

**SNOHOMISH HEALTH DISTRICT
RESOLUTION OF THE BOARD OF HEALTH**

11-35

RESOLUTION NUMBER: 11-35

RESOLUTION SUBJECT: SNOHOMISH HEALTH DISTRICT SANITARY CODE CHAPTER 1.9 RIGHT OF APPEAL, REVISION

WHEREAS the Board of Health of Snohomish Health District serves to promote the public health of the residents of Snohomish County, and under provisions of RCW 70.05.060 maintains supervision over matters pertaining to the preservation of the life and health of the people within its jurisdiction, and

WHEREAS the Board of Health has incorporated into Chapter 1 and Chapter 8 of the Snohomish Health District Sanitary Code Appeals Procedures established to aid in resolving conflicts arising from administration of applicable regulations, and

WHEREAS the Board of Health adopted a Tobacco Program Appeals Procedure for resolving conflicts arising from the enforcement of RCW 70.160 entitled Smoking in Public Places, and

WHEREAS a review of Snohomish Health District Appeals Procedures has brought to light the need to provide increased guidance and clarity with regard to decisions that may be appealed and information that should be submitted to help identify the specific areas of difference and provide the best means of presenting clarification together with supporting documentation, and


WHEREAS the Snohomish Health District has determined that the three existing stand alone Appeals Procedures can be consolidated into one document to assure consistency and efficiency of future revisions and simplify the process for public review,

NOW THEREFORE the Board of Health of Snohomish Health District takes the following actions:


- Rescinds Chapter 1.9.1 of the Sanitary Code of Snohomish Health District, RIGHT OF APPEAL.
- Rescinds Chapter 8.1.6 of the Sanitary Code of Snohomish Health District, ON-SITE SEWAGE DISPOSAL ADMINISTRATIVE APPEALS PROCEDURE.
- Rescinds the Snohomish Health District Tobacco Program Administrative Appeals Procedure.
- Adopts the attached amended Snohomish Health District Sanitary Code Chapter 1.9 RIGHT OF APPEAL.

ADOPTED this 13th day of December, 2011.

ATTEST:



Mark Lamb, Chair
Board of Health



Gary Goldbaum, M.D., M.P.H.
Health Officer and Director

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Board of Health adopted 11/9/93, Resolution 93-32; Revised 5/9/95, Resolution 95-16;
Revised 12/17/96, Resolution 96-27; Revised 1/14/97, Resolution 97-02; Revised 12/13/11, Resolution 11-35

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1.9.1 Purpose

The purpose of this Appeals Procedure is to establish a system which will aid in resolving conflicts arising from the administration of the Snohomish Health District Sanitary Code and enforcement of RCW 70.160 *Smoking in Public Places* where not otherwise specified and to ensure procedural due process and fairness in such administration; however, this procedure shall not apply where a specific appeals procedure is written or is incorporated into any enforcement procedure in other Chapters of this Code.

1.9.2 What May be Appealed

Any decision or order of the Health District with respect to applications made to the Health District or the revocation or suspension of a license or permit issued by the Health District may be appealed. The same may be referred to in this Chapter as the "Order" or the "decision under dispute".

1.9.3 Who May Appeal

Any applicant or one with a proprietary interest in the subject property feeling aggrieved by a decision or order of the Health District made pursuant to these rules and regulations and RCW 70.160, entitled *Presumptively Reasonable Distance*.

1.9.4 Pre-appeal Conference Recommended

Although not required for the purpose of initiating the Appeal Procedure, any applicant or one with a proprietary interest in the subject property feeling aggrieved by the decision under dispute is encouraged to avail himself/herself of the opportunity to request an office conference with the Health District Official who made the decision. Such conference will permit a free exchange of viewpoints. The Health District Official will be expected to discuss and clarify the reason(s) for the decision and the regulations which are applicable. The individual dissatisfied with the decision may present his/her position and submit any information he/she feels has not been adequately considered in making the decision. A Health District Manager may attend such conference. If the individual presents information not previously available or raises issues not previously addressed, the department may undertake an additional review of the matter following the conference.

1.9.5 Appeal Procedure

GENERAL INFORMATION

- A. The Appeal Procedure shall consist of STEP ONE and STEP TWO.
- B. STEP ONE shall be an Administrative Review conducted by the responsible Health District Division.

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- C. STEP TWO shall be conducted by a Hearing Examiner.
- D. The Appeal Procedure shall be initiated by the appellant within twenty one (21) days of the date of the decision under dispute.

1.9.6 Appeal Procedure

STEP ONE

A. General

STEP ONE shall be an Administrative Review conducted by supervisory staff of the responsible Health District Division with the STEP ONE decision to be rendered by the Division Director. Depending upon the circumstances of the individual case under appeal, the Health Officer may be consulted in the STEP ONE procedure.

B. Initiation of STEP ONE

The person feeling aggrieved (hereinafter referred to as appellant) shall initiate the Appeal Procedure in writing on forms supplied and prescribed by the Health Officer. Appellant must provide the Health District with a copy of the written notice of the appeal either by hand delivery to the responsible Snohomish Health District Division Office (Attention: Division Director) or sent by certified mail within the time period set forth in Chapter 1.9.5(D). The appellant shall state the decision being appealed, the reason(s) for the appeal, and cite the regulation(s) which the appellant feels have not been followed or correctly interpreted by the Health District.

C. STEP ONE Review Procedure

The Division Director shall perform an Administrative Review within thirty (30) days. Such review shall consist of a review of information relevant to the matter under appeal including, but not limited to: (a) review of Health District records; (b) review of information submitted by the appellant; (c) determination of what regulations/laws are applicable; (d) onsite inspection of the property in question if deemed appropriate; (e) meeting with the appellant if such meeting has been requested in the appellant's request for STEP ONE Appeal Procedure. If the Director feels that additional studies are indicated, the STEP ONE review period may be extended by ten (10) days if necessary in order to have such studies performed.

D. STEP ONE Decision

The Director shall inform the appellant in writing of the decision to the STEP ONE Appeal Procedure. Such decision will indicate whether the original decision is upheld, overruled, or whether the Health District is willing to

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consider other alternatives. A copy of the decision shall be filed with the Health Officer.

1.9.7 Appeal Procedure

STEP TWO

A. General

STEP TWO shall be a hearing conducted by a Hearing Examiner. STEP TWO shall follow STEP ONE of this Appeal Procedure if the appellant is dissatisfied with the STEP ONE decision.

B. Initiation of STEP TWO

The appellant shall initiate the STEP TWO Appeal Procedure by submitting a fully completed request for appeal on forms supplied and prescribed by the Health Officer. Such request may be delivered to the responsible Snohomish Health District Office (Attention: Division Director) or sent by registered mail within twenty one (21) days after the date the STEP ONE decision was rendered.

C. Fee Required

The request for the STEP TWO Appeal Procedure shall be accompanied by payment of a fee as established by the Board of Health in the fee schedule.

D. Hearing Examiner:

1. Selection

The Health Officer shall appoint a Hearing Examiner from one of the following: (a) any Hearing Examiner employed or retained by Snohomish County; (b) any Hearing Examiner employed or retained by any city or town within Snohomish County; (c) any attorney who has served as a judge pro tem; (d) any other individual who possesses qualifications to serve as Hearing Examiner and who has been approved by the Board of Health.

2. Qualifications

Examiners shall be appointed solely with regard to their qualifications for the duties required and will have such experience and training as to qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred

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upon them. Hearing Examiners will not be current or past employees or consultants for Snohomish Health District.

3. Discontinuation of Services

The service of any Examiner employed or retained by the Health District may be discontinued by action of the Board of Health.

4. Freedom from Improper Influence

No person, including Health District employees and/or members of the Board of Health, shall attempt to influence a Hearing Examiner in any matter pending before the Examiner, except at a public hearing duly called for such purpose, or to interfere with an Examiner in the performance of his/her duties in any way; PROVIDED, that this section shall not prohibit the Health District's attorneys from rendering legal service to the Examiner nor shall it prohibit Snohomish Health District staff from providing support services to the Examiner upon request.

5. Conflict of Interest

No Examiner shall conduct or participate in any hearing, decision or recommendation in which the Examiner has a direct or indirect substantial financial or familial interest or concerning which the Examiner has had substantial pre-hearing contacts with proponents or opponents. Nor, on appeal from an Examiner decision, shall any member of the Board of Health who has such an interest or has had such contact participate in consideration thereof.

6. Hearing Rules/Procedures

The Board of Health shall adopt rules for the conduct of hearings and other procedural matters related to the duties of Hearing Examiners. In adopting such rules and procedures, the Board shall take into consideration recommendations of persons serving as Hearing Examiners.

7. Powers and Duties

The Hearing Examiner shall receive and examine available information, conduct hearings, prepare records thereof, and enter decisions on STEP TWO appeal procedures. The Hearing Examiner shall have no authority to authorize the issuance of a permit contrary to the laws of the State of Washington, Washington Administrative Code (WAC), the Sanitary Code of Snohomish Health District, RCW 70.160, or applicable local rules and regulations of the Board of Health of the Snohomish Health District.

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E. STEP TWO Hearing

1. Scheduling

The Health Officer shall, upon receiving a request from an appellant for a STEP TWO hearing, appoint a Hearing Examiner and schedule such hearing within a reasonable time after receipt of their request for appeal. Appellant shall receive written notice of the time and place of the hearing not fewer than twenty one (21) days prior to the date of the hearing.

2. Notice

Notice of the time and place of the public hearing will be sent by certified mail to the appellant by the Health Officer.

3. Information for Hearing Examiner

Health District staff shall coordinate and assemble a factual statement with attached relevant documentation, along with the position statement of the Health District staff relative to said appeal, all to be delivered or mailed by certified mail to the Hearing Examiner and the appellant not fewer than fourteen (14) days prior to the scheduled hearing.

4. Information/Documentation/Admission by Appellant

Appellant shall assemble and submit any factual statement and copies of all documents or exhibits which appellant intends to submit at said hearing, together with Appellant's position statement to the Hearing Examiner and to the Snohomish Health District not fewer than seven (7) days prior to the scheduled hearing. To the extent that the factual statement and/or documentation would be repetitious with the submission of the Health District staff, Appellant shall not re-submit such factual statements or documentation unless necessary for the continuity of Appellant's position statement. Furthermore, the statement from Appellant shall:

- (a) Identify those factual statements made by the Health District which are accepted by Appellant as facts.
- (b) Identify and attach all documents or exhibits Appellant intends to submit and/or reference at such hearing.
- (c) Identify all errors asserted by Appellant to have been made by the Health District.
- (d) Identify all witnesses intended to be called and a summary of the fact or opinions each is expected to testify to at such hearing. The failure to disclose such witnesses and/or a summary of expected

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testimony shall be a basis to bar such witness testimony at the hearing.

5. Burden of Proof

Except in the case of the revocation or suspension of a license or permit, the Appellant shall have the burden of proof.

6. Conduct of Public Hearing

The Examiner shall conduct the public hearing following the general rules and procedures which have been adopted by the Board of Health as per Chapter 1.9.7.(D)(6).

7. Examiner's Decision

Unless a longer period is agreed to in writing or verbally on the record at the public hearing by the appellant, within fifteen (15) days of the conclusion of a hearing the Examiner shall render a written decision which shall include at least the following:

- (a) Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would conform to the applicable regulations.
- (b) A decision on the appeal which may be to grant, grant in part, return to the appellant for modification, deny or grant with such conditions, modifications, restrictions as the Examiner finds necessary to comply with the applicable regulations.
- (c) A statement which indicates the procedure for appealing the Examiner's decision. The Examiner's decision shall be mailed to the appellant, the Health Officer, and any other person who specifically requested notice of the decision by signing a register provided for such purpose at the hearing.

1.9.8 APPEAL from Examiner's Decision:

A. General

The decision of the Examiner shall be final and conclusive unless appealed by the appellant or Health Officer to the Board of Health.

B. Initiation of Appeal to Board of Health/Appellant

Any appellant wishing to appeal the decision of the Hearing Examiner to the

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Board of Health must file in writing a statement with the Health Officer within fifteen (15) days of the date of the decision of the Hearing Examiner. Such notice may be delivered personally to the Administration Office of Snohomish Health District (Attention: Health Officer) or sent by certified mail. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Examiner, and a copy of the Hearing Examiner Decision which shall be accompanied by a fee as established by the Board of Health in the fee schedule.

C. Initiation of Appeal to Board of Health/Health Officer

The Health Officer may appeal the decision of the Hearing Examiner to the Board of Health if the Health Officer believes that the Examiner's decision may jeopardize the public health or is contrary to the applicable regulations. The notice of appeal by the Health Officer shall be filed with the Chair (or Vice-Chair in absence of the Chair) of the Board of Health in writing within fifteen (15) days of the date of the decision of the Hearing Examiner. Such notice shall contain a statement of the reason why the Health Officer believes that the Examiner made an error in issuing the decision and provide a copy of the Hearing Examiner Decision. The Health Officer shall send a copy of the notice of appeal to the appellant by certified mail.

D. Stay of Examiner's Decision

When an appeal of the Examiner's decision is made to the Board of Health, the filing of such appeal shall stay the effective date of the Examiner's decision until such time as the appeal is adjudicated or withdrawn.

E. Board of Health Consideration:

1. An Examiner's decision which has been timely appealed shall be reviewed by the Board of Health at a regularly scheduled meeting within forty-five (45) days of the receipt of the appeal notice. Both parties shall be notified of the date of review by the Board of Health. Both parties may submit additional written information, if desired, for review by Board members. Such information must be received by the Health Officer not fewer than ten (10) days prior to the hearing to permit copying and mailing to Board members. By this process, it is not intended nor shall it be the obligation of the Board to receive or review the entire or extensive record from the Hearing Examiner proceeding in order to take action.
2. At the Board of Health Meeting referenced in the section above, the Board of Health shall take one of the following actions:
 - (a) Concur with the findings and conclusions of the Examiner and decline to hear an appeal.

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- (b) Determine to hear the appeal at a public hearing to be established at a later date.
- (c) Remand a decision to the Hearing Examiner for further hearing and specifically identify for the Hearing Examiner the grounds for the remand.

At such meeting, staff shall provide an oral summary of the decision, and respond to any questions of the Board. Except as requested by the Chair, no additional comments or testimony from the appellant, public, or witnesses shall be taken on the subject matter for purposes of the decision to be made by the Board at said meeting.

- 3. In those instances in which the Board of Health determines to conduct a public hearing, such hearing shall be scheduled within forty-five (45) days of the Board of Health meeting referenced in Section E.1. above, and all parties given notice of the date of the scheduled hearing. Procedures for the conduct of public hearings will be pursuant to the format identified in Snohomish Health District Environmental Health Hearing Rules of Procedure, and the Chair of the Board of Health, or such Board member selected by the Chair, shall coordinate the presentation of evidence and the decision. The issue before the Board will be limited to a determination of whether the Hearing Examiner erred under the clearly erroneous standard in making his/her decision. Under the clearly erroneous standard, the Board may only overturn the decision of the Examiner if, after reviewing the entire record, the Board is left with the definite and firm conviction that an error has been made. If the Board determines that an error did occur, it may issue a new decision or modify the decision rendered by the Examiner. The decision of the Board of Health shall be supported by findings and conclusions.
- 4. Staff shall provide appellant with written notice of the action taken by the Board hereunder.

E. Effect of Board of Health's decision

The Board's decision not to hear an appeal or the Board's decision after public hearing on an appeal, shall be final and conclusive unless an application is made to a court of competent jurisdiction by writ of certiorari, writ of prohibition or writ of mandamus within thirty (30) days of final Health District action or such time period as authorized by law.