

ORDINANCE NUMBER 5-2007

AN ORDINANCE PROHIBITING THE ACCUMULATION OF IRRIGATION WATER ON PUBLIC ROADS IN FRANKLIN COUNTY AND PRESCRIBING VIOLATIONS THERETO AS CLASS 1 CIVIL INFRACTIONS SUBJECT TO MONETARY PENALTIES AND REPEALING FRANKLIN COUNTY ORDINANCE NO. 11-2001.

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and is given authority to pass regulatory ordinances under the Washington State Constitution Article 11 §11; RCW 36.32.120(7); and

WHEREAS, the accumulation of irrigation water on public roads and rights-of-way presents a hazard to the public, vehicle traffic, and results in damages to public roads and rights-of-way in Franklin County; and

WHEREAS, adoption of this ordinance or code prohibiting the accumulation of irrigation water on public roads and rights-of-way is in the best interest of the citizens of Franklin County to maintain their health, safety, welfare, and to preserve public properties; and

WHEREAS, a public hearing was held on this ordinance or code, following published notice thereof, and those persons appearing to testify have been heard;

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Franklin County, Washington, as follows:

Section 1: Purpose

This ordinance or code serves to negate hazards and damages to the public, vehicle traffic, and public roadways caused by irrigation water on such roadways; to impose penalties upon persons, firms, corporations, or entities (hereinafter collectively referred to as "person") whose irrigation water causes hazards or damages to such; and to provide a means to recover restitution for such damages through the issuance of notices of violation or notices of civil infraction.

Section 2: Definitions

(A) "Irrigation water" shall be defined as the artificial application of water to land for purposes including but not limited to the production or sustaining of crops, plants, vegetation, or soil management.

(B) "Officer" shall be defined as any commissioned law enforcement officer or Franklin County official with the authority and charged responsibility to ensure compliance with all state laws and/or county code and ordinances as adopted by the Board of Franklin County Commissioners.

Section 3: Irrigation Water On Public Roadway Unlawful

No person shall knowingly, or intentionally, or recklessly, or negligently suffer, cause, or permit any irrigation water to flow across, encroach, fall, or accumulate upon the maintained portion of any public road or public road right-of-way within Franklin County in a quantity that presents a hazard, or endangers traffic, or damages the roadway, road-bed, or right-of-way. It is the intention of this section that violations that are caused by conditions resulting from an act of GOD be excluded.

Section 4: Standards of Culpability

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The General Requirements of Culpability set forth in Revised Code of Washington (RCW) 9A.08.010 is incorporated herein as if set forth in full.

Section 5: Duty to Enforce – Inspections – Duty to Comply

- (A) It shall be the duty of the officer to enforce the chapters, titles, or sections of this ordinance or code.
- (B) The chapters, titles, or sections of this ordinance or code shall be enforced for the benefit of the general public and citizens of Franklin County, including their health, safety, welfare, and public properties, but not for the benefit of any particular person or class of persons.
- (C) It is the intent of this ordinance or code to place the obligation of compliance with the provisions herein upon the owner of the land within the scope of the applicable provisions herein.
- (D) No provisions of or terms used herein this ordinance or code is intended to impose any duty upon law enforcement officers, Franklin County, or any of its officers or employees which would subject them to damages in a civil action.

Section 6: Investigation and Notice of Violation

- (A) The officer may investigate any circumstance of a person causing or permitting any irrigation water to run across, encroach, fall, or accumulate upon a maintained portion of any public road or public road right-of-way within Franklin County.
- (B) Whenever the officer determines that a violation of the ordinance or code herein has occurred there shall be served upon the responsible person either:
 - (1) A notice of violation and corrective order; or
 - (2) A notice of infraction.
- (C) The officer shall issue a notice of infraction in all circumstances if the person cited has been served with a prior notice of violation or infraction, or if the violation creates an immediate threat to public health, safety, welfare, or property.

Section 7: Notice of Infraction – Service

The officer may issue a notice of infraction if the officer reasonably believes that a provision of the applicable chapters, titles, or sections of this ordinance or code has been violated. A notice of infraction may be served either by:

- (A) The officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or
- (B) The officer filing the notice of infraction with Franklin County District Court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at their address. If a notice of infraction served by mail is returned to the court as undeliverable, the court shall issue a summons.

Section 8: Notice of Infraction – Form – Contents

The notice of infraction shall be a Class 1 civil infraction per RCW 7.80.120(1)(a) and shall include the following:

- (A) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice of infraction and that the determination shall be final unless contested as provided in this chapter;
- (B) A statement that the infraction is a non-criminal offense for which imprisonment shall not be imposed as a sanction;
- (C) A statement of the specific infraction for which the notice was issued;
- (D) A statement that monetary penalties as set forth below have been established for each infraction;
- (E) A statement of the options provided in this ordinance or code for responding to the

notice and the procedures necessary to exercise these options;

(F) A statement that at any hearing to contest the determination Franklin County has the burden of proving by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative who issued and served the notice of infraction;

(G) A statement, which the person who has been served with the notice of infraction may sign, that the person promises to respond to the notice of infraction in one of the ways provided therein the notice of infraction;

Section 9: Notice of Infraction – Filing – Hearing in Franklin County District Court

A notice of infraction shall be filed in Franklin County District Court within five (5) days after issuance of the notice, excluding Saturdays, Sundays, and holidays. Franklin County District Court shall have jurisdiction to hear and determine these matters.

Section 10: Notice of Infraction – Determination Infraction Committed

Unless contested in accordance with this ordinance or code, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.

Section 11: Notice of Infraction – Response Requesting A Hearing – Failure to Respond or Appear

(A) A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen (15) days of the date the notice was served.

(B) If the person named in the notice of infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the Franklin County District Court. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in Franklin County District Court's records, and a record of the response order shall be furnished to the Franklin County Planning and Building Department.

(C) If the person named in the notice of infraction seeks to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the Franklin County District Court. The Franklin County District Court shall notify the person in writing of the time, place, and date of the hearing. The date of the hearing shall not be earlier than seven (7) days nor more than ninety (90) days from the date of the notice of the hearing, except by agreement.

(D) If the person determined to have committed the infraction does not contest the determination but seeks to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the Franklin County District Court. The Franklin County District Court shall notify the person in writing of the time, place, and date of the hearing. The date of the hearing shall not be earlier than seven (7) days nor more than ninety (90) days from the date of the notice of the hearing, except by agreement.

(E) The Franklin County District Court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may order a person to appear at a requested hearing if any person issued a notice of civil infraction either:

- (1) Fails to respond to the notice of infraction as provided in subsection (B) of this section; or
- (2) Fails to appear at a hearing requested pursuant to either subsection (C) or (D) of this section.

If a default judgment is entered, Franklin County District Court shall notify the Franklin County Planning and Building Department of the entry of the default judgment, and the reason therefor.

Section 12: Nonappearance – Failure To Satisfy Penalty

(A) Any person who, after receiving a notice of infraction providing the options set forth in this ordinance or code for responding to the notice of infraction and the procedures necessary to exercise these options, willfully fails to exercise one of the options in a timely manner is guilty of a misdemeanor regardless of the disposition of the notice of infraction. A notice of civil infraction may be complied with by an appearance by legal counsel.

(B) A person who willfully fails to pay a fine or to perform community service as required by a court under this ordinance or code may be found in civil contempt after notice and hearing.

Section 13: Representation by Attorney

(A) A person subject to proceedings under this ordinance or code may appear or be represented by legal counsel.

(B) The Franklin County Prosecuting Attorney Office may, but need not, appear in any proceedings under this ordinance or code.

Section 14: Infraction – Hearing – Procedure – Burden of Proof – Order – Appeal

(A) A hearing held to contest the determination that an infraction has been committed shall be without a jury.

(B) Franklin County District Court may consider the notice of infraction and any sworn statements or attachments thereto by the officer who issued and served the notice of infraction in lieu of the officer's personal appearance at the hearing. Both the person named in the notice of infraction and the officer may subpoena witnesses including each other, and both have the right to present evidence and examine witnesses present in Franklin County District Court.

(C) The burden of proof is on Franklin County to establish the commission of the infraction by a preponderance of evidence.

(D) After consideration of the evidence and argument, Franklin County District Court shall determine whether the infraction was committed. If it is not established that the infraction was committed, an order dismissing the notice of infraction shall be entered in Franklin County District Court's records. If it has been established that a civil infraction has been committed, an order shall be entered in Franklin County District Court's records.

(E) An appeal from Franklin County District Court's determination or order shall be to Franklin County Superior Court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). The decision of the Franklin County Superior Court is subject only to discretionary review pursuant to the Rules of Appellate Procedure (RAP).

Section 15: Infraction – Explanation of Mitigating Circumstances

(A) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding before the Franklin County District Court. The person may not subpoena witnesses. The person may not contest the determination that the notice of infraction has been committed as the hearing is limited to the purpose of explaining mitigating circumstances.

(B) After Franklin County District Court has heard the explanation of mitigating circumstances surrounding the commission of the notice of infraction, an order shall be entered in the court's records with a copy submitted to the Franklin County Planning and Building Department.

(C) There shall be no appeal from Franklin County District Court's determination or order.

Section 16: Judgment – Fine – Restitution – Costs – Attorney Fees

(A) Upon a finding that a notice of infraction has been committed Franklin County District Court shall enter judgment requiring:

- (1) Payment of a fine of not more than two hundred fifty dollars (\$250.00) per day, with each day constituting a separate offense;

- (2) Payment of court costs as defined by rule or statute.
- (3) Payment to the prevailing party of its reasonable attorneys' fees as allowed by RCW 7.80.140.
- (4) Payment of restitution.

(B) Whenever a fine is imposed by Franklin County District Court under this ordinance or code it is immediately payable. If the person is unable to pay at that time, Franklin County District Court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. Franklin County District Court shall also notify the Franklin County Planning and Building Department of the failure to pay the penalty, and the Franklin County Planning and Building Department shall not issue the person any future permits for any work approved by the Franklin County Planning and Building Department until the monetary penalty has been paid.

Section 17: Order of Court – Civil Nature – Modification of Penalty

(A) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the notice of infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(B) Franklin County District Court may waive, reduce, or suspend the monetary penalty prescribed for the notice of infraction. If Franklin County District Court determines that a person has insufficient funds to pay the monetary penalty, Franklin County District Court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

Section 18: Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or code is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance or code.

Section 19: Prior Ordinance Repealed

Franklin County Ordinance Number 11-2001 passed on June 11, 2001 is hereby repealed.

Section 20: Effective Date

This ordinance or code shall take effect July 23, 2007.

PASSED this 23 day of July, 2007.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON



Robert E. Koch, Chair



Neva J. Corkrum, Chair Pro Tem



Rick Miller, Member

ATTEST:

Mary Wickens
Clerk of the Board

APPROVED AS TO FORM:

By: RUB
Ryan E. Verhulp
Deputy Prosecuting Attorney

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