

Ordinance No. 2022-7

**AN ORDINANCE TO ADOPT EMERGENCY HEALTH ORDER
ENFORCEMENT ACTION APPEAL PROCEDURES**

WHEREAS, as a result of the pandemic, the Legislature has addressed numerous concerns related to public health and individual liberties, among other issues; and,

WHEREAS, one such provision that took effect on July 1, 2021 is codified as I.C. § 16-20-5.5, and grants citizens the right to appeal certain enforcement actions taken by local health officials; and,

WHEREAS, more specifically, a citizen who is the recipient of an enforcement action taken or issued by the Morgan County Board of Health, or one of its duly appointed officers, in response to either a declared local public health emergency as determined by the Board of Health or its officer(s), or in response to a disaster emergency declared by the governor under I.C. § 10-14-3-12, may appeal such enforcement action to the Morgan County Board of Commissioners (“Commissioners”); and,

WHEREAS, this new statute also requires that the Commissioners adopt procedures for the administration of an appeal filed in accordance with the foregoing, specifically that it develops procedures for the review, consideration, and hearing of an appeal; and,

WHEREAS, the Commissioners believe that a clear and concise procedure is in the best interests of all parties, and of the citizens of Morgan County, and further believes that for ease of access and reference, the same should be added as a new Chapter of the Morgan County Code of Ordinances (“Code”); and,

WHEREAS, the Commissioners believe that an addition to the Code, in conformity with the foregoing, is in the best interests of the health, safety, comfort, and general welfare of the citizens of Morgan County.

NOW THEREFORE BE IT ORDAINED, by The Board of Commissioners of Morgan


County that:

1. A new chapter Morgan County Code of Ordinances is hereby adopted and codified therein, the same shall be known as "Chapter 31.03" and titled, "Emergency Health Order Enforcement Action Appeal Procedures".
2. This Ordinance shall be in full force and effect at the time of its passage.
3. The terms of this Ordinance shall supersede and cause to be vacated, any prior Ordinance, Resolution, or other measure adopted by the Commissioners that contradicts the language herein.

IN WITNESS WHEREOF, ALL OF WHICH IS AGREED, ADOPTED, and SO


ORDAINED, this 7th day of march, 2022.

**MORGAN COUNTY, INDIANA
BOARD OF COMMISSIONERS**


KENNY HALE, President

ATTEST: 
DAN BASTIN
Morgan County Auditor


BRYAN COLLIER


DON ADAMS

CHAPTER 31.03:

EMERGENCY HEALTH ORDER ENFORCEMENT ACTION APPEAL PROCEDURES

31.03	Applicability.
31.04	Appeal Requirements.
31.05	Procedure Upon Submission of Appeal.
31.06	Attendance Requirements.
31.07	Hearing Procedures.
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31.09	Procedures After Hearing.

SECTION 31.03 APPLICABILITY.

- A. This Chapter only applies to an "Enforcement Action," as defined by I.C. 16-18-2-114.8, which includes an order, mandate, citation, administrative notice, business closure, or other action taken by the Morgan County Board of Health or its Local Health Officer in response to:
 - 1. A declared local public health emergency, as determined by the local health department or local health officer; or
 - 2. A disaster emergency declared by the Governor in accordance with I.C. 10-14-3-12.
- B. If a local order issued by the Morgan County Board of Health or its Local Health Officer, in response to an emergency declared by the Governor, includes provisions or restrictions that are not included in the Governor's Executive Order, or is more stringent than the Governor's Executive Order, such local order may not take effect, or remain in effect, unless it is approved by the Board of Commissioners.
- C. During a public health emergency declared by the Morgan County Board of Health or its Local Health Officer, or a disaster emergency declared by the Governor, all enforcement actions related to such emergencies or disasters must be authorized by the Board of Commissioners prior to the Board of Health or Local Health Officer imposing any such enforcement action.

SECTION 31.04 APPEAL REQUIREMENTS.

- A. A person or entity to whom an Enforcement Action is issued may file an appeal pursuant to I.C. § 16-20-5.5.
- B. In order for an appeal under this Chapter to be considered, it must:

1. Be delivered to the Office of the Morgan County Board of Commissioners not more than seven (7) days from the date the Enforcement Action being appealed was issued;
 2. Be in writing;
 3. Include the name, address, home telephone, work telephone, and email address of the Appellant;
 4. Clearly state the issues that serve as the basis of the appeal;
 5. Be executed by the Appellant, and so executed under oath and being subject to the penalties for perjury;
 6. Attach or otherwise include a copy of the written Enforcement Action that is the subject of the appeal and from which the Appellant seeks relief;
 7. Be submitted in a timely manner as described herein and fulfill all portions as described herein.
- C. The appeal is not required to be prepared or organized in any particular form, so long as it complies with this Section 31.04, all other related provisions herein and as proscribed by the Indiana Code.
- D. An aggrieved party may appeal the matter directly to the circuit or superior court; but in so doing, said party waives their right to request an appeal under this Chapter.

SECTION 31.05 PROCEDURE UPON SUBMISSION OF APPEAL.

- A. Appeal Submitted After Deadline. If an appeal is not submitted within seven (7) days of the Enforcement Action, it is untimely. The Commissioners may choose to grant an exception for the untimely submission, particularly given any justifiable or reasonable cause for delay. However, the Commissioners are not required to provide an extension of time within which to submit the appeal and, as such, it may be summarily dismissed.
- B. Incomplete Appeal. An appeal that lacks one (1) or more of the requirements contained in Section 31.02 may be summarily dismissed.
- C. Order to Stay Enforcement Action. Upon receipt of a timely and properly filed appeal of an Enforcement Action as described in this Chapter, the Commissioners may issue an Order to Stay the Enforcement Action until the disposition of the appeal.
- D. Determination to Conduct Hearing. Within fifteen (15) days of the submission of a timely and properly filed appeal of an Enforcement Action as described in this Chapter, the Commissioners:

1. May grant the request for a Hearing to consider the appeal;
2. May deny the request for a Hearing to consider the appeal; or
3. May take no action.

E. Granting of Request for Hearing. If the Commissioners determine to grant the request to conduct a Hearing to consider the appeal:

1. A Notice of Hearing, including the date, time, and location of the public meeting where the hearing will occur, shall be sent, within fifteen (15) days of the date on which the determination to conduct a hearing was reached, to:
 - i. The Morgan County Board of Health by email and to its regular business address. This shall include delivering a copy to a specific officer of the Board of Health, as the case may warrant.
 - ii. The Appellant by email, if provided, as well as to his or her home address, as provided at the time of submission of the appeal.

F. Denial of Request for Hearing. If the Commissioners determine to deny the request to conduct a hearing to further consider the appeal:

1. A Notice of Denial of Appeal shall be sent, within fifteen (15) days of the date on which the determination to deny the appeal, to:
 - i. The Morgan County Board of Health by email and to its regular business address. This shall include delivering a copy to a specific officer of the Board of Health, as the case may warrant.
 - ii. The Appellant by email, if provided, as well as to his or her home address, as provided at the time of submission of the appeal.

G. No Action. If the Commissioners take no action on the appeal of an Enforcement Action with fifteen (15) days of the date the same is submitted, the appeal is deemed denied by operation of law. In this event, a Notice of Denial of Appeal shall be sent in the same manner as prescribed in Section F above.

H. Consolidation of Appeals. If two (2) or more appeals are filed from the same order or involve common questions of law and fact, the Appellant or Morgan County Board of Health may request consolidation of the appeals. Such request must be in writing, submitted at least seven (7) days before the scheduled hearing date, and be sent to all parties to the proceedings. After reviewing the request, the Commissioners have the discretion to grant or deny the request to consolidate and shall send Notice of its determination to all parties of concern to the matter.

- I. Ex Parte Communications. In order to avoid actual ex parte communications, or the appearance of the same, all parties are prohibited from communicating directly with any member of the Board of Commissioners prior to the Hearing. However, except that a party may file, or submit, additional information that they request be considered by the Commissioners, so long as they also provide a copy of that writing to all other parties.

SECTION 31.06 ATTENDANCE REQUIREMENTS.

- A. The appellant must be present at a Hearing conducted by the Board of Commissioners or designated Hearing Officer in which Appellant's appeal will be considered.
- B. The Morgan County Board of Health and its Local Health Officer shall be notified in writing of the hearing date and time pursuant to section, but the failure of the Health Department, the Officer, or their representative to be present is not a cause for postponement of the hearing unless a continuance is requested and granted.
- C. A continuance requested by the Morgan County Board of Health or its Local Health Officer does not reduce the period required for a written decision by the Commissioners.

SECTION 31.07 HEARING PROCEDURES.

A Hearing on an Appeal of an Emergency Health Order Enforcement Action shall be conducted in accordance with the following:

- A. The Hearing shall be open to the public.
- B. The parties are directed to exchange documents, evidence, and information with another no less than forty-eight (48) hours prior to the Hearing.
- C. A subpoena of a witness or for production of evidence may be issued by the President of the Board of Commissioners, if requested by the Appellant or the Morgan County Board of Health at least three (3) days prior to the scheduled Hearing. The Commissioners may apply for an order from the Morgan Circuit Court to enforce the subpoena, if necessary.
- D. Any person who testifies in the Hearing will swear or affirm upon their oath to the truthfulness of the same.
- E. Any party may be represented by legal counsel, who may call witnesses, cross examine witnesses, present evidence, and make argument(s) on behalf of his or her client.
- F. The Appellant, or their designated representative, shall present the basis for the appeal, call any supporting witnesses, and introduce any other evidence in support of the appeal.

- G. The Morgan County Board of Health or Local Health Officer who issued the Enforcement Action being appealed, or their designated representative, shall have the opportunity to cross-examine the Appellant and the Appellant's supporting witnesses.
- H. The Morgan County Board of Health or Local Health Officer who issued the Enforcement Action being appealed, or their designated representative, shall have the opportunity to respond to the Appellant's presentation by calling its own supporting witnesses and introducing any other evidence he or she believes strengthens the case that the Enforcement Action is proper, and the appeal should be denied.
- I. The Appellant, or their designee, shall have the opportunity to cross-examine the Board of Health or Local Health Officer and any witness they may call at the conclusion of each witness's presentation.
- J. The Board of Commissioners, or their designated Hearing Officer, shall have the right to question any participant at any point during the Hearing.
- K. The Hearing shall be informal, and legal rules of evidence shall not apply; however, irrelevant, immaterial, or unduly repetitive evidence may be excluded from consideration.
- L. 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.

SECTION 31.08 STANDARD OF REVIEW.

An Emergency Health Order Enforcement Action will be affirmed, unless the Appellant demonstrates to the satisfaction of the Hearing Officer that:

- A. The Morgan County Board of Health or Local Health Officer deprived the Appellant of Appellant's property or otherwise substantially prejudiced Appellant's rights and, in doing so, exceeded permissible authority, acted erroneously, failed to follow proper procedure, or acted arbitrarily or capriciously.
- B. No violation of the Emergency Health Order occurred and thus the Enforcement Action was unnecessary or improperly imposed.

SECTION 31.09 PROCEDURES AFTER HEARING

Within fifteen (15) business days following a Hearing conducted in accordance with this Chapter, the Board of Commissioners shall:

- A. Issue a written decision that must appear in its official written records; and,
- B. Include in the written decision the legal and factual basis for the decision; and,

- C. Advise the Appellant and the Morgan County Board of Health or Local Health Officer of the right to judicial review; and,
- D. Maintain all records concerning a request for appeal, including all evidence or other documents submitted before, during, or after a Hearing; all letters, Notices, or other documents sent by the Board of Commissioners; or any other such item(s) related thereto.