

**KENT COUNTY HEALTH DEPARTMENT
PROCEDURES FOR ADMINISTRATIVE
APPEAL HEARING**



HEALTH
DEPARTMENT
ENVIRONMENTAL HEALTH

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November 3, 2006

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**ADMINISTRATIVE APPEAL HEARING PROCEDURES FOR
KENT COUNTY, MICHIGAN**

SECTION 1 - RIGHT TO HEARING

Any person wishing to appeal a notice of violation, order, citation, or decision issued or made by the Health Officer or his/her designee has a right to an administrative hearing and review as provided by these rules. Copies of these rules are available at the Health Department, 700 Fuller Avenue NE, Grand Rapids, MI 49503.

SECTION 2 - REQUEST FOR HEARING

- a. To be entitled to a hearing, a written request for a hearing must be filed with the Health Department no later than twenty (20) business 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.
- b. The applicant will be assessed an administrative appeal filing fee established by the Kent County Board of Commissioners pursuant to MCLA 333.2444. This fee must accompany the written request for a hearing. If the Hearing Officer dismisses the Health Department's notice of violation, order, citation, or decision the Health Department may refund the filing fee.
- c. The written request for hearing must be made on a form provided by the Health Department.
- d. Upon receipt of a written request and filing fee, the Health Department will give or send a copy of these procedures to the applicant or to that person's designated representative.

SECTION 3 - TIME, PLACE, AND NOTICE OF HEARING

- a. The Health Department shall schedule and hold a hearing within thirty (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 hearing to the applicant or that person's designated representative by certified mail a minimum of seven (7) days before the date of the hearing.
- c. The hearing may be adjourned to another specified time and date if the Health Department gives written notice or if the applicant makes a written request for an adjournment, at least twenty-four (24) hours prior to the scheduled hearing date.

SECTION 4 - FAILURE TO APPEAR

If a party fails to appear at the scheduled hearing after proper service of notice and no adjournment or further adjournment is granted, the hearing may continue and a decision may be made in the absence of the party.

SECTION 5 - PARTIES

- a. The Health Department will appear at the hearing by its designated representative.
- b. The applicant may appear in person and/or by his or her designated representative.

SECTION 6 - HEARING OFFICERS

- a. Hearings will 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 case because of personal bias or prejudice, that party may ask the Hearing Officer to disqualify himself. 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 must be filed no later than four (4) days before the scheduled hearing date. Untimeliness of filing shall be a factor in considering whether the motion should be granted. The matter shall be determined by the Hearing Officer. That determination shall become part of the record and shall be subject to review by the courts, at the conclusion of the administrative hearing and the review process, as provided below. When a Hearing Officer has been disqualified, the Health Officer shall assign another Hearing Officer to continue with the case.
- 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 case unless the change in Hearing Officers would substantially prejudice either party's case.

SECTION 7 - POWERS OF HEARINGS 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 the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.
- e. Direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

SECTION 8 - CONDUCT OF HEARING

Subject to reasonable regulation by the Hearing Officer:

- a. Both parties shall have an opportunity to make opening statements at the hearing.
- b. When the opening statements are completed, the representative for the Health Department shall present its evidence against the applicant. The applicant or his designated representative may cross-examine all witnesses presented on behalf of the Health Department.
- c. When the representative for the Health Department has completed his or her presentation, the applicant may present evidence on his or her behalf. The representatives for the Health Department may cross-examine all witnesses presented on behalf of the applicant.
- d. When the applicant has completed his presentation, both parties may submit rebuttal evidence.
- e. When both parties have presented all their evidence, each party shall be given an opportunity to present oral or written arguments.

SECTION 9 - RULES OF EVIDENCE

- a. The rules of evidence that apply in a non-jury civil case in the Michigan Circuit Court shall be followed as far as practicable, but evidence may be admitted and given probative effect if it is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules or 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 expediting hearings and when the interest of the parties will not be substantially prejudiced thereby, may provide for submission of all or 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 materials so incorporated are available for re-examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.
- e. The Hearing Officer may take official notice of a fact, (i.e., accept the fact as true without the necessity of formal proof by introduction of 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 fact finder may use his experience, technical competence and specialized knowledge in evaluation of evidence presented to him.

SECTION 10 - STIPULATION OF FACT 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 be binding on the parties. The parties are requested to agree upon facts when practicable.
- b. Except as otherwise provided by law, the entire case may be settled by stipulation, or consent to order, waiver, default or other method agreed upon by the parties.

SECTION 11 - DECISION AND ORDER

- a. After the administrative hearing, the Hearing Officer shall prepare a decision and order. The decision and order shall recommend to affirm, dismiss, or modify the Health Department's notice of violation, order, citation, or decision and shall report the reasons including findings of fact and conclusions of the law. If a party submits proposed findings of fact which would control the decision or order, the decision and order shall include a ruling on each proposed finding.
- b. The decision and order shall be based upon the entire record of the case and shall be supported by competent, material and substantial evidence. Findings of fact shall be based exclusively on the evidence of record and on matters officially noticed pursuant to subsection 9.e.
- c. The parties shall be served with copies of the decision and order and shall be allowed to take exceptions. Any exceptions must be in writing and filed at least ten (10) days after receipt of the decision and order.

SECTION 12 - OFFICIAL RECORD OF HEARING

- a. The Health Department shall prepare an official record of a hearing, which shall include:
 - 1. The request for hearing, all notices and any pleading, 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 video and/or 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.

SECTION 13 - REHEARING

- a. The Health Department may order a rehearing in any case 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 for agency reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

SECTION 14 - ADMINISTRATIVE REVIEW

- a. A party aggrieved by the decision and order of the Hearing Officer may, within sixty (60) days after the date of the decision and order, petition the Health Officer for review of the Hearing Officer's decision.
- b. The grant of review and the scope and manner of review shall be within the discretion of the Health Officer.
- c. If review is not granted within sixty (60) days after the date of the decision and order of the Hearing Officer, the decision and order of the Hearing Officer shall be final and subject to judicial review as provided by law.
- d. A denial of review or a decision on the merits by the Health Officer shall be final and subject to judicial review as provided by law.

END