

**PACIFIC COUNTY LOCAL BOARD OF HEALTH  
ORDINANCE NO. 9**

**AN ORDINANCE WHICH PERTAINS TO PUBLIC NUISANCES**

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

**WHEREAS**, Pacific County general ordinances cannot be enforced in an incorporated city absent an agreement with the legislative authority of the city but Local Board of Health ordinances may;

**WHEREAS**, the Pacific County Local Board of Health has a legislative mandate to enforce public health rules in both incorporated and unincorporated areas of the county;

**WHEREAS**, the Pacific County Local Board of Health must enact special legislation pertaining to public nuisances to allow county public health rules to be enforced in both incorporated and unincorporated areas of the county; now therefore:

In accordance with Chapter 70.05 RCW, **IT IS HEREBY ORDAINED BY THE PACIFIC COUNTY LOCAL BOARD OF HEALTH THAT PACIFIC COUNTY LOCAL BOARD OF HEALTH ORDINANCE NUMBER 9 IS ADOPTED AS FOLLOWS:**

**SECTION 1 – DEFINITIONS**

1.1 Disorderly Conduct – means:

- a. to intentionally create the risk of assault by using abusive language;
- b. to intentionally disrupt without lawful authority any lawful assembly or meeting of persons; or
- c. to engage in fighting on public property.

1.2 Firework – means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, or which meets the definition of articles pyrotechnic (RCW 70.77.138) or consumer fireworks (RCW 70.77.136) or display fireworks (RCW 70.77.131).

1.3 Person – means an individual (including an owner or an occupier), a partnership (including partners and managers, whether together or individually), a corporation (including board members, officers, and managers, whether together or individually), or any other entity of any kind. “Person” also includes an applicant, a permit holder, an authorized agent of any entity, or any third party acting on behalf of any entity.

- 1.4 Pollution – means such contamination, or other alteration of the physical, chemical or biological properties of any waters of Washington State, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state which will create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to the domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.
- 1.5 Prosecuting Authority – means the Pacific County Prosecuting Attorney, his or her deputies and assistants, or such other persons as statutes may designate.
- 1.6 Public Nuisance – means any of the following, except in those cases where the activity or property is under the express authority of a statute:
- a. To cause, permit or allow the carcass of any animal or any offal, filthy, or noisome substance to be collected, 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, without legal authority, any river, harbor, lake, drainage district easement or other collection of water, or any public highway, private way, street, alley, commons, landing place, ways to burying places, or public rights of way; or to unlawfully obstruct or impede the flow of municipal transit vehicles as defined in RCW 46.04.355 or passenger traffic, access to municipal transit vehicles or stations as defined in RCW 9.91.025(2)(a), or otherwise interfere with the provision or use of public transportation services, or obstruct or impede a municipal transit driver, operator, or supervisor in the performance of that individual's duties.
  - d. To establish and maintain, without authority of law, any inherently dangerous business, or activity that emits odors or smells that is dangerous to the health of individuals or the public or that prevents an individual from the quiet enjoyment of their property.
  - e. To cause, permit, or allow to remain on one's property a condition, such as an open well, that is inherently dangerous to the general public and that would be classified as an attractive nuisance.
  - f. To cause, permit, or allow the presence in the open, as opposed to an enclosed building, 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 premises any putrescent material that is attractive to vermin or other harmful animal, unless the same is in containers that deny access to the animals and contain any obnoxious odors therefrom.
  - h. To cause, permit, or allow the continuation of a failed septic system. This shall include the failure to prevent occupancy or use of a structure served by 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 that it contains is used or intended to be used for the housing of horses or other livestock.
  - j. To cause, permit, or allow the accumulation of, or growth of, vegetation or materials that constitute an unreasonable fire hazard to any buildings or real property or that unreasonably blocks the view required for safe travel on a public road.

- k. To cause, permit, or allow the disposal of garbage except in an approved container or solid waste site.
- l. To cause, permit, or allow to remain on premises any building that has been damaged by fire or elements, or that has deteriorated to a point that is not economically feasible to repair the same, and that building constitutes a potential hazard to the public.
- m. It is unlawful for any person to cause or make, or for any person to allow to originate from the property in or under his or her possession, ownership, or control, any loud or raucous noise which unreasonably disturbs or interferes with the peace, comfort or repose of between the “quiet hours” of 10:00 p.m. and 6:00 a.m, Sundays through Thursdays, and 12:00 a.m. and 6:00 am, Fridays and Saturdays.
  - i. Factors to Be Considered. In determining whether a noise is unreasonable under subsection (m) of this section, the following factors incident to such noise are to be considered: time of day; proximity to any residential structures, including proximity to dwelling units within the same, or adjacent, multifamily structures or complexes; proximity to any school, church, hospital, nursing or convalescent facility, or human service facility; whether the noise is recurrent, intermittent, or constant; the volume and intensity of the noise; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; whether the noise is typical of the routine normal operation of the type of business or industrial activity involved, giving consideration to the effects upon other allowed uses in the land use zone in which the business is located; whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.
  - ii. Rebuttable Presumptions. The following noise is presumed unreasonable under subsection (m) of this section:
    - a. Noise emanating from a residence, person, machinery, or equipment that can be heard 50 feet beyond the estimated property line between the hours of 10:00 p.m. and 6:00 a.m. Sunday to Thursday, or 12:00 a.m and 6:00 a.m. Friday or Saturday; provided, however, that sound from a sound systems such as an amplifier, stereo, tape players, radio, compact disc, MP3 player, operated at a volume so as to be audible greater than 50 feet from the vehicle or property itself shall also be presumed unreasonable at any time.
  - iii. Illustrative Enumeration. The following sounds or combinations of sounds are illustrative of the types of sounds which may, upon application of the factors in subsection (i) of this section and/or the presumptions in subsection (ii) of this section, constitute unreasonable noise under subsection (m) of this section. This enumeration of sounds or combinations of sounds shall not be construed as excluding other sounds and noises which offend the public peace, comfort or repose of others.
    - a. Sounds made by any animal, except that such sounds made in animal shelters, commercial kennels, veterinary hospitals, pet shops or pet kennels licensed under this code shall be exempt from this subsection; provided, that notwithstanding any other provision of this chapter, if the owner or other person having custody of the animal cannot, with reasonable inquiry, be located by the investigating officer or if the animal is a repeated violator of this subsection, the animal may be impounded by the Pacific County Sheriff, subject to redemption in the manner provided by RCW 16.08.

- b. Sounds made by horn or siren, except such sounds that are made to warn of danger or that are specifically permitted or required by law.
  - c. Sounds made in connection with the starting, operation, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine.
  - d. Sounds created by use of a musical instrument, or other device capable of producing sound when struck by an object, a whistle, sound amplifier, stereo, radio, compact disc player, television, motor vehicle audio system or other device capable of producing, amplifying, or reproducing sound.
  - e. Sounds made by the amplified or unamplified human voice, such as yelling, shouting, screaming and hooting.
  - f. Sounds made in connection with activities such as a band session, social gathering, tavern operation or liquor establishment, or commercial sales lot.
- iv. Exceptions. The provisions of this chapter shall not apply to:
- a. Noise originating from regularly scheduled community events or associated with preparation for such events, such as sporting events, parades, or public ceremonies, including regularly scheduled events conducted by or at the Pacific County fairgrounds;
  - b. Normal construction activity;
  - c. Special community events approved by the Department of Community Development upon application of an event permit;
  - d. Noise associated with street cleaning, emergency repair to any street, building or structure, fire suppression, law enforcement response or any other emergency activity designed to preserve life or property, undertaken by the United States, the state of Washington;
  - e. Between the hours of 6:00 a.m. and 10:00 p.m., noise created by powered equipment used in temporary or periodic maintenance or repair of residential property, grounds and appurtenances, including but not limited to sounds from lawnmowers, snow removal equipment and powered hand tools.
- v. Approval of Waivers
- a. The Department of Community Development may grant a waiver to an event or activity otherwise subject to the provisions of this chapter, upon approval of the request by the Health Department and the Pacific County Sheriff. Notwithstanding the foregoing, Department of Community Development may refer any waiver request to the Board of County Commissioners at the next scheduled council meeting for consideration of whether it should be approved.
  - b. A request for a waiver must be submitted to the Department of Community Development no later than 14 calendar days prior to the event for which the waiver is sought. In granting a waiver, Department of Community Development may prescribe reasonable conditions, including but not limited to limiting the times and location for which the waiver applies. The grant of any such waiver shall be specific to the location of the particular event or activity for which the waiver is granted, unless a broader geographic application of the waiver is identified by the Department or Board of County Commissioners.

- vi. Penalty. It shall be a civil infraction for any person to violate the provisions of this chapter. Any person who violates any provision of this chapter shall be assessed a penalty and default amount in an amount not to exceed \$250.00, not including statutory assessments; provided, that the penalty and default amount for a second violation within any 12-month period shall not exceed \$500.00; not including statutory assessments. Notwithstanding any other provisions, any third violation occurring over any 24 month period is subject to the penalties proscribed in section 3.2 below. The Pacific County Sheriff, Department of Community Development, Department of Health, or Pacific County Prosecutor's Office may enforce the provisions of this chapter.
  
- vii. Content Not to Be Considered. The content of any speech associated with a sound shall not be considered in determining a violation of this section.
  
- n. To cause, permit, or allow the sale or use on one's property of any alcohol or controlled substance in contravention of the law.
- o. To cause, permit, or allow a blighted property. A blighted property is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months.
- p. For an owner or custodian of any non-human animal to allow it to be at large on the property of another without permission or on public property except for those controlled by a competent person and on a leash or bridle not more than 10 feet long. This shall not pertain to any person legally hunting with a dog on public property or exhibiting at the fair.
- q. To cause, permit, or allow on one's property the violation of a County Burn Ban as enacted by Ordinance 126B or any amendments thereto.
- r. To cause, permit, or allow on one's property any assembly of people in violation of Board of County Commissioners' Ordinance Number 35B or any amendments thereto.
- s. To discharge a firework, or to permit or allow the discharge of a firework on property under one's ownership or control, when the firework is illegal to possess at that place.
- t. To drive any vehicle on any public highway or county right-of-way unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping from it. It shall not be a violation of this to drop sand for traction, melting agents on ice, water for the cleaning and maintenance of roadways, or materials to be used for paving or surfacing the roadway. Any person operating a vehicle from which any glass or objects have fallen, escaped, or discarded onto the public highway or county right-of-way, constituting an obstruction or hazard shall immediately clean such material from that place. Failure to do so constitutes a public nuisance.
- u. To place any sign on a public highway or right-of-way.

- v. To cause, permit, or allow the use of one's structure or real property for the purpose of unlawfully manufacturing, delivering, storing, or giving away any controlled substance under Chapter 69.50 RCW or legend drug under chapter 69.41 RCW except as otherwise permitted by law.
- w. To engage in disorderly conduct.

1.7 Regulation – means a statute, administrative rule or adjudicatory decision.

1.8 Statute – means any Washington State law or regulation or any county ordinance or resolution.

## **SECTION 2 – PUBLIC NUISANCE PROHIBITION**

It is unlawful for a person directly or indirectly to cause, permit, or allow a public nuisance to exist. No lapse of time can legalize a public nuisance.

## **SECTION 3 – VIOLATIONS**

3.1 It shall be the individual and joint responsibility of property owners, tenants, and occupiers to maintain their property in a nuisance free manner and also to be responsible for the abatement and correction of any public nuisance that has been determined to exist on their property. A person who violates any provision of this ordinance or who fails to comply with any of its requirements shall be subject to the procedures and sanctions as set forth in Pacific County Local Board of Health Ordinance No. 1 or any amendments thereto.

3.2 In addition to the civil penalty provisions provided in Pacific County Local Board of Health Ordinance No. 1 or any amendments thereto, any person who violates any of the provisions of this Ordinance is guilty of a misdemeanor, and each day or portion thereof during which a violation is committed, continued, or not permitted shall constitute a separate offense. The penalty for each violation is a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both. 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.

3.3 When a court determines that a person has committed a civil infraction under this Ordinance and Pacific County Local Board of Health Ordinance No. 1 or any amendments thereto, the Pacific County Local 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 County Local Board of Health.

3.4 Any disposition of a violation pursuant to this Ordinance and Ordinance No. 1 or any amendments thereto shall not absolve a person from correcting or abating a violation. When it appears to the public official or Prosecuting Authority that the remedies provided by this Ordinance are not sufficient to abate the nuisance, the Prosecuting Authority may also pursue temporary and permanent injunctive relief, a warrant of abatement, and an order for costs and fees in Superior Court under Chapter 7.48 RCW. The provisions of this Chapter are in addition to and not in lieu of any other penalty, sanction, or right of action provided by law. If the Pacific County Local Board of Health prevails in a separate civil action, the Court may award the County Local Board of Health reasonable

costs including, but not limited to, the costs of the responsible officials' time, witness fees, attorney fees, court costs, and the costs to the County Local Board of Health of abatement or of enforcement of an injunction, or both.

3.5 Pursuant to RCW 36.32.120(10), all costs incurred by Pacific County for the abatement of any nuisance defined by any statute or ordinance shall be a special assessment upon land or premises on which the nuisance is situated and this assessment shall constitute a lien against the property which shall be of equal rank with state, county, and municipal taxes.

3.6 Any or all of the remedies articulated in Subsections 3.1, 3.2, and 3.4 may be used by the Pacific County Local Board of Health to enforce this Ordinance. Nothing contained in this Ordinance shall prevent the County Local Board of Health, by and through the prosecuting authority, from taking such other lawful action as is necessary to prevent or remedy any violations.

#### SECTION 4 – SEVERABILITY

If any provision, or any portion thereof, contained in this Ordinance is held to be unconstitutional, invalid or unenforceable, said provision(s), 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.

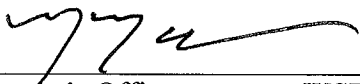
#### SECTION 5 – EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE

This Ordinance shall take effect the 28<sup>th</sup> day of August, 2018 and Local Board of Health Ordinance No. 4 shall be repealed the same day.

**PASSED BY THE PACIFIC COUNTY LOCAL BOARD OF HEALTH** meeting 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 on the 14<sup>th</sup> day of August, 2018.

  3   AYE;   0   NAY;   0   ABSTAIN;   0   ABSENT

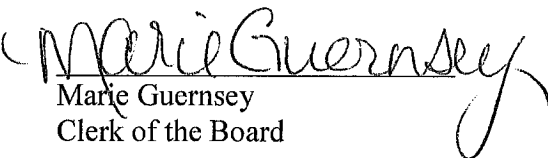
APPROVED AS TO FORM

  
\_\_\_\_\_  
Prosecutor's Office                      WSBA #

LOCAL BOARD OF HEALTH  
PACIFIC COUNTY, WASHINGTON

  
\_\_\_\_\_  
Lisa Olsen, Chair

ATTEST:

  
\_\_\_\_\_  
Marie Guernsey  
Clerk of the Board

  
\_\_\_\_\_  
Frank Wolfe, Commissioner

  
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Lisa Ayers, Commissioner