

Ordinance No. 78-07

AN ORDINANCE REPEALING CHAPTER 24.22 OF TITLE 24, ENTITLED “HEALTH AND SAFETY” OF THE ST. JOSEPH COUNTY CODE AND REPLACING CHAPTER 24.22 WITH AN ENTIRELY NEW CHAPTER 24.22.

Department 055 Health

Statement of Purpose and Intent

The purpose and intent of this Ordinance is to protect public health, safety, welfare, and property in St. Joseph County by repealing Chapter 24.22 of Title 24, entitled “Health and Safety” of the St. Joseph County Code and replacing Chapter 24.22 with an entirely new Chapter 24.22.

This is an ordinance pertaining to the protection of surface and groundwater resources of St. Joseph County.

NOW, THEREFORE, IT IS ORDAINED BY THE ST. JOSEPH COUNTY COUNCIL THAT:

Section 1, Chapter 24.22, Source Water Protection Ordinance, is repealed and revised to read as attached hereto.

Section 2, This ordinance shall be in full force and effect from and after its enactment and approval by the St. Joseph County Council and the St. Joseph County Commissioners and publication as required by law.

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1. DEFINITIONS:

Except as defined below, the terms of 327 IAC 2-6, as amended from time to time, shall have the same definition whenever used in this Ordinance. For purposes of this Ordinance, the terms below shall be defined as follows:

- a. Backflow. The undesirable reversal of flow from any source into the distribution pipes of the potable water system.
- b. Biological substance. Any material consisting of or containing a living organism that is a human pathogen.
- c. Board of Health. The St. Joseph County Board of Health.
- d. CFR. Code of Federal Regulations.
- e. Conveyance. Any structural process for transferring storm water between at least two (2) points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, and roadways.
- f. Cross-connection. Any point on a water system where a damaging substance may come in contact with potable waters.
- g. Damage to groundwater. For purposes of this Ordinance, groundwater damage occurs when: 1) a release of a regulated substance causes or is likely to cause the groundwater to exceed a Federal Primary or Secondary Drinking Water Standard, 2) any release not in compliance with all applicable federal, state, and county permits and approvals causes a measurable increase in the concentration of a regulated substance in the groundwater, 3) a spill or illicit discharge enters the soil or groundwater and is not remediated in compliance with all applicable federal, state, or local laws, regulations, rules, and lawful orders, or 4) the Health Department determines that a release of a regulated substance has or is likely to threaten public health.
- h. Damage to surface water. For purposes of this Ordinance, surface water damage occurs when: 1) a release of a regulated substance causes or is likely to cause the surface water to exceed any applicable federal or state water standard, 2) any release not in compliance with all applicable federal, state, and county permits and approvals causes a measurable increase in the concentration of a regulated substance in any surface water, 3) a spill or illicit discharge enters the surface water and is not remediated in compliance with all applicable federal, state, or local laws, regulations, rules, and lawful orders, or 4) the Health Department determines that a release of a regulated substance has or is likely to threaten public health.
- i. Extremely hazardous substance. Any substance identified pursuant to 42 U.S.C. 11002 and 11004.
- j. Facility. Facility has the meaning set forth in 42 U.S.C 9601(9) which is “The term “facility” means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, or (b) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.” Facility does not include motor vehicle, rolling stock or aircraft.
- k. Groundwater. Any water below the surface of the ground within the interstices of the rock or soil.
- l. Hazardous substance. Has the meaning set forth in 42 U.S.C. 9601 (14).
- m. Health Department. The Health Department of St. Joseph County, Indiana.
- n. Health Officer. The Health Officer of the Health Department of St. Joseph County, Indiana, or an authorized representative.

- o. Human Waste. Any combination of liquid and/or water-carried wastes from residence(s), commercial building(s), industry(s), institution(s), or any other facility generated by ordinary living processes.
- p. Illicit Discharge. Any release to a surface water or conveyance of any regulated substance (See definition in Section 1.ff) which is not in compliance with all existing applicable federal, state, or local permits and approvals. Illicit discharges specifically include, but are not limited to, the release of sanitary wastewater, septic effluent, commercial car wash wastewater, oil, radiator flushing fluids, laundry wastewater, roadway accident spillage, and household hazardous waste.
- q. IAC. Indiana Administrative Code.
- r. IC. Indiana Code.
- s. Injection Well. Any well, the operation of which includes the subsurface emplacement of fluids through a well.
- t. Monitoring Well. A well installed to obtain hydrogeological information or to monitor the quality or quantity of water in the groundwater or soil.
- u. Municipality. Any incorporated City or incorporated Town.
- v. Operator. Any person in control of, or having responsibility for the operation of a facility subject to this Ordinance.
- w. Objectionable Substance. Has the same meaning as 327 IAC 2-6.1-4, as may be amended from time to time.
- x. Owner. Any person who owns a property and/or a facility in whole or in part that is subject to any provision of this Ordinance.
- y. Person. Any individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), limited liability company, partnership, Copartnership, company, estate, municipal corporation, City, School City, Town, school Town, School District, School Corporation, County, State Agency, association, State, municipality, commission, political subdivision of the State, any interstate entity or any other legal entity or their legal representative.
- z. Petroleum. A naturally occurring complex of hydrocarbons in liquid form in its natural or refined state.
 - aa. Petroleum byproducts. A liquid or semi-solid substance derived from petroleum and composed primarily of petroleum or petroleum derivatives.
 - bb. Potable Water. Water intended and suitable for drinking or culinary purposes.
 - cc. Private Water Supply. One or more sources of groundwater, including facilities for conveyance thereof, such as wells, springs, and pumps other than those serving a public water supply.
 - dd. Property. Any real estate and any facilities or structures upon the real estate.
 - ee. Public Water System (PWS). A system for supplying potable water if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system, including the operator or administrator of such system, and used primarily in connection with such system and (2) any collection or pretreatment storage facilities not under such control which are used in this Ordinance shall have the same applicability as Public Water Supply System or PWSS as used in 327 IAC 8-4.1, "The Wellhead Protection Rule," and defined at 327 IAC 8-4.1-1(19).
- ff. Regulated Substance. Any extremely hazardous substance, hazardous substance, petroleum or petroleum byproduct, human waste, radioactive substance, biological substance, or other objectionable substance.

- gg. Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any regulated substance.
- hh. Remediaton: The act of eliminating, reducing, or mitigating any damage to the groundwater or surface water.
- ii. Responsible Party. Any person or persons who through their actions or negligence, cause or have caused a spill, an illicit discharge, or damage to the groundwater or surface water. When the person or persons that caused the spill, illicit discharge, or damage can not be identified after a due diligence investigation, the owner of the property where the contamination originated shall be the responsible party.
- jj. Sanitary Waste. Any combination of liquid and water-carried wastes from residence(s), commercial building(s), industry(s), institutions, or any other facility generated by ordinary living processes.
- kk. Spill. Any unexpected, unintended, abnormal, or unapproved release of a regulated substance to soils, surface water, groundwater, conveyances, or roadways. The term does not include releases to impermeable surfaces, except roadways, when the substance does not contact or enter soils, groundwater, surface water, or a conveyance.
- ll. Surface Water. All natural or constructed waters on the surface of the earth including, but not limited to, rivers, streams, lakes, ponds, ditches, surface impoundments, catch basins, retention or detention basins, and water within conveyances and drains recognized by the St. Joseph County Drainage Board. The term does not include surface impoundments with a synthetic or equivalent earthen liner that have been installed and maintained pursuant to a federal or state permit.
- mm. Threat to Groundwater or Surface Water. Any of the following conditions constitutes a threat to groundwater and/or surface water for purposes of this Ordinance:
 - i. The presence of a regulated substance in the vadose zone, groundwater, or surface water in sufficient quantity or concentration to present a reasonable likelihood that it will damage the groundwater or surface water,
 - ii. Any illicit discharge as defined in Section 1.p,
 - iii. Any spill as defined in Section 1.kk, and/or
 - iv. The presence at a facility or property of any of the activities or conditions listed in Section 1.mm.iv.1 through 9 below of any regulated substance: 1) in a quantity sufficient to present a reasonable likelihood that it has or is likely to damage groundwater or surface water and 2) stored, transferred, or used in a manner either not in compliance with applicable federal, state or local requirements, or in a manner which represents an unreasonable risk of release to the soil, groundwater, or surface water:
 - 1. An underground storage tank,
 - 2. An above-ground storage tank,
 - 3. A drum storage area,
 - 4. A waste pile, including one consisting of contaminated soil awaiting removal,
 - 5. A surface impoundment,
 - 6. A rail or truck-loading or transfer area,
 - 7. Auto salvage facility,
 - 8. An outdoor storage or disposal area exposed to precipitation, or
 - 9. Other activities or conditions as determined by the Health Department on a case by case basis that meets the criteria set forth in Section 1.mm.iv.

Activities described in mm.iv.2 or 3 do not represent a threat to groundwater or surface water if they are completely enclosed in a building in an area with no floor drain and an impermeable floor and walls sufficient to contain a release of 100 percent of the contents.
- v. Transfer. A change in the ownership of land as described in Section 11 of this Ordinance.

- vi. U.S.C. United States Code.
- vii. Water Supply Well. Any excavation that derives water from the interstices of the rocks or soil it penetrates intended to supply water for any use. Water supply wells do not include dewatering or monitoring wells.
- viii. Well. Any artificial excavation that derives water from the interstices of the rock or soil it penetrates.

2. PURPOSE

- a. The purpose of this Ordinance is to protect the public health, safety and welfare of persons and property in St. Joseph County by protecting the groundwater and surface water resources of St. Joseph County.

3. CONFLICTING ORDINANCES

- a. The provisions of this Ordinance shall be deemed as additional requirements to minimum legal requirements of other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

4. REPORTING REQUIREMENTS SUBSTITUTION

- a. In the case where a report requiring information of the same character must be filed for a federal or state requirement, the report may be copied and submitted to the Health Department in lieu of otherwise applicable reporting requirements under this Ordinance. Any of the above information required, not included in the report, must be submitted additionally.

5. COMPLIANCE WITH OTHER LAWS

- a. In addition to the requirements of this Ordinance, compliance with the requirements set forth in any applicable federal, state or local law, rule, or regulation shall be required. In case of conflicting requirements, the most restrictive shall apply.

6. CROSS-CONNECTIONS AND BACK-SIPHONAGE

- a. No device shall be installed or connected to any water supply system when such installation or connection may provide a possibility of damaging a water supply or water system or may provide a cross-connection or back siphonage unless there is provided an approved backflow prevention device in accordance with 320 IAC 3-9.1.
- b. The Health Department may order that a threat of a cross-connection or back siphonage be eliminated when reasonable and necessary to protect a drinking water supply.
- c. Any connection of a water supply to a public water supply shall be performed only with the approval of the public water supply which shall be allowed to establish any reasonable and necessary measures to prevent a cross-connection or back-siphonage and shall be allowed to inspect any such measures.

7. PROHIBITED ACTIONS

a. General Prohibitions

- i. The commencement of any activity with intent or reckless disregard which is likely to result in damage of the groundwater or surface water resources of St. Joseph County is strictly prohibited.
- ii. Any violation of the provisions of this Ordinance or any rules, regulations, or standards developed pursuant to it shall constitute a public nuisance and the responsible party shall be subject to the enforcement provisions identified in Section 12 and all other applicable laws, rules, and regulations.

b. Specific Prohibitions

- i. The use of an injection well, including drywells, for disposal, storage, or treatment of anything except storm water is prohibited unless properly permitted.
- ii. The use of a surface impoundment for the disposal, storage, or treatment of regulated substances is prohibited unless properly permitted.
- iii. The use of a conveyance to transport an illicit discharge is prohibited.
- iv. The disposal of sanitary waste, except in compliance with the following, as applicable, is prohibited:
 1. The laws, regulations, and rules applicable to onsite septic systems promulgated by the Indiana State Department of Health,
 2. The St. Joseph County Onsite Septic System Ordinance, County Code 24.04,
 3. The requirements of the St. Joseph County Water and Sewer District, and/or
 4. The laws and rules of the Indiana Department of Environmental Management.

8. THREATS TO THE GROUNDWATER AND SURFACE WATER

- a. The Health Department may order any person who is responsible for a threat to the groundwater or surface water (See definition in Section 1.mm) to take any reasonable and necessary corrective action to prevent the threat from damaging the groundwater or surface water or to protect public health.
- b. If a facility or property is found to have a condition which represents a threat to groundwater, or surface water, the Health Department may require the responsible party to conduct an investigation which may include, but shall not be limited to, installing soil borings or groundwater monitoring wells or sampling and analyzing the soil, groundwater, or surface water. The cost of any and all of such requirements shall be borne by the responsible party.
- c. Any and all data or other relevant information collected pursuant to Section 8.b. shall be provided to the Health Department within thirty (30) days of obtaining or generating the data or information.
- d. If the Health Department determines there is a threat to the safety of groundwater or surface water for use by humans in drinking, food preparation, washing, or other direct human contact, from a release of a regulatory substance, the following requirement shall apply:
 - i. If a Community Public Water System is available (a) within three hundred (300) feet of the property line of any property, and (b) within nine hundred (900) feet of a residence(s) located on the property, upon order of the Health Officer, a direct connection shall be made to said public water main and its water shall be used exclusively. Any water supply serving such property shall be abandoned in accordance with Title 24, Chapter 20, of the St. Joseph County Code in a safe and sanitary manner. The cost for such connection shall be the responsibility of any responsible party(s).

9. DAMAGE TO THE GROUNDWATER AND SURFACE WATER

a. General Requirements

- i. The Health Department may defer enforcement action or enter into a joint enforcement action with a federal or state agency with jurisdiction over the damage for all requirements related to damage to the groundwater or surface water.
- ii. Irrespective of any deferred or joint enforcement action described in Section 9.a.i, the responsible party shall perform the notification and reporting requirements listed in Sections 9.b and c.

- b. Notification Requirements
 - i. General Notification Requirement
 - 1. Any property owner or operator, or their authorized agent, upon receiving information that indicates that a spill, illicit discharge, or other release of a regulated substance has or is likely to damage the groundwater or surface water, shall report such information to the Health Department during normal office hours by the end of the next business day.
 - ii. Spill Notification
 - 1. Whenever a spill is required to be reported in accordance with the “Spills; Reporting, Containment and Response Rule,” 327 IAC 2-6.1, the spill report shall be provided to the Health Department during normal office hours by the end of the next business day. Such reporting shall in no way alleviate other local, state and federal obligations as required by law.
 - 2. Failure to provide a notifications required by Sections 9.b.i or ii shall be a violation of this Ordinance.
- c. Reporting Requirements
 - i. All written reports required to be filed under any local, state and federal laws, rules and regulations regarding damage to the groundwater or surface water shall be provided to the Health Department at the same time they are provided to any federal, state, and local agency.
 - ii. When damage to the groundwater or surface water has occurred, the responsible party shall document and maintain any reasonable and necessary information and analysis required by the health Department to assess the need for corrective action and to protect public health. The responsible party shall provide a copy of all such records to the Health Department within thirty (30) days of their creation and shall keep copies of all such records for five (5) years.
 - iii. In the event of a transfer of the property, a copy of the records shall be furnished to the transferee by the property owner.
 - iv. The responsible party for damage to the groundwater or surface water shall submit an annual report to the Health Department by April 1 of each year which accurately reflects the circumstances related to the release, the damage to the groundwater or surface water, the remediation of the damage, and any remaining contamination in the soil, groundwater or surface water.
 - 1. In the case of damage to groundwater or surface water involving multiple properties, a representative for all responsible parties may submit the report for each individual property.
 - 2. After the report for the first year, subsequent reports may include only any changes in information from the first report and any additional information obtained. If information has not changed, the report may so state and no other information needs to be submitted.
 - 3. The reports shall be provided each year until the damage has been completely remediated or the Health Department determines that the reports are no longer necessary.
- d. Containment Requirements
 - i. The responsible party shall contain any release of a regulated substance that may damage the groundwater or surface water in accordance with all federal, state, and local requirements at all times and to the extent reasonable and practical to prevent, stop, or minimize the migration of the release.

- ii. The Health Department may order the responsible party to perform any reasonable and necessary measure to prevent, stop, or minimize the migration of a release that has or is likely to damage the groundwater or surface water.
- e. Investigation of Damage to Groundwater or Surface Water
 - i. Any responsible party who damages the groundwater or surface water shall investigate the damage in compliance with all federal and state requirements and the requirements of this Ordinance.
 - ii. If the Health Department determines that the groundwater or surface water has been damaged, the Health Department may require the responsible party to conduct an investigation of the damage which may include, but shall not be limited to, installing soil borings and groundwater monitoring wells and sampling and analyzing the soil, groundwater or surface water.
- f. Remediating Damage to the Groundwater or Surface Water
 - i. Any responsible party who damages the groundwater or surface water shall remediate the damage in compliance with all federal and state requirements and the requirements of this Ordinance.
 - ii. The Health Department may order a responsible party to take any and all reasonable and necessary measures to remediate the damage to the groundwater or surface water.
 - iii. If the damage to groundwater or surface water does not present an immediate threat to public health or public safety:
 - 1. The Health Department may order the responsible party to remediate the damage to groundwater or surface water or take whatever actions the Health Department deems reasonable and necessary within the timeframe established by the Health Department.
 - 2. If the responsible party fails to comply with the Health Department orders or cannot be identified or found, the Health Department may remediate the damage to groundwater or surface water.
 - iv. If the damage to groundwater or surface water does present an immediate threat to public health or public safety:
 - 1. The Health Department may order the responsible party to immediately take whatever actions the Health Department deems reasonable and necessary within the timeframe established by the Health Department to protect public health.
 - 2. If the responsible party fails to comply with the emergency orders of the Health Department or cannot be immediately identified or found, the Health Department may take whatever actions the Health Department deems reasonable and necessary to protect public health.
- g. Monitoring Requirements
 - i. The responsible party shall perform the actions necessary to accurately and completely monitor any damage to the groundwater or surface water during and after remediation as determined by the Health Department until the damage is entirely eliminated or the Health Department has determined that monitoring is no longer necessary.
- h. Costs
 - i. The costs for implementing any and all notifications, reporting, containment, investigations, remedial action, and monitoring required by the provisions of Section 9 shall be borne by the responsible party.
 - ii. The responsible party shall reimburse the Health Department for all costs incurred by the Health Department associated with an enforcement action issued pursuant to Section 9 within sixty (60) days of receiving a statement itemizing the expenses
 - iii. If the responsible party fails to reimburse the Health Department within sixty (60) days of receiving a statement itemizing the expenses, the Health Department may take

appropriate steps to secure an order from a court of competent jurisdiction for the reimbursement of the expenses or place a judgment lien against property and/or facility.

10. BOTTLED WATER RULES and REGULATIONS

- a. Bottled water and water used for potable ice shall meet the requirements of the Food and Drug Administration (FDA) Department of Health and Human Services, 21 CFR Part 103. All bottled water and potable ice may be sampled and tested by the Health Officer pursuant to IC 16-41-24-3.

11. PROPERTY TRANSFER: MANDATORY INSPECTIONS, CERTIFICATIONS AND TESTING

- a. In order to: 1) protect the health and welfare of the citizens of St. Joseph County, 2) to ensure the water quality of potable water supply wells, and to 3) provide information to the Health Department and prospective buyer(s) regarding potential groundwater damage, inspections of septic systems and water tests shall be performed prior to the time of transfer of the ownership of any property in St. Joseph County.
- b. Standards and Requirements establishing the requirements for complying with Section 11 shall be issued by the Board of Health pursuant to Section 12.
- c. A fee for the receipt and statement of compliance, as determined by the St. Joseph County Commissioners, shall be paid to the Health Department at the time of the request for the receipt and statement of compliance.
- d. As used in this section, “transfer” means a change in the ownership of land by any of the following:
 - i. A deed or other instrument transferring fee title to property.
 - ii. A lease whose term, if all options were exercised, would be more than forty (40) years.
 - iii. An assignment of more than twenty-five percent (25%) of the beneficial interest in a land trust.
 - iv. A collateral assignment of a beneficial interest in a land trust.
 - v. An installment contract for the sale of property.
 - vi. A lease of any duration that includes an option to purchase.
- e. As used in this section, “transfer” does not include a change in the ownership of a property by any of the following:
 - i. A deed or trust document, which without additional consideration, confirms, corrects, modifies, or supplements a deed or trust document that was previously recorded.
 - ii. A deed or trust document that, without additional consideration, changes title to property without changing beneficial interest.
 - iii. A tax deed or a deed from a County transferring property the County received under IC 6-1.1-25-5.5.
 - iv. An instrument or release of an interest in property that is security for a debt or other obligation.
 - v. A deed of partition.
 - vi. As a result of the foreclosure of a mortgage or other lien on real property.
 - vii. An easement.
 - viii. A transfer of an interest in minerals, gas or oil (including a lease).
 - ix. A transfer by operation of law upon the death of a joint tenant with right of survivorship.
 - x. An inheritance.
 - xi. A deed in lieu of foreclosure.
 - xii. A Uniform Commercial Code sale or other foreclosure of a collateral assignment of a beneficial interest in a land trust.
 - xiii. A deed that conveys fee title under an installment contract for the sale of property.

- xiv. A deed that conveys fee title under an exercise of an option to purchase contained in a lease of property.
- xv. A mortgage or trust deed.
- xvi. A transfer of vacant land containing no structures, walls, or on-site wastewater disposal systems.
- xvii. Deeds ordered by a Court arising from a property settlement agreement in a dissolution of marriage proceeding.

12. ENFORCEMENT

a. Authority to Adopt Rules and Regulations

- i. The County Board of Health may adopt, amend or rescind any rules and regulations and standards as deemed necessary for proper enforcement and to carry out the purposes and intent of this Ordinance. This shall be accomplished using public comment periods, public meetings, and public hearings, as appropriate, in accordance with State law and in consultation with the St. Joseph County Water Resources Advisory Board.

b. Right-of-Entry Upon Premises

- i. The Health Officer or an authorized representative, bearing proper credentials and identification, may enter upon and inspect private property for such purposes as inspecting, observing, measuring, sampling, testing and examining records necessary to carry out the provisions of this Ordinance.
- ii. In the event a person who has common ownership over a building, structure or land does not permit an inspection for the purposes described in 12.b.i, the inspection may be rescheduled and shall be notified by United States Certified Mail. Failure of such person to thereafter permit an inspection will be sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for the purpose of inspecting, observing, measuring, sampling, testing, or examining records necessary to carry out the provisions of this Ordinance.
- iii. In the event a building, structure or land appears to be vacant or abandoned and the property owner cannot be readily contacted in order to obtain consent for an inspection, the Health Officer or an authorized representative may enter into or upon any open or unsecured portion of the premises, for such purposes as inspecting, observing, measuring, sampling, testing and examining records necessary to carry out the provisions of this Ordinance.

c. Issuance of Notice of Violation

- i. Whenever the Health Department determines there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, the Health Department shall give notice in writing of such violation to the person or persons responsible thereof, and to any known agent of such person. Such notice shall:
 - 1. Include a statement of reasons why the notice of violation is being issued.
 - 2. Allow a reasonable time for the performance of any act it requires.
 - 3. Be served upon the owner or his agent, or the operator, as the case may require; provided that such notice shall be deemed to be properly served upon such owner or agent, or upon such operator, if a copy thereof is served upon him personally, or if a copy thereof is sent by certified mail to his last known address, or if a copy thereof is posted in a conspicuous place on or about the property affected by the notice, or if he/she is served with such notice by any other method authorized or required under the laws of this State.
 - 4. Contain an outline of required remedial action.
 - 5. Describe the penalty that is imposed for non-compliance.

- ii. Any person receiving a notice pursuant to Section 12.c shall comply with the requirements in the notice or they shall be in violation of this Ordinance.
- d. Appealing an Order by the Health Department
 - i. Any person affected by an abatement order or any decision issued by the Health Department may petition for and shall be granted a hearing on the matter before the Health Officer, provided that such person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within fifteen (15) days after service of an order of abatement or issuance of the decision. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.
 - ii. Upon receipt of such petition, the Health Officer shall arrange a time and place for such hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall the hearing be more than thirty (30) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard and to show cause why such notice should not be complied with.
 - iii. The Health Officer shall sustain, modify, or withdraw the notice to the petitioner as soon as practical and in no case later than fifteen (15) days following the hearing. The decision shall be final subject only to review by a court of competent jurisdiction.
- e. Issuance of Emergency Orders
 - i. Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health, the Health Officer may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that action be taken as the Health Officer deems necessary to meet the emergency. Notwithstanding any other provisions of this Ordinance, such order shall be effective immediately. Any person receiving such an order may seek a hearing under Section 12.d and e above while carrying out such order, and shall have the right to recover any of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law.

13. VARIANCES

- a. Any person affected by any provision of this ordinance may petition for a variance of any provision by the Health Officer, provided that such person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered.
 - i. The variance request shall be written and shall set forth a brief statement of the grounds thereof.
 - ii. Upon receipt of such petition, the Health Officer shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall the hearing be more than thirty (30) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard.
 - iii. The Health Officer shall sustain, modify, or withdraw the notice to the petitioner as soon as practical and in no case later than fifteen (15) days following the hearing.
- b. A decision by the Health Officer to approve, amend, or disapprove a variance may be appealed to the County Board of Health by filing a petition with the office of the Health Officer by mail postmarked or hand delivered within fifteen (15) days of the decision by the Health Officer.
 - i. The petition shall be written and shall set forth a brief statement of the grounds thereof.
 - ii. Upon receipt of such petition, the Board of Health or a committee appointed by the Board of Health shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt

- of a petition but in no case shall the hearing be more than sixty (60) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard.
- iii. The Board of Health shall sustain, modify, or withdraw the notice to the petitioner as soon as practical and in no case later than thirty (30) days following the hearing. The decision shall be final subject only to review by a court of competent jurisdiction.
 - c. Neither the Health Officer nor the Board of Health may approve a variance that:
 - i. Materially threatens public health, or
 - ii. Would result in a material violation of any applicable federal, state, or county law, regulation, or rule.

14. PENALTIES AND COSTS

a. Penalties

- i. Any person determined by the Health Officer to be in violation of this Ordinance shall be punished for each offense by a penalty established by the Health Officer of not more than Five Hundred Dollars (\$500.00) for the first offense, not more than One Thousand Dollars (\$1,000.00) for the second, and by not more than One Thousand Five Hundred Dollars (\$1,500.00) for each subsequent offense. Each day after receiving a notice of violation from the Health Officer shall constitute a distinct and separate offense.

b. Liability for Health Department Costs

- i. Any person violating any provisions of this Ordinance shall become liable to the Health Department for any expense, loss, or damage occasioned it by reason of such violation, including the costs for labor, supplies, equipment, and services.

15. SEVERABILITY

- a. If any section or part of this Ordinance be for any reason held unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of the Ordinance, but the remaining portions shall be and remain in full force and effect.

16. DISCLAIMER OF LIABILITY

- a. The Ordinance shall not create liability on the part of the Health Department or any officer, employee or agent thereof for any damage that may result from reliance on this Ordinance or on any administrative decision lawfully made thereunder.
- b. All inspections shall be at the discretion of the Health Department and nothing in this Ordinance shall be construed as requiring the Health Department to conduct any inspection nor shall any inspection imply a duty to conduct any other inspection. Nothing in this Ordinance shall be construed to hold the Health Department responsible for any damage to persons or property by any failure to make an inspection or reinspection or for inspections that failed to identify unacceptable conditions or procedures.