

RESOLUTION NO.

**RESOLUTION CALLING FOR PUBLIC HEARING ON ADOPTING NEW
HEALTH CODE TO ESTABLISH
CIVIL PENALTIES FOR VIOLATIONS OF HEALTH OFFICER ORDERS**

WHEREAS on January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in the State of Washington, and, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and,

WHEREAS the United States Centers for Disease Control and Prevention (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as "very high," and has advised that person-to-person spread of COVID-19 will continue to occur globally, including within the United States; and,

WHEREAS on January 31, 2020, the United States Department of Health and Human Services secretary Alex Azar declared a national public health emergency arising from COVID-19; and

WHEREAS on March 11, 2020, the World Health Organization declared COVID-19 a pandemic with global spread, impacts and health risks; and,

WHEREAS on March 13, 2020, Health Officer Dr. Howard Leibrand released a statement that read: "Wearing a fabric face covering or mask is a simple action that everyone can take to help slow the spread of COVID-19 and protect our community,"... "Face masks and coverings help prevent the spread of infection by blocking infectious droplets from entering into the air when a contagious person coughs, sneezes or speaks. We see transmission from people who are asymptomatic all the time, so it's important that everyone wear a mask, even if they're feeling well;" and

WHEREAS effective June 26, 2020, a new statewide requirement was established that all Washingtonians and visitors to the State wear facemasks or coverings in indoor public places such as stores, offices and restaurants and requires that face coverings be used in outdoor settings where people cannot stay six feet apart from people of their household; and

WHEREAS on September 30, 2020, the Skagit County Health Department reported a total of 1,111 positive COVID-19 test results since March 10, 2020; and between October 1, 2020, and December 8, 2020, the total case has risen dramatically to 2,318 positive test results; and,

WHEREAS on October 8, 2020, Health Officer Dr. Howard Leibrand released a statement that read: "Skagit County, we're in trouble. COVID-19 cases are rising at an alarming rate, and we need your help to reverse the trend and keep us out of major trouble...." and stressed the usefulness of masks in preventing spread: "Masks work. Mask work to protect you, protect those

around you and allow us to interact more safely. The evidence is overwhelmingly clear that the better we are about mask use, the less the disease will spread. For the majority of Skagitonians, a simple cloth face mask or covering is plenty effective at reducing disease transmission.” and

WHEREAS Health Officer Dr. Howard Leibrand states as December 9, 2020, the number of COVID-19 cases in Skagit County continues to rise and the number of hospitalized and ventilated patients in Skagit County continues to rise despite efforts to put in place measures to slow the spread of disease and educate the people of Skagit County about them and there is every expectation that those metrics will continue to worsen as we wait for better tests and treatments, and for the COVID-19 vaccines, unless there improved adherence to those measures; and

WHEREAS Health Officer Dr. Howard Leibrand additionally states it is recognized that the majority of people in the county do follow the infection control guidelines, but that “super-spreader events” caused by lapses in mitigation efforts continue to drive the pandemic; and

WHEREAS the Skagit County Board of Health deems it in the best interests of the health, safety and welfare of all citizens, residents and visitors to the County to reinforce the personal responsibility of individuals who put others in the community at risk by violating the public health orders and proclamations in effect during the global, national and state declared COVID-19 public health emergency by imposing personal penalties on such persons for the creation of a public health risk and public nuisance; and ,

WHEREAS SCC chapter 12.38 provides a process for adopting Health Code Ordinances and SCC 12.38.020 provides that creation of a committee to review the proposed changes to the Health Code Ordinances is permissive by use of the term “may;” and,

WHEREAS there has been a recent surge in cases of COVID-19 in Skagit County, which requires prompt legislative intervention to assure appropriate enforcement tools are available, and it reasonably appears that prompt action is required; and

NOW, THEREFORE, BE IT RESOLVED the Skagit County Board of Health has decided to consider adoption of the attached Health Officer Order Violation ordinance; and

IT IS FURTHER RESOLVED by the Skagit County Board of Health that the Board shall hold public hearing on the adoption of a chapter of the Health Code Ordinance to provide for civil penalties for violations of Health Officer Orders related to control of contagious diseases; and

IT IS FURTHER RESOLVED that the Skagit County Health Department, the Skagit County Health Officer, the Public Population Health Trust and the public shall be invited to provide comments on the proposal prior to and at the public hearing; and

IT IS FURTHER RESOLVED, by the Skagit County Board of Health that a notice of the public hearing shall be posted on the County Website indicating the time, place and purpose of the public hearing, and such notice shall be published, in the official newspaper of the County for public

notices, once a week for two weeks, the first publication the first date of which shall be at least twenty-one (21) days prior to the public hearing.

IT IS FURTHER RESOLVED by the Skagit County Board of Health that a public hearing be held in accordance with current Governor proclamations requiring public hearings to be held by remote access or in the event such Proclamation is amended or expires to allow in person hearing then the meeting shall be held at the Commissioners' Hearing Room, located at 1800 Continental Place, Mount Vernon, Washington,

on Wednesday, January 20, 2021, at the hour 10:30 a.m.
day date time

or as soon thereafter as possible, where oral and written testimony will be heard for, against or for modification of the terms of the proposed ordinance.

PASSED this 22 day of December, 2020.

SKAGIT COUNTY, WASHINGTON

BOARD OF HEALTH
SKAGIT COUNTY, WASHINGTON

Connie Davis, MD
Connie Davis, MD

Aaron Katz, CPH
Aaron Katz, CPH

Ron Wesen, Commissioner
Ron Wesen, Commissioner

OPPOSED

Kenneth A. Dahlstedt, Commissioner

Lisa Janicki, Commissioner
Lisa Janicki, Commissioner

Attest:

Kara Williams
Clerk of the Board

Approved as to form:

M. Mello
Civil Deputy Prosecuting Attorney

Approved as to Content:

Samuel Johnson
Department Head



12.54.010 Authority, applicability, and purpose.

(1) The statutory authority for the adoption of this Chapter is under RCW 70.05.060(3) to preserve, promote, and improve the public health.

(2) The purpose of this Chapter is to protect and promote the health, safety, and welfare of the public by providing for the control and prevention of any dangerous, contagious or infectious disease, reducing the impact of communicable diseases and authorizing the issuance of civil fines to support enforcement.

12.54.020 Definitions and local supplemental definitions.

The following specific definitions shall apply:

(1) "Chapter" means a chapter in Skagit County Code.

(2) "County" means Skagit County.

(3) "Health Officer" means the Health Officer of Skagit County as defined by SCC 12.01.010(3), or the Health Officer's designee.

(4) "Health Officer Order" means an order issued by the Health Officer of Skagit County, or the Health Officer's designee which is determined to be necessary to maintain health and control and prevent the spread of any dangerous, contagious or infectious disease in Skagit County. Orders are issued under authority of RCW 70.05.070 and may be issued as to indoor public places or outdoor public places.

(5) "Indoor public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Washington, or other public entity. Public places include, but are not limited to: schools, elevators, public conveyances or transportation facilities, taxis, buses, for hire conveyances, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing

facilities, State legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, clubs, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than 75 percent of the sleeping quarters within a hotel or motel that are rented to guests. "Indoor public place" also means any public or private place that is open to the general public regardless of whether dues, cover charges or a fee is charged or there are restrictions such as an age requirement for the privilege of admission, and includes any place used by a membership association or club at which nonmember guests are present or permitted.

(6) "Outdoor public place" means a social space that is open and accessible to the public, but located outside of buildings.

12.54.030 Publication and Effective Date of Health Officer Orders

(1) Health Officer Orders issued pursuant SCC 12.54.020(4) shall be published in a newspaper of general circulation in Skagit County and shall be effective the day after publication. Health Officers Orders shall also be made publicly available on the website for the Skagit County Health Department.

(2) Health Officers Orders shall be effective for a period of ninety (90) days unless otherwise specified in the Order.

(3) Health Officer Orders may be renewed upon the expiration of the ninety (90) day period upon publication pursuant to subsection (1) or upon the expiration of any subsequent ninety (90) day renewal period.

(4) The Health Officer may rescind a Health Officer Order issued pursuant to this Chapter at any time. Notice of rescinded Orders will be published on Skagit County Department of Health's publically available website and notice to local law enforcement officials.

12.54.040 Violation of Health Officer Orders Prohibited.

(1) No person may violate the terms of a Health Officer Order which requires the wearing of masks, use of other personal protective equipment, or other requirements deemed necessary for the control and prevention of contagious diseases as specified in the order,

- (a) in indoor public places in Skagit County.
- (b) in outdoor public places in Skagit County in a concentration of individuals in a designated area as set by the Health Officer or the Health Officer's designee.

(2) It is an affirmative defense to SCC 12.54.040(1) (a) or (b) that an individual is unable to comply with the ordinance as determined by a licensed medical professional prior to the time of the incident.

(3) No business or organization may permit members of the public to enter or remain in any indoor public place or outdoor public place who is in violation of a Health Officer Order issued under this chapter. Such violation may be shown by lack of enforcement of the terms of a Health Officer Order or by at least three individuals shown to be violation of a Health Officer Order.

12.54.050 Enforcement Procedures.

(1) The Health Officer and law enforcement officers of duly established law enforcement agencies in Skagit County are authorized to administer and enforce this Chapter. The Health Officer may issue a notice of violation to an individual, business or organization based upon a sworn statement from a law enforcement officer or Skagit County Department of Public Health Staff.

(2) The Health Officer or his/her duly authorized representative, and law enforcement officers of duly established law enforcement agencies in Skagit County, shall have the authority to seek entry and inspect any building, structure, property or portion thereof

which are indoor public places, at reasonable times for the purpose of determining compliance with and enforcing the provisions of this Chapter.

(3) Violations. All violations of the requirements and restrictions imposed under the authority of this Chapter are hereby declared to be detrimental to the public health, safety and welfare and are hereby declared to be public nuisances.

(a) Each violation of this Chapter 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.

(b) A notice of violation or order shall be served on the person or persons responsible for the violation either personally or by mailing via certified mail, return receipt requested, to the last known address of the violator. Service by certified mail is effective upon receipt or five days after the date of mailing, whichever occurs first.

(4) Penalty. Civil penalties for violations of shall be imposed pursuant to the following schedule:

(a) Individuals:

- | | | |
|-------|---------------------------------|---------------------------------------|
| (i) | First Violation: | \$50 (Fifty dollars) |
| (ii) | Second Violation within a year: | \$100 (One hundred dollars) |
| (iii) | Third Violation with a year: | \$250 (Two-hundred and fifty dollars) |

(b) Businesses or Organizations:

- | | | |
|-------|---------------------------------|---------------------------------------|
| (i) | First Violation: | \$250 (Two-hundred and fifty dollars) |
| (ii) | Second Violation within a year: | \$500 (Five-hundred dollars) |
| (iii) | Third Violation with a year: | \$1,000 (One thousand dollars) |

Under the authority of RCW 70.05.070 (7), penalties imposed and collected under the authority of the Health Officer shall be remitted to the Skagit County Health Department.

12.54.060 Requests for reconsideration and appeals.

(1) Requests for Reconsideration.

(a) Persons named in a notice of violation and issued a civil penalty may request reconsideration by filing a request for reconsideration, on a form provided by Skagit County Health Department and accompanied by the required filing fee, to Skagit County Health Department within 10 business days of service of the notice of violation.

(b) Requests for reconsideration shall identify alleged errors in the notice of violation, including statements and photographs as applicable, and by a written explanation. An aggrieved person may request a meeting with the Health Officer, which may be granted at the Health Officer's discretion. The Health Officer may rule on the request for reconsideration without a hearing

(c) The Health Officer has the discretion to reduce the civil penalty.

(d) The Health Officer shall issue a written decision within thirty (30) days of receipt of the request for reconsideration unless additional time is justified by good cause. Service of the decision shall be effective upon personal service on the person(s) requesting the reconsideration, or five days after mailing the decision, via certified mail return receipt requested, to the address provided in the request for reconsideration.

(2) Appeals of Health Officer's Decision on a Request for Reconsideration.

(a) Persons aggrieved by the Health Officer's decision on a request for reconsideration may appeal by filing a notice of appeal, on a form provided by Skagit County Health Department, accompanied by the required filing fee, to

Skagit County Health Department within 10 business days of service of the Health Officer's decision.

(b) The request for appeal must be served to the Skagit County Public Health Department with a copy to the Skagit County Board of Health.

(i) A fee in the amount listed in the most current Skagit County Public Health Department Schedule of Charges is due and payable to the Skagit County Public Health Department when an appeal of the Health Officer's reconsideration decision is made to the Board of Health. Such fee may be waived upon documentation by the individual showing income below federal poverty guidelines.

(c) The Board of Health will hear the appeal within sixty (60) days of receipt of the application to appeal the Health Officer's decision.

(3) The filing of a request for reconsideration or appeal pursuant to this Section shall operate as a stay of the civil penalty. There shall be no stay from a Health Officer order for immediate compliance with this Chapter when a public health threat exists.

**NOTICE OF PUBLIC HEARING
SKAGIT COUNTY BOARD OF HEALTH
JANUARY 20, 2021 at 10:30 A.M.**

**CREATING AN ORDINANCE FOR
HEALTH OFFICER ORDERS AND ENFORCEMENT**

NOTICE IS HEREBY GIVEN that the Board of Health will hold a public hearing in the Commissioners Hearing Room, County Administration Building 1800 Continental Place, Mount Vernon, WA on **January 20, 2021 at 10:30 a.m.**, for the purpose of considering public comment and possible action regarding the proposed adoption of proposed new County Code Chapter 12.54 Health Officer Orders and Violations. This ordinance will adopt a method of establishing Health Officer Orders and enforcement of Health Officer Orders in Skagit County. This Public Hearing provides an opportunity for the public to give comment to the Board of Health. Your views for or against the adoption of the proposed Health Officer Orders and Violations ordinance are invited by attendance, representation, or letter.

Participation in the public hearing, pursuant to Proclamations currently in place, shall be through remote access via GoToMeeting. To participate in the public hearing, call +1 (408) 650-3123 (Access Code: 632 327 501) or join from your computer, tablet or smartphone at: <https://global.gotomeeting.com/join/632327501>


Citizens who would like to sign up to provide public testimony must call the Clerk of the Board at (360) 416-1300 before the meeting is scheduled to start. The Clerk will need each citizen's name and the town or city where they reside. Once the public hearing is opened, those who signed up will be called on one-at-a-time to provide public testimony for up to 3 minutes.

Written comments may be submitted by mail or email. Email comments can be sent to Health@co.skagit.wa.us, or can be mailed or delivered to Public Health Administration 700 South Second Street #301, Mount Vernon, WA 98273-1071. Both mail and emailed comments must be identified with the subject "Health Officer Orders and Enforcement." All written comments must be received prior to January 20, 2021 to be considered.

In the event in-person participation is authorized by the date of the public hearing, in addition to participating remotely, citizens may also participate through in-person attendance at the Skagit County Commissioners Hearing Room, located at 1800 Continental Place, Suite 100, Mount Vernon, WA 98273.

Citizens who plan to attend a public hearing and have special needs or disabilities are asked to call the Board of County Commissioners Office at (360) 416-1300 at least 96 hours before the hearing to discuss and arrange for any needed accommodation.

NOTICE GIVEN BY ORDER OF THE BOARD OF HEALTH this December 22, 2020.



Clerk of the Board

Publish in the Skagit Valley Herald on December 26, 2020 and December 31, 2020.