

**DAVIS COUNTY BOARD OF HEALTH**

**A REGULATION REGARDING ADJUDICATIVE HEARING PROCEDURES**



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## **1.0 PURPOSE**

These rules describe the administrative adjudicative procedures for the Davis County Health Department (“Department”). These rules provide an equitable and uniform method for administering and resolving disputes between the Department and parties alleged to have violated laws, ordinances, regulations and orders under the jurisdiction of the Department.

## **2.0 SCOPE**

This regulation applies to all Davis County Health Department programs.

Compliance with these regulations does not preclude compliance with other applicable local, state, and federal laws.

## **3.0 AUTHORITY**

This regulation is promulgated by the Davis County Board of Health as authorized by 26A-1-109(8), *Utah Code Annotated*, and 26A-1-121(2), and 26A-1-114, *Utah Code Annotated*, 1953, as amended.

## **4.0 DEFINITIONS**

4.1 **BOARD:** The Davis County Board of Health created under Utah Code Annotated § 26A-1-109.

4.2 **DAYS:** Calendar days. In computing any period of time prescribed or allowed by these rules, by order of a hearing officer, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day.

4.3 **DEPARTMENT:** the Davis County Health Department which is responsible for administering these hearing procedures.

4.4 **IMMEDIATE COMPLIANCE ORDER or IC ORDER:** An order requiring immediate compliance prior to any hearing, including but not limited to the following:

(1) An order issued pursuant to Utah Code Ann. § 26-15-9 and Davis County Health Department Regulations that impounds adulterated food;

(2) An order closing a business;

(3) An order closing a residence to occupancy or entry;

(4) An order closing a public swimming pool;

- (5) An order suspending or revoking an existing license, permit or certificate;
  - (6) An order suspending or revoking prior approval of a work plan; or
  - (7) Any other immediately effective emergency order.
- 4.5 HEARING OFFICER: An attorney or Department representative who is selected by the Department Director to conduct departmental hearings. A Hearing Officer does not perform prosecutorial or investigative functions in connection with any matter in which he or she serves as Hearing Officer.
- 4.6 NOTICE OF VIOLATION/DEPARTMENTAL DETERMINATION OR NOV/DD: An initial departmental notice concerning legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable parties, including all determinations to grant, deny, revoke, suspend, modify, impose, annul, withdraw, or amend any requirements, permits, rights, penalties or fines subsequent to an opportunity for a hearing. An NOV/DD is issued without conducting any level of review by a Hearing Officer or Chief Hearing Officer. An NOV/DD does not include IC Orders.
- 4.7 PARTY: The person to whom an initial order or NOV/DD or IC Order is directed, such as a person who submitted a permit application that was approved or disapproved by the Department; the Department or Bureau; and all persons whose legal rights or interests are substantially affected by the proceeding.

## **5.0 REGULATION**

### **5.1 DISQUALIFICATIONS**

5.1.1 A Hearing Officer may not perform functions provided for in these rules regarding any matter in which he or she:

- (1) Has a financial interest; or
- (2) Has any relationship with a Party or with the subject matter which would make it inappropriate for the officer to act.

5.1.2 Any Party may at any time by motion made to the Department request that the Hearing Officer be disqualified from the review. A Hearing Officer may withdraw from any review proceeding in which he or she deems himself or herself disqualified or unable to act for any reason.

### **5.2 ADJUDICATIVE PROCEEDINGS**

5.2.1 Two types of proceedings are available to resolve a NOV/DD: a departmental hearing and a Board of Health review. The Department should attempt to

resolve disputes at the lowest level. One type of proceeding is available to resolve an IC Order: a departmental hearing.

- 5.2.2 When good cause appears, the Department may permit a deviation from these rules if it finds compliance to be impractical or unnecessary or that such deviation furthers justice or purposes of the Department.
- 5.2.3 These rules will be liberally construed to secure a just, speedy and economical determination of all issues presented to the Department.
- 5.2.4 Board reviews constitute formal proceedings for purposes of judicial review; departmental hearings shall constitute informal proceedings.
- 5.2.5 To the extent that the Utah Administrative Procedures Act (“UAPA”) governs the proceedings by statute or other specific requirement and these provisions conflict, the UAPA prevails.
- 5.2.6 The Department’s burden of proof during the departmental hearing or the Board review is by the preponderance of the evidence for the elements of the violations. The burden of proving affirmative defenses and other assertions is on the Party asserting it by a preponderance of evidence or as otherwise provided by law.
- 5.2.7 The parties may confer prior to any hearing or appeal and if the parties reach an agreement at any time after the Department issues a NOV/DD or an IC Order and before an appeal to a District Court as to the issues, requirements and penalties (if any), the Department representative shall prepare, in consultation with the County Attorney’s Office, a binding settlement agreement and order and shall submit the agreement and order to the parties for approval and signature. After signing a settlement agreement and order and the Department or Board’s entry of the order, the Parties waive all rights to further department conferences, hearings or appeals.

**5.3 FILING A REQUEST FOR A DEPARTMENTAL HEARING OR APPEAL AND CONSEQUENCES OF FAILURE TO FILE SUCH A REQUEST**

**5.3.1 NOV/DD**

- 5.3.1.1 A party aggrieved by a NOV/DD may request a departmental hearing with the Department. Such a request must be in writing and must be received by the Department within ten (10) days after the NOV/DD is received by the Party.
- 5.3.1.2 If a Party aggrieved by a NOV/DD fails to file a written request for a departmental hearing with the Department within ten (10) days after the NOV/DD is received by the Party, the NOV/DD is a final unappealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

### 5.3.2 IC Order

5.3.2.1 A Party aggrieved by an IC Order may request a departmental hearing with the Department. Such a request must be in writing and must be received by the Department within five (5) days after the IC Order is received by the Party.

5.3.2.2 If a Party aggrieved by a IC Order fails to file a written request for a departmental conference or departmental hearing with the Department within five (5) days after the IC Order is received by the Party, the IC Order is a final un-appealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## 5.4 DEPARTMENTAL HEARING

5.4.1 The purpose of a departmental hearing is to have a hearing officer resolve matters in dispute quickly and inexpensively through informal proceedings in which the parties are allowed to present witnesses and evidence informally.

5.4.2 A departmental hearing is commenced by the filing of a written request consistent with paragraph 5.4.3 by the aggrieved Party. The Department may, but is not required to, file an answer or other responsive pleading.

5.4.3 The Party's request for departmental hearing shall be in writing, signed by the Party, and include:

- (1) The names and addresses of all parties to whom a copy of the request for departmental hearing is being sent;
- (2) A space for the Department's file number or other reference number;
- (3) A statement of the disputed facts and reasons forming the basis for relief or action; and
- (4) A statement of the relief or action sought from the Department.

### 5.4.4 Notice of Hearing

5.4.4.1 In the case of a request for a departmental hearing on a NOV/DD, the Department shall notify the parties of the date of the departmental hearing by issuing a Notice of Hearing within twenty (20) days of receipt of the request for a departmental hearing. The scheduled date shall be within sixty (60) days from the date of the request for a departmental hearing unless the parties agree otherwise.

5.4.4.2 In the case of a request for a departmental hearing on an IC Order, the Department shall notify the parties of the date of the departmental conference by issuing a Notice of Hearing within five (5) days of receipt of the request for a departmental hearing. The scheduled date shall be within ten (10) days from the date of the request for a departmental hearing unless the parties agree otherwise.

5.4.4.3 All Notices of Hearing shall include:

- (1) The Department's file number or other reference number;
- (2) A statement of the time and place of the hearing;
- (3) A statement that a Party failing to attend may be held in default; and
- (4) The names and addresses of all interested parties to whom a Notice of Hearing is being sent.

## 5.5 PROCEDURES FOR DEPARTMENTAL HEARING

5.5.1 The parties named in the Notice of Hearing shall be permitted to testify, present evidence, call witnesses, and comment on the issues. Witnesses shall be placed under oath by the Hearing Officer. The Hearing Officer is not bound by the rules of evidence but shall decide the facts based on the testimony and the evidence submitted from the Department's files and any information presented in evidence in the hearing.

5.5.2 Discovery is prohibited, but the Department may issue subpoenas or other orders as authorized by state law to compel production of necessary evidence.

5.5.3 To the extent permitted by law, the Party aggrieved by the NOV/DD or IC Order shall have access to information contained in the Department's files and to all materials and information gathered by investigation.

5.5.4 Intervention by a third Party is prohibited, except where required by state or federal law.

5.5.5 The Hearing Officer shall record the hearing. Any Party, at his or her own expense, may have a transcript prepared from the Department's record of the hearing subject to any restrictions that the Department is permitted by statute to impose to protect confidential information.

5.5.6 All hearings shall be open to the public but the Hearing Officer may take appropriate measures to preserve the integrity of the hearing, exclude witnesses if requested by a Party, and protect non-public records or other information protected by law.

- 5.5.7 All parties to the departmental hearing are responsible for assuring the appearance of witnesses, costs of the appearance of witnesses, and all other incidental costs.
- 5.5.8 Any Party may, at its own expense, be represented by counsel in a departmental hearing. The Department will not provide counsel to Parties aggrieved by an NOV/DD or IC Order. If a Party will be represented by Counsel, it must give written notice to the other Party no later than twenty (20) days after receipt of the Notice of Hearing on NOV/DD's and no later than three (3) days after the receipt of the Notice of Hearing on an IC Order.
- 5.5.9 The burden of proof in a departmental hearing shall be on the Department by a preponderance of the evidence for the elements of the violation. The burden of proving affirmative defenses and other assertions is on the Party asserting it by a preponderance of evidence or as otherwise provided by law.
- 5.5.10 All parties may stipulate to a continuance of the departmental hearing for the purposes of settlement discussions.
- 5.5.11 Within a reasonable time after the close of the proceeding, the Hearing Officer shall issue a written, signed order stating the following:
- (1) The decision;
  - (2) The reasons for the decision;
  - (3) A notice of the right to appeal; and
  - (4) The time limits and right to appeal.
- 5.5.12 The Hearing Officer shall, upon issuance, serve a copy of the final order on the parties by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.
- 5.5.13 A Party aggrieved by the Hearing Officer's order on a NOV/DD may file a written appeal with the Department within thirty (30) days after receipt of the Hearing Officer's order. The written request for a Board review must be received by the Department within thirty (30) days after the Hearing Officer's Order is received by the Party. If a timely request for a Board review is filed by any Party, any other Party may file an additional or cross-request for a Board review within fourteen (14) days after the filing of the initial request for Board review.
- 5.5.14 A Party aggrieved by the Hearing Officer's order may file a written request for Board review with the Department within ten (10) days after receipt of the Hearing Officer's order. The written request for Board review must be received by the Department within ten (10) days after the Hearing Officer's Order is received by the Party. If a timely request for Board review of an IC Order is filed

by any Party, any other Party may file an additional or cross-request for Board review of an IC Order within five (5) days after the first request for Board review of an IC Order was filed.

- 5.5.15 If a Party aggrieved by a Hearing Officer's order fails to file a written request for a Board review with the Department within thirty (30) days after receipt of the order as set out above, the Hearing Officer's order is a final un-appealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## 5.6 DEFAULT IN DEPARTMENTAL HEARING

- 5.6.1 The Hearing Officer may enter an Order of Default against a Party if the Party fails to appear and participate in the hearing. The Order of Default shall include a statement of the grounds for default and shall be mailed to all parties. An Order of Default may find that the NOV/DD or IC Order is final and un-appealable or dismiss the NOV/DD or IC Order with or without prejudice.
- 5.6.2 A defaulting Party may seek to have the Hearing Officer set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) days of the receipt of the Order of Default. The Hearing Officer shall issue a decision on the request within twenty (20) days from the receipt of the request.
- 5.6.3 After issuing the Order of Default, the Hearing Officer may conduct any further proceedings necessary to complete the hearing without the participation of the Party in default and may determine all issues, including those affecting the defaulting Party. Alternatively, the Order of Default may dismiss the request for a departmental hearing if the Party aggrieved by the NOV/DD or IC Order fails to appear. The Order of Default may dismiss the NOV/DD or IC Order if representatives of the Department fail to appear. An Order of Default may find that the NOV/DD or IC Order are final and un-appealable or may dismiss the NOV/DD or IC Order with or without prejudice.
- 5.6.4 If a Party aggrieved by a Hearing Officer's Order of Default fails to file a written request to the Hearing Officer to set aside the order with the Department within ten (10) days after receipt of the order as set out above, the Hearing Officer's Order of Default is a final un-appealable order of the Department and Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse Party. However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have

prospective application, or any other reason justifying relief from the operation of the order not listed above.

## **5.7 BOARD REVIEW**

Pursuant to a timely request as set forth in section 5.5.14 above, a Party may request that the Board review a Hearing Officer's final order pursuant to Utah Code Ann. § 26A-1-121-(2).

**5.7.1** A Party's request for review shall include the following:

- (1)** The names and addresses of the Parties and the Department's file number;
- (2)** A statement of the relief or action sought from the Board;
- (3)** A statement of the disputed facts and reasons forming the basis for relief or action; and
- (4)** A copy of the Hearing Officer's Order.

**5.7.2** The review for matters subject to these rules shall be a review of the record of the departmental hearing. The Board shall determine if the factual findings are supported by substantial evidence. The Board shall review legal conclusions de novo and mixed questions of law and fact will be reviewed for reasonableness and rationality.

**5.7.3** The Board may designate one or more members to coordinate the parties' submission of materials and to prepare a recommended order for the Board's review.

**5.7.4** The Board or its designee(s) may set a schedule for the orderly submission of memoranda concerning the appeal by the Parties, normally to include an initial memorandum from the Party seeking the review, a response memorandum from the Party opposing the appeal and setting forth any matters for cross-appeal, and a reply memorandum from the Party seeking review.

**5.7.5** Within a reasonable time after the request for review and the party's submission of materials for the review, the Board shall issue a written final order signed by the Board Chair and approved by a majority vote of the Board which shall include the following:

- (1)** A statement of the Board's findings of fact, conclusions of law and order;
  - (a)** The Board may adopt a Hearing Officer's findings of fact if such findings are supported by substantial evidence or make other findings of fact if necessary and supported by substantial evidence in the record; and

- (b) The Board may adopt a Hearing Officer's conclusions concerning mixed questions of law and fact if reasonable and rational or make other conclusions if reasonable and rational; and
  - (c) The Board may adopt a Hearing Officer's conclusions of law or make its own.
- (2) A notice of the right to appeal; and
- (3) The time limits for filing a written request for judicial review as provided in Utah Code Ann. § 26A-1-121 (2)(c). A Party aggrieved by the Board's order may file a written petition with the district court within thirty (30) days after receipt of notice of the Board's final determination. The petition must be received by the district court within thirty (30) days after the Board's Order is received by the Party. If a timely written request for judicial review is filed by any Party, any other Party may file an additional or cross-request for judicial review with its answer.

5.7.6 The Board shall, upon issuance, serve a copy of the final order on the parties by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

5.7.7 If a Party aggrieved by the Board's Order fails to file a written petition for review in the district court within thirty (30) days after receipt of the order as set out above, the Board's Order is a final un-appealable order of the Department and Board and may not be challenged in further administrative or judicial appeals.

## 5.8 DEFAULT

5.8.1 The Board may enter an Order of Default against a Party if the Party fails to participate in the Board review or comply with the Board's orders. The Order of Default shall include a statement of the grounds for default and shall be mailed to all parties. An Order of Default may find that the NOV/DD, IC Order, or Hearing Officer's Order is final and un-appealable or dismiss the NOV/DD, IC Order, and Hearing Officer's Order with or without prejudice.

5.8.2 A defaulting Party may seek to have the Board set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received within ten (10) days of the receipt of the Order of Default.

5.8.3 After issuing the Order of Default, the Board may conduct any further proceedings necessary to complete the review without the participation of the Party in default and may determine all issues, including those affecting the defaulting Party. Alternatively, the Order of Default may dismiss the request for review if the Party aggrieved by the NOV/DD, IC Order, or Hearing Officer's

Order fails to appear or dismiss the NOV/DD, IC Order, or Hearing Officer's Order if representatives of the Department fail to appear. An Order of Default may find that the NOV/DD, IC Order, or Hearing Officer's with or without prejudice.

5.8.4 If a Party aggrieved by the Board's Order of Default fails to file a written request for the Board to set aside the order with the Department within ten (10) days after receipt of the order as set out above, the Board's Order of Default is a final un-appealable order of the Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse Party. However, the (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

## 5.9 JUDICIAL REVIEW

Judicial review of a final determination by the Board on review is governed by Utah Code Ann. § 26A-1-121(2).

## 6.0 PENALTY

6.1 Determined by proceedings.

6.2 Variable.

## 7.0 SEVERABILITY

If any provision, clause, sentence, or paragraph of this regulation or the application or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of this regulation. The valid part of any clause, sentence, or paragraph of this regulation shall be given independence from the invalid provisions or application, and to this end, the provisions of this regulation are hereby declared to be severable.

## 8.0 FEES

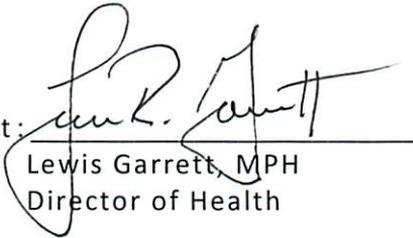
Not applicable.

IN WITNESS WHEREOF, the Davis County Board of Health has passed, approved and adopted this regulation this 8<sup>th</sup> day of May, 2012.

**Effective date: 8<sup>th</sup> day of May, 2012.**

**Revised and Amended: 11<sup>th</sup> Day of February, 2014.**

Signed:   
Don Wood  
Board Chairman

Attest:   
Lewis Garrett, MPH  
Director of Health