

**BOARD OF COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO. 2017 - _____

AN ORDINANCE TO AMEND CHAPTER 13.75 OF THE KITTITAS COUNTY CODE

WHEREAS, the Board of Commissioners of Kittitas County hereby adopts this Ordinance pursuant to and by the authority of Chapter 70.05 of the Revised Code of Washington and Article 11, §11 of the Washington Constitution to enact regulatory measures to preserve, promote, and improve the public health; and

WHEREAS, the purpose of this Ordinance is to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by this Ordinance; and

WHEREAS, the provisions of this Ordinance shall be liberally construed for the accomplishment of its purpose; and

WHEREAS, nothing contained in this Ordinance is intended to be nor shall be construed to create or form the basis for any liability on the part of the Board of Health, Kittitas County, or any of its officers, employees, or agents, for any injury or damage resulting from the failure of any person subject to Chapter 13.75 of the Kittitas County Code to comply with this Ordinance, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of the above referenced Chapter on the part of the Board of Health, Kittitas County, or any of its officers, employees, or agents; and

WHEREAS, the Board of Commissioners wish to establish regulations governing the recoupment of costs expended by the County during health order enforcement actions in Kittitas County; and

WHEREAS, the Board of Commissioners finds that recovery of these costs is necessary for the preservation of resources required to provide the crucial health initiatives essential to public health and safety; and

WHEREAS, previous health order enforcement actions have had detrimental and costly impacts on public health resources; and

WHEREAS, without a regulation to allow for the recoupment of enforcement costs, the financial burden associated with such actions is unfairly attributed to the public; and

WHEREAS, a public hearing was held on October 19, 2017 and the public was provided due notice and opportunity to provide testimony on the proposed ordinance; and

WHEREAS, the Kittitas County Board of Commissioners believes that adopting this ordinance would be in the best interest of Kittitas County; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Kittitas County that Chapter 13.75 of the Kittitas County Code is hereby amended by adding the following underlined language to 13.75.010(3):

3. The Health Order shall contain:
 - a. The street address, when available, and a legal description of real property and/or description of personal property sufficient for identification of where the violation occurred or is located;
 - b. A statement that the Health Officer has found the person to be in violation of public health rules and regulations with a brief and concise description of the conditions found to be in violation;
 - c. A statement of the corrective action required to be taken, if necessary;
 - d. A statements advising that if any corrective action is not commenced or completed within the time specified, the Health Officer will proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation;
 - e. A statement advising that the Health Order shall become final unless, no later than ten (10) days after the Health Order is served, any person aggrieved by the order requests in writing an appeal before the Board of Health. (Ord. 2011-006, 2011);
 - f. A statement advising that the costs incurred by any Kittitas County Department involved in enforcing a final Health Order will be assessed and charged as a joint and separate personal obligation of any person in violation;
 - g. A statement advising that imposed enforcement costs may be appealed directly to the Board of County Commissioners, in writing, no later than ten (10) days after receipt of an invoice for costs.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Board of Commissioners of Kittitas County that Chapter 13.75, of the Kittitas County Code is hereby amended by adding the following underlined language to 13.75.050:

13.75.050 Enforcement of Final Health Order.

1. If, after any Health Order duly issued by the Health Officer has become final, the person to whom such Health Order is directed fails, neglects or refuses to obey such Health Order, the Health Officer may:
 - a. Cause such person to be prosecuted under [Chapter 13.70 KCC](#); and/or
 - b. Abate the health violation using the procedures of this chapter; and/or
 - c. File in the county Auditor's Office a notice describing the property and the violation and stating that the owner has been so notified; and/or

- d. Impose and charge the costs incurred by any Kittitas County Department involved in enforcing the Health Order against the property as a joint and separate personal obligation of any person in violation.
- e. Pursue any other appropriate remedy at law or equity under this chapter.
2. Enforcement of any Health Order of the Health Officer pursuant to this chapter shall be stayed during the pendency of any appeal under this chapter, except when the Health Officer determines that the violation will cause immediate and irreparable harm and so states in the notice and order issued. (Ord. 2011-006, 2011).
3. An invoice for enforcement costs shall be served in the same manner as detailed in section 13.75.020 for Health Orders.
4. Enforcement costs may be appealed directly to the Kittitas County Board of County Commissioners, in writing, no later than ten (10) days after receipt of an invoice for costs.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Board of Commissioners of Kittitas County that Chapter 13.75, of the Kittitas County Code is hereby amended by creating a new section, 13.75.075, which shall read as follows:

13.75.075 Appeal of Enforcements Costs.

1. The imposition of enforcement costs may be appealed, by the aggrieved party, directly to the Kittitas County Board of County Commissioners. A request for appeal must be made within ten (10) days of the service of the invoice for costs. The request shall include:
 - a. The Health Order that initiated the enforcement costs assessment.
 - b. The name and address of the appellant and his or her interest(s) in the matter;
 - c. The specific reasons why the appellant believes the enforcement costs should not be imposed; and
 - d. The appeal fee.
2. Notice of Hearing.
 - a. Not later than fifteen (15) calendar days after the receipt of one or more timely Notices of Appeal, the Kittitas County Board of County Commissioners shall issue and serve a Notice of Hearing to the appellant(s). Requests from multiple parties concerning the same invoice may be consolidated.
 - b. The Notice of Hearing shall be served by the same means as a Health Order as detailed in Section 13.75.020 KCC.
 - c. The Notice of Hearing shall contain the date, time, and location of the hearing.
3. Evidence.
 - a. Evidence, including hearsay evidence, is admissible if in the judgment of the Board of Commissioners it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.
 - b. All testimony of parties and witnesses shall be made under oath or affirmation.
 - c. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
 - d. Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the Board's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state, or by a nationally

recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

4. Each party shall have the following rights:
- a. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - b. To introduce document and physical evidence;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - d. To impeach any witness;
 - e. To rebut evidence against him;
 - f. To represent himself or be represented by an attorney of his or her own choosing.

5. Hearing

- a. The appeal hearing shall be conducted on the record and the Kittitas County Board of County Commissioners shall have such rulemaking and other powers necessary for conducting the hearing.
- b. The Board must find that the facts that allege that the enforcement costs are due and owing by the appellant(s) are true and accurate by a preponderance of the evidence.
- c. The existence of a valid and final Health Order shall be prima facia evidence that enforcement costs may be imposed.
- d. Following review of the evidence submitted, the Kittitas County Board of County Commissioners shall make written findings and conclusions, and shall affirm or modify the enforcement costs issued if the Board finds that they were properly imposed. The Board shall revoke the imposition of costs if they find that they were improperly imposed. The written decision of the Board shall be mailed by certified mail and first class mail, five day return receipt requested, to the appealing party.

ADOPTED this _____ day of _____, 2017.

**BOARD OF COUNTY COMMISSIONERS
KITTTAS COUNTY, WASHINGTON**

Paul Jewell, Chairman

Laura Osiadacz, Vice-Chairman

Obie O'Brien, Commissioner

ATTEST:

- _____
 Clerk of the Board- Julie Kjorsvik
 Deputy Clerk of the Board- Mandy Buchholz