

REGULATION No. 400-02

Clermont County Board of Health Hearing Process

A regulation establishing the process by which a decision made by Clermont County General Health District staff may be brought before the Board of Health for reconsideration of the decision per Ohio Administrative Code 3701-29-19.

I. Board of Health Hearings

A) Who May Request a Hearing

Any person who is affected or aggrieved by a decision made by Clermont County General Health District staff or a Board of Health action or regulation may appeal that decision to the Clermont County Board of Health if they are the property owner, the license holder, or the permit holder for a property impacted by the decision. If an aggrieved party chooses to have an agent serve as their representative that representative *must* be an attorney licensed to practice law in the State of Ohio. If an aggrieved party chooses to have an individual who is not an attorney speak on their behalf without the owner, the license holder or permit holder present, that non-licensed individual will need to have a written letter or power of attorney indicating their intent to have the individual speak on their behalf. An individual who is not an attorney speaking on behalf of the owner, license holder or permit holder will only be able to provide information about the situation on behalf of the owner but will not be able to argue the facts or merits of the situation.

B) How to Request a Hearing

To challenge a decision, the aggrieved individual must file a written request with the Clermont County General Health District which includes the following specific information. Any request received that does not include all of the necessary information will not be accepted. The written request for a of hearing must include:

- 1) The name and address of the individual requesting the hearing. This should be the property owner, the license holder, or the permit holder.
- 2) The name of the requestor's attorney or identified spokesperson if any.
- 3) The grounds for the request. This should be a detailed explanation of the objections to the decision describing information that was excluded or incorrect.
- 4) The particulars relevant to the hearing. This might include background facts that relate to the situation including how you are affected by the decision or order.
- 5) A description of the relief or remedy requested. That is, what you are asking the Board of Health to do at the end of the hearing.
- 6) The signature of the requestor or the requestor's attorney.
- 7) A copy of the decision (the permit, license, application, order, disapproval, etc.) that is being challenged.

- 8) Eight copies of all documents supporting the appeal including the original notice of appeal.

The request for a hearing must be mailed, hand delivered or faxed to the office of the Clermont County General Health District. Emailed appeals will not be accepted.

C) Time Limit for Filing a Hearing Request

Every request for a hearing in front of the Board of Health must be filed within 180 days of the initial notice from the Clermont County General Health District of the disapproval, the order to eliminate a nuisance, repair/replace a failing onsite system, tie into the sanitary sewer system, or other order that causes the requestor to be aggrieved.

The Board of Health will reject any request filed after the time limit for filing an request for hearing has expired.

D) What may be brought before the Board of Health for consideration

Any decision of the Board of Health or the Board's representatives on the staff of the Clermont County General Health District may be challenged. Any decision that is being challenged solely on the basis of financial hardship is considered a Hardship Variance and must follow the process outlined in Section II of this regulation.

E) Incomplete Request for Hearing

If, after review by the Health Commissioner, the request for a hearing is found to not contain the required information it is considered deficient. The request for a hearing will be returned to the requestor with a written notice that:

- 1) Identifies the deficiencies
- 2) Informs the requestor that the Board will not proceed with the request for a hearing until an amended request that addresses the identified deficiencies by a specified date is received.

If the deficiencies identified by the Health Commissioner are not corrected by the date specified in the notice of deficiencies, the hearing request will be considered abandoned.

Filing a notice of requesting a hearing that is deficient will result in delays, as the Board of Health will not take any action on the request until the deficiencies are corrected.

F) Notification of Hearing

Once a complete request for a hearing is received the requestor will be notified in writing within 14 days of receipt by the Health District of the date that the hearing will be set before

the Board of Health. Hearings are held at the regularly scheduled monthly Board of Health meetings so depending on the timing of receipt of the request and the upcoming Board agendas, the hearing may be scheduled several months from the receipt of the completed request for a hearing. Every attempt will be made to schedule the hearing as quickly as possible as well as to accommodate the requestor's scheduling needs. While the hearing is pending there will be no further action against the requestor except when a nuisance situation is endangering others.

G) Hearing Decision of the Board of Health

The requestor and their representative, if applicable, will have the opportunity to present the information contained in their request for a hearing in person to the Board of Health. The requestor may also have additional parties that present information to the Board on their behalf at the hearing but those individuals will be limited to providing information on behalf of the requestor or answering questions posed by the Board or the Board's attorney. The Clermont County General Health District staff will also be at the hearing to present their side of the issue and will answer questions from the requestor, the requestor's attorney, the Board of Health and the Board of Health's attorney. The Board of Health will make a decision during the hearing and take one of four actions:

- 1) Deny the requestor's desired action and uphold the original orders/decision of the Health District staff
- 2) Approve the requestor's alternate action
- 3) Approve the requestor's challenge and allow the appellant to proceed with a revised action determined by the Board
- 4) Continue the hearing at a subsequent meeting to allow time for additional information to be obtained

H) Options When a Challenge is Denied

If the Board of Health denies the challenge, the appellant has the option to appeal the Board of Health's decision to either the Clermont County Court of Common Pleas or if the hearing was related to a sewage issue, to the Clermont County Sewage Appeals Board.

II. Hardship Variance Requests

- A) When a financial hardship, for any reason, prevents a homeowner from complying with an order from the Clermont County General Health District, the Board of Health may approve a time extension variance in accordance with section 3701-29-02 (L) and (M) of the Ohio Revised Code (OAC) and OAC 3701-29-20-A. A hardship variance is only valid with the original requestor and shall expire when designated by the Board of Health or when the property changes ownership, whichever is earliest.
- B) Prior to review of the time extension request, the following must be provided by the property owner:
- 1) A written variance request on the approved Health District variance form
 - 2) At least two written estimates of the cost to complete the repair/replacement or sewer connection
 - 3) Report and recommendation from a financial advisor, debt counselor, accountant, or other qualified financial expert confirming the financial hardship
 - 4) An affidavit , signed by the requestor of the variance, stating that all information provided to both the financial advisor and the Board of Health is true, accurate, and complete
 - 5) A plan to accumulate the money necessary pay the for the repair, replacement or sewer connection as recommended by the financial advisor
- B) If the septic system has not been inspected within the past 6 months, the system will be inspected to ensure that is operating properly. If the septic system is not operating properly it will be tested to determine if the system is causing a sewage nuisance. The owner will be responsible for all fees associated with sampling and testing the system. Any system that is found to be creating a sewage nuisance will not be considered for a time extension variance.
- C) Properties that are granted a time extension variance will continue to be monitored under the Basic System Assessment program. If at any time the system is found to be malfunctioning or failing the Board shall terminated the time extension variance.
- D) At the end of the time extension period, the property shall take the originally identified action or an alternate action approved by Health District staff or the Board of Health will begin further legal action.

Regulation 400-02 Discussion

The purpose of establishing a hearing process for the Board of Health is to ensure a consistent process for all parties and to make expectations and responsibilities very clear. Placing the responsibility for copying all necessary materials on the individual requesting the hearing ensures that all parties involved in the hearing have the necessary information and that the information accurately represents what the requestor intends to present. Generous timelines are established in order to keep the issue moving forward without representing a hardship to the aggrieved individual. There is no fee for requesting a Board of Health hearing.

A Board of Health hearing is a formal requirement of due process whereby an individual who feels they have been wronged by a decision of the Board of Health or more commonly a decision made on behalf of the Board of Health by Health District staff, has an opportunity to present information to support their desired proposed alternate action. Since orders are always given to the property owner, the license holder, or the permit holder, only the property owner, license holder or permit holder may request a hearing. An outraged customer of a restaurant facing a license revocation action has no standing and may not request a hearing; a neighbor of the individual next door who feels their neighbor is being treated unfairly may not request a hearing, a renter who is being evicted because the landlord has been given orders to do some repair or cease to rent the property cannot request a hearing, and so on. No matter how upset an individual is the only party considered legally aggrieved is the property owner, the license holder or the permit holder. In addition, there must be some action, decision or enforcement that is being considered at such a hearing. Hearings are not debates on the merit of a particular law or regulation so, for instance, an aggrieved individual who does not like the Workplace Smoking law and believes it to be unconstitutional, will need to have their enforcement action reviewed at a hearing and argue the merit of the law in court.

That is not to say that a citizen has no ability to voice their thoughts and personal opinions to the Board of Health. Certainly the customer, the neighbor or the renter could testify at a hearing on behalf of the aggrieved party or they could make their views known in writing. The Clermont County Board of Health has a very open door policy and supports citizen input. If a citizen is particularly upset or concerned about an action or decision of the Health District they can request time on the Board of Health's monthly agenda to voice their concerns directly to the policy making body. It should be underlined, however, that although they are being "heard" by the Board of Health, they are not in any way being given a hearing and no decision or action will be made at the meeting as a result of their input. They are simply stating their thoughts on a particular matter. As a courtesy to the Board members and in the interest of time, such presentations are typically limited to 5 to 10 minutes. Citizens get on the Board of Health agenda by making a formal request to the Health Commissioner who will typically discuss the situation with the citizen and if their concern cannot be resolved will schedule them at an upcoming Board of Health meeting.