

BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN
ORDINANCE DATED: August 6, 2021
ORDINANCE NUMBER: 08-06-21-08

WHEREAS, the Board of Commissioners of the County of Allen desires to revise the Allen County Code to reflect changes in State law; and

WHEREAS, the Board of Commissioners of the County of Allen finds that the proposed amendments would promote the health, safety, comfort and general welfare of the citizens of Allen County; and

WHEREAS, the provisions of this ordinance serve in the best interests and convenience of Allen County citizens and visitors.

NOW THEREFORE, BE IT ORDAINED that:

Section 1. Allen County Title 10 shall be amended to add a new article, Article 13, to read as follows:

ALLEN COUNTY CODE TITLE 10
DEPARTMENT OF HEALTH

ARTICLE 13

Emergency Health Order Enforcement Action Appeal Procedures

10-13-1 Chapter 1: Applicability

This Article only applies to enforcement actions, as defined in Indiana Code (I.C.) 16-18-2-114.8, issued or taken by the Allen County Board of Health or the Allen County local health officer in response to:

- 1) A declared local public health emergency determined by the local health department or local health officer; or
- 2) A disaster emergency declared by the governor under I.C. 10-14-3-12.

10-13-2 Chapter 2: Appeal Requirements

The person or entity receiving the order (hereinafter “recipient”) of an enforcement action defined in I.C. 16-18-2-114.8, may appeal the enforcement action pursuant to I.C. 16-20-5.5, et seq.

If such appeal is initiated, the following apply:

- 1) The appeal must be filed in the office of the County legislative body, the Board of Commissioners of the County of Allen, not later than seven (7) days from the issuance of the enforcement action. Upon proper and timely filing of an appeal by the recipient, the Board of Commissioners may stay the enforcement action until final disposition of the appeal.
- 2) The appeal must be in writing, must state the name of the recipient appealing, the recipient’s address, a telephone number at which the recipient can be reached, and a short statement setting forth why the recipient believes the enforcement action should not be allowed. The appeal must be signed by the recipient of the enforcement action, and a copy of the written health enforcement action at issue must be attached to the appeal.
- 3) The appeal need not be in any particular form, but a form will be provided for the convenience of those who choose to use it.

10-13-3 Chapter 3: Determination of Hearing – Consolidation of Appeals

Within fifteen (15) days of receipt of the appeal, the Board of Commissioners will determine whether to hear the appeal and may issue a denial of an appeal at any time after the filing of the appeal. If the Board of Commissioners determines to hear the appeal, notice will be sent to the individual making the appeal, the board of health, and the health officer. The notice will state the time and place for the public meeting during which the appeal will be heard. Such hearing will be held within fifteen (15) days after the date the Board of Commissioners determined to hear the appeal. If the Board of Commissioners determines against hearing the appeal, a notice will be sent to the individual making the appeal, the board of health, and the health officer. If no determination is made within 15 days of receipt of the appeal, the appeal is deemed denied.

If two or more appeals are filed regarding the same enforcement action, or involving common questions of law and fact, the appellant or the issuer of the enforcement action (board of health or health officer) may request consolidation of the appeals or the Board of Commissioners may order the appeals to be consolidated. If a request to consolidate is made by a party to an appeal, such request must be made in writing at least 7 days before the first scheduled hearing pertaining to one of the filed appeals. Upon review of any request for consolidation, the Board of Commissioners may approve or deny the request and a notice of the determination will be sent to the individuals making the appeal, the board of health, and the health officer.

In order to avoid *ex parte* communications, except during the hearing of an appeal, any party to an appeal may only share information regarding the matter being appealed with a member of the Board of Commissioners in writing and a copy of such writing must be shared with all parties.

10-13-4 Chapter 4: The Hearing

The hearing will be open to the public, and the conduct and order of the hearing shall be as follows:

- 1) Either party may request that subpoenas for either the attendance of witnesses or production of documents be issued for the hearing. A request shall be in writing, on forms provided by the Board of Commissioners, and must be made at least two working days prior to the hearing. Preparation of the subpoenas shall be the responsibility of the requesting party. Subpoenas for such purposes are available in the office of the Board of Commissioners.
- 2) All persons presenting evidence shall swear or affirm to the truthfulness of same, unless such swearing or affirmation is in violation of their sincerely held religious beliefs. Any party to the proceeding may be represented by legal counsel and will be allowed to cross examine any witnesses.
- 3) The person making the appeal (appellant) or their designated representative shall present the basis for the appeal, and call any witnesses in support of the appeal.
- 4) The board of health or health officer that issued the enforcement action being appealed or their designated representative shall have the opportunity to question the appellant and the appellant's witnesses at the conclusion of each witness's presentation.
- 5) The board of health or health officer that issued the enforcement action being appealed shall have the opportunity to respond to the appellant's presentation and to call witnesses. The appellant shall have the opportunity to question the board of health or health officer and any witnesses called by them at the conclusion of each witness's testimony.
- 6) The members of the Board of Commissioners, or their designated hearing officer, shall have the right to question any participant at any time during the hearing.
- 7) The hearing shall be conducted in an informal manner and the formal rules of evidence will not be applied, but irrelevant, immaterial, or unduly repetitive evidence may be excluded from consideration.
- 8) The entire Board of Commissioners, a single Commissioner or a designee of the Board of Commissioners may act as the hearing officer for the hearing.

10-13-5 Chapter 5: Standards for Evaluating an Enforcement Action

An enforcement action will be affirmed, unless the appellant demonstrates to the satisfaction of the hearing officer that:

- 1) No violation of the health order resulting in the enforcement action occurred; or
- 2) The health officer or, if applicable, board of health, deprived appellant of appellant's property or otherwise substantially prejudiced appellant's rights *and, in doing so*, exceeded the health officer's authority, acted erroneously, failed to use proper procedure, or acted arbitrarily or capriciously.

10-13-6 Chapter 6: Attendance Requirements

- 1) The appellant must be present at the hearing conducted on their appeal.
- 2) The board of health or health officer that issued that enforcement action being appealed need not appear at the hearing, and the hearing will not be postponed due to their absence, unless the board of health or health officer requests and is granted a continuance. The granting of a continuance does not modify any other time requirements in this ordinance.

10-13-7 Chapter 7: Decision Requirements

Following any appeal hearing under this ordinance, the Board of Commissioners shall issue a written decision that must appear in the official records of the Board of Commissioners, and

- 1) Be issued not more than 15 working days following the date of the hearing;
- 2) State the legal and factual basis for the decision;
- 3) Advise the appellant and the board of health or health officer of the right to judicial review.

All records concerning a request for appeal and the appeal process shall be maintained by the Board of Commissioners.

10-13-8 Chapter 8: Effective Date

This ordinance shall be effective upon passage.

Section 2. This Ordinance shall be effective as of the date of passage.

Passed this _____ day of _____, 2021.

THE BOARD OF COMMISSIONERS OF
THE COUNTY OF ALLEN

Richard E. Beck

Therese M. Brown

F. Nelson Peters

ATTEST:

Chris Cloud, Deputy Auditor

