

ADMINISTRATIVE HEARING PROCEDURE

SECTION 1: PURPOSE AND APPLICABILITY

- A. Pursuant to the authority vested in Mesa County Public Health (Public Health) in Section 25-1-508, C.R.S., any administrative action taken by the Board of Health or Mesa 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. Enforcement of the Colorado Food Protection Act pursuant to Sections 25-4-1604 and 25-4-1611.5, 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.
This procedure shall not apply to legislative hearings or processes involving adoption of rules or regulations by the Board of Health, or to any personnel matters.
- 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.

SECTION 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.
- F. **BOARD OF HEALTH:** The Mesa County Board of Public Health
- G. **PUBLIC HEALTH:** The Executive Director of the Mesa County Department of Public Health or their designees.

SECTION 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. Such request for

review must take place within five (5) working days from the date of the Aggrieved Action. So long as the request is made within that five (5) days, Applicant preserves their right to formally appeal to the Board of Public Health. 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: BOARD OF HEALTH HEARINGS

The Board of Health shall hear matters related to Administrative Actions in the following instances:

1. 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.
2. Any Applicant may appeal to the Board of Health within five (5) working days after the Executive Director or their designee makes a decision to suspend or revoke a retail food license.

SECTION 5: STANDARD OF REVIEW

- A. Any hearing conducted pursuant to this procedure shall involve a determination of whether the Aggrieved Administrative Action was consistent with the controlling statutes, regulations, rules, and policies applicable to the action. The Board of Health 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 when conducting a hearing under this policy.
- B. 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, Board of Health shall make his/her determination based on the applicable standards at issue concerning said license, permit or system, as provided by law.

SECTION 6: AUTHORITY

- A. The Board of Health shall affirm the administrative action taken by Public Health if they determines that such action taken was consistent with the controlling statutes, regulations, rules, and policies pertinent to the action. If the Board of Health determines that such Administrative Action was not consistent with controlling statutes, regulations, rules, or policies, the Board of Health 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.
- B. 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 Board of Health 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.

SECTION 7: 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 Board of Health to justify the proposed action.

SECTION 8: HEARING PROCEDURE

- A. The following hearing process shall be followed in the following circumstances, unless otherwise provided for by a state statute or state regulation:
 1. When an Applicant is Aggrieved by an Administrative Action that provides for an administrative hearing;
 2. 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.
- A. In such cases, the Chair 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.
- B. The Applicant shall file a written request for a hearing to review said action within five (5) working days of the action aggrieved. The written request shall be addressed to the Mesa County Board of Health, Mesa County Public Health, 510 29-1/2 Road, Grand Junction, Colorado 81504, and shall be delivered by first class U.S. mail. 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.
- C. Within five (5) working days of receipt of an Applicant's request, the Board of Health shall establish a time, date and place for the hearing, and shall, thereafter, notify the Applicant of the hearing date which shall be scheduled a minimum of thirty (30) days from the date of the notice. 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, sent to the address provided by the Applicant, unless otherwise required to be served by certified mail or in some other manner as provided by law. Upon written agreement of both the Applicant and Public Health, the time periods provided for herein may be waived.
- D. The hearing shall generally be conducted as follows:
 1. Introductory statement by the Chair, 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 Board of Health.
 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. The Board shall advise the participants of the manner and date upon which a determination

will be rendered, if the decision is not made the same day as the Hearing.

- E. The Board of Health has the authority to establish specific procedures governing the conduct of the hearing in order to afford due process and a fair hearing. The Board of Health 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 Board of Health authorized to award monetary damages, costs or attorney's fees.
- F. 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. Any dispute or question concerning what constitutes the "official recording" or the "official transcript" of the hearing shall be resolved by the Board of Health, whose determination shall be final.
- G. 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 Board of Health 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 Board of Health shall rule on admissibility of all such documentation and other exhibits.
- H. The Applicant may be represented by an attorney or other advocate at the hearing. The Board of Health 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, which consultation shall not be ex parte, unless otherwise permitted by law.
- I. At the conclusion of the hearing, the Board of Health shall inform the parties when, and in what manner the written findings of fact and determination will be communicated. The Board of Health 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 Board of Health determines that the Administrative Action was consistent with controlling statutes, regulations, rules, and policies, or if the Board of Health orders an action adverse to the Applicant's license or permit, the Applicant will be advised that the Board of Health's determination is final for purposes of the administrative review process.
- J. After conclusion of the hearing and final determination of the Board of Health, all tape recordings, transcripts, documents, and other exhibits presented and/or accepted into evidence during the hearing shall be given to Mesa County Public Health's Executive Administration Manager for filing and retention.

K. Any person Aggrieved by such administrative action shall have the right to appeal such action according to Colorado Rules of Civil Procedure Rule 106 by filing a complaint, pursuant to that rule, within twenty-eight (28) days after the final decision by the Board of Public Health.