

**RULES FOR THE CONTROL OF  
PUBLIC HEALTH NUISANCES  
FOR  
KENT COUNTY, MICHIGAN**



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**ARTICLE I – TITLE, AUTHORITY AND JURISDICTION**

**101 - TITLE**

These rules shall be hereinafter known by the title, “Rules for the Control of Public Health Nuisances in Kent County, Michigan.”

**102 – AUTHORITY**

These rules are adopted pursuant to Sections 2435 and 2441 of the Michigan Public Health Code, Act No. 368 of the Public Acts of 1978, as amended.

**103 – JURISDICTION**

The Health Officer of the Kent County Health Department shall be the official responsible for the administration of these rules. The Health Officer shall have jurisdiction throughout all areas of Kent County whether incorporated or unincorporated.

**ARTICLE II – DEFINITION OF TERMS**

**201 - BOARD OF HEALTH**

“Board of Health” shall refer to the Kent County Board of Health.

**202 – DEPARTMENT**

“Department” shall refer to the Kent County Health Department.

**203 - HEALTH OFFICER**

“Health Officer” shall refer to the Director of the Kent County Health Department or his authorized representative.

**204 – PERSON**

“Person” shall refer to any individual, group, association, organization, firm, corporation or other legally defined entity.

**205 - PUBLIC HEALTH NUISANCE**

“Public Health Nuisance” shall refer to any condition or activity on private or public property which, in the judgment of the Health Officer, may have or threaten to have a detrimental effect on the health and safety of the public. Public Health Nuisance may include, but shall not be limited to, the following: abandoned buildings; accumulations of garbage, refuse, and animal manure; dead animals; unprotected excavations; mosquito breeding areas; vermin infestations; and all other conditions or activities recognized as public health nuisances at common law.

## **206 – RULES**

“Rules” as used hereinafter shall refer to the Rules for the Control of Public Health Nuisances in Kent County, Michigan.

### **ARTICLE III – PUBLIC HEALTH NUISANCE PROHIBITED: POWER AND DUTIES OF THE HEALTH OFFICER**

#### **301 - PUBLIC HEALTH NUISANCES PROHIBITED**

No person shall engage in an activity or create or permit a condition to exist, which is, or may become, a public health nuisance.

#### **302**

The Health Officer shall initiate investigations of public health nuisances and take all necessary action to abate the same. The Health Officer shall also investigate complaints concerning alleged public health nuisances as hereafter provided.

#### **303 - COMPLAINTS CONCERNING PUBLIC HEALTH NUISANCES**

All complaints concerning alleged public health nuisances shall be submitted to the Health Officer. Such complaints shall include specific details regarding the situation, including the nature and location of the alleged nuisance condition, the date and time of occurrence, the person responsible, the names of witnesses, and the name and address of the complainant. The Health Officer may require such complaints to be submitted in writing.

#### **304 - INVESTIGATION OF COMPLAINTS**

The Health Officer, upon receipt of a complaint concerning a public health nuisance, shall consider the information provided and shall conduct such investigations as he may deem necessary. If the investigation by the Health Officer discloses that the alleged public health nuisance no longer exists, or does not represent a threat to the health and safety of the public, the complainant shall be notified of such findings. If the investigation of the Health Officer reveals that the complaint pertains to an activity or condition subject to the statutory regulation of an official agency, bureau or department other than the Health Department, he shall notify the appropriate agency, bureau or department of the complaint.

#### **305 - ORDERS FOR CORRECTION OR ABATEMENT**

When the Health Officer, following any investigation, determines that a public health nuisance exists, he shall promptly notify the person responsible for the condition or activity of his findings. The Health Officer shall order the person responsible for the public health nuisance to undertake appropriate actions to correct or abate the condition or activity and shall specify a reasonable time limit for such correction or abatement to be completed. Such orders shall be submitted in writing, except in situations requiring more expedient forms of communication in the interests of protecting the public health or safety.

### **306 - AVAILABILITY OF JUDICIAL REMEDIES**

The Health Officer shall be empowered to seek appropriate judicial remedies, in the name of the Kent County Health Department, in order to bring about compliance with the rules when attempts at gaining voluntary compliance or the issuance of orders requiring the correction or abatement of public health nuisances have not proven effective. Such judicial remedies may include, but shall not be limited to, criminal warrants, appearance tickets, and injunctions.

### **307 - SUMMARY ABATEMENT**

When, in the judgment of the Health Officer, a public health nuisance exists, which represents an immediate and extremely dangerous threat to public health and safety, he may, prior to or in conjunction with the pursuit of judicial remedies, undertake appropriate actions to bring about the immediate correction or abatement of the nuisance condition. In all cases where such measures are employed, the Health Officer shall be required to prepare a complete written report of his actions. The report shall contain full particulars concerning the nature and significance of the public health nuisance and shall explain the reasons for the employment of summary abatement measures. The summary shall include a complete inventory of all properties seized, embargoed, or destroyed as a consequence of the Health Officer's action.

## **ARTICLE IV – APPEALS**

### **401 - RIGHT OF APPEAL**

All actions undertaken by the Health Officer, pursuant to the authority conferred by these rules, shall be subject to appeal by any person reasonably affected by such actions.

### **402 – APPEAL PROCEDURES**

All appeals relating to actions taken by the Health Officer in the administration of these rules shall be subject to the procedures set forth in Article X-A "Appeals Procedures" of the Kent County Health Department Sewage Disposal Regulations, as amended and attached hereto.

## **ARTICLE V – PENALTIES**

Any person failing to comply with the provisions of these rules, or failing to comply with orders issued by the Health Officer pursuant to authority conferred by these rules, shall be guilty of a misdemeanor. Each day that a violation of these rules exists shall constitute a separate offense.

## **ARTICLE VI – SEVERABILITY**

If any portion of these rules should be declared invalid or unconstitutional for any reason, the remaining portions shall remain in effect.

Following a public hearing on January 14, 1977, these rules were adopted by the Kent County Board of Health on January 21, 1977.

The rules were approved by the Kent County Board of Commissioners on February 2, 1977, and became effective 45 days after that.

### **APPEALS PROCEDURE**

#### **CONDUCTED IN ACCORDANCE WITH ARTICLE X-A "APPEALS PROCEDURES" OF THE KENT COUNTY HEALTH DEPARTMENT SEWAGE DISPOSAL REGULATIONS:**

##### **1051 – RIGHT TO HEARING**

Any person wishing to appeal a notice of violation, order, citation, or decision issued or made by the Health Officer for an alleged violation of the Kent County Health Department Regulations has a right to an administrative hearing and review as provided by this Article.

##### **1052 - REQUEST FOR HEARING**

- a. To be entitled to a hearing, the appellant must file a written request for hearing with the Health Department, on a form provided by the Health Department, no later than 20 days after receipt of the notice of violation, order, citation, or decision. In computing this period, the day of receipt is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next Monday or non-holiday.
- b. A filing fee, as established by the Board of Commissioners, must accompany the written request for hearing. If the Health Department's notice of violation, order, citation, or decision is dismissed after the hearing, the Health Department may refund the filing fee.
- c. Upon receipt of a written request and filing fee, the Health Department shall give or send a copy of these procedures to the appellant or his/her designated representative.

##### **1053 - TIME, PLACE AND NOTICE OF HEARING**

- a. The Health Department shall schedule and hold a hearing within 30 days after receipt of the written request and filing fee.
- b. The Health Department shall serve notice of the time, date, and place of the hearing on the appellant or his/her designated representative by certified mail a minimum of 10 business days before the date of the hearing.
- c. The hearing may be adjourned to another specified time, date, or place if the Health Department gives written notice thereof, or if the appellant makes a written request for an adjournment at least 24 hours prior to the scheduled time of the hearing.

### **1054 - FAILURE TO APPEAR**

- a. If the appellant fails to appear for the hearing at the scheduled or properly rescheduled date, time, or place after proper service of notice, and no further adjournment has been granted, the hearing may continue and a decision may be made in the absence of the appellant.

### **1055 - PARTIES**

- a. The Health Department shall appear at the hearing by its designated representative.
  
- b. The appellant may appear in person or by his or her representative designated in writing.

### **1056 - Hearing Officers**

- a. Hearings shall be conducted in the manner set forth below by an impartial Hearing Officer designated by the Health Officer. The Hearing Officer shall not have been involved in the determination to issue the notice of violation, order, citation, or decision.
  
- b. If either party to the hearing believes the Hearing Officer is not qualified to hear the appeal because of personal bias or prejudice, that party may ask the Hearing Officer to disqualify himself/ herself. The request must be accompanied by a sworn written statement of facts showing that the Hearing Officer is biased or prejudiced. The request for disqualification and the accompanying statement of facts in support thereof must be filed no later than 4 business days before the scheduled hearing date.  
Untimeliness of filing shall be a factor in considering whether or not the motion should be granted. The matter shall be determined by the Health Officer, and his/her determination shall become part of the record and shall be subject to review by a court as provided below. When a Hearing Officer has been disqualified, the Health Officer shall assign another Hearing Officer to conduct the appeal.
  
- c. Whenever it becomes impracticable for the Hearing Officer to continue with the hearing, the Health Officer may assign another Hearing Officer to continue the hearing unless the change in Hearing Officer would substantially prejudice either party's case.

### **1057 - Powers of Hearing Officer**

A Hearing Officer may:

- a. Administer oaths and affirmations
- b. Certify to official acts
- c. Provide for the taking of testimony by deposition

- d. Regulate the course of a hearing, set the time and place for continuation of a hearing, and fix the time for filing briefs and other documents
- e. Direct the parties to appear and confer to consider simplification of the issues by consent of the parties

**1058 CONDUCT OF THE HEARING**

During the hearing, and subject to reasonable regulation by the Hearing Officer:

- a. Each party shall have an opportunity to make an opening statement.
- b. The Health Department designated representative shall then present its evidence against the appellant. The appellant or his or her designated representative may cross-examine all witnesses presented by the Health Department.
- c. The appellant shall then present evidence on his or her behalf. The Health Department representative may cross-examine all witnesses presented by the appellant.
- d. Both parties may then present rebuttal evidence.
- e. At the close of evidence, each party shall have an opportunity to present a final argument or closing statement, either orally or in writing.

**1059 - RULES OF EVIDENCE**

- a. As far as practicable, the hearing shall be conducted in accordance with the rules of evidence that apply in a non-jury civil case in the Michigan Circuit Court. However, evidence may generally be admitted and given probative effect if it is of a type commonly relied upon by reasonable, prudent people in the conduct of their affairs. Irrelevant or unduly repetitious material may be excluded. Effect shall be given to the rules of privilege recognized by law (e.g., attorney/ client, doctor/ patient).
- b. If either party objects to any evidence offered by the other party, the objection must be stated when the evidence is offered. The Hearing Officer shall rule as to the admissibility of the evidence.
- c. Subject to the requirements stated in subsections a. and b., the Health Department, for purposes of efficiency and when the interest of the parties will not be substantially prejudiced, may provide for submission of all or a part of the evidence in written form.
- d. Writings, recordings, and photographs may be received as evidence in the form of a copy, if the original is not readily available, or may be incorporated by reference, if the material so incorporated is available for reexamination by the parties. Upon timely



request, a party shall be given an opportunity to compare the copy with the original, if it is available.

e. The Hearing Officer may take official notice of a fact — that is, accept a fact as true without evidence — if the fact cannot be reasonably disputed because it is generally known throughout Kent County, is within the specialized knowledge of the Hearing Officer, or is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.

f. The Hearing Officer may use his or her experience, technical competence, and specialized knowledge in evaluation of evidence presented to him or her.

### **1060 - Stipulation of Facts and Settlements**

a. The parties, by a stipulation in writing filed with the Health Department, may agree upon any fact involved in the controversy. The stipulation shall be used as evidence at the hearing and shall be binding upon the parties.

b. Except as otherwise provided by law, the entire case may be settled by stipulation, consent to order, waiver, default, or other method agreed upon by the parties.

### **1061 - DECISION AND ORDER**

a. After the administrative hearing, the Hearing Officer shall prepare a decision and order to affirm, dismiss, or modify the Health Department's notice of violation, order, citation, or decision, and shall report the reasons therefor, including findings of fact and conclusions of law. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling on each proposed finding.

b. The decision and order shall be based upon the entire record and shall be supported by competent, material, and substantial evidence. Findings of fact shall be based exclusively on the evidence of record on matters officially noticed pursuant to subsection 1059.e.

c. The parties shall be served with copies of the decision and order and shall be allowed to take exceptions thereto. Any exception must be in writing and filed at least 10 days after receipt of the decision and order.

### **1062 - Official Record of Hearing**

a. The Health Department shall prepare an official record of the hearing, which shall include:

1. The written request for hearing, all notices, and any pleadings, briefs, or written arguments
  2. Evidence presented
  3. Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose
  4. Any decision, opinion, order, or report by the Hearing Officer
- b. Oral proceedings at which evidence is presented shall be recorded by tape recorder or stenographically, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested, except as otherwise provided by law.

### **1063 - Rehearing**

- a. The Health Department may order a rehearing on its own motion or on request of a party.
- b. Where, for justifiable reasons, the record of testimony made at the hearing is found by the Health Department to be inadequate for purposes of judicial review, the Health Department on its own motion or on the request of a party shall order a rehearing.
- c. A rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record of agency reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

### **1064 - Administrative Review**

- a. A party aggrieved by the decision and order of the Hearing Officer may, within 60 days after the date of the decision and order, petition the chair of the Legislative and Human Resources Committee of the Board of Commissioners for review of the Hearing Officer's decision. Petitions for review shall be made on a form provided by the Health Department.
- b. The grant of review and the scope and manner of review shall be within the discretion of an Appeal Subcommittee appointed by the Legislative and Human Resources Committee.
- c. If the review is not granted within 60 days after the date of the decision and order of the Hearing Officer, the decision and order shall be final and subject to judicial review as provided by law.

d. If the review is granted, the Appeal Subcommittee may affirm, dismiss, modify, or reverse the decision of the Hearing Officer.

e. A denial of review or a decision on the merits by the Appeal Subcommittee shall be final and subject to judicial review as provided by law.