

**KITSAP COUNTY BOARD OF HEALTH
ORDINANCE NUMBER 2005-7**

**DECONTAMINATION AND ASSESSMENT OF ILLEGAL
DRUG MANUFACTURING OR STORAGE SITES**

SECTION I. AUTHORITY AND PURPOSE.

A. Authority.

This ordinance is adopted pursuant to Chapters 64.44, 70.05, and 70.46 Revised Code of Washington (RCW) and Chapter 246-205 Washington Administrative Code (WAC). All references to these RCWs and this WAC refer to the cited chapters and sections, as amended.

B. Purpose.

This ordinance provides for the protection of the health, safety, and welfare of the public by reducing the potential for public contact with hazardous chemicals associated with the manufacture of illegal drugs and by providing a just and practicable method for assessing and decontaminating property where these hazardous chemicals commonly are present. In addition to the requirements established in Chapter 64.44 RCW and Chapter 246-205 WAC, this ordinance establishes additional requirements for contamination assessment, reduction, abatement, and assessment of costs.

SECTION II. APPLICABILITY.

This ordinance shall apply to any site defined as an illegal drug manufacturing or storage site in WAC 246-205-010. This ordinance shall also apply to any property that has been sampled in accordance with WAC 246-205-531 and has sample values which exceed the decontamination standards as defined in WAC 246-205-541. This ordinance shall not apply to industrial sites where a person's manufacturing process uses a hazardous chemical when licensed or regulated by state or federal agencies.

SECTION III. DEFINITIONS.

When used in this ordinance, the following terms have the meanings provided below. Other terms used in this ordinance that are not defined below are provided in Chapter 246-205 WAC and Chapter 64.44 RCW.

- A. Approved: Approved in writing by the Health Officer.
- B. Board of Health: Kitsap County Board of Health.
- C. Health District: The Kitsap County Health District.

- D. Nuisance: Any unlawful act or omission to perform a duty that may be detrimental to public health.
- E. Occupy: To be present in or be inside of.
- F. Use: The enjoyment of property, as by occupying or exercising it.

SECTION IV. CONTAMINATION DETERMINATION AND REDUCTION.

A. Applicability.

The requirements in this section are in addition to the contamination reduction requirements in WAC 246-205-570. The requirements in this section apply to contractors, property owners, and the Local Health Officer as defined in WAC 246-205-010. The requirements in this section apply to property that has been found by the Health Officer to be contaminated and unfit for use pursuant to RCW 64.44.020 and 64.44.030, and WAC 246-205-540 including properties found contaminated and unfit for use by the Health Officer prior to the effective date of this ordinance.

B. Decontamination or Disposal Required.

1. The owner of a contaminated property, excluding contaminated motor vehicles, trailers, and boats as described in Section IV.B.2 below, is required to decontaminate or dispose of the property. The owner shall decontaminate the property in accordance with Chapter 64.44 RCW and WAC 246-205-570, or dispose of the property in accordance with state and local laws. The owner of the contaminated property shall decontaminate or dispose of the property within forty-five (45) days of notification of contamination by the Health Officer, unless otherwise approved by the Health Officer.
2. The registered owner of a contaminated motor vehicle, trailer, or boat shall decontaminate this property in accordance with Chapter 64.44 RCW and WAC 246-205-570, or dispose of this property in accordance with state and local laws. The owner of a contaminated motor vehicle, trailer, or boat shall decontaminate or dispose of this property within thirty (30) days of notification of contamination by the Health Officer, unless otherwise approved by the Health Officer.

C. Determination of Contamination

At any illegal drug manufacturing or storage site, in the instance that analytical samples cannot be collected in accordance with WAC 246-205-531, the property will be determined to be contaminated unless the property owner can provide analytical evidence showing the property is not contaminated and fit for use.

SECTION V. NOTICE AND ORDER TO CORRECT VIOLATION.

A. Issuance.

Whenever the Health Officer determines that a violation has occurred or is occurring, he/she may issue a written notice and order to correct violation to the property owner or to any person causing, allowing, or participating in the violation.

B. Content.

The notice and order to correct violation shall contain:

1. The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;
2. The street address or description sufficient for identification of the property upon or within which the violation has occurred or is occurring;
3. A description of the violation and a reference to that provision of the regulation which has been violated;
4. A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;
5. A statement that each violation of this ordinance 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; and
6. A statement that the failure to obey this notice may result in the issuance of a notice of civil infraction and/or imposition of criminal penalties.

C. Disposal Receipts.

The notice and order to correct violation may also include a statement requiring the person to whom the notice and order to correct violation is directed to produce receipts from a permitted solid or hazardous waste disposal facility or transporter to demonstrate compliance with an order issued by the Health Officer.

D. Service of Order.

The notice and order to correct violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violation by first class and certified mail postage prepaid, return receipt requested, to such person at his/her last known address.

E. Extension.

Upon written request received prior to the correction date or time, the Health Officer may extend the date set for corrections for good cause. The Health Officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.

F. Supplemental Order to Correct Violation.

The Health Officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations.

G. Enforcement of Order.

If, after any order is duly issued by the Health Officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer may:

1. Cause such person to be prosecuted under these regulations; and/or
2. Institute any appropriate action to collect a penalty assessed under these regulations; and/or
3. Abate the health violation using the procedures of these regulations; and/or
4. Pursue any other appropriate remedy at law or equity under these regulations.

H. Written Assurance of Discontinuance.

The Health Officer may accept a written assurance of discontinuance of any act in violation of this regulation from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this regulation.

SECTION VI. VIOLATIONS, CIVIL REMEDIES, AND CRIMINAL PENALTIES.

A. Violations.

1. Violations of this ordinance may be addressed through a civil remedy or punished as a criminal act as provided in Sections VII.B. and C.
2. Each violation of this ordinance 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.
3. Any property that is declared contaminated or unfit for use is an unlawful public nuisance.
4. This ordinance may be enforced by law enforcement officers, by the Health Officer, or by the Health Officer's designee.

B. Civil Remedies.

1. The violation of any provision of this ordinance is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW, as amended. The Health Officer may issue a notice of civil infraction pursuant to Chapter 7.80 RCW if the authorized representative has reasonable cause to believe that the person has violated any provision of these regulations or has not corrected the violation as required by a written notice and order

to correct violation. Civil infractions shall be issued, heard, and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules.

2. The following are civil infractions under this ordinance:

- a. Failure to Decontaminate: Any person who fails to decontaminate any property as required pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC, has committed a Class 1 civil infraction;
- b. Occupying or Permitting Occupation of Property Declared Unfit for Use: Any person who occupies, permits, or authorizes the occupation of any property ordered vacated pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction;
- c. Removing, Destroying, Defacing, or Obscuring a Notice: Any person who removes, destroys, defaces, obscures or otherwise tampers with any notice posted pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction;
- d. Failure to Comply with Order: Any person who fails to comply with any order issued pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction;
- e. Obstructing Employees or Agents of Health District: Any person who obstructs any enforcement officer, employee, or agent of the Health District or other governmental unit in the enforcement or carrying out of the duties prescribed in this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction; or
- f. Failure to Comply with a Written Assurance of Discontinuance: Any person who fails to comply with a written assurance of discontinuance issued pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC has committed a Class 1 civil infraction.
- g. Failure to Comply with Approved Workplan: Any person who performs decontamination activities not in accordance with the approved decontamination workplan has committed a Class 1 civil infraction.
- h. Failure to Report Contamination: Any person who becomes aware of contaminated property is required to report the contamination to the Health Officer, within one (1) working day, upon gaining such knowledge.

C. Criminal Penalties.

The following are crimes under this ordinance:

1. Failure to Decontaminate: Any person who has previously been found by a court to have committed a violation of section VII.B.2.a. of this ordinance, "Failure to

Decontaminate,” and fails to decontaminate the same property as required pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC, shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 or to imprisonment in the county jail not to exceed ninety (90) days or to both fine and imprisonment. The court may also impose restitution.

2. Occupying or Permitting Occupation of Property Declared Unfit for Use: Any person who occupies, permits, or authorizes the occupation of any property ordered vacated pursuant to this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC, shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 or to imprisonment in the county jail not to exceed ninety (90) days or to both fine and imprisonment. The court may also impose restitution.
3. Obstructing Employees or Agents of Health District: Any person who obstructs any enforcement officer, employee or agent of the Health District or other governmental unit in the enforcement or carrying out of the duties prescribed in this ordinance, Chapter 64.44 RCW, or Chapter 246-205 WAC shall be, upon conviction, guilty of a misdemeanor and shall be subject to a fine of not more that \$1,000 or to imprisonment in the county jail not to exceed ninety (90) days or to both fine and imprisonment. The court may also impose restitution.

D. Other Legal or Equitable Relief.

Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of these regulations, or rules and regulations adopted under them.

E. Imminent and Substantial Dangers.

Notwithstanding any provisions of this regulation the Health Officer may take immediate action to prevent an imminent and substantial danger to the public health.

SECTION VII. APPEALS.

A. Appeal of an Order Prohibiting Use.

1. Health Officer Administrative Hearing.

Any person required to be notified of an order prohibiting use under RCW 64.44.030 may request an appeal hearing before the Health Officer or his or her designee. Such appeals must be made in writing to the Health Officer and shall be accompanied by a fee as established in the current Health District fee schedule. Any such appeal must be made within ten (10) calendar days of service of the order. An appeal will be heard by the Health Officer not less than twenty (20) calendar days nor more than thirty (30) calendar days from the date of the serving of the order. The decision of the Health Officer is final. The order prohibiting use shall remain in effect during the appeal. Any appeal of an order prohibiting

use must be made at the same time or before an appeal of a notice and order to correct violation can be made as described in Section VII.B.

2. Appeal of Administrative Hearing.

- a. Any person aggrieved by the findings of an administrative hearing shall have the right to appeal the matter by requesting a hearing before the Board of Health. Such notice of appeal shall be in writing and presented to the Health Officer within seven (7) calendar days of the findings from the administrative hearing. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer, and shall be accompanied by a fee as established in the current Health District fee schedule. The appellant and the Health Officer may submit additional information to the Board of Health for review. The order prohibiting use shall remain in effect during the appeal.
- b. Upon receipt of a timely written notice of appeal together with the hearing fee, the Health Officer shall set a time, date, and place for the requested hearing before the Board of Health and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than seven (7) calendar days or more than thirty (30) calendar days from the date the appeal was received by the Health Officer.
- c. Any decision of the Board of Health shall be final and may be reviewable by an action filed in superior court. Any action to review the Board's decision must be filed within thirty (30) calendar days of the date of the decision.

B. Appeal of Notice and Order to Correct Violation.

1. Health Officer Administrative Hearing.

Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation may request an appeal hearing before the Health Officer or his or her designee. Such appeals must be made in writing to the Health Officer and shall be accompanied by a fee as established in the current Health District fee schedule. Any such appeal request shall be presented to the Health Officer within ten (10) calendar days of the notice. An appeal will be heard by the Health Officer not less than twenty (20) calendar days nor more than thirty (30) calendar days from the date of the serving of the order. The decision of the Health Officer is final.

2. Appeal of Administrative Hearing.

- a. Any person aggrieved by the findings of an administrative hearing shall have the right to appeal the matter by requesting a hearing before the Board of Health. Such notice of appeal shall be in writing and presented to the Health Officer within seven (7) calendar days of the findings from the administrative hearing. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer, and shall be accompanied by a fee as established in the current Health District fee schedule. The appellant and the Health Officer may

submit additional information to the Board of Health for review. The notice and order to correct violation shall remain in effect during the appeal.

- b. Upon receipt of a timely written notice of appeal together with the hearing fee, the Health Officer shall set a time, date, and place for the requested hearing before the Board of Health and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than seven (7) calendar days or more than thirty (30) calendar days from the date the appeal was received by the Health Officer.
- c. Any decision of the Board of Health shall be final and may be reviewable by an action filed in superior court. Any action to review the Board's decision must be filed within thirty (30) calendar days of the date of the decision.

SECTION VIII. ABATEMENT AND ASSESSMENT OF COSTS.

- A. After all appeals have been exhausted or if no appeal is filed within the time allowed for filing an appeal as required Section VII, and the property owner or other persons to whom the order was directed have failed to decontaminate a contaminated property as ordered by the Health Officer under this ordinance, the Health Officer may direct or cause the property to be decontaminated, closed, vacated, boarded up, removed, disposed of or demolished, and all costs thereof, including any actual administrative costs and actual attorney's fees and costs, may be assessed against the property, the persons to whom the order was directed, and the owners of the property upon which the cost was incurred.
- B. Notice of the costs incurred shall be sent by first class and certified mail to the owners of the property upon which the costs are assessed or other persons against whom the costs are charged. The Health Officer may modify the amount, methods, or time of payment of such costs as it may deem just, considering the condition of the property and the circumstances of the owner. In determining any such modification, the costs may be reduced against an individual who has acted in good faith and would suffer extreme financial hardship.
- C. Any costs incurred by the Health District abating the condition of the property may be collected by any appropriate legal remedy.
- D. Any amounts collected shall be distributed to any fund or source of funds for the program area from which payment for the work was made.

SECTION IX. SEVERABILITY.

Should any part of this ordinance be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remainder.

SECTION X. REPEALER.

Kitsap County Board of Health Ordinance Number 2003-5, adopted May 3, 2000, is hereby repealed.

SECTION XI. EFFECTIVE DATE.

The effective date of this ordinance shall be March 1, 2005.