

 Public Health	
Policy Name:	Durham County Board of Health (BOH) Adjudication Process (Appeals)
Policy Number:	BOH-005
Effective Date:	2/14/2012

Policy:

Appeals concerning the interpretation and enforcement of BOH Rules and the 2010 NC Smoke Free Bars and Restaurants Law by the Durham County Department of Public Health (DCoDPH), shall be conducted in accordance with the procedures listed below.

Purpose:

To ensure that adjudication rights are provided to those who feel that rules have been misinterpreted or wrongfully enforced.

Procedures:

1. Public Health Director must notify the person of his or her right to appeal the penalty.

The Public Health Director should notify the person of the penalty in writing. The written notice should include a statement explaining the person's right to file an appeal, including:

- Instructions about when to file the notice of appeal
- What to include in the notice of appeal
- And where to direct the notice of appeal

2. The person may appeal the Public Health Director's decision.

- a. **Filing period:** The person has 30 calendar days to appeal the Public Health Director's decision.
- b. **Notice of appeal:** The person's notice of appeal must be in writing and should be given to the Public Health Director. The notice must include:
 - The appellant's name and address
 - A description of the challenged action

- And a statement explaining why the appellant believes the Public Health Director’s decision to impose a penalty is incorrect

3. Public Health Director notifies Board of Health of appeal. Once the Public Health Director receives the notice of appeal, the Public Health Director has five working days to notify the Board of Health that the appeal has been filed. The Public Health Director must provide to the board:

- A copy of the notice of appeal and copies of “the papers and materials upon which the challenged action was taken.”

4. BOH must hold a hearing.

A. **Hearing date:** Once the BOH receives the notice of appeal, it has 15 calendar days to hold a hearing.

B. **Notice of hearing:**

1. **Notice to appellant:** The board must notify the appellant about the hearing at least 10 calendar days before the hearing date. At a minimum, the notice must state the date, time, and place of the hearing. Given the tight timeframe involved, the BOH must act very quickly to set the hearing date once it receives a notice of appeal.
2. **Notice to public:** The BOH must comply with the open meetings law. The hearing would likely be considered a “special meeting,” which requires at least 48 hours notice before the meeting. Such notices must state the time, place, and purpose of the meeting and they must be:

Posted on the BOH’s principal bulletin board or the door of the BOH’s usual meeting room, posted on the department’s webpage (GS 143-318.12(e) and deliver the notice to any person (which includes media outlets) who has requested notice of such meetings.

C. **Conduct of hearing:**

The hearing should be conducted as a court-like proceeding (“quasi-judicial”). Specifically, the following procedures should be followed:

1. No *ex parte* contact with parties or between board members.
2. BOH members with any conflict of interest must not participate.
3. BOH must:
 - a. Allow the appellant’s attorney to attend and advise her client.
 - b. Take sworn and relevant testimony.
 - c. Provide for cross-examination of witnesses.

- d. Keep detailed or verbatim minutes.

D. The hearing:

1. The entire hearing will be electronically recorded and the recording will later be transcribed. During the hearing, the following will be the sequence of actions:
 - a. The Chair of the BOH will introduce all parties.
 - b. The Chair of the BOH will ask Board members to declare whether they have a conflict of interest to declare.
 - c. Presentation by the party appealing as to why they believe the staff's interpretation(s) and action(s) are in error.
 - d. Presentation by health department staff explaining the actions taken.
 - e. Cross examination/question and answer period for BOH members of the appealing party.
 - f. Cross examination/question and answer period for BOH members of the staff.
 - g. Closure of the formal hearing by the Chair of the BOH.

2. BOH may discuss whether they are ready to make a decision or whether they wish to delay the decision pending review of the transcript. The BOH decision shall indicate whether they affirm, modify or reverse the challenged action of the staff in applying the rule(s) or law. When a decision is made, a motion must be made clearly stating the reasons for the decision.

3. A transcript of the hearing will be prepared no later than 10 working days after the hearing and made available to the appealing party, the BOH, and the DCoDPH staff upon request.

4. If the BOH chooses not to make a decision at the hearing, the appeal will be scheduled for action at the next full BOH meeting. The BOH also has the option of calling a special meeting following the hearing but prior to the next regularly scheduled BOH meeting to make a decision. The special meeting must follow all Open Meetings requirements.

5. Once the BOH takes action to uphold, deny or modify the staff decision, it will issue a written decision in accordance with G.S. 130A-24(c). The Public Health Director in the role as Secretary to the Board, drafts the written decision as specified by the BOH in Step 4 for the BOH Chair's signature. The decision must:
 - Be based upon the evidence presented at the hearing and contain a concise statement of the reasons for the decision.

- The decision should also explain the appellant’s right to appeal the BOH’s decision as described in Step 6 below.
- While the law specifies that the hearing must be held within a certain period of time, it does not require that the BOH issue its decision with a set timeframe.

6. Appellant may appeal the BOH’s decision to district court:

- If the appellant disagrees with the BOH’s decision, he or she may file an appeal in district court.
- The appeal must be filed within 30 calendar days after the date of the BOH’s decision.
- The court must follow certain guidelines when reviewing the BOH’s decision but it ultimately may affirm, modify or overturn the decision.
- Following the district court’s decision, further judicial appeals are also an option.

PROCEDURES FOR FINALIZING APPEALS HEARING TRANSCRIPTS

1. Within 30 working days following the Hearing, a draft transcript is prepared by the Administrative Assistant to the Public Health Director.
2. Within 10 working days following its completion, two copies of the draft transcript and the audio recording are delivered to the Public Health Director and the Chair of the BOH.
3. The Public Health Director and the Chair of the BOH reviews the draft transcript and marks the text to indicate corrections. In addition, the Public Health Director and/or the Chair annotate the text of the draft transcript as needed to aid in the comprehension of the transcript. The annotations are to be provided in parentheses or otherwise clearly marked to ensure that the reader understands that the annotations were added following the hearing to clarify the text.
4. Within 10 working days of receipt of the draft transcript, the Public Health Director and/or the Chair returns the audio recordings and a marked-up copy of the draft transcript to the Administrative Assistant to the Public Health Director.
5. Within 10 working days of its receipt, the revised draft transcript is finalized and becomes available upon request. The Administrative Assistant notifies the appellant that the transcript is available.
6. The final transcript is sent to the full BOH by inclusion in the BOH agenda materials for next regularly scheduled meeting of the BOH.

7. The transcript is filed with the appeal documents and kept according to the records retention schedule established by the State of North Carolina Cultural Resources Department.

References

A. Fleming Bell, II, *Appeal Procedures for Local Boards of Health*. The material was presented at the Health Directors' Legal Conference on April 22, 2009.

G.S. 150B-51 for details regarding the scope of review. The scope of review in this statute, which governs appeals from decisions issued by administrative law judges under the Administrative Procedure Act, also applies to these types of local appeals. G.S.130A-24(d)

G.S. 130A-22(h)

G.S. 130A-24(c)

G.S. 130A-24(b).

CHANGE HISTORY:

Version	Date	Comments
A	12/14/2012	Original document.
	12/11/2013	Reviewed and approved by the BOH
	12/11/2014	Reviewed and approved by the BOH
	12/12/2015	Reviewed and approved by the BOH
	8/10/2017	Revision to the BOH Policy on Policies, to set the annual policy review period to the first quarter (July –September) of each new fiscal year.
	11/8/18	Reviewed and approved by the BOH
Annual Review Due Dates		12/11/2013; 12/11/2014; 12/12/2015; 8/10/2017; 10/2/2018

<p>Approved By:</p> <hr/> <p>Chair, Board of Health</p> <hr/> <p>Public Health Director</p>	<p>Program Area(s) Affected:</p> <p>Durham County Board of Health</p> <p>Durham County Department of Public Health</p> <p>Citizens of Durham County</p>
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