

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending Article IV and adopting Article IV, Appendix A of the Sanitary Code for Thurston County.

WHEREAS, the Board of Health adopts the following findings:

1. Pursuant to Chapter 70.05 RCW and Washington State Constitution Article XI, Section 11, the Board of Health has the power to enact rules and regulations as are necessary to preserve, promote and improve the public health.
2. Henderson Inlet is an important shellfish growing area in Thurston County.
3. On October 19, 2000, the Washington State Department of Health downgraded approximately nine acres of commercial shellfish growing area in Henderson Inlet to a classification of “Prohibited” because of water quality degradation. In 2001, the Washington State Department of Health downgraded an additional 300 acres to “Conditionally Approved” status because of bacterial contamination in Henderson Inlet. In June 2005, an additional 49 acres of tidelands were downgraded to “Prohibited” status for shellfish harvesting.
4. Studies performed by Thurston County and the State of Washington have identified on-site sewage systems as a significant source of contamination contributing to the water pollution in Henderson Inlet.
5. The presence of human sewage from failing on-site sewage systems in the waters of Henderson Inlet and its tributaries poses a serious risk to the public health of Thurston County residents and visitors.
6. A systematic approach to managing on-site sewage systems within the Henderson Inlet Shellfish Protection District is needed to reduce fecal coliform bacteria pollution from failing systems.
7. Routine operation and maintenance are key to maintaining fully functioning on-site sewage systems that do not contribute to water quality degradation.
8. Pursuant to Article IV, section 22.4 of the Sanitary Code for Thurston County, an area of special concern should be established to minimize public health risk and implement enhanced operation and maintenance requirements for on-site-sewage systems.
9. The boundary of an area of special concern governing on-site sewage systems should include that portion of the Henderson Inlet Shellfish Protection District that is more likely to have an impact on water quality in Henderson Inlet.
10. Article IV of the Sanitary Code for Thurston County should be amended to establish an enhanced operation and maintenance program for on-site sewage systems within a portion of the Henderson Inlet Shellfish Protection District to improve water quality in Henderson Inlet and its tributaries.

11. The amendments will enable Thurston County to better preserve, promote and protect the public health.

NOW, THEREFORE, THE THURSTON COUNTY BOARD OF HEALTH HEREBY ORDAINS AS FOLLOWS:

Section 1. The definition of “Community On-site Sewage System (COSS)” in Article IV, section 3 of the Sanitary Code for Thurston County is hereby amended to read as follows:

**“Community On-site Sewage System (COSS)”** means any on-site sewage system

- (a) ~~d~~Designed to serve more than ~~one single family residence~~ two residential units; and/or
- (b) ~~w~~With a design flow, at any common point, more than one thousand (1,000) gallons per day and less than or equal to three thousand five hundred (3,500) gallons per day, ~~except when dealing with issues and proposals;~~ or
- (c) ~~Within the Lacey, Olympia or Tumwater Urban Growth Areas with a design flow, at any common point, more than six hundred (600) gallons per day and less than or equal to three thousand five hundred (3,500) gallons per day within the designated Thurston County Urban Growth Management Area and/or covered by the Thurston County Sewerage General Plan, the lower design limit shall be six hundred (600) gallons per day.~~

Section 2. The definition of “Conforming system” in Article IV, section 3 of the Sanitary Code for Thurston County is hereby amended to read as follows:

**"Conforming system"** means any on-site sewage system, except an experimental system, that is in full conformance with an operational certificate, where required, and meets any of the following criteria:

- (a) The system is in full compliance with all requirements for new construction as specified in this article, including the provision of a reserve area. This includes a repair system that meets the requirements for new construction as specified in this article; or
- (ii) ~~A new or repair system was permitted, but a waiver had to be obtained as per section 24 of this article; or~~
- (b) The system is an existing on-site sewage system approved, installed, and operated under a previous edition of this article; or
- (c) The system is a repair system that was permitted to meet the requirements of this article to the maximum extent permitted by the site; or

- (d) The system or repair was permitted through the waiver process ~~which assure public health protection by higher treat~~; or
- (e) The system was in existence prior to 1979, is not in failure, and its use is consistent with its size and design. ~~and, where required, is in full conformance with a valid operational certificate~~

Section 3. The definition of “Non-conforming system” in Article IV, section 3 of the Sanitary Code for Thurston County is hereby amended to read as follows:

“**Non-conforming system**” means an on-site sewage system which is:

- (a) Not in compliance with the conditions ~~stipulated~~ specified on the approved On-site Sewage System Application or accepted as-built drawing; or
- (b) Not being operated consistent with its size and design; or
- (c) Not in full conformance with an operational certificate where one is required; or
- (d) Failing. ~~A repair which is placed in the originally designated reserve area shall be considered a conforming system as long as the system is not in failure.~~

Section 4. Article IV, section 16.2.1 of the Sanitary Code for Thurston County is hereby amended to read as follows:

16.2.1 Establish ~~recommended~~ required conditions, monitoring schedules, ~~and reporting schedules, and recommendations~~ to assure proper on-going operation and maintenance for all OSS. The conditions and monitoring schedules will vary depending on the type of system, the location of the system, population or facility(ies) served, the sensitivity of the site, and requirements within alternative system guidelines.

Section 5. Article IV, section 16.3 of the Sanitary Code for Thurston County is hereby amended to read as follows:

- 16.3 Operational Certificates shall be required ~~for certain large or complex OSS. These include~~ for the following systems: experimental, community, large OSS, proprietary devices which require third party maintenance, OSS which serve food establishments as defined by Article II of the Thurston County Sanitary Code, OSS which must meet treatment standard 1, or treatment standard 2 where disinfection is required, lined sand filters, mounds, those which require waivers where enhanced system performance and monitoring is the basis for approval of the waiver, and systems in Areas of Special Concern as established by the Board of Health.

- 16.3.1 The operational certificate will contain specific conditions required for the continued use of the OSS, as noted in subsection 16.3.4 of this article. The purpose of these conditions is to assist the OSS owner in minimizing the potential of a failure and having to repair the OSS.
- 16.3.2 The operational certificate and the conditions contained therein shall run continuously with the property; however, when an operational certificate is no longer required, the health officer may issue an operational certificate release, which the owner may record against his/her property.
- 16.3.3 As noted in section 16.4 of this article, the owner of an OSS with an operational certificate is responsible for operating, maintaining, and monitoring the OSS in a manner that satisfies the conditions in the operational certificate. Failure to maintain a current operational certificate or failure to comply with required conditions in an operational certificate is a violation of this article.
- 16.3.4 The Health Officer will establish conditions, monitoring schedules, ~~and~~ reporting schedules, and any required testing and inspections to assure proper on-going operation and maintenance for OSS with an operational certificate. The conditions may include a requirement to connect to a public sewer system within a specific time frame. At a minimum, the conditions shall require ~~the OSS owner to~~ the following:
- 16.3.4.1 Determine the level of solids and scum in the septic tank once every three years;
- 16.3.4.2 Protect the OSS area and the reserve area from:
- 16.3.4.2.1 Cover by structures or impervious material;
- 16.3.4.2.2 Surface drainage;
- 16.3.4.2.3 Soil compaction, for example by vehicular traffic or livestock; and
- 16.3.4.2.4 Damage by soil removal and grade alteration;
- 16.3.4.3 Keep the flow of sewage to the OSS at or below the approved design both in quantity and waste strength;
- 16.3.4.4 Operate and maintain alternative systems as directed by the health officer;

- 16.3.4.5 Direct drains, such as footing or roof drains away from the area where the OSS is located;
- 16.3.4.6 Maintain the OSS and meet conditions as specified in the approval of the OSS;
- 16.3.4.7 Require annual inspections of OSS serving food service establishments and may require pumping as needed;
- 16.3.4.8 Other appropriate requirements for OSS in an area of special concern based on criteria developed by the health officer.

16.3.5 The Health Officer shall:

- 16.3.5.1 Renew operational certificates for another specified period of time once all conditions of the certificate have been fulfilled and fees for renewal have been paid.
- 16.3.5.2 Charge fees for performing these activities as per Appendix A of article I.
- ~~16.3.5.3 Require annual inspections of OSS serving food service establishments and may require pumping as needed.~~
- 16.3.5.3 Withhold approvals for permits or recommend denial of permits for future property development if a required operational certificate has not been obtained or renewed.
- 16.3.5.4 Withhold issuance of an operational certificate on any OSS that is in failure.

Section 6. Article IV, section 16.4 of the Sanitary Code for Thurston County is hereby amended to read as follows:

- 16.4 The OSS owner is responsible for properly operating and maintaining the OSS to comply with the ~~recommended standards or the~~ and conditions of the Operational Certificate, when one is required. The OSS owner shall:
  - 16.4.1 Either monitor the OSS himself/herself at least once every three years or contract with a ~~licensed monitoring firm~~ person approved, certified or authorized by the health officer to perform the monitoring.

- 16.4.2 Employ a pumping firm to remove the septage from the septic tank, pump chamber, and or other vessel when the level of solids and/or scum indicates that removal is necessary.
- 16.4.3 Send the report of the monitoring results to the health officer ~~for review and input of the appropriate data into the health officer's data base~~. When required as part of an operational certificate, the report must be submitted in accordance with a schedule established by the department.
- 16.4.4 Pay the fees, when applicable, as per Appendix A of ~~a~~Article I.

Section 7. Article IV, section 16.6 of the Sanitary Code for Thurston County is hereby amended to read as follows:

- 16.6 If an OSS has been classified as non-conforming because of failure to maintain a valid operational certificate, the system may be reinstated as a conforming system only after all of the following conditions have been met:
  - 16.6.1 The tank has been pumped and a report has been submitted by a certified pumping firm; and
  - 16.6.2 A field inspection of the OSS has been conducted by the department to verify the status of the system and confirm it is not in failure; and
  - 16.6.3 All past renewal fees and the field inspection fee have been paid; and
  - 16.6.4 All other applicable requirements of the expired operational certificate have been satisfied.

Section 8. Article IV, section 22.3 of the Sanitary Code for Thurston County is hereby amended to read as follows:

- 22.3 Within areas of special concern, to reduce risk of system failures, a ~~certified monitoring firm~~ person approved, certified or authorized by the Health Officer shall:
  - 22.3.1 Inspect every OSS at least once every three ~~four~~ years;
  - 22.3.2 Submit the following written information to both the department and the property owner within 30 days following the inspection:
    - 22.3.2.1 Location of the tank, if not on file with the department;

- 22.3.2.2 Structural condition of the tank(s), including baffles, and system components;
- 22.3.2.3 Depth of scum and solids in the tank;
- 22.3.2.4 Problems detected with any part of the system;
- 22.3.2.5 Results of visual inspection of OSS;
- 22.3.2.6 Maintenance needed;
- 22.3.2.7 Maintenance provided at time of inspection; and
- 22.3.2.8 Other information as required by the department.

22.3.3 Immediately report failures to the department.

Section 9. New subsection 22.4 of Article IV of the Sanitary Code for Thurston County is hereby adopted to read as follows:

22.4 The Henderson Watershed Protection Area is designated as an area of special concern as set forth in Appendix A. The Henderson Watershed Protection Area, and all requirements for the Area set forth in this article, as may be hereafter amended, shall terminate on December 31, 2017 unless re-enacted by the Board of Health.

Section 10. Article IV, section 27.1 is hereby amended to read as follows:

27.1 Any person aggrieved by a decision, an inspection or notice made by the health officer shall have the right to appeal the matter as specified in article I, except for (1) appeals of disciplinary actions taken pursuant to section 23 of article IV, which shall be governed by section 27.2 and (2) determinations of the applicability of Henderson Watershed Protection Area requirements which shall be governed by Appendix A of this article.

Section 11. Article IV, Appendix A of the Sanitary Code for Thurston County is hereby adopted to read as set forth in Attachment A, attached hereto and incorporated herein by reference.

Section 12. This ordinance shall take effect January 1, 2006.

Section 13. Severability. If any provision of this Ordinance or its application to any

person or circumstance is held invalid, in whole or in part, for any reason, the remainder of this ordinance or the application of the provision to other persons or circumstances shall not be affected.

ADOPTED: \_\_\_\_\_.

ATTEST:

BOARD OF HEALTH  
Thurston County, Washington

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

EDWARD G. HOLM  
PROSECUTING ATTORNEY

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Jane Futterman  
Deputy Prosecuting Attorney

# ATTACHMENT A

## Article IV, Appendix A

### Henderson Watershed Protection Area

1. **Creation of Area of Special Concern.** Pursuant to Article IV, section 22.4 of the Sanitary Code for Thurston County, the Henderson Watershed Protection Area is established as an area of special concern.

2. **Henderson Watershed Protection Area Map.** The Henderson Watershed Protection Area includes all property where drainage flows toward Henderson Inlet within the area generally depicted on the map attached hereto as Appendix A-1. The official Henderson Watershed Protection Area Map is a parcel-specific map adopted as a part of this article that shall be maintained by the Health Officer.

If any portion of a parcel is within the area, the entire parcel will be considered to be within the area.

The Health Officer shall review the Henderson Watershed Protection Area map annually to update the boundary based on any new information obtained regarding drainage flow and location of on-site sewage systems and other improvements.

3. **On-site Sewage System Regulations.** Any property served by an on-site sewage system where any portion of the wastewater system (including a building and any collection, transport, treatment, and disposal components) is within the Henderson Watershed Protection Area will be required to comply with operation and maintenance requirements established for the Area.

4. **Operation and Maintenance Requirements.** The following operation and maintenance requirements shall apply to all on-site sewage systems within the Henderson Watershed Protection Area:

(a) **Operational Certificates**

All on-site sewage systems within the Area are required to have renewable operational certificates in accordance with Section 16 of this article. The operational certificates must be kept current and renewed on prescribed schedules. The operational certificate requirements shall include routine inspections and submission of inspection reports to the health officer.

An operational certificate shall not be issued or renewed for a system that is failing.

The Health Officer shall establish a schedule to phase in implementation of the operational certificate requirements within the Area.

(b) **High and Low Risk System Designation**

The Health Officer shall establish policies and procedures adopting criteria for ranking on-site sewage systems as low or high risk and setting minimum inspection and evaluation requirements for on-site sewage systems within the Henderson Watershed Protection Area. The criteria to rank on-site sewage systems shall be based on soil type, proximity to surface water and other appropriate criteria.

(i) A High Risk System is an on-site sewage system that, if failing, would pose a high risk to public health by contributing to water quality degradation.

(ii) A Low Risk System is an on-site sewage system that, if failing, would pose a lower risk to public health and would be less likely to contribute to water quality degradation.

(c) **Dye Trace Evaluations**

For High Risk Systems, a dye trace evaluation shall be required as a condition of the operational certificate to determine whether or not the system is failing. Dye trace evaluations shall be required to be performed every other renewal cycle for the operational certificate.

Dye trace evaluations shall be conducted in accordance with policies and procedures adopted by the Health Officer.

Dye trace evaluations may be performed only by authorized Department staff or other persons approved by the Health Officer as having the necessary training and expertise. The Health Officer shall establish minimum qualifications for individuals to be approved to perform dye trace evaluations. Before starting a dye trace evaluation, private evaluators shall submit a dye trace plan to the Health Officer for approval. Failure to follow adopted procedures will result in withdrawal of approval to perform these evaluations.

5. **Owner Request for Review.** Once a year there will be a review period for property owners to request review of whether Henderson Watershed Protection Area requirements apply to their properties.

(a) Property owners may request review of the following:

(i) Whether their property is served by an on-site sewage system;

(ii) Whether their property drains toward Henderson Inlet;

(iii) Whether the location of any portion of their wastewater system is within the Henderson Watershed Protection Area;

(iv) Whether their on-site sewage system is a high-risk system or a low-risk system.

No other review or appeal will be allowed.

- (b) Applications for review shall be submitted to the Environmental Health Division Director, or Director's designee, on a form provided by the Department. The applicant may submit any information (maps, photographs, details) to support the adjustment requested.

The burden of proof shall be on the applicant to show that the adjustment sought should be granted.

The Director will consider all information submitted by the applicant and any information on file with the Department regarding the property. The Director may request a meeting with the applicant and Department staff to consider available information regarding the review.

- (c) Applications for review must be received by April 30<sup>th</sup> of each year.

For applications received by April 30<sup>th</sup>, the Director will issue a letter of determination by June 30<sup>th</sup>. If the Director determines that an adjustment is warranted, the adjustment shall be made effective for the next year after the date of the determination.

The determination is final and there shall be no further right of administrative appeal.

6. **Corrections and Adjustments.** As new information is obtained and, based on the adopted policies, procedures, and program criteria, the Health Officer may make appropriate adjustments and corrections to properties included in the Area, OSS risk rankings, conditions in operational certificates, and other appropriate adjustments; except for expansion of the Henderson Watershed Protection Area boundary which would require legislative action by the Thurston County Board of Health. Property owners affected by any corrections and adjustments shall be notified of such corrections and adjustments at least 30 days prior to the effective date of those changes.

7. **Fees.** The operational certificate renewal fee and Areas of Special Concern Annual Regulatory Fees set forth in Article I, Appendix A of this code shall not apply within the Henderson Inlet Shellfish Protection District. Parcels in the Henderson Watershed Protection Area are subject to rates and charges of the Henderson Inlet Shellfish Protection District On-site Sewage System Operation and Maintenance Program.

8. **Program Evaluation.** Five years after creation of the Henderson Watershed Protection Area, the Health Officer will conduct an evaluation of the program and activities and submit a report to the Board of Health.

Article IV, Appendix A-1

Henderson Watershed Protection Area Map

