

ord. Book.

BEFORE THE BOARD OF COMMISSIONERS

FOR PACIFIC COUNTY, WASHINGTON

ORDINANCE NO. 114

IN THE MATTER OF THE ABATEMENT OF A PUBLIC HEALTH HAZARD CREATED BY THE STORAGE, USE OR HANDLING OF HAZARDOUS CHEMICALS IN DWELLINGS, BUILDINGS, STRUCTURES, OR PREMISES.

THE PACIFIC COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Title

This ordinance shall be known and referred to as the Hazardous Chemical Ordinance of Pacific County.

SECTION 2. Policy and Purposes

- 2.1. The purpose of this ordinance is to protect the health, safety and welfare of the public by providing a just and practicable method for regulating the occupancy of dwellings, buildings, and premises where hazardous chemicals and their residue are present. This ordinance shall not apply to industrial sites where the manufacturing processes using hazardous chemicals are licensed or regulated by state or federal agencies.
- 2.2. This ordinance is adopted pursuant to the provisions of RCW 7.48.140, 43.20(A).640, and 70.05.070 as a matter of concern within the county and under the general legislative authority of the Board of Commissioners.
- 2.3. The use of hazardous chemicals is commonly associated with the manufacture of illegal drugs. Illegal drug manufacturing operations are often located in occupied dwellings, buildings and automotive vehicles and premises. Drug manufacturing operations and the chemicals used and residues produced pose a threat to the safety and health of the occupants and members of the public who may come in contact with the property. These chemicals and residues may cause injury or adverse long-term health affects, including, but not limited to, cancer, neural, optic, respiratory or systemic damage.
- 2.4. The use of hazardous chemicals to manufacture illegal drugs is a matter of statewide and local concern. there is a need to coordinate state and local law and health enforcement and fire district activity, to ensure continuous protection of the public from injurious exposure to hazardous chemicals and residues by ensuring

that dwellings, buildings and premises where manufacturing operations are conducted are not used or occupied until the hazardous chemicals are removed, and the property is no longer contaminated.

- 2.5. The Board of Commissioners intends to impose necessary and reasonable regulations in conjunction with, or apart from, provisions contained in other laws without prejudice to the use of such procedures and remedies as are available under such laws, including but not limited to RCW 70.05, 43.20(A), 360.38 and 7.48 of Washington law.

SECTION 3. Definitions:

- 3.1. "Hazardous Chemicals" shall mean any substance used in the manufacture of controlled substances as defined by Chapter 147 laws of 1988, hazardous substances as identified by RCW 70.105 and federal regulations establishing same, and WAC 360-38 Precursor Substance Control regulations.
- 3.2. "Health Officer" - The legally designated Health Officer of the Pacific County Health Department or his authorized representative.
- 3.3. "Person" - Any individual, corporation, trust, company, association, society, firm, partnership, public or private association or corporation, joint stock company, or any branch of state or local government.
- 3.4. "Owner of Record" - That person or persons who is shown as the person in control of the property by recorded deed or sales contract on the records of the Pacific County Assessor.
- 3.5. "Health Hazard" - A condition or situation where, in the opinion of the Health Officer, disease potential exists and if unabated the disease potential will increase and may result in a public health emergency.
- 3.6. "Board" - Legally constituted Pacific County Board of Health.
- 3.7. "Civil Penalty" - A non-criminal penalty assessed by the Health Officer for violation of provisions of this ordinance.
- 3.8. "Civil Penalty Schedule" - The schedule of penalties set forth in Section 08 of this ordinance or amendments thereto.

- 3.9. "Department" - Pacific County Department of Health and Human Services.
- 3.10. "Imminent Health Hazard" - Those conditions exist where pathogenic organisms; toxic, hazardous or dangerous chemicals; or radiation occurs or can be reasonably expected to occur which will cause an endangerment to the health of individuals upon incidental or habitual contact.
- 3.11 "Public Nuisance" - Every act unlawfully done and every omission to perform a duty, which act or omission shall annoy, injure or endanger the safety, health, comfort, repose or environment of an individual or individuals or shall interfere with, befoul, obstruct, or tend to obstruct or render dangerous for passage any lake, navigable river, bay, stream, canal or basin, public park, square, street, alley or highway; or render any person(s) insecure in life or use of property.

SECTION 4. Maintenance of Health Hazard Prohibited

It is a health hazard for the owner, agent or occupant of any dwelling, building, automotive vehicle, or premises to suffer or permit the storing, using or handling of hazardous chemicals classified as precursors, reagents or solvents, their containers and all associated contaminated vessels on the property contrary to the law, or the contamination of the property by residue from hazardous chemicals. It is further a health hazard for the owner, agent or occupant or property to fail to correct any such condition after having been notified by the Health Officer to do so.

SECTION 5. Public Nuisance Declared

For purposes of this ordinance, the Board of Commissioners declares, finds and determines that the creation or maintenance of a health hazard is a public nuisance.

SECTION 6. Public Nuisance Prohibited

- 6.1. It is unlawful for any dwelling, building or premises to be employed or used as a public nuisance. If property is found to be used or employed as such, it shall be subject to closure.
- 6.2. It is unlawful for any person to employ, use, maintain or allow the employment, use or maintenance of property under their ownership or control as a public nuisance.
- 6.3. It is unlawful for any person to use or occupy any property determined to be a public nuisance after service of notice has been made pursuant to this ordinance.

However, this provision may be waived by the Administrator or a court of competent jurisdiction if exigent circumstances are such that the use or occupancy of the premises prior to a full court hearing is mandated.

- 6.4. Any occupant who fails to voluntarily cease to use or occupy as required by subsection C of this section may be removed only pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of any action brought pursuant to this ordinance.

SECTION 7. Enforcement

- 7.1. The Health Officer is authorized to administer and enforce all provisions of this ordinance. Nothing contained herein is meant to limit him/her discretion in evaluating and directing compliance with this ordinance.
- 7.2. If any dwelling, building, or premises is employed, used or occupied contrary to the provisions of this ordinance, the Health Officer shall give due notice to the owner or his agent and the occupant requiring him, within a reasonable time, to comply with this ordinance. Upon failure to comply with this ordinance, the Health Officer may institute appropriate legal action to compel the owner, or agent, tenant or person in control of the premises to comply with this ordinance.
- 7.3. Every notice or order in relation to a dwelling, building or premises shall be served upon the owner or his agent and the occupant, allowing a specified reasonable time for doing the requirements of the notice. However, the posting of a copy of such a notice or order in a conspicuous place in or upon the dwelling, building or premises, and mailing a copy thereof to such owner or agent and the occupant at his last known address, shall constitute service of any notice or order required by this ordinance, unless otherwise provided.
- 7.4. It is unlawful for any person, other than the Health Officer, to remove, destroy, deface, coverup or conceal any notice or order posted as herein provided, except by written permission by the Health Officer.
- 7.5. The Health Officer may extend the time within which to comply with the notice or order. When he/she is satisfied that the immediate health hazard from the dwelling, building or premises has ceased to exist, the Health officer may suspend the notices or order to allow access to the property for testing and clean up. The

Health Officer will recommend procedures, including names of authorized contracting for this type of work. When the owner is satisfied the property is safe, and all recommendations of the Health Officer have been completed, the owner may sign an Affidavit and a Hold Harmless Agreement with the Health Department and receive final approval of property for occupancy.

- 7.6. In the event that any dwelling, building, or premise is found to be in violation of this ordinance, the Health Officer may enforce any provision of this ordinance against the legal owner or agent of said dwelling, building or premise whether or not the legal owner or agent had actual knowledge that said dwelling, building, or premise was or had been used to create or maintain a public nuisance through health hazard as defined in this ordinance.

SECTION 8. Legal Proceedings

- 8.1. In the event the Health Officer finds that a dwelling, building or premises constitutes a public nuisance as defined by this ordinance, the Health Officer may order that it be closed.
- 8.2. This ordinance authorize the Health Officer or jurisdictional law enforcement agency to secure the dwelling, building or premises against use or occupancy in the event that the owner fails to do so within the time specified in Section 7 (C) of this ordinance. In the event the Health Officer secures the property, all costs reasonably incurred by the Health Officer to effect a closure shall be recovered from the owner and/or occupant. As used in this subsection, costs mean those costs actually incurred by the Health Officer for the physical securing of the property, including, but not limited to, actual attorneys' fees and costs and surveillance for continuing security by law enforcement officers.
- 8.3. If the owner and/or occupant is a corporation, partnership, joint venture, trust, business or any other similar entity, then in that event, the director(s), trustee(s), and/or any member of a joint venture, business, or similar entity shall be both jointly and severally liable for each and every proceeding which may arise by and through enforcement of any paragraph of this

ordinance.

- 8.4. In the event the owner of record fails to abate the public nuisance as directed by the Health officer under Section 7 of this ordinance, the Health Officer may initiate legal proceedings to abate the nuisance as referenced in but not limited to the Washington State Uniform Building Code as adopted by Pacific County and recommended decontamination procedures. In this event the owner of record shall be liable for fees and costs incurred in abating the public nuisance including but not limited to actual attorney's fees and costs.

SECTION 9. Liability

This ordinance shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any dwelling building or premises for any damages to persons or property caused by their violation of this ordinance, nor shall the Health Officer or the County be held as assuming any such liability by reason of the inspections or other actions authorized by this ordinance.

SECTION 10 CONFLICT; EFFECT OF PARTIAL INVALIDITY

- 10.1 In any case where a provision of these rules and regulations is found to be in conflict with a provision of any other rules and regulations of the Pacific County Health Department existing on the effective date of the rules and regulations, the provision which, in the judgment of the Health Officer, establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.
- 10.2 If any section, subsection, paragraph, sentence, clause or phrase of these rules and regulations should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of these rules and regulations which shall remain in full force and effect; and to this end the provisions of these rules and regulations are hereby declared to be severable.

SECTION 11 APPEALS

- 11.1 Appeals from any decision by the sanitarian or Health Officer made pursuant to this Ordinance shall be made by filing a written request with the Health Officer within 5 days of notice of the decision of the sanitarian or Health Officer.

- 11.2 Any decision of the Health Officer is final unless appealed within 10 days of filing of the Health Officer's written decision by filing written notice of appeal with the Board of Pacific County Commissioners/Board of Health. The Board of County Commissioners/Board of health shall hear the appeal during a regular meeting of such Board within 30 days of receipt of the above described notice of appeal. The Health Officer or his designee shall appear in person or in writing advising the Board of County Commissioners of the reason for the Health Departments denial or granting of a particular permit.
- 11.3 Any decision of the Board of Pacific County Commissioners/Board of Health pertaining to this Ordinance including the affirmance or reversal of any appeal of any decision of the Health Officer is final unless appealed to the Superior Court of the State of Washington of Pacific County within 30 days and notice of the same is served upon Pacific County within that time period.
- 11.4 The time period described above for appealing decisions made pursuant to this ordinance are jurisdictional.

SECTION 12 **PENALTY**

Any person, business, partnership, or corporation, or entity of any kind violating or failing to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and each day of such violation shall constitute a separate offense. Penalty upon conviction shall be punishment by a fine of not more than \$1000. per violation, or by imprisonment for not more than 90 days or by both fine and imprisonment.

SECTION 13 **INJUNCTION**

In addition to the criminal sanctions described in Section 9 of this Ordinance, the Prosecuting Attorney for Pacific County or at his election, the Attorney representing the city or town in which said violation occurred, may bring a civil action in the Superior Court of Pacific Count to enjoin any person, business, partnership, corporation, or entity of any kind from violation or failing to comply with this Ordinance; as well as for damages including but not limited to the cost of prosecution and the cost of repairing the damage to the environment.

SECTION 14 **EFFECTIVE DATE**

This ordinance, being necessary for the preservation of the health,

safety and welfare of the citizens of PACIFIC County and an emergency having been declared to exist, shall be effective immediately upon passage hereof.

Passed by the Board of County Commissioners/Board of Health on this 13th day of December, 1988 and signed in authentication of its passage this 13th day of December, 1988.

APPROVED AS TO FORM

BOARD OF COUNTY
COMMISSIONERS,
BOARD OF HEALTH
PACIFIC COUNTY, WASHINGTON

Michael Sullivan
Prosecuting Attorney

Don P. Markham
12/13/88 Chairman

ATTEST

Bill Crossman
12-13-88 Commissioner

Shirley R. Hartberg
Clerk of the Board

Dave Wolfenbarger
12/13/88
Commissioner