

ORDINANCE #498

AN ORDINANCE ESTABLISHING A PROGRAM TO MONITOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS WITHIN THE TOWN OF YACOLT; AUTHORIZING THE ENFORCEMENT OF LAWS FOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS BY AND WITHIN THE TOWN OF YACOLT; DECLARING A PUBLIC NUISANCE; AND REPEALING ORDINANCE #431 AND ORDINANCE #436.

Whereas, the Town of Yacolt does not have a public sewer system, and depends upon individual Onsite Sewage Disposal Systems to treat wastewater and sewage;

Whereas, the discharge from Onsite Sewage Disposal Systems within the Yacolt Town limits risks contaminating the groundwater which provides the community's drinking water supply;

Whereas, the Clark County Public Health Department, (formerly the Southwest Washington Health District), designated Yacolt as an *area of special concern*, under WAC 246-272, Regulation 92-01 and Resolution 93-42, recognizing that failing Onsite Sewage Disposal Systems risk contaminating the community's drinking water supply;

Whereas, owners of all Onsite Sewage Disposal Systems, including systems in an *area of special concern*, are required to inspect and maintain their Onsite Sewage Disposal Systems in accordance with rules and regulations administered by the Clark County Public Health Department and described by Clark County Code;

Whereas, the results of studies indicate that regular inspections and maintenance of Onsite Sewage Disposal Systems provides additional protection to keep the drinking water supply and local surface waters from being threatened by improperly treated septage and that such inspections and maintenance are reasonably necessary for the health, welfare and safety of the community;

Whereas, Yacolt executed a Memorandum of Understanding on April 29, 2003, with Clark Public Utilities and the Clark County Public Health Department, ("MOU"), which created a septic inspection and maintenance program for the Town of Yacolt;

Whereas, relying on the representations of the parties to the MOU, Clark Public Utilities obtained funding to implement said program through a loan from the State of Washington Department of Ecology;

Whereas, Clark Public Utilities made certain representations about the use of said loan funds and the MOU parties' intent to improve compliance by Property Owners with OSS inspection and maintenance laws within the Town of Yacolt's Town limits.

Whereas, many Property Owners within the Town Yacolt declined to participate in the voluntary septic inspection and maintenance program created by the parties to the MOU;

Whereas, the Town Council finds that a significant percentage of the Property Owners within the Town limits fail to timely or properly inspect and maintain their Onsite Sewage Disposal Systems as required by state and local law, and that said percentage is significantly higher among Property Owners who declined to participate in the septic inspection program that was developed under the MOU;

Whereas, the Town Council finds that some Property Owners participating in the existing septic inspection and maintenance program desire more flexibility and freedom with regard to their selection of OSS certified inspection personnel, pumpers and maintenance specialists;

Whereas, the owner of an Onsite Sewage Disposal System is responsible under state and local law for properly operating, inspecting, monitoring, pumping and maintaining the OSS to minimize the risk of failure or deficiency;

Whereas, given the Clark County Public Health Department's responsibilities with regard to a large number of Onsite Sewage Disposal Systems located over a large geographical area, the Town of Yacolt deems it prudent and necessary to provide additional oversight and enforcement of the Department's laws and directives to minimize the potential adverse effects on public health and welfare that discharges from Onsite Sewage Disposal Systems may have on ground and surface waters and the general public health and welfare;

Whereas, the Town Council of the Town of Yacolt has engaged in an extensive program of public participation that included public meetings and workshops to evaluate the Town's involvement in monitoring the inspection and maintenance of Onsite Sewage Disposal Systems within the Town limits, and to discuss various alternative methods in which the Town could better satisfy its purposes as described herein;

Whereas, the Town of Yacolt recognizes that a rigorous program providing for regular and thorough inspections of Onsite Sewage Disposal Systems is a proven means to reduce the risk of groundwater contamination, and the Town of Yacolt desires to safeguard the community's drinking water supply and thereby protect public health;

Whereas, municipalities have the authority to enact laws in furtherance of the public health, safety, and general welfare, and the regulation of nuisance activities is a necessary government service designed both to protect the public health, safety, and welfare, and to prevent public harm;

Whereas, the Town Council wishes to adopt a new program relating to Onsite Sewage Disposal Systems emphasizing inspection and maintenance verification, assisting the Clark County Public Health Department in monitoring the inspection and maintenance of Onsite Sewage Disposal Systems, and monitoring compliance by all Property Owners within the

Town limits of the Town of Yacolt;

Whereas, the Town Council therefore wishes to replace Ordinance #431 and Ordinance #436 with a new ordinance to better balance the desires of its citizens and the needs of the community by 1). Acknowledging each Property Owner's unique and independent responsibility to comply with existing state and Clark County OSS inspection and maintenance laws; 2). Providing flexibility to Property Owners to choose any Clark County certified inspector or maintenance specialist of their choosing, in compliance with state and local law; 3). Providing verification and enforcement tools to the Town to improve compliance with all state and local laws regarding the inspections and maintenance of Onsite Sewage Disposal Systems; and, 4). Recognizing the value and importance of procedures for the collection and sharing of OSS inspection and maintenance data for the benefit of the Town of Yacolt, the Clark County Public Health Department, and Clark Public Utilities;

Whereas, the Town Council of the Town of Yacolt is in regular session this 4th day of June, 2012, and all members of the Town Council have had notice of the time, place, and purpose of said meeting:

NOW THEREFORE, be it Ordained by the Town Council of the Town of Yacolt, Washington:

Section 1 – Legislative Findings. The recitals set forth above are adopted as the legislative findings of the Town Council of the Town of Yacolt in support of the adoption of this Ordinance.

Section 2 - Onsite Sewage Disposal System Inspection and Maintenance Verification Program Established. A program providing for the verification of compliance with inspection and maintenance requirements of the State of Washington and the Clark County Public Health Department relating to Onsite Sewage Disposal Systems within the Town of Yacolt is hereby established.

Section 3 – Purpose. The Town Council of the Town of Yacolt finds that Properties using Onsite Sewage Disposal Systems can present grave health, safety and welfare concerns where the Person responsible for such Properties has failed to follow inspection requirements, maintenance protocols, or to take corrective action to abate nuisance conditions. Such Properties can have a serious negative impact upon the quality of life, safety and health of the neighborhoods where they are located, as well as the values of property affected by such failures. Such conditions are or may become a financial burden to the Town and its citizens, including through the negative impact of such conditions on the Town's ground and surface waters and water supply. The Town of Yacolt declares such conditions to be a public nuisance. It is the purpose of this Ordinance to provide a remedy for situations where Property Owners fail to timely or properly inspect, monitor, maintain or repair their Onsite Sewage Disposal Systems by providing a process for communication,

correction, and eventual abatement of deficiencies. The primary intent of this Ordinance is to assist Clark County Public Health Department in identifying circumstances where a Property Owner has failed to timely inspect, monitor, maintain and/or report information to the Department as required by the Department. If Nuisance conditions or Violations described herein remain uncorrected, this Ordinance is intended to ameliorate these conditions and hold accountable those Persons responsible for the Properties involved.

Section 4 – Definitions. As used in this Ordinance, unless a different meaning is plainly required:

- A. **Abate** means to inspect, repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a Civil Violation by such means, in such a manner, and to such an extent as the Applicable Town Official determines is necessary in the interest of the general health, safety, and welfare of the community.
- B. **Applicable Town Official** means the Mayor of the Town of Yacolt or the Town Public Works Director, or the designee of the Mayor or Public Works Director, including any department director or other designee empowered by ordinance or by the Mayor to enforce a Town ordinance or regulation.
- C. **Civil Violation** means a Violation for which a monetary penalty may be imposed as specified in this Ordinance. Each day in which a Violation occurs or exists is a separate Violation.
- D. **Department** means the Clark County Public Health Department.
- E. **Emergency** means a situation which in the opinion of the Applicable Town Official requires immediate action to prevent or eliminate an immediate threat to the health or safety of Persons or Property.
- F. **Nuisance**, (also referred to herein as **Violation** or **Nuisance Violation**), means a Violation of any law or order of the State of Washington or the Clark County Public Health Department relating to the inspection, maintenance, repair or replacement of any Onsite Sewage Disposal System within the limits of the Town of Yacolt.
- G. **OSS** or **Onsite Sewage Disposal System** means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of wastewater or sewage on the Property where it originates or on nearby Property under the control of the user where the system is not connected to a public sewer system. For purposes of this Ordinance, an Onsite Sewage Disposal System does not include indoor plumbing and associated fixtures.
- H. **Person** means any individual, firm, association, partnership, corporation, or any entity, public or private, or the authorized agents of these entities.

- I. ***Person Responsible for the Violation*** means the Property Owner or any Person otherwise responsible for the Violation as tenant, occupant, or otherwise.
- J. ***Property Owner*** means the Person or Persons who are the legal owners according to the records of Clark County, Washington, of the real Property upon or within which the Violation has occurred or is occurring.
- K. ***Town*** means the Town of Yacolt.

Section 5 – OSS Inspection Frequency and Protocols. Property Owners in the Town of Yacolt shall have their OSS's inspected in compliance with state and local law, including without limitation the laws and regulations currently described in Clark County Code Title 24 together with any future amendments thereto, or as administered and interpreted by the Department under the authority of said Title.

Section 6 – New OSS Installations, Maintenance, Deficiencies, and OSS Failures. Property Owners in the Town of Yacolt shall install, inspect, pump, maintain, repair and/or replace their Onsite Sewage Disposal Systems as may be required by state and local law, including without limitation the laws and regulations currently described in Clark County Code Title 24 together with any future amendments thereto, or as required by the Department under the authority of said Title.

Section 7 – Reporting and Data Collection. Property Owners in the Town of Yacolt shall comply with all information collection and reporting requirements for any action described in Sections 5 and 6 above as may be required by state and local law, including without limitation the laws and regulations described currently in Clark County Code Title 24 together with any future amendments thereto, or as required by the Department under the authority of said Title.

Section 8 - Record Keeping and Verification by the Town. The Mayor, Town Clerk, or appropriate designee is hereby authorized and directed to work cooperatively with the Clark County Public Health Department to develop and maintain a system within the Town to verify the timeliness and adequacy of required OSS inspections, maintenance and reporting activities for OSS's within the Town of Yacolt.

Section 9 – Community Outreach and Assistance. The Mayor is authorized to develop and implement a plan to inform the residents and owners of Property within the Town of Yacolt about the terms of this Ordinance and to remind and encourage Property Owners to complete the operation and maintenance inspections required by state and local law. Public information should encourage certified inspectors and OSS maintenance specialists to obtain current Town of Yacolt business licenses before doing business within the geographical limits of the Town. The Mayor, through his or her staff, is further authorized to assist the Town's citizens by identifying potential programs for financial assistance with OSS repairs and replacement where needed.

Section 10 – Voluntary Correction.

- A. **Applicability.** This Section applies whenever the Applicable Town Official determines that a Nuisance or Violation as described herein has occurred or is occurring. The Town is authorized to seek voluntary correction under this Section when authorized and approved by the Department or where the Department fails to respond to a request by an Applicable Town Official for enforcement action by the Department or approval of the Town's proposed enforcement actions for a period of ten (10) business days.
- B. **General.** The Applicable Town Official shall attempt to secure voluntary correction by contacting the Person Responsible for the Violation, as provided below, and explaining the Violation and requesting correction.
- 1). Contact shall occur either:
 - a). In Person or by telephone; or,
 - b). By certified, return receipt requested, and by first class mail.
 - 2). The Applicable Town Official shall keep a record of his/her attempts to contact the Person Responsible for the Violation.
 - 3). The Applicable Town Official shall not be required to make more than five attempts in a ten calendar day period to contact the Person Responsible for the Violation before issuing a notice of Civil Violation under Section 11.
- C. **Issuance of Voluntary Correction Agreement.** A voluntary correction agreement may be entered into between the Person Responsible for the Violation and the Town acting through the Applicable Town Official.
- 1). **Content.** The voluntary correction agreement is a contract between the Town and the Person responsible for the Violation under which such Person agrees to abate the Violation within a specified time and according to the specified conditions. The voluntary correction agreement shall include the following:
 - a). The name and address of the Person Responsible for the Violation and the name and address of the Property Owner; and,
 - b). The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the Violation has occurred or is occurring; and,

- c). A description of the Violation and a reference to the law or regulation which has been violated; and,
 - d). A description of the necessary corrective action to be taken, and a date or time by which correction must be completed; and,
 - e). An agreement by the Person Responsible for the Violation that the Town may abate the Violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this Ordinance from the Person Responsible for the Violation if the terms of the voluntary correction agreement are not satisfied; and,
 - f). An agreement that by entering into the voluntary correction agreement, the Person Responsible for the Violation waives the right to a hearing before the hearing examiner under this Ordinance, regarding the matter of the Violation and/or the required corrective action.
- 2). **Right to a Hearing Waived.** Upon entering into a voluntary correction agreement, the Person Responsible for the Violation shall have no right to a hearing before the hearing examiner under this Ordinance, regarding the matter of the Violation and/or the required corrective action.
 - 3). **Extension and Modification.** An extension of the time limit for correction or a modification of the required corrective action may be granted by the Applicable Town Official if the Person Responsible for the Violation has shown due diligence and/or substantial progress in correcting the Violation, but unforeseen circumstances delay correction under the original conditions.
 - 4). **Abatement by the Town.** The Town may abate the Violation in accordance with this Ordinance if the terms of the voluntary correction agreement are not met.
 - 5). **Collection of Costs.** If the terms of the voluntary correction agreement are not met the Person responsible for the Violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, plus all costs and expenses of abatement, as set forth in Sections 11, 12 and 13.
 - 6). **Notice to Property Owner.** A copy of the voluntary correction agreement shall be mailed by certified mail, return receipt requested, to the Property Owner.

- 7). **Interpretation by Town Council.** Any dispute between the Person Responsible for the Violation and the Applicable Town Official about the interpretation of the voluntary correction agreement may be presented to the Town Council at a regularly scheduled Town Council meeting and resolved by the Town Council. The Person Responsible for the Violation agrees to be bound by the determination of Town Council.

Section 11 – Notice of Civil Violation. The Applicable Town Official is authorized to issue a Notice of Civil Violation when authorized and approved by the Department or where the Department fails to respond to a request by an Applicable Town Official for enforcement action by the Department or approval of the Town’s proposed enforcement actions for a period of ten (10) business days.

A. Issuance.

- 1). When the Applicable Town Official determines that a Violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to Section 10, the Applicable Town Official may issue a notice of Civil Violation to the Person Responsible for the Violation and the Property Owner.
- 2). The Applicable Town Official may issue a notice of Civil Violation without having attempted to secure voluntary correction as provided in Section 10 under the following circumstances:
 - a). When an Emergency exists; or
 - b). When the Violation creates a situation or condition which cannot be corrected; or
 - c). When the Person responsible for the Violation and the Property Owner knows or reasonably should have known that the action is in Violation of this Town Ordinance; or
 - d). The Person responsible for the Violation and the Property Owner cannot be contacted, as provided in Section 10, or refuses to communicate or cooperate with the Town in correcting the Violation.

B. Content. The notice of civil Violation shall include the following:

- 1). The name and address of the Person Responsible for the Violation and the name and address of the Property Owner; and,
- 2). The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the Violation

has occurred or is occurring; and,

- 3). A description of the Violation and a reference to the provisions of the state or local law or directive which has been violated; and,
- 4). A description of the required corrective action and a date and time by which the correction must be completed after which the Town may abate the unlawful condition in accordance with Section 13; and,
- 5). The date, time and location of an appeal hearing before the hearing examiner which will be at least thirty (30) calendar days but no more than sixty (60) calendar days from the date the notice of civil violation is issued, unless such date is continued by the hearing examiner for good cause shown; and,
- 6). A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the Applicable Town Official approves the completed, required corrective action prior to the hearing; and,
- 7). A statement that the costs and expenses of abatement incurred by the Town pursuant to Section 13, and a monetary penalty in an amount per day for each Violation as specified in this Section, may be assessed against the Person(s) to whom the notice of civil violation is directed as specified and ordered by the hearing examiner; and,
- 8). A statement that the Property Owner(s) or the Person Responsible for Violation could be held jointly and severally liable for any costs and expenses and any monetary penalty.

C. **Service of Notice.** The Applicable Town Official shall serve the notice of civil Violation upon the Person Responsible for the Violation and the Property Owner, either personally or by mailing a copy of the notice of civil violation by certified mail, return receipt requested, to such Person at their last known address. If the Person Responsible for the Violation and/or the Property Owner cannot be Personally served within Clark County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected Property or structure and by publishing the notice one time in a newspaper which publishes legal notice in Clark County, Washington. If the Property Owner is the same Person as the Person Responsible for the Violation, only one copy of the notice need be given. Proof of service shall be made by a written declaration under penalty of perjury executed by the Person effecting the service, declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the Person(s) personally or by mail.

- D. **Extension.** Extensions of the time specified in the notice of civil violation for correction of the Violation may be granted at the discretion of the Applicable Town Official or by order of the hearing examiner.
- E. **Monetary Penalty.** The monetary penalty for each Violation per day or portion thereof shall be twenty-five dollars (\$25.00).
- F. **Continued Duty to Correct.** Payment of a monetary penalty pursuant to this Ordinance does not relieve the Person(s) to whom the notice of civil violation was issued of the duty to correct the Violation.
- G. **Collection of Monetary Penalty.**
 - 1). The monetary penalty constitutes a Personal obligation of the Person(s) to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the Town within ten (10) calendar days from the date of mailing of the hearing examiner's decision or a notice from the Town that penalties are due.
 - 2). The Town Attorney is authorized to take appropriate action to collect the monetary penalty.
 - 3). The monetary penalty described herein does not replace or limit any penalty or remedy that may apply to the Violation as imposed by any other authorized Person or entity, including the Department.

Section 12 – Hearing Before the Hearing Examiner.

- A. **Notice.** The Person(s) to whom a notice of civil Violation is issued will be scheduled to appear before the hearing examiner at least thirty (30) calendar days but no more than sixty (60) calendar days from the date the notice of civil violation is issued.
- B. **Hearing Examiner.** One or more hearing examiners shall be appointed by the Town Council to hear cases brought under this ordinance. The hearing examiner may be a Town employee but shall not be an employee of the public works department or the Town attorney's office.
- C. **Prior Correction of Violation.** Except in the case of a Violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the Applicable Town Official approves the completed required corrective action at least forty-eight (48) hours prior to the scheduled hearing.

D. **Procedure.** The hearing examiner shall conduct a hearing on the civil violation. The Applicable Town Official and the Person(s) to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The Town shall have the burden of proof to demonstrate by a preponderance of the evidence that a Violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the Applicable Town Official as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action. Formal rules of evidence need not be followed, but all witnesses shall be sworn by the hearings officer.

E. **Decision of the Hearing Examiner.**

- 1). The hearing examiner shall determine whether the Town has established by a preponderance of the evidence that a Violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the Town 's decisions regarding the alleged Violation and/or the required corrective action.
- 2). The hearing examiner shall issue a written order to the Person Responsible for the Violation and the Property Owner which contains the following information:
 - a). The decision regarding the alleged Violation including findings of fact and conclusions based thereon in support of the decision;
 - b). The required corrective action;
 - c). The date and time by which the correction must be completed;
 - d). The monetary penalties assessed based on the criteria described in this Ordinance;
 - e). The date and time after which the Town may proceed with abatement of the unlawful condition if the required correction is not completed.

F. **Assessment of Monetary Penalty.** Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 11.

- 1). The hearing examiner shall have the following options in assessing monetary penalties:
 - a). Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

- b). Assess monetary penalties beginning on the correction date set by the Applicable Town Official or an alternate correction date set by the hearing examiner and thereafter; or,
 - c). Assess no monetary penalties.
 - 2). In determining the monetary penalty assessment, the hearing examiner shall consider the following factors;
 - a). Whether the Person(s) responded to attempts to contact the Person and cooperated with efforts to correct the Violation;
 - b). Whether the Person(s) failed to appear at the hearing;
 - c). Whether the Violation was a repeat Violation;
 - d). Whether the Person(s) showed due diligence and/or substantial progress in correcting the Violation;
 - e). Whether a genuine issue exists regarding interpretation of the law or directive underlying the Violation; and,
 - f). Any other relevant factors.
 - 3). The hearing examiner may double the monetary penalty schedule if the Violation was a repeat Violation. In determining the amount of the monetary penalty for repeat Violations the hearing examiner shall consider the factors set forth above.
- G. **Notice of Decision.** The hearing examiner shall mail a copy of the decision to the Property Owner and the Person Responsible for the Violation and to the Applicable Town Official within ten (10) working days of the hearing,
- H. **Failure to Appear.** If the Person(s) to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the Violation occurred and assessing the appropriate monetary penalty. The Town will carry out the hearing examiner's order and will seek to recover all related expenses, plus the cost of the hearing and any monetary penalty from that Person(s).
- I. **Appeal to Superior Court.** An appeal of the decision of the hearing examiner must be filed with the superior court within ten (10) calendar days from the date the hearing examiner's decision was mailed to the Person(s) to whom the Notice of Civil Violation was directed, or is thereafter barred.

Section 13 – Abatement by Town .

- A. **Remedy of Abatement Authorized.** The Town may abate a condition which was caused by or continues to be a civil violation when:
- 1). The terms of the voluntary correction agreement have not been met; or
 - 2). A notice of civil violation has been issued pursuant to Section 11 and a hearing has been held pursuant to Section 12 and the required correction has not been completed by the date specified in the hearing examiner's order; or
 - 3). The condition is subject to summary abatement as provided for in Section 13.
- B. **Summary Abatement.** Whenever any Nuisance or Violation causes a condition, the continued existence of which constitutes an immediate threat to public health, safety, or welfare or to the environment, the Town may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the Person Responsible for the Violation as soon as reasonably possible after the abatement. No right of action shall lie against the Town or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the Town be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the Person Responsible for the Violation and the Property Owner.
- C. **Authorized Action by the Town.** Using any lawful means, the Town may enter upon the subject Property and may correct the condition that is subject to abatement. The Town may seek such judicial process as it deems necessary to effect the correction of such condition.
- D. **Recovery of Costs and Expenses.** The costs, including the incidental expenses, of correcting the Violation shall be billed to the Person Responsible for the Violation and/or the Property Owner and shall become due and payable to the Town within ten (10) calendar days. The term "incidental expenses" includes but is not limited to Personnel costs, both direct and indirect; attorney's fees; costs incurred in documenting the Violation; and actual expenses and costs of the Town in preparing notices, specifications, and contracts, the expenses and costs of the Town in accomplishing, contracting, and inspecting the work; and the costs of any required printing, mailing, posting and publishing.
- E. **Interference.** Any Person who knowingly obstructs, impedes, or interferes with the Town or its agents, or with the Person Responsible for the Violation or the Property Owner in the performance of duties imposed by this Ordinance, shall be

guilty of a misdemeanor punishable by imprisonment not exceeding ninety (90) days and a fine not exceeding one thousand dollars (\$1,000). The Town may also impose a civil fine of up to one thousand dollars (\$1,000) for knowingly obstructing, impeding or interfering with the Town.

Section 14 – Remedies Not Exclusive. The rights, remedies and provisions of this Ordinance are cumulative, and are not exclusive of any rights or remedies otherwise provided or allowed by law to the Town.

Section 15 – Information Sharing. Upon request, the Town will provide information developed under Section 8 with the Department and with Clark Public Utilities.

Section 16 – Actions During Program Transition. The Town Clerk/Treasurer is hereby authorized and directed to refund all monies held by the Town under its existing OSS inspection program within 60 days of the effective date of this Ordinance. The Mayor is authorized to take all reasonable and necessary actions to terminate the Town’s existing septic inspection program, and implement the provisions of this Ordinance #498 in accordance with its terms and purpose.

Section 17 – Conflicts. Nothing in this Ordinance is intended to replace or limit in any way the duties, responsibilities and enforcement authority of the Clark County Public Health Department. In the event of a conflict between enforcement actions of the Department and the enforcement authority or enforcement actions of the Town of Yacolt under this Ordinance, the Town will defer to the Department.

Section 18 - Repeal of Ordinance #431 and Ordinance #436.

Ordinance #431 of the Town of Yacolt, adopted March 15, 2004, entitled “An Ordinance Establishing an Onsite Wastewater Disposal System Inspection Program” is hereby repealed. Ordinance #436 of the Town of Yacolt, adopted September 20, 2004, entitled “An Ordinance Amending Section 9 of Ordinance #431” is hereby repealed.

Section 19 - Savings Clause.

All terms of Ordinance #431 and Ordinance #436 shall remain in full force and effect until the effective date of this Ordinance #498.

Section 20 – Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, or its application to any Person or circumstances is held invalid, the remaining portion of this Ordinance shall remain in full force and effect, and the application of the provision to other Persons or circumstances shall not be affected.

Section 21 - Numbers. As used in this Ordinance, where applicable, references to the singular shall include the plural and references to the plural shall include the singular; words importing the masculine gender shall include the feminine and the neuter, and vice versa in each case; and words importing Persons shall include bodies of Persons whether corporate

or unincorporated.

Section 22 – Non-Waiver. No failure or delay on the part of the Town in exercising any power, right or remedy described in this Ordinance shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right or power or the exercise of any other right, power or remedy.

Section 23 – Denial of Responsibility. The Town assumes no responsibility or liability under this Ordinance to provide notice to Property Owners regarding their OSS responsibilities under state and local law, or for the inspection, maintenance, repair or replacement of any OSS other than an OSS owned and maintained by the Town itself.

Section 24 - Effective Date. This Ordinance shall take effect immediately upon adoption and publication of the following summary, according to law.

Town of Yacolt - Summary of Ordinance #498

The Town Council of the Town of Yacolt adopted Ordinance #498 at its regularly scheduled Town Council meeting held on June 4, 2012. The content of the Ordinance is summarized in its title as follows:

AN ORDINANCE ESTABLISHING A PROGRAM TO MONITOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS WITHIN THE TOWN OF YACOLT; AUTHORIZING THE ENFORCEMENT OF LAWS FOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS BY AND WITHIN THE TOWN OF YACOLT; DECLARING A PUBLIC NUISANCE; AND REPEALING ORDINANCE #431 AND ORDINANCE #436. The effective date of the Ordinance is June 13, 2012.

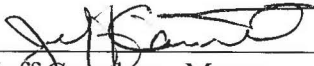
A copy of the full text of the Ordinance will be mailed upon request to the undersigned at the Town of Yacolt Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

Published this 13th day of June, 2012.
Cindy Marbut, Town Clerk/Treasurer

PASSED by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 4th day of June, 2012.

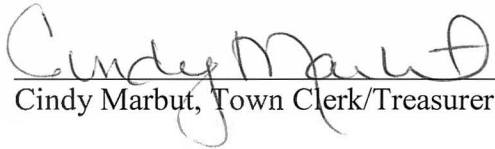
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TOWN OF YACOLT



Jeff Carothers, Mayor

Attest:



Cindy Marbut, Town Clerk/Treasurer

Approved as to Form:

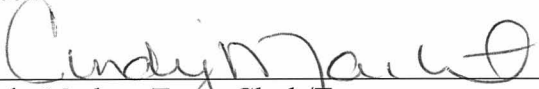
David W. Ridenour, Town Attorney

Ayes: Newell, Holyk, Myers, Urias
Nays: none
Absent: none
Abstain: none

TOWN CLERK'S CERTIFICATION

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance #498 of the Town of Yacolt, Washington, entitled "AN ORDINANCE ESTABLISHING A PROGRAM TO MONITOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS WITHIN THE TOWN OF YACOLT; AUTHORIZING THE ENFORCEMENT OF LAWS FOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS BY AND WITHIN THE TOWN OF YACOLT; DECLARING A PUBLIC NUISANCE; AND REPEALING ORDINANCE #431 AND ORDINANCE #436", as approved according to law by the Town Council on the date therein mentioned. The Ordinance has been published or posted according to law.

Attest:



Cindy Marbut, Town Clerk/Treasurer

Published: _____ June 13th, 2012 _____
Effective Date: _____ June 13th, 2012 _____
Ordinance Number: _____ #498 _____

MINISTERIAL CHANGES TO ORDINANCE #498

A 2016 review of Ordinances revealed several typographical errors on page 10 of Ordinance #498.

Language in Section 11(F) read as follows (emphasis added):

Payment of a monetary penalty pursuant to this Ordinance does not relieve the Person(s) to whom the notice of civil violation was issued *if the due* to correct the Violation.

“If the due” has been changed to “of the duty.”

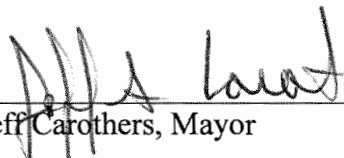
Language in Section 12(C) read as follows (emphasis added):

Except in the case of a Violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the Applicable Town Official approves the completed required *connective action* at least forty-eight (48) hours prior to the scheduled hearing.

“Connective action” has been changed to “corrective action.”

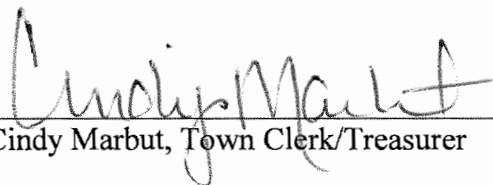
These changes were approved by officials from the Town of Yacolt on the dates listed below.

Attest:



Jeff Carothers, Mayor

1-10-17
Date



Cindy Marbut, Town Clerk/Treasurer

1/10/17
Date



David W. Ridenour, Town Attorney

January 10, 2017
Date

ORDINANCE #498

AN ORDINANCE ESTABLISHING A PROGRAM TO MONITOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS WITHIN THE TOWN OF YACOLT; AUTHORIZING THE ENFORCEMENT OF LAWS FOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS BY AND WITHIN THE TOWN OF YACOLT; DECLARING A PUBLIC NUISANCE; AND REPEALING ORDINANCE #431 AND ORDINANCE #436.

Whereas, the Town of Yacolt does not have a public sewer system, and depends upon individual Onsite Sewage Disposal Systems to treat wastewater and sewage;

Whereas, the discharge from Onsite Sewage Disposal Systems within the Yacolt Town limits risks contaminating the groundwater which provides the community's drinking water supply;

Whereas, the Clark County Public Health Department, (formerly the Southwest Washington Health District), designated Yacolt as an *area of special concern*, under WAC 246-272, Regulation 92-01 and Resolution 93-42, recognizing that failing Onsite Sewage Disposal Systems risk contaminating the community's drinking water supply;

Whereas, owners of all Onsite Sewage Disposal Systems, including systems in an *area of special concern*, are required to inspect and maintain their Onsite Sewage Disposal Systems in accordance with rules and regulations administered by the Clark County Public Health Department and described by Clark County Code;

Whereas, the results of studies indicate that regular inspections and maintenance of Onsite Sewage Disposal Systems provides additional protection to keep the drinking water supply and local surface waters from being threatened by improperly treated septage and that such inspections and maintenance are reasonably necessary for the health, welfare and safety of the community;

Whereas, Yacolt executed a Memorandum of Understanding on April 29, 2003, with Clark Public Utilities and the Clark County Public Health Department, ("MOU"), which created a septic inspection and maintenance program for the Town of Yacolt;

Whereas, relying on the representations of the parties to the MOU, Clark Public Utilities obtained funding to implement said program through a loan from the State of Washington Department of Ecology;

Whereas, Clark Public Utilities made certain representations about the use of said loan funds and the MOU parties' intent to improve compliance by Property Owners with OSS inspection and maintenance laws within the Town of Yacolt's Town limits.

Whereas, many Property Owners within the Town Yacolt declined to participate in the voluntary septic inspection and maintenance program created by the parties to the MOU;

Whereas, the Town Council finds that a significant percentage of the Property Owners within the Town limits fail to timely or properly inspect and maintain their Onsite Sewage Disposal Systems as required by state and local law, and that said percentage is significantly higher among Property Owners who declined to participate in the septic inspection program that was developed under the MOU;

Whereas, the Town Council finds that some Property Owners participating in the existing septic inspection and maintenance program desire more flexibility and freedom with regard to their selection of OSS certified inspection personnel, pumpers and maintenance specialists;

Whereas, the owner of an Onsite Sewage Disposal System is responsible under state and local law for properly operating, inspecting, monitoring, pumping and maintaining the OSS to minimize the risk of failure or deficiency;

Whereas, given the Clark County Public Health Department's responsibilities with regard to a large number of Onsite Sewage Disposal Systems located over a large geographical area, the Town of Yacolt deems it prudent and necessary to provide additional oversight and enforcement of the Department's laws and directives to minimize the potential adverse effects on public health and welfare that discharges from Onsite Sewage Disposal Systems may have on ground and surface waters and the general public health and welfare;

Whereas, the Town Council of the Town of Yacolt has engaged in an extensive program of public participation that included public meetings and workshops to evaluate the Town's involvement in monitoring the inspection and maintenance of Onsite Sewage Disposal Systems within the Town limits, and to discuss various alternative methods in which the Town could better satisfy its purposes as described herein;

Whereas, the Town of Yacolt recognizes that a rigorous program providing for regular and thorough inspections of Onsite Sewage Disposal Systems is a proven means to reduce the risk of groundwater contamination, and the Town of Yacolt desires to safeguard the community's drinking water supply and thereby protect public health;

Whereas, municipalities have the authority to enact laws in furtherance of the public health, safety, and general welfare, and the regulation of nuisance activities is a necessary government service designed both to protect the public health, safety, and welfare, and to prevent public harm;

Whereas, the Town Council wishes to adopt a new program relating to Onsite Sewage Disposal Systems emphasizing inspection and maintenance verification, assisting the Clark County Public Health Department in monitoring the inspection and maintenance of Onsite Sewage Disposal Systems, and monitoring compliance by all Property Owners within the

Town limits of the Town of Yacolt;

Whereas, the Town Council therefore wishes to replace Ordinance #431 and Ordinance #436 with a new ordinance to better balance the desires of its citizens and the needs of the community by 1). Acknowledging each Property Owner's unique and independent responsibility to comply with existing state and Clark County OSS inspection and maintenance laws; 2). Providing flexibility to Property Owners to choose any Clark County certified inspector or maintenance specialist of their choosing, in compliance with state and local law; 3). Providing verification and enforcement tools to the Town to improve compliance with all state and local laws regarding the inspections and maintenance of Onsite Sewage Disposal Systems; and, 4). Recognizing the value and importance of procedures for the collection and sharing of OSS inspection and maintenance data for the benefit of the Town of Yacolt, the Clark County Public Health Department, and Clark Public Utilities;

Whereas, the Town Council of the Town of Yacolt is in regular session this 4th day of June, 2012, and all members of the Town Council have had notice of the time, place, and purpose of said meeting:

NOW THEREFORE, be it Ordained by the Town Council of the Town of Yacolt, Washington:

Section 1 – Legislative Findings. The recitals set forth above are adopted as the legislative findings of the Town Council of the Town of Yacolt in support of the adoption of this Ordinance.

Section 2 - Onsite Sewage Disposal System Inspection and Maintenance Verification Program Established. A program providing for the verification of compliance with inspection and maintenance requirements of the State of Washington and the Clark County Public Health Department relating to Onsite Sewage Disposal Systems within the Town of Yacolt is hereby established.

Section 3 – Purpose. The Town Council of the Town of Yacolt finds that Properties using Onsite Sewage Disposal Systems can present grave health, safety and welfare concerns where the Person responsible for such Properties has failed to follow inspection requirements, maintenance protocols, or to take corrective action to abate nuisance conditions. Such Properties can have a serious negative impact upon the quality of life, safety and health of the neighborhoods where they are located, as well as the values of property affected by such failures. Such conditions are or may become a financial burden to the Town and its citizens, including through the negative impact of such conditions on the Town's ground and surface waters and water supply. The Town of Yacolt declares such conditions to be a public nuisance. It is the purpose of this Ordinance to provide a remedy for situations where Property Owners fail to timely or properly inspect, monitor, maintain or repair their Onsite Sewage Disposal Systems by providing a process for communication,

correction, and eventual abatement of deficiencies. The primary intent of this Ordinance is to assist Clark County Public Health Department in identifying circumstances where a Property Owner has failed to timely inspect, monitor, maintain and/or report information to the Department as required by the Department. If Nuisance conditions or Violations described herein remain uncorrected, this Ordinance is intended to ameliorate these conditions and hold accountable those Persons responsible for the Properties involved.

Section 4 – Definitions. As used in this Ordinance, unless a different meaning is plainly required:

- A. **Abate** means to inspect, repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a Civil Violation by such means, in such a manner, and to such an extent as the Applicable Town Official determines is necessary in the interest of the general health, safety, and welfare of the community.
- B. **Applicable Town Official** means the Mayor of the Town of Yacolt or the Town Public Works Director, or the designee of the Mayor or Public Works Director, including any department director or other designee empowered by ordinance or by the Mayor to enforce a Town ordinance or regulation.
- C. **Civil Violation** means a Violation for which a monetary penalty may be imposed as specified in this Ordinance. Each day in which a Violation occurs or exists is a separate Violation.
- D. **Department** means the Clark County Public Health Department.
- E. **Emergency** means a situation which in the opinion of the Applicable Town Official requires immediate action to prevent or eliminate an immediate threat to the health or safety of Persons or Property.
- F. **Nuisance**, (also referred to herein as **Violation** or **Nuisance Violation**), means a Violation of any law or order of the State of Washington or the Clark County Public Health Department relating to the inspection, maintenance, repair or replacement of any Onsite Sewage Disposal System within the limits of the Town of Yacolt.
- G. **OSS** or **Onsite Sewage Disposal System** means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of wastewater or sewage on the Property where it originates or on nearby Property under the control of the user where the system is not connected to a public sewer system. For purposes of this Ordinance, an Onsite Sewage Disposal System does not include indoor plumbing and associated fixtures.
- H. **Person** means any individual, firm, association, partnership, corporation, or any entity, public or private, or the authorized agents of these entities.

- I. **Person Responsible for the Violation** means the Property Owner or any Person otherwise responsible for the Violation as tenant, occupant, or otherwise.
- J. **Property Owner** means the Person or Persons who are the legal owners according to the records of Clark County, Washington, of the real Property upon or within which the Violation has occurred or is occurring.
- K. **Town** means the Town of Yacolt.

Section 5 – OSS Inspection Frequency and Protocols. Property Owners in the Town of Yacolt shall have their OSS's inspected in compliance with state and local law, including without limitation the laws and regulations currently described in Clark County Code Title 24 together with any future amendments thereto, or as administered and interpreted by the Department under the authority of said Title.

Section 6 – New OSS Installations, Maintenance, Deficiencies, and OSS Failures. Property Owners in the Town of Yacolt shall install, inspect, pump, maintain, repair and/or replace their Onsite Sewage Disposal Systems as may be required by state and local law, including without limitation the laws and regulations currently described in Clark County Code Title 24 together with any future amendments thereto, or as required by the Department under the authority of said Title.

Section 7 – Reporting and Data Collection. Property Owners in the Town of Yacolt shall comply with all information collection and reporting requirements for any action described in Sections 5 and 6 above as may be required by state and local law, including without limitation the laws and regulations described currently in Clark County Code Title 24 together with any future amendments thereto, or as required by the Department under the authority of said Title.

Section 8 - Record Keeping and Verification by the Town. The Mayor, Town Clerk, or appropriate designee is hereby authorized and directed to work cooperatively with the Clark County Public Health Department to develop and maintain a system within the Town to verify the timeliness and adequacy of required OSS inspections, maintenance and reporting activities for OSS's within the Town of Yacolt.

Section 9 – Community Outreach and Assistance. The Mayor is authorized to develop and implement a plan to inform the residents and owners of Property within the Town of Yacolt about the terms of this Ordinance and to remind and encourage Property Owners to complete the operation and maintenance inspections required by state and local law. Public information should encourage certified inspectors and OSS maintenance specialists to obtain current Town of Yacolt business licenses before doing business within the geographical limits of the Town. The Mayor, through his or her staff, is further authorized to assist the Town's citizens by identifying potential programs for financial assistance with OSS repairs and replacement where needed.

Section 10 – Voluntary Correction.

- A. **Applicability.** This Section applies whenever the Applicable Town Official determines that a Nuisance or Violation as described herein has occurred or is occurring. The Town is authorized to seek voluntary correction under this Section when authorized and approved by the Department or where the Department fails to respond to a request by an Applicable Town Official for enforcement action by the Department or approval of the Town's proposed enforcement actions for a period of ten (10) business days.
- B. **General.** The Applicable Town Official shall attempt to secure voluntary correction by contacting the Person Responsible for the Violation, as provided below, and explaining the Violation and requesting correction.
- 1). Contact shall occur either:
 - a). In Person or by telephone; or,
 - b). By certified, return receipt requested, and by first class mail.
 - 2). The Applicable Town Official shall keep a record of his/her attempts to contact the Person Responsible for the Violation.
 - 3). The Applicable Town Official shall not be required to make more than five attempts in a ten calendar day period to contact the Person Responsible for the Violation before issuing a notice of Civil Violation under Section 11.
- C. **Issuance of Voluntary Correction Agreement.** A voluntary correction agreement may be entered into between the Person Responsible for the Violation and the Town acting through the Applicable Town Official.
- 1). **Content.** The voluntary correction agreement is a contract between the Town and the Person responsible for the Violation under which such Person agrees to abate the Violation within a specified time and according to the specified conditions. The voluntary correction agreement shall include the following:
 - a). The name and address of the Person Responsible for the Violation and the name and address of the Property Owner; and,
 - b). The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the Violation has occurred or is occurring; and,

- c). A description of the Violation and a reference to the law or regulation which has been violated; and,
 - d). A description of the necessary corrective action to be taken, and a date or time by which correction must be completed; and,
 - e). An agreement by the Person Responsible for the Violation that the Town may abate the Violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this Ordinance from the Person Responsible for the Violation if the terms of the voluntary correction agreement are not satisfied; and,
 - f). An agreement that by entering into the voluntary correction agreement, the Person Responsible for the Violation waives the right to a hearing before the hearing examiner under this Ordinance, regarding the matter of the Violation and/or the required corrective action.
- 2). **Right to a Hearing Waived.** Upon entering into a voluntary correction agreement, the Person Responsible for the Violation shall have no right to a hearing before the hearing examiner under this Ordinance, regarding the matter of the Violation and/or the required corrective action.
 - 3). **Extension and Modification.** An extension of the time limit for correction or a modification of the required corrective action may be granted by the Applicable Town Official if the Person Responsible for the Violation has shown due diligence and/or substantial progress in correcting the Violation, but unforeseen circumstances delay correction under the original conditions.
 - 4). **Abatement by the Town.** The Town may abate the Violation in accordance with this Ordinance if the terms of the voluntary correction agreement are not met.
 - 5). **Collection of Costs.** If the terms of the voluntary correction agreement are not met the Person responsible for the Violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, plus all costs and expenses of abatement, as set forth in Sections 11, 12 and 13.
 - 6). **Notice to Property Owner.** A copy of the voluntary correction agreement shall be mailed by certified mail, return receipt requested, to the Property Owner.

- 7). **Interpretation by Town Council.** Any dispute between the Person Responsible for the Violation and the Applicable Town Official about the interpretation of the voluntary correction agreement may be presented to the Town Council at a regularly scheduled Town Council meeting and resolved by the Town Council. The Person Responsible for the Violation agrees to be bound by the determination of Town Council.

Section 11 – Notice of Civil Violation. The Applicable Town Official is authorized to issue a Notice of Civil Violation when authorized and approved by the Department or where the Department fails to respond to a request by an Applicable Town Official for enforcement action by the Department or approval of the Town’s proposed enforcement actions for a period of ten (10) business days.

A. Issuance.

- 1). When the Applicable Town Official determines that a Violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to Section 10, the Applicable Town Official may issue a notice of Civil Violation to the Person Responsible for the Violation and the Property Owner.
- 2). The Applicable Town Official may issue a notice of Civil Violation without having attempted to secure voluntary correction as provided in Section 10 under the following circumstances:
 - a). When an Emergency exists; or
 - b). When the Violation creates a situation or condition which cannot be corrected; or
 - c). When the Person responsible for the Violation and the Property Owner knows or reasonably should have known that the action is in Violation of this Town Ordinance; or
 - d). The Person responsible for the Violation and the Property Owner cannot be contacted, as provided in Section 10, or refuses to communicate or cooperate with the Town in correcting the Violation.

B. Content. The notice of civil Violation shall include the following:

- 1). The name and address of the Person Responsible for the Violation and the name and address of the Property Owner; and,
- 2). The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the Violation

has occurred or is occurring; and,

- 3). A description of the Violation and a reference to the provisions of the state or local law or directive which has been violated; and,
- 4). A description of the required corrective action and a date and time by which the correction must be completed after which the Town may abate the unlawful condition in accordance with Section 13; and,
- 5). The date, time and location of an appeal hearing before the hearing examiner which will be at least thirty (30) calendar days but no more than sixty (60) calendar days from the date the notice of civil violation is issued, unless such date is continued by the hearing examiner for good cause shown; and,
- 6). A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the Applicable Town Official approves the completed, required corrective action prior to the hearing; and,
- 7). A statement that the costs and expenses of abatement incurred by the Town pursuant to Section 13, and a monetary penalty in an amount per day for each Violation as specified in this Section, may be assessed against the Person(s) to whom the notice of civil violation is directed as specified and ordered by the hearing examiner; and,
- 8). A statement that the Property Owner(s) or the Person Responsible for Violation could be held jointly and severally liable for any costs and expenses and any monetary penalty.

C. **Service of Notice.** The Applicable Town Official shall serve the notice of civil Violation upon the Person Responsible for the Violation and the Property Owner, either personally or by mailing a copy of the notice of civil violation by certified mail, return receipt requested, to such Person at their last known address. If the Person Responsible for the Violation and/or the Property Owner cannot be Personally served within Clark County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected Property or structure and by publishing the notice one time in a newspaper which publishes legal notice in Clark County, Washington. If the Property Owner is the same Person as the Person Responsible for the Violation, only one copy of the notice need be given. Proof of service shall be made by a written declaration under penalty of perjury executed by the Person effecting the service, declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the Person(s) personally or by mail.

- D. **Extension.** Extensions of the time specified in the notice of civil violation for correction of the Violation may be granted at the discretion of the Applicable Town Official or by order of the hearing examiner.
- E. **Monetary Penalty.** The monetary penalty for each Violation per day or portion thereof shall be twenty-five dollars (\$25.00).
- F. **Continued Duty to Correct.** Payment of a monetary penalty pursuant to this Ordinance does not relieve the Person(s) to whom the notice of civil violation was issued if the due to correct the Violation.
- G. **Collection of Monetary Penalty.**
- 1). The monetary penalty constitutes a Personal obligation of the Person(s) to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the Town within ten (10) calendar days from the date of mailing of the hearing examiner's decision or a notice from the Town that penalties are due.
 - 2). The Town Attorney is authorized to take appropriate action to collect the monetary penalty.
 - 3). The monetary penalty described herein does not replace or limit any penalty or remedy that may apply to the Violation as imposed by any other authorized Person or entity, including the Department.

Section 12 – Hearing Before the Hearing Examiner.

- A. **Notice.** The Person(s) to whom a notice of civil Violation is issued will be scheduled to appear before the hearing examiner at least thirty (30) calendar days but no more than sixty (60) calendar days from the date the notice of civil violation is issued.
- B. **Hearing Examiner.** One or more hearing examiners shall be appointed by the Town Council to hear cases brought under this ordinance. The hearing examiner may be a Town employee but shall not be an employee of the public works department or the Town attorney's office.
- C. **Prior Correction of Violation.** Except in the case of a Violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the Applicable Town Official approves the completed required connective action at least forty-eight (48) hours prior to the scheduled hearing.

D. **Procedure.** The hearing examiner shall conduct a hearing on the civil violation. The Applicable Town Official and the Person(s) to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The Town shall have the burden of proof to demonstrate by a preponderance of the evidence that a Violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the Applicable Town Official as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action. Formal rules of evidence need not be followed, but all witnesses shall be sworn by the hearings officer.

E. **Decision of the Hearing Examiner.**

- 1). The hearing examiner shall determine whether the Town has established by a preponderance of the evidence that a Violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the Town 's decisions regarding the alleged Violation and/or the required corrective action.
- 2). The hearing examiner shall issue a written order to the Person Responsible for the Violation and the Property Owner which contains the following information:
 - a). The decision regarding the alleged Violation including findings of fact and conclusions based thereon in support of the decision;
 - b). The required corrective action;
 - c). The date and time by which the correction must be completed;
 - d). The monetary penalties assessed based on the criteria described in this Ordinance;
 - e). The date and time after which the Town may proceed with abatement of the unlawful condition if the required correction is not completed.

F. **Assessment of Monetary Penalty.** Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section 11.

- 1). The hearing examiner shall have the following options in assessing monetary penalties:
 - a). Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

- b). Assess monetary penalties beginning on the correction date set by the Applicable Town Official or an alternate correction date set by the hearing examiner and thereafter; or,
 - c). Assess no monetary penalties.
- 2). In determining the monetary penalty assessment, the hearing examiner shall consider the following factors;
- a). Whether the Person(s) responded to attempts to contact the Person and cooperated with efforts to correct the Violation;
 - b). Whether the Person(s) failed to appear at the hearing;
 - c). Whether the Violation was a repeat Violation;
 - d). Whether the Person(s) showed due diligence and/or substantial progress in correcting the Violation;
 - e). Whether a genuine issue exists regarding interpretation of the law or directive underlying the Violation; and,
 - f). Any other relevant factors.
- 3). The hearing examiner may double the monetary penalty schedule if the Violation was a repeat Violation. In determining the amount of the monetary penalty for repeat Violations the hearing examiner shall consider the factors set forth above.
- G. **Notice of Decision.** The hearing examiner shall mail a copy of the decision to the Property Owner and the Person Responsible for the Violation and to the Applicable Town Official within ten (10) working days of the hearing,
- H. **Failure to Appear.** If the Person(s) to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the Violation occurred and assessing the appropriate monetary penalty. The Town will carry out the hearing examiner's order and will seek to recover all related expenses, plus the cost of the hearing and any monetary penalty from that Person(s).
- I. **Appeal to Superior Court.** An appeal of the decision of the hearing examiner must be filed with the superior court within ten (10) calendar days from the date the hearing examiner's decision was mailed to the Person(s) to whom the Notice of Civil Violation was directed, or is thereafter barred.

Section 13 – Abatement by Town .

- A. **Remedy of Abatement Authorized.** The Town may abate a condition which was caused by or continues to be a civil violation when:
- 1). The terms of the voluntary correction agreement have not been met; or
 - 2). A notice of civil violation has been issued pursuant to Section 11 and a hearing has been held pursuant to Section 12 and the required correction has not been completed by the date specified in the hearing examiner's order; or
 - 3). The condition is subject to summary abatement as provided for in Section 13.
- B. **Summary Abatement.** Whenever any Nuisance or Violation causes a condition, the continued existence of which constitutes an immediate threat to public health, safety, or welfare or to the environment, the Town may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the Person Responsible for the Violation as soon as reasonably possible after the abatement. No right of action shall lie against the Town or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the Town be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the Person Responsible for the Violation and the Property Owner.
- C. **Authorized Action by the Town.** Using any lawful means, the Town may enter upon the subject Property and may correct the condition that is subject to abatement. The Town may seek such judicial process as it deems necessary to effect the correction of such condition.
- D. **Recovery of Costs and Expenses.** The costs, including the incidental expenses, of correcting the Violation shall be billed to the Person Responsible for the Violation and/or the Property Owner and shall become due and payable to the Town within ten (10) calendar days. The term "incidental expenses" includes but is not limited to Personnel costs, both direct and indirect; attorney's fees; costs incurred in documenting the Violation; and actual expenses and costs of the Town in preparing notices, specifications, and contracts, the expenses and costs of the Town in accomplishing, contracting, and inspecting the work; and the costs of any required printing, mailing, posting and publishing.
- E. **Interference.** Any Person who knowingly obstructs, impedes, or interferes with the Town or its agents, or with the Person Responsible for the Violation or the Property Owner in the performance of duties imposed by this Ordinance, shall be

guilty of a misdemeanor punishable by imprisonment not exceeding ninety (90) days and a fine not exceeding one thousand dollars (\$1,000). The Town may also impose a civil fine of up to one thousand dollars (\$1,000) for knowingly obstructing, impeding or interfering with the Town.

Section 14 – Remedies Not Exclusive. The rights, remedies and provisions of this Ordinance are cumulative, and are not exclusive of any rights or remedies otherwise provided or allowed by law to the Town.

Section 15 – Information Sharing. Upon request, the Town will provide information developed under Section 8 with the Department and with Clark Public Utilities.

Section 16 – Actions During Program Transition. The Town Clerk/Treasurer is hereby authorized and directed to refund all monies held by the Town under its existing OSS inspection program within 60 days of the effective date of this Ordinance. The Mayor is authorized to take all reasonable and necessary actions to terminate the Town’s existing septic inspection program, and implement the provisions of this Ordinance #498 in accordance with its terms and purpose.

Section 17 – Conflicts. Nothing in this Ordinance is intended to replace or limit in any way the duties, responsibilities and enforcement authority of the Clark County Public Health Department. In the event of a conflict between enforcement actions of the Department and the enforcement authority or enforcement actions of the Town of Yacolt under this Ordinance, the Town will defer to the Department.

Section 18 - Repeal of Ordinance #431 and Ordinance #436. Ordinance #431 of the Town of Yacolt, adopted March 15, 2004, entitled “An Ordinance Establishing an Onsite Wastewater Disposal System Inspection Program” is hereby repealed. Ordinance #436 of the Town of Yacolt, adopted September 20, 2004, entitled “An Ordinance Amending Section 9 of Ordinance #431” is hereby repealed.

Section 19 - Savings Clause. All terms of Ordinance #431 and Ordinance #436 shall remain in full force and effect until the effective date of this Ordinance #498.

Section 20 – Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, or its application to any Person or circumstances is held invalid, the remaining portion of this Ordinance shall remain in full force and effect, and the application of the provision to other Persons or circumstances shall not be affected.

Section 21 - Numbers. As used in this Ordinance, where applicable, references to the singular shall include the plural and references to the plural shall include the singular; words importing the masculine gender shall include the feminine and the neuter, and vice versa in each case; and words importing Persons shall include bodies of Persons whether corporate

or unincorporated.

Section 22 – Non-Waiver. No failure or delay on the part of the Town in exercising any power, right or remedy described in this Ordinance shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right or power or the exercise of any other right, power or remedy.

Section 23 – Denial of Responsibility. The Town assumes no responsibility or liability under this Ordinance to provide notice to Property Owners regarding their OSS responsibilities under state and local law, or for the inspection, maintenance, repair or replacement of any OSS other than an OSS owned and maintained by the Town itself.

Section 24 - Effective Date. This Ordinance shall take effect immediately upon adoption and publication of the following summary, according to law.

Town of Yacolt - Summary of Ordinance #498

The Town Council of the Town of Yacolt adopted Ordinance #498 at its regularly scheduled Town Council meeting held on June 4, 2012. The content of the Ordinance is summarized in its title as follows:

AN ORDINANCE ESTABLISHING A PROGRAM TO MONITOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS WITHIN THE TOWN OF YACOLT; AUTHORIZING THE ENFORCEMENT OF LAWS FOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS BY AND WITHIN THE TOWN OF YACOLT; DECLARING A PUBLIC NUISANCE; AND REPEALING ORDINANCE #431 AND ORDINANCE #436. The effective date of the Ordinance is June 13, 2012.

A copy of the full text of the Ordinance will be mailed upon request to the undersigned at the Town of Yacolt Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

Published this 13th day of June, 2012.
Cindy Marbut, Town Clerk/Treasurer

PASSED by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 4th day of June, 2012.

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TOWN OF YACOLT

Jeff Carothers
Jeff Carothers, Mayor

Attest:

Cindy Marbut
Cindy Marbut, Town Clerk/Treasurer

Approved as to Form:

David W. Ridenour, Town Attorney

Ayes: Newell, Holyk, Myers, Urias
Nays: none
Absent: none
Abstain: none

TOWN CLERK'S CERTIFICATION

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance #498 of the Town of Yacolt, Washington, entitled "AN ORDINANCE ESTABLISHING A PROGRAM TO MONITOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS WITHIN THE TOWN OF YACOLT; AUTHORIZING THE ENFORCEMENT OF LAWS FOR THE INSPECTION AND MAINTENANCE OF ONSITE SEWAGE DISPOSAL SYSTEMS BY AND WITHIN THE TOWN OF YACOLT; DECLARING A PUBLIC NUISANCE; AND REPEALING ORDINANCE #431 AND ORDINANCE #436", as approved according to law by the Town Council on the date therein mentioned. The Ordinance has been published or posted according to law.

Attest:



Cindy Marbut, Town Clerk/Treasurer

Published: June 13th, 2012
Effective Date: June 13th, 2012
Ordinance Number: #498