

REGULATIONS OF THE EL PASO COUNTY BOARD OF HEALTH

EL PASO COUNTY, COLORADO

Chapter 4

Administrative Hearing Procedure

El Paso County Public Health

CHAPTER 4

ADMINISTRATIVE HEARING PROCEDURE

SECTION 4.1: PURPOSE AND APPLICABILITY

- A. Pursuant to the authority vested in El Paso County Public Health (Public Health) in Section 25-1-508, C.R.S., any administrative action taken by the Board of Health or El Paso County Public Health that requires an administrative hearing or process shall be reviewed and determined using this Administrative Hearing Procedure, unless otherwise provided by law or direction of the Board of Health.
- B. This procedure shall not apply to legislative hearings or processes involving adoption of rules or regulations by the Board of Health.
- C. In any case wherein a specific statute or regulation requires different time periods, procedures, processes, or authorities than provided for herein, the specific requirements of such statutes or regulations shall be followed.
- D. This procedure shall not apply to personnel matters.

SECTION 4.2: DEFINITIONS

As used herein, unless the context dictates otherwise, the following definitions shall apply:

- A. **ADMINISTRATIVE ACTION:** Any official act by the Board of Health or Public Health to carry out properly assigned governmental powers and duties including, without limitation, license or permit approvals, denials, conditions, suspensions, revocations, imposition of penalties or fines, issuance of cease and desist orders, and any other similar administrative actions.
- B. **AGGRIEVED:** Having suffered actual loss or injury or being exposed to potential loss or injury to legitimate interests including, but not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.
- C. **APPLICANT:** Any person who is aggrieved by an administrative action of Public Health including any person whose license or permit is proposed to be suspended, revoked, modified, conditioned, or otherwise adversely affected by administrative action by Public Health, or against whom a penalty or fine is proposed or has been imposed, and who is allowed, or required, by law to have an administrative hearing.
- D. **EXECUTIVE DIRECTOR:** The Public Health Executive Director appointed by the Board of Health as administrative and executive head of Public Health pursuant to Section 25-1-505, C.R.S.
- E. **PERSON:** All natural persons, corporations, businesses, partnerships, associations, governments, enterprises, and all other legal entities.

SECTION 4.3: INFORMAL REVIEW

An applicant who wishes to grieve an administrative action by Public Health may request an informal review by the appropriate manager in the subject area under dispute. Public Health managers are encouraged to resolve the grievance in any reasonable, practicable manner in accordance with applicable statutes, regulations and policies. Any person involved with a dispute shall have the right to review pertinent records, policies and regulations.

SECTION 4.4: BOARD OF HEALTH PROCEDURE

The following procedure shall be followed with respect to administrative hearings required to be determined by the Board of Health:

- A. In any administrative hearing required by law or directed by the President of the Board of Health, or by majority vote of the Board of Health, to be conducted before the Board of Health, the Board of Health shall conduct the hearing in the same manner, to the extent practicable, as provided for herein. In such cases, the President of the Board of Health shall preside at the hearing, and the Board of Health, acting as a whole, shall render its determination by majority vote. Any applicant shall have the right to request an administrative hearing before the Board of Health in matters in which the Board of Health is required by law to make the final determination. The President of the Board of Health shall determine whether the Board of Health, acting as a whole, shall hear the matter or whether the matter will be heard by a Hearing Officer as provided below, unless otherwise decided by majority vote of the Board of Health.
- B. For all administrative actions required by law to be determined by the Board of Health, unless heard directly by the Board of Health as provided above, the Executive Director is hereby designated as Hearing Officer to conduct the administrative review. The Executive Director is authorized to appoint a designee as provided in Section 4.9:B., below. The Hearing Officer shall conduct a hearing as provided for herein, and within ten (10) working days after conclusion of the hearing, shall render written findings of fact and a proposed determination to the Board of Health. Thereafter, at its first regular or special meeting, or as soon as practicable thereafter, the Board of Health shall accept, reject or modify the proposed determination. The applicant shall be notified in writing of the Board of Health's determination, which is then final for purposes of the administrative review process.
- C. In matters pertaining to enforcement of the Colorado Food Protection Act pursuant to Sections 25-4-1604 and 25-4-1611, C.R.S., Public Health is authorized to grant or refuse licenses, suspend or revoke licenses, hear and determine all complaints against licensees, enforce the Colorado Food Protection Act and rules promulgated there under, review and approve hazard analysis critical control point plans, conduct inspections, provide written notifications of violations, provide reasonable times to comply, and assess civil penalties in accordance with a schedule of civil penalties promulgated by the Board of Health. Any person aggrieved by such administrative action shall have the right to appeal such action within five (5) working days in accordance with this procedure.

SECTION 4.5: PUBLIC HEALTH PROCEDURE

The following procedure shall be followed with respect to administrative hearings required to be determined by Public Health, and in matters in which a Hearing Officer is appointed by the Board of Health.

SECTION 4.6: STANDARD OF REVIEW

The Hearing Officer conducting a hearing pursuant to this procedure shall determine if the aggrieved administrative action was consistent with the controlling statutes, regulations, rules, and policies applicable to the action. The Hearing Officer shall not have authority to assign or develop other controlling rules or policies; or, to fail to enforce or to ignore controlling statutes, regulations, rules, and policies. In administrative actions for the purpose of suspending, revoking, modifying, conditioning, or otherwise adversely affecting an applicant's license or

permit, or hearings to impose a penalty or fine, or hearings related to issuance of a cease and desist order, the Hearing Officer shall make his/her determination based on the applicable standards at issue concerning said license, permit or system, as provided by law.

SECTION 4.7: AUTHORITY

The Hearing Officer shall affirm the administrative action taken by Public Health if he/she determines that such action taken was consistent with the controlling statutes, regulations, rules, and policies pertinent to the action. If the Hearing Officer determines that such administrative action was not consistent with controlling statutes, regulations, rules, or policies, the Hearing Officer has authority to modify, reverse, adjust, reform, or otherwise order changes to the administrative action such that it conforms to the controlling statutes, regulations, rules, and policies. In administrative actions for the purpose of suspending, revoking, modifying, conditioning, or otherwise adversely affecting an applicant's license or permit, or for imposing a penalty or fine, or for the purpose of issuance of a cease and desist order, the Hearing Officer shall have authority to deny, revoke, suspend, modify, condition, or otherwise enter orders, including imposition of penalties, fines, and cease and desist orders, concerning said license, permit or system, as provided by law. The Hearing Officer shall impose penalties in accordance with the penalty guidance in Chapter 3 of the Board of Health Regulations.

SECTION 4.8: RESPONSIBILITY

Except as otherwise specifically provided by statute or regulation, Public Health has the responsibility to establish what controlling statutes, regulations, rules, and policies apply to the action aggrieved, and to establish that the administrative action taken was consistent with them. In actions to deny, revoke, suspend, modify, condition, or otherwise adversely affect an applicant's license or permit, or to impose a penalty or fine, or for issuance of a cease and desist order, Public Health has the responsibility to establish sufficient facts as determined by the Hearing Officer to justify the proposed action.

SECTION 4.9: HEARING PROCESS

The following hearing process shall be followed for an applicant aggrieved by an administrative action that provides for an administrative hearing, and in actions by Public Health to deny, revoke, suspend, modify, condition, or otherwise adversely affect an applicant's license or permit, or to impose a penalty or fine, or to issue a cease and desist order, the hearing process shall be as follows, unless otherwise specifically provided for by statute or regulation:

- A. The applicant shall file a written request for a hearing to review said action within five (5) working days of the action aggrieved, except that a request for review of the denial of an onsite wastewater system permit shall be made within sixty (60) days of such denial. The written request shall be addressed to the Executive Director, El Paso County Public Health, 1675 W. Garden of the Gods Road, Suite 2044, Colorado Springs, Colorado 80907, and shall be delivered by first class U.S. mail, or personally served. The written request must identify, with as much particularity as possible, the administrative action being aggrieved and the basis for the grievance. For proposed actions relating to denial, revocation, suspension, modification, conditioning, or otherwise adversely affecting an applicant's license or permit, or for the purpose of issuance of a cease and desist order, Public Health shall notify the applicant in accordance with the applicable statute or regulation.

- B. The Executive Director may act as Hearing Officer to conduct the administrative review, or the Executive Director may appoint an employee or any other person who has had no previous involvement with the administrative action, and who is not supervised or a supervisor in the program area that is involved in the administrative action, to be the Hearing Officer.
- C. Within five (5) working days of receipt of an applicant's request, the Hearing Officer shall establish a time, date and place for the hearing, and shall, thereafter, notify the applicant and EPCDHE a minimum of thirty (30) days prior to the hearing. The notice shall also advise the applicant of the nature of the hearing, the legal authority and jurisdiction under which it is held, and the matters of fact and law asserted. Notice shall be sent by first class U.S. mail, or personally served, unless otherwise required to be served by certified mail or in some other manner as provided by law. Upon agreement of both the applicant and Public Health, the time periods provided for herein may be waived.
- D. The applicant may respond to said notice in writing, or by personal appearance, or both, or otherwise as provided by law.
- E. The hearing shall generally be conducted as follows:
 - 1. Introductory statement by the Hearing Officer giving the date, time, place, and purpose for the hearing.
 - 2. Participants shall identify themselves orally for the record, and write their names and positions or affiliations on a form provided by the Hearing Officer.
 - 3. Public Health shall present its case to support the administrative action proposed, or taken, including written documentation and witnesses.
 - 4. Applicant shall be given the opportunity to cross-examine Public Health witnesses.
 - 5. Applicant shall be given the opportunity to present his/her case grieving the administrative action, including presentation of written documentation and witnesses.
 - 6. Public Health shall be given the opportunity to cross-examine the applicant and any of the applicant's witnesses.
 - 7. Summary statement by Public Health.
 - 8. Summary statement by applicant.
 - 9. Hearing Officer shall advise the participants of the manner and date upon which a determination will be rendered.
- F. The Hearing Officer has the authority to establish specific procedures governing the conduct of the hearing in order to afford due process and a fair hearing. The Hearing Officer shall have authority to sign and issue subpoenas to compel attendance; administer oaths and affirmations; rule upon offers of proof and receive evidence; rule on motions of all types; relating to discovery and production of relevant documents and other evidence for inspection, copying, or photographing; regulate the course of the hearing; set the time and place for continued hearings; fix the time for filing of briefs and other documents; direct the parties to appear and confer to consider simplification of issues, admissions of fact, or of documents to avoid unnecessary proof; limit the number of expert witnesses; issue appropriate orders to control the course of the proceeding; reprimand or exclude from the hearing any person for improper or indecorous conduct; and, otherwise take such action as is appropriate and necessary to conduct a fair, impartial hearing. In no event is the Hearing Officer authorized to award monetary damages, costs or attorney's fees.
- G. The hearing shall be tape recorded, recorded by any combination of audio and/or video devices, or recorded in any other manner that preserves the entire proceeding. A transcript of

the hearing taken from the tape recording or other transcript will be the official record of the hearing for purposes of judicial review. A copy of the tape recording, transcript, or video, whichever is applicable, will be provided to the applicant upon payment of the cost of reproduction. Public Health may require a deposit of estimated reproduction costs in advance.

- H. During the hearing, Public Health and the applicant both have the right to make a presentation and to provide written documentation, as well as to call witnesses relevant to the administrative action. The applicant has the right to require the presence of Public Health employees who are reasonably necessary to support the applicant's position or to give testimony. The hearing may be postponed, or may be recessed and reconvened, as deemed necessary by the Hearing Officer in order for appropriate witnesses or documentation to be made available. Documentation and other exhibits offered as evidence during the hearing will be marked for identification, and the Hearing Officer shall rule on admissibility of all such documentation and other exhibits.
- I. The applicant may be represented by an attorney or other advocate at the hearing. If the applicant is represented by an attorney, Public Health shall also have the right to be represented by an attorney. The Hearing Officer may consult the legal counsel for the Board of Health, or other legal counsel as appropriate, at any time concerning legal questions prior to, during and after the hearing. Legal counsel for the Hearing Officer shall not be the same attorney who represents Public Health at the hearing.
- J. At the conclusion of the hearing, the Hearing Officer shall inform the parties when, and in what manner the written findings of fact and determination will be communicated. The Hearing Officer shall render the written findings of fact and determination within ten (10) days following the hearing. The written findings of fact and determination may be sent by first class U.S. mail, personally served, or otherwise communicated as determined appropriate by agreement of the parties. If the Hearing Officer determines that the administrative action was consistent with controlling statutes, regulations, rules, and policies, or if the Hearing Officer orders an action adverse to the applicant's license or permit, the applicant will be advised that the Hearing Officer's determination is final for purposes of the administrative review process.
- K. After conclusion of the hearing and final determination of the Hearing Officer, all tape recordings, transcripts, documents, and other exhibits presented and/or accepted into evidence during the hearing shall be given to the Secretary of the Board of Health for filing and retention.