

## **Title 10 – Community Health**

### **Chapter 6 – Enforcement**

**Sec.**

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#### **Legislative History**

**Enacted:**

Ordinance 388 Amending STC Title 10: Amending Chapters 1 & 6, Repealing and Enacting Chapter 2, Enacting Chapters 9, 10, & 11 (12/4/18).

Ordinance 300 Amending STC Title 11, Chapters 1 and 2, amending STC Title 10, Chapter 6, Enacting STC Title 10, Chapter 8 – Solid Waste, and Repealing STC Title 11, Chapter 7 (11/8/11), BIA (11/21/11).

Ordinance 169 Public Health and Welfare, (6/30/03), BIA (7/3/03).

**Repealed or Superseded:**

Ordinance 90 Health and Sanitation Code Repealing and Superseding Resolution 81-2-801, Resolution 81-1-794, and Resolution 76-7-399, (2/6/92), BIA (2/18/92).

Resolution 89-8-75 Amending the Health and Sanitation Code by Adopting Provisions for the Control of Dogs, (8/1/89).

Resolution 81-2-801 Adopting the Interim Health and Sanitation Code, (2/26/81).

Resolution 76-7-399 Adopting Skagit County Residential Construction and Maintenance Codes, (7/3/76).

Ordinance 16 Requiring the Control of Livestock, BIA (6/6/45).

Resolution 96A Applying State Health and Education Laws and Regulations to the Reservation, (12/2/55).

Ordinance 13 renumbered as Ord. 16.

Ordinance 12 Delegating Authority to the Sanitation and Inspection Committee, (4/28/41).

Unnumbered Ordinance Regulating the Disposal of Garbage, BIA (10/13/36).

Ordinance 2 Requiring the Registration and Taxation of Dogs, BIA (8/28/36).

[Ed. Note. The Interim Health and Sanitation Code enacted by Res. 81-2-801 reenacted Sections I, VII, and XIII of the Health and Sanitation Code enacted by Res. 81-1-794, which the BIA disapproved. Res. 76-7-399, repealed by Ord. 90, is cited in Title 12 – Building and Construction.]

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**10-06.010 Enforcement Policy.**

The Senate recognizes that promotion of community health both requires enforcement of this Title and active public education. Where an alleged violation occurs, the priority of enforcement shall be to educate and ensure future compliance for the community's benefit. The Board of Health and Health Official shall seek to collaborate with alleged violators to remedy potential violations in an efficient and pragmatic manner where feasible.

[History] Ord. 388 (12/4/18).

**10-06.020 Inspection.**

- (A) During hours of normal operation, the Health Official shall be allowed access to establishments operating subject to permits issued under this Title or Title 15.
- (B) During hours of normal operation and upon reasonable suspicion of ongoing violation of this Title, the Health Official may inspect any establishment that serves the public and is regulated under this Title.
- (C) For any area other than those described in subsections (A) and (B) above, the Health Official may inspect the premises if the Health Official has a reasonable suspicion of ongoing violations of this Title and follows the procedures set forth in subsections (1) through (4) below.
  - (1) The Health Official may inspect premises after providing a Notice of Inspection at least 48 hours before the specified dates of entry either: (i) in person to the suspected violator or (ii) posted on the premises of the suspected violator. The Notice of Inspection must state the suspected violation(s) of this Chapter, the factual basis for the suspected violation(s), a specific date and time of inspection, contact information for the Health Official, and information on how to reschedule and appeal the inspection.
  - (2) The recipient of the Notice of Inspection may request in writing a different time for inspection that will occur within 48 hours of the inspection time provided on the Notice of Inspection, and the Health Official shall make all reasonable efforts to accommodate such requests.
  - (3) The recipient may appeal the Notice of Inspection to the Board of Health in the same manner as a Notice of Violation under Section 10-06.030, which will result in an automatic stay of the inspection pending a determination by the Board of Health. The Board of Health shall hold a hearing within seven (7) days of the notice of appeal to determine whether entry is justified.

- (4) For housing, rental properties are subject to inspection upon request of the tenant. Rental properties are subject to inspection upon request by the owner/lessor/sub-lessor, absent the consent of the tenant, only if such inspection is provided for in the terms of a written rental agreement signed by the tenant. If any provision in this Chapter conflicts with a provision in Title 13, Real Property and Housing, the provisions in Title 13 shall prevail.
- (D) Suspected violators must assist the Health Official in obtaining entry to the premises for any inspection authorized by this Title. If the violator is not present, the Health Official is authorized to use all reasonable methods to gain entry.

\* Previously codified as STC 10-06.010.

[History] Ord. 388 (12/4/18); Ord. 169 (6/30/03); Ord. 90 (2/6/92).

#### **10-06.030 Violations, Penalties, Orders, and Appeals.**

- (A) **Violation.** All persons shall comply with this Title or any permit issued hereunder in all respects.
- (B) **Notice of Violation.** If the Health Official concludes that a violation of this Title has occurred and seeks enforcement, the Health Official shall cause a “Notice of Violation” to be provided to the permittee, the owner of the premises, the operator of the business establishment, or such other person as may be responsible for the violation. The “Notice of Violation” shall include the following information:
  - (1) identification of the alleged violation(s);
  - (2) findings of fact necessary to support the alleged violation(s);
  - (3) the necessary measures required to remedy the violation(s);
  - (4) a date and time for a follow-up inspection to ensure compliance;
  - (5) a schedule of potential fines or other consequences that may accrue;
  - (6) instructions on how to appeal the violation(s), including the deadline for initiating an appeal and the date, time and place for a hearing on the allegation before the Board of Health.
- (C) **Appeal.** A hearing shall be provided if the recipient of the Notice of Violation files a written notice of appeal with the Board of Health within seven (7) days of receipt of the Notice of Violation. The hearing should be held within fourteen (14) days of the filing of the notice of appeal unless scheduled later by the Board of Health for good cause. Except as set forth in Section 10-06.040, penalties and orders set forth in the Notice of Violation are stayed pending appeal.

- (D) **Hearing on Appeal.** At the hearing on appeal the Board of Health shall consider all relevant evidence concerning the allegations. The alleged violator of this Title shall have the right to explain why the violation did not occur or penalties are not warranted, to present evidence, and to examine any witness presented by the Health Official. The Board shall enter an order indicating its findings within fourteen (14) days of the hearing.
- (E) **Penalties and Orders.** Unless otherwise specified in this Title, if the Board of Health finds that a violation of this Title occurred, it may impose a civil penalty of not more than five hundred dollars (\$500.00) for each separate violation, and a penalty of not more than one hundred dollars (\$100.00) for each day that such violation continues. In addition to any penalties imposed, the Board of Health may order action to correct or remedy any violation or to cease any activity that constitutes or causes a violation, including eviction of residents from housing or closure of a food service establishment, and may order suspension or revocation of any permit issued hereunder.
- (F) **Mitigation.** In assessing fines and other penalties, the Board of Health shall take into account mitigating factors, including whether the alleged violator has remedied the alleged violation. Upon receipt of satisfactory proof of expenditure, the Health Official or Board of Health has the discretion to apply any money spent on curing a violation (such as on contractor or materials costs) as an offset to fines and penalties for that violation.

\* Previously codified as STC 10-06.020

[History] Ord. 388 (12/4/18); Ord. 300 (11/8/11); Ord. 169 (6/30/03); Ord. 90 (2/6/92).

#### **10-06.040 Emergencies.**

- (A) **Emergencies.** Upon discovery of a violation in any setting that poses a serious threat to human health, the Health Official shall have the authority to issue an Emergency Order requiring: the immediate closure of a business establishment, the suspension of any permit issued hereunder, the cessation of any activity that constitutes or causes a violation, or other remedial action as necessary. Within 24 hours of issuance of an Emergency Order, the Health Official must issue a written Notice of Violation detailing the alleged violations and findings of fact regarding the violations and the health justification for the emergency order.
- (B) **Housing Emergencies.** Upon discovery of a violation in housing that poses a serious and immediate threat to human health, the Health Official shall have the authority to issue a Notice of Violation detailing the alleged violations and findings of fact regarding the violations and the health justification for the emergency order, and may order the eviction of housing residents within a period of time not less than 24 hours.

- (C) **Temporary Only.** Such an Emergency Order shall be temporary only, and shall be effective for no longer than seven (7) days unless the Board of Health finds that the aggrieved party or parties had reasonable notice of the violation and failed to remedy it.
- (D) **Appeal.** A party subject to an Emergency Order or Notice of Violation under Section 10-06.040 may file a written appeal to the Board of Health under Section 10-06.030 and request a hearing on an expedited basis, which shall not be unreasonably withheld. No order or proceeding under this Section shall prevent any proceedings under Section 10-6.030 for the same violations. Failure to comply with any Emergency Order issued under the subsection shall be a separate violation.

\* Previously codified as STC 10-06.030.

[History] Ord. 388 (12/4/18); Ord. 169 (6/30/03); Ord. 90 (2/6/92).

#### **10-06.050 Grace Period and Cure.**

- (A) The purpose of enforcement is to protect and restore safe conditions on the Reservation as quickly and efficiently as possible. The Health Official and Board of Health shall attempt to collaborate with suspected violators to cure violations, and shall seek to identify resources to facilitate such cure when reasonably possible. In the first instance of an alleged violation, the Health Official shall have discretion to provide a written or verbal warning to the homeowner identifying the steps necessary to cure the violation and resources to assist in such cure.
- (B) The Board of Health shall have the authority, upon the application of any person, in a hearing of a violation or in a separate proceeding, to grant grace periods from the application of the provisions of this Title.
- (C) Such grace periods shall not exceed thirty (30) days and shall be granted only upon a showing of good faith efforts to comply with the provisions of this Title and a reasonable likelihood of complying with the provisions within the grace period.

\* Previously codified as STC 10-06.040.

[History] Ord. 388 (12/4/18); Ord. 169 (6/30/03); Ord. 90 (2/6/92).

**10-06.060 Judicial Review.**

A final order of the Board of Health may be reviewed by the Tribal Court upon the filing of a petition for review with the court within fourteen (14) days of the entry of the order for which review is sought. A copy of the petition shall be served upon the Board of Health. The review shall be limited to the evidence before the Board of Health unless there is a clear showing that the Board of Health failed to consider proper evidence that was offered at the hearing. The Court may reverse or remand any order that it finds arbitrary and capricious.

\* Previously codified as STC 10-06.050.

[History] Ord. 388 (12/4/18); Ord. 169 (6/30/03); Ord. 90 (2/6/92).

**10-06.070 Correction of Harmful Situations.**

- (A) If any party fails to comply with an order of the Board of Health directing the party to correct or remedy a situation that poses a threat to human health, the Board of Health may undertake the correction, request the tribal government to undertake the correction, or contract with a private party to undertake the correction.
- (B) The costs of correction shall be an assessed fine against the property holder involved, which may be adjusted as justice requires. The party that failed to comply with the Board of Health's order shall be liable for all costs incurred.

\* Previously codified as STC 10-06.060.

[History] Ord. 388 (12/4/18); Ord. 169 (6/30/03); Ord. 90 (2/6/92).