – "Health Officer" means the Health Officer appointed by the Board of Health pursuant to RCW 70.05.040 and RCW 70.05.050, or a representative authorized by and under the supervision of the appointed Health Officer.
8. Imminent Hazard to Public Health - "Imminent Hazard to Public Health" means that individuals are likely to come in contact with (1) radiation, (2) pathogenic organisms, or (3) toxic, hazardous, or dangerous chemicals that will endanger their health upon incidental contact.

9. Infraction Case - "Infraction Case" means a proceeding initiated in a court of limited jurisdiction pursuant to this Ordinance that authorizes offenses to be punished as infractions.
10. Judge - "Judge" means any judge of any court of limited jurisdiction and shall include every judicial officer authorized to preside over infraction cases.
11. Judgment - "Judgment" means any final decision in an infraction case, including, but not limited to, a finding entered after a hearing governed by this Ordinance or after payment of a monetary penalty in lieu of a hearing.
12. Lawyer - "Lawyer" means any person authorized by Supreme Court rule to practice law.
13. Notice of Infraction – "Notice of Infraction" means a document initiating an infraction case when issued and filed pursuant to this Ordinance.
14. Person - "Person" means an individual, a partnership (including partners and managers), a corporation (including board members, officers, and managers), or any other entity of any kind. "Person" also includes an applicant, a re-applicant, a permit holder, an authorized agent of any entity, or any third party acting on behalf of any entity.
15. Plaintiff – "Plaintiff" means the Board of Health.
16. Prosecuting Authority - "Prosecuting Authority" means the Pacific County Prosecuting Attorney, his or her deputies and assistants, or such other persons as may be designated by statute.
17. Public Nuisance – "Public Nuisance" means:
 - a. To cause, Permit, or allow the carcass of any animal or any offal, filthy, or noisome substance to be collected, to be deposited, or to remain in any place to the prejudice of others or to the prejudice of the general public;
 - b. To pollute any watercourse, lake, stream, marsh, well, spring, or groundwater;

- c. To obstruct, impede, or encroach upon, without legal authority, any river, harbor, lake, or other collection of water, or any public highway, private way, street, alley, commons, landing place, access to a graveyard, or public right of way;
- d. To establish and maintain, without authority of law, any inherently dangerous business, or activity which emits odors, smells, or noise that is dangerous to the health of individuals or the public or which prevents an individual from the quiet enjoyment of his or her property;
- e. To cause, permit, or allow to remain on a parcel any condition, such as an open well, which is inherently dangerous to the general public and which would be classified as an attractive nuisance;
- f. To cause, permit, or allow in the open, as opposed to an enclosed building, the presence of any abandoned or discarded objects or equipment, such as automobiles, furniture, stoves, refrigerators, washers, dryers, freezers, or hot water tanks;
- g. To keep, permit, or allow on a parcel any putrescent material that is attractive to vermin, unless the same is stored in containers that deny access to vermin and that contain any emitted obnoxious odors;
- h. To cause, permit, or allow the continuation of a failed septic system;
- i. To cause, permit, or allow any fence that has the purpose of containing livestock or horses to fall into disrepair, if the field is used, or intended to be used, for the housing of livestock or horses;
- j. To cause, permit, or allow the growth of vegetation and/or the accumulation of materials that constitutes an unreasonable fire hazard to any buildings or real property;
- k. To cause, permit, or allow the disposal of garbage except in an approved container or solid waste site;

- I. To cause, permit, or allow to remain on a parcel any building which has been damaged by fire or elements, or which has deteriorated to a point that is not economically feasible to repair the same, and such building constitutes a potential hazard to the public; or
- m. To cause, permit, or allow loud noise to emanate by mechanical, electrical, human, or animal means of transmission in such a manner and at such times as to cause another person to lose the quiet and peaceful enjoyment of his or her property. An isolated instance of this prohibited activity is not a public nuisance. A pattern of this activity is a public nuisance

18. Regulation – "Regulation" means a statute. "Regulation" also means an administrative rule or adjudicatory decision which is adopted under the authority of the Board of Health, the Pacific County Board of Commissioners, the State of Washington, or the Federal government.

19. Statute - "Statute" means any ordinance of the Pacific County Board of Health or the Pacific County Board of Commissioners, or any State or Federal law.

D. Designation of Civil Infractions

Violations of Board of Health Ordinance Nos. 2, 3E, 4, 5, 6A, 7, 8, and any amendments to these regulations among other things constitute civil infractions. Such infractions shall be adjudicated according to the provisions contained in this Ordinance.

E. Violations – Each Day Constitutes a Separate Infraction

Violations of Board of Health Ordinance Nos. 2, 3E, 4, 5, 6A, 7, 8, and any amendments to these regulations shall constitute a separate infraction for each and every day or portion thereof during which such violation is committed, continued, or not permitted.

F. Construction

This Ordinance shall be construed to secure the just, speedy, and inexpensive determination of every infraction case. This Ordinance shall supersede all conflicting regulations of the Board of Health.

II. PROCEDURES FOR RESOLVING VIOLATIONS AND NOTICES OF INFRACTIONS

A. Investigation of Possible Violations

An enforcement officer may investigate alleged or apparent violations of the regulations listed above. Upon the request of an enforcement officer who has probable cause to believe, and does believe, that a person has violated any of the above regulations, the person allegedly or apparently in violation of any of these regulations shall identify himself or herself and provide his or her current address to the enforcement officer.

B. Initiation of an Infraction Case

1. Generally. An infraction case is initiated by the issuance, service, and filing of a Notice of Infraction in accordance with this Ordinance.
2. Who may issue. A Notice of Infraction may be issued upon certification that the issuer has probable cause to believe, that a person has committed an infraction contrary to Board of Health Ordinance Nos. 2, 3E, 4, 5, 6A, 7, 8, or any amendment to these regulations. A Notice of Infraction may only be issued by an enforcement officer. The infraction need not have been committed in the officer's presence.
3. Content of the Notice of Infraction. A Notice of Infraction shall contain the following information on the copy provided to the defendant:
 - a. The name, address, and phone number of the court where the Notice of Infraction will be filed or has already been filed;
 - b. The name and address of the defendant;

- c. The infraction which the defendant is alleged to have committed; and the accompanying statutory citation; the date, time, and place the infraction occurred; the date the Notice of Infraction was issued; and the name of the citing enforcement officer;
- d. A statement that in general the defendant has fifteen (15) days from the date of being served to respond to the Notice of Infraction. However, the statement shall indicate that if the Notice of Infraction was mailed, the defendant has eighteen (18) days from the date the Notice of Infraction was mailed to respond to the Notice of Infraction;
- e. A space for the defendant to sign a promise to respond to the Notice of Infraction within the time lime required;
- f. A space for the entry of the monetary penalty which the defendant may pay in lieu of appearing in court and a notation of the monetary penalty prescribed by this Ordinance;
- g. A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested;
- h. A statement that the infraction is a non-criminal offense for which imprisonment cannot be imposed as a sanction;
- i. A statement of the options provided in this Ordinance for responding to the notice and the procedures necessary to exercise these options;
- j. A statement that at any hearing to contest the determination by an enforcement officer that the defendant has committed an infraction, the plaintiff has the burden of proving by a preponderance of the evidence that the infraction was committed; and that the defendant may subpoena witnesses, including the enforcement officer who issued the Notice of Infraction;

- k. A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction, the defendant will be deemed to have committed the infraction and may not subpoena witnesses;
 - l. A statement which the defendant shall sign, that the defendant promises to respond to the Notice of Infraction in one of the ways listed in this Ordinance;
 - m. A statement that the failure to respond to the Notice of Infraction as promised or failure to appear at a requested hearing may cause the suspension of one's privilege to drive in Washington State;
 - n. A statement that failure to respond to the Notice of Infraction or a failure to appear at the hearing requested for the purpose of contesting the determination by the enforcement officer or its agents or for the purpose of explaining mitigating circumstances will automatically increase the monetary penalty; and
 - o. A statement that failure to respond to a Notice of Infraction as promised or failure to appear at a requested hearing is a crime and may be punished by a fine or imprisonment in jail or both.
4. Service of Notice. A Notice of Infraction may be served as follows:
- a. The citing enforcement officer may serve the Notice of Infraction on the defendant at the time of issuance;
 - b. The citing enforcement officer may file the Notice of Infraction with the court, and have the notice served either personally or by mail postage prepaid, on the defendant;
 - c. Service may be effectuated on a corporation or other entity by serving the Notice of Infraction either personally or by mail, postage prepaid, on the president or other head of the corporation or other entity; or,

- d. Service may be effectuated on an individual by leaving the Notice of Infraction at the house of the individual's usual abode with some person of suitable age and discretion that resides therein.
5. Proof of Service. Proof of service may be shown by a written declaration under penalty of perjury executed by the person(s) affecting the service that specifies the time and date of service and the manner by which service was made.
6. Filing of Notice. When a Notice of Infraction has been issued, the notice shall be filed with a court having jurisdiction over the infraction. The notice must be filed within forty-eight (48) hours after issuance of the notice, excluding Saturdays, Sundays, and holidays. A Notice of Infraction not filed within the time limits of this Subsection may be dismissed without prejudice.

C. Venue

Except as other specifically provided by statute, an infraction case shall be brought in the district court that serves the district in which the alleged infraction occurred. If a Notice of Infraction is filed in a court which is not the proper venue, the Notice of Infraction shall be dismissed without prejudice on the motion of either party.

D. Response to Notice

1. Generally. A defendant who has been served with a Notice of Infraction must respond to the notice within fifteen (15) days of the date the notice is served or, if the notice is served by mail, within eighteen (18) days of the date the notice is mailed.
2. Alternative. A defendant may respond to a Notice of Infraction by:
 - a. Paying the amount of the monetary penalty in accordance with applicable law, in which case the court shall enter a judgment that the defendant has committed the infraction;
 - b. Contesting the determination that an infraction occurred by requesting a hearing in accordance with applicable law; or

- c. Requesting a hearing to explain mitigating circumstances surrounding the commission of the infraction in accordance with applicable law.
 - 3. Method of Response. A defendant may respond to a Notice of Infraction either personally, by mail, or by an appearance by counsel. If the response is mailed, it must be postmarked on or before the day the response is due.
- E. Scheduling of Hearings
- 1. Contested Hearings. A defendant who has been served with a Notice of Infraction must respond to the notice within fifteen (15) days of the date the notice is served or, if the notice is served by mail, within eighteen (18) days of the date the notice is mailed.
 - a. Upon receipt of a response submitted pursuant to Subsection II.D.2. of this Ordinance, the court shall schedule a hearing to determine whether the defendant committed the infraction. The hearing shall be scheduled for not less than fourteen (14) days from the date the written notice of hearing is sent by the court, nor more than one hundred twenty (120) days from the date of the Notice of Infraction or from the date a default judgment is set aside, unless otherwise agreed to by the defendant in writing.
 - b. The court shall send the defendant written notice of the time, place, and date of the hearing within fourteen (14) days of the receipt of the request for a hearing. The notice of the hearing shall also include statements advising the defendant of the defendant's rights at the hearing, how the defendant may request that witnesses be subpoenaed, and that failure to appear is a crime for which the defendant may be arrested.
 - c. The court may schedule the hearing on a contested infraction for the same time as a hearing on another infraction alleged to have been committed by the defendant. The court also may schedule the hearing on a contested infraction for the same time as a trial on a misdemeanor arising out of the same occurrence as the infraction.

2. Mitigation Hearings

- a. Upon receipt of a response submitted pursuant to Subsection II.D.2.c of this Ordinance, the court shall schedule a hearing to determine whether there were mitigating circumstances surrounding the commission of the infraction. The hearing shall be scheduled for not less than fourteen (14) days from the date the written notice of hearing is sent by the court, nor more than ninety (90) days from the date of the Notice of Infraction or from the date a default judgment is set aside, unless otherwise agreed by the defendant in writing.
- b. The court shall send the defendant written notice of the time, place, and date of the hearing within fourteen (14) days of the request for a hearing. The notice also shall include statements advising the defendant of the defendant's rights at the hearing and stating that failure to appear is a crime for which the defendant may be arrested.
- c. The court may schedule the mitigation hearing for the same time as a hearing on another infraction alleged to have been committed by the defendant. The court also may schedule the mitigation hearing for the same time as a trial on a misdemeanor arising out of the same occurrence as the infraction.

3. Objection to Hearing Date.

A defendant who objects to the hearing date set by the court upon the ground that it is not within the time limits prescribed by this Ordinance shall file with the court and serve upon the prosecuting authority a written motion for a speedy hearing date within ten (10) days after the notice of hearing is mailed or otherwise given to the defendant. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a hearing commenced on such a date is not within the time limits prescribed by this Ordinance. The written notice of the hearing date shall contain a copy of Subsection II.E.3.

4. Dismissal without prejudice.

An infraction not brought to hearing within the time period provided by Subsection II.E., shall upon motion, be dismissed with prejudice.

F. Contested Hearing – Preliminary Proceedings

1. Subpoena. The defendant and the plaintiff may subpoena witnesses necessary for the presentation of their respective cases. Witnesses should be served at least seven (7) days before the hearing. The subpoena may be issued by a judge, court commissioner, or clerk of the court or by a party's lawyer. If a party's lawyer issues a subpoena, a copy shall be filed with the court. A subpoena may be directed for service within their jurisdiction to the sheriff of any County or to any peace officer of any municipality in the State in which the witness may be located, or it may be served as provided in CR 45(c), or it may be served by first-class mail, postage prepaid, sent to the witness' last known address. Service by mail shall be deemed complete upon the third day following the day upon which the subpoena was placed in the mail. If the subpoena is for a witness outside Pacific County, a judge must approve of the subpoena.
2. Discovery. Upon written demand of the defendant at least fourteen (14) days before a contested hearing, the plaintiff's lawyer shall at least seven (7) days before the hearing provide the defendant or defendant's lawyer with a list of the witnesses the plaintiff intends to call at the hearing and a copy of any written report by the enforcement officer. Upon written demand of the plaintiff's lawyer at least fourteen (14) days before the hearing, the defendant shall at least seven (7) days before the hearing provide the plaintiff's lawyer with a list of the witnesses the defendant intends to call at the hearing. No other discovery shall be required. Neither party is precluded from investigating the case, and neither party shall impede another party's investigation.

3. Amendment of Notice. The court may permit a Notice of Infraction to be amended at any time before judgment if no additional or different infraction is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall be granted if the defendant satisfies the court that the additional time is needed to defend against the amended Notice of Infraction.
4. Sufficiency. A Notice of Infraction shall not be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific infraction which the defendant is alleged to have committed, nor shall a Notice of Infraction be deemed insufficient because of defects or imperfections which do not tend to prejudice substantial rights of the defendant.

G. Failure to Appear

1. Entry of Judgment. If the defendant fails to appear at a requested hearing or fails to respond to a Notice of Infraction in a timely fashion under Subsection II.D. of this Ordinance, the court shall enter judgment against the defendant finding that the defendant has committed the infraction. The court shall assess a monetary penalty against the defendant. The court shall not impose a penalty in excess of the monetary penalty provided for the infraction by law. A judgment upon a failure to appear shall not be entered if it appears to the court from the papers on file that the infraction case was brought in an improper court.
2. Setting Aside Judgment Upon Failure to Appear. For good cause shown and upon terms the court deems just, the court may set aside a judgment entered upon a failure to appear in accordance with CRLJ 60(b).

H. Procedure at Contested Hearing

1. Generally. The court shall conduct the hearing for contesting the Notice of Infraction on the record in accordance with applicable law. This contested hearing shall take place without a jury.

2. Representation by a Lawyer. At a contested hearing, the plaintiff may be represented by a lawyer representative of the prosecuting authority. The defendant also may be represented by a lawyer
3. Rules of Evidence. The Rules of Evidence shall apply to contested hearings.
4. Factual Determination. The court shall determine whether the plaintiff has proved by a preponderance of the evidence that the defendant committed the infraction. If the court finds that the defendant committed the infraction by a preponderance of the evidence, it shall enter an appropriate order on its records. If the court finds that the infraction was not committed, it shall enter an order dismissing the case.
5. Disposition. If the court determines that the infraction has been committed, it shall assess a monetary penalty against the defendant. The court shall not impose a penalty in excess of the monetary penalty provided for the infraction by law. The court may waive or suspend a portion of the monetary penalty, or may provide for time payments, or may allow the defendant to perform community service in lieu of monetary payment. If the court chooses to impose the last option, the number of community service hours imposed shall be based on the rate of the then existing State minimum wage per hour. The court has continuing jurisdiction and authority to supervise disposition for not more than two (2) years.
6. Costs and Attorney's Fees. Each party in a contested hearing is responsible for costs incurred by that party, but the court may assess court costs against a non-prevailing defendant. Attorney's fees shall not be awarded to either party in a contested hearing. Court costs may be ordered in addition to any monetary penalty imposed by the court.

I. Hearing on Mitigating Circumstances

1. Generally. The court shall conduct the hearing concerning mitigating circumstances in accordance with applicable law.

2. Procedure at a Mitigation Hearing. The court shall hold an informal hearing which shall not be governed by the Rules of Evidence. Subject to the other provisions of this Ordinance, all relevant evidence is admissible which, in the opinion of the judge, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. The plaintiff may be represented by a lawyer representative of the prosecuting authority. The defendant also may be represented by a lawyer. The defendant may present witnesses, but they may not be compelled to attend.
3. Disposition. The court shall determine whether the defendant's explanation of the events justifies reduction of the monetary penalty. The court shall enter an order finding that the defendant committed the infraction and shall assess a monetary penalty. The court may not impose a penalty in excess of the monetary penalty provided for the infraction by law. The court may waive or suspend a portion of the monetary penalty, or provide for time payments, or may allow the defendant to perform community service in lieu of a monetary payment. If the court chooses to impose the last option, the number of community service hours imposed shall be based on the rate of the then existing State minimum wage per hour. The court has continuing jurisdiction and authority to supervise disposition for not more than two (2) years.

J. Relief from Judgment

A motion to waive or suspend a penalty, or to convert a penalty to community service, or to vacate a judgment is governed by CRLJ 60(b).

III. PENALTIES

A. Miscellaneous Provisions

1. Failure to Provide Information. When Subsection II. A. of this Ordinance applies, a person who willfully refuses to provide an enforcement officer with the required information is guilty of a misdemeanor.

2. Failure to Sign a Notice of Infraction. A person who fails to acknowledge receipt of a Notice of infraction by willfully failing to sign the Notice of Infraction is guilty of a misdemeanor regardless of the disposition of the Notice of Infraction.
3. Failure to Respond to a Notice of Infraction:
 - a. Criminal Sanction. A person who willfully fails to respond to a Notice of Infraction in a timely fashion under Subsection II.D of this Ordinance or who willfully fails to appear at a scheduled hearing regarding a Notice of Infraction is guilty of a misdemeanor regardless of the disposition of the Notice of Infraction.
 - b. Additional Monetary Penalty. The court shall impose a monetary civil penalty of twenty-five dollars (\$25.00) plus any statutory assessments including, but not limited to, assessments under Chapter 2.68 RCW and RCW 3.62.090 rounded down to the nearest dollar, against any defendant who willfully fails to respond to a Notice of Infraction in a timely fashion under Subsection II.D. of this Ordinance or who willfully fails to appear at a scheduled hearing regarding a Notice of Infraction. This monetary civil penalty shall be in addition to any other penalty imposed under this Ordinance.
4. Failure to Pay a Monetary Obligation or to Perform Court-Ordered Community Service. A person who willfully fails to pay a monetary obligation or to perform community service under this Ordinance as ordered by a court may be found in contempt of court as provided in Chapter 7.21 RCW.

5. Collection of Outstanding Monetary Obligations. If a person fails to pay a monetary obligation under this Ordinance as ordered by a court, the court may proceed to collect the amount owed in the same manner as other civil judgments. The court shall notify Board of Health of the failure to pay, and Pacific County and the incorporated cities within Pacific County shall not issue the person any County or city permits or approvals until the monetary obligation has been paid. The Board of Health may collect penalties, assessments, costs, and/or fines by any procedure established for the collection of debts that are owed to the Board of Health.

B. Monetary Civil Penalties

1. Generally. In addition to or as an alternative to any other judicial or administrative remedy contained in this Ordinance or in any other regulation, a person who is found to have committed an infraction shall be assessed a monetary penalty.
2. Penalty Schedule:
 - a. Class I Violations. A Class I violation occurs when a person directly or indirectly causes or allows to exist:
 - (1) A violation of Pacific County Board of Health Ordinance No. 2 or any amendment thereto that does not constitute a Class II or Class III violation;
 - (2) A violation of Pacific County Board of Health Ordinance No. 4 or any amendment thereto that does not constitute a Class II or Class III violation;
 - (3) A violation of Pacific County Board of Health Ordinance No. 5 or any amendment thereto that does not constitute a Class II or Class III violation;
 - (4) A violation of Pacific County Board of Health Ordinance No. 6A or any amendment thereto that does not constitute a Class II or Class III violation;

- (5) A violation of Pacific County Board of Health Ordinance No. 7 or any amendment thereto that does not constitute a Class II or Class III violation; or
- (6) A violation of Pacific County Board of Health Ordinance No. 8 or any amendment thereto that does not constitute a Class II or Class III violation.

The penalty for a Class I violation is two hundred fifty dollars (\$250.00) plus statutory assessments including, but not limited to, assessments under Chapter 2.68 RCW and RCW 3.62.090 rounded down to the nearest dollar. Each violation and each day or portion thereof that a violation continues shall constitute a separate infraction.

b. Class II Violations. A Class II violation occurs when a person directly or indirectly causes or allows to exist:

- (1) A public nuisance as defined in Subsection I.C.16b. and I.C.16.h of this Ordinance.
- (2) A health hazard;
- (3) The discharge of any waste or contaminant which can be expected to significantly increase chemical or biological factors above the natural condition; or
- (4) A violation of Pacific County Board of Health Ordinance No. 3E or any amendments thereto not listed as a Class III violation (excluding activities subject to Section 35 of Pacific County Board of Health Ordinance No. 3E).

The penalty for a Class II violation is five hundred dollars (\$500.00) plus statutory assessments including, but not limited to, assessments under Chapter 2.68 RCW and RCW 3.62.090 rounded down to the nearest dollar. Each violation and each day or portion thereof that a violation continues shall constitute a separate infraction.

c. Class III Violations. A Class III violation occurs when a person directly or indirectly causes or allows to exist:

- (1) An imminent hazard to public health;
- (2) A waste, chemical, biological, or radiological discharge which contaminates a drinking water aquifer; or
- (3) A waste, chemical, biological, or radiological contaminant discharge which causes a detrimental effect on an industry, by impacting economic, resource or recreational activities.

The penalty for a Class III violation is one thousand two hundred fifty dollars (\$1,250) plus statutory assessments including, but not limited to, assessments under Chapter 2.68 RCW and RCW 3.62.090 rounded down to the nearest dollar. Each violation and each day or portion thereof that a violation continues shall constitute a separate infraction.

C. Criminal Penalties

1. Generally. Any violation of this Ordinance which constitutes a misdemeanor is punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than 90 days, or both.
2. Principles of Liability. The principles of liability contained in Chapter 9A.08 RCW including, but not limited to, liability for conduct of another shall apply to the enforcement of this Ordinance as shall all judicial interpretations thereof.

IV. APPEALS

- A. Review by the Superior Court of a District Court Judgment Pertaining to this Ordinance.
1. Judgments That Are Appealable. A defendant may appeal a judgment entered in district court after a contested hearing if the court finds that the defendant committed an infraction. The plaintiff may appeal a decision which in effect abates, discontinues, or determines the case other than by a judgment that the defendant has not committed an infraction. No other orders or judgments pertaining to a Notice of Infraction are appealable by either party.
 2. Applicable Rules. An appeal of a district court judgment pertaining to this Ordinance is governed by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).
- B. No Appeals to the Board of Health are authorized. A defendant who is issued a Notice of Infraction shall have no right to appeal the issuance of the Notice of Infraction to the Board of Health.

V. MISCELLANEOUS

- A. Time.

Time shall be computed or enlarged as provided in CRLJ 6, except that the time to respond to a Notice of Infraction under Subsection II.D., and the time to file an appeal may not be enlarged.

- B. Additional or Alternative Action.

Nothing contained in this Ordinance shall prevent the Board of Health or the Health Officer, by and through the prosecuting authority, from taking any other lawful action to prevent or remedy any violation of this Ordinance.

- C. Savings and Severability

If any provision, or any portion thereof, contained in this Ordinance is held to be unconstitutional, invalid or unenforceable, said provisions, or portion(s) thereof, shall be deemed severed and the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

VI. EFFECTIVE DATE

Board of Health Ordinance No. 1 is effective as of October 8, 1996. Board of Health Ordinance No. 1 as amended by Board of Health Ordinance No. 1A is effective as of January 12, 1998. Board of Health Ordinance No. 1 as amended by Board of Health Ordinance No. 1B is effective as of August 3, 1998. Board of Health Ordinance No. 1 as amended by Board of Health Ordinance No. 1C is effective as of March 13, 2007. Board of Health Ordinance No. 1 as amended by Board of Health Ordinance No. 1D is effective as of August 14, 2007. These Ordinances are replaced with a new Board of Health Ordinance No. 1 which has an effective date contingent upon the following:

A. Explicit Approval by the Washington State Department of Health.

If the Washington State Department of Health explicitly approves this Ordinance during its ninety (90) day review period under WAC 246-272A-0015, this Ordinance shall take effect five (5) days after the date on which the Washington State Department of Health's approval is published in the official legal newspaper for Pacific County.

B. Tacit Approval by the Washington State Department of Health.

If the Washington State Department of Health tacitly approves this Ordinance by failing to act during its ninety (90) day review period under WAC 246-272A-0015, this Ordinance shall take effect five (5) days after the date on which the Washington State Department of Health's tacit approval is published in the official legal newspaper for Pacific County.

C. Disapproval by the Washington State Department of Health.

If the Washington State Department of Health disapproves this Ordinance, during its ninety (90) day review period under WAC 246-272A-0015, this Ordinance shall not take effect.

PASSED by the Pacific County Board of Health in regular session at South Bend, Washington, by the following vote, then signed by its membership and attested to by its Clerk in authorization of such passage the 11th day of January, 2011.

3 AYE; 0 NAY; 0 ABSTAIN; 0 ABSENT

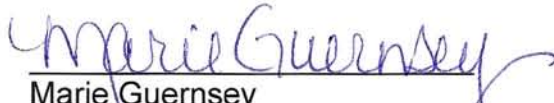
BOARD OF HEALTH
PACIFIC COUNTY, WASHINGTON


Norman B. Cuffel, Chairman


Jon C. Kaino, Commissioner


Lisa Ayers, Commissioner

ATTEST:


Marie Guernsey
Deputy Clerk of the Board