

RESOLUTION NO. 2010-4224

BE IT RESOLVED BY THE TACOMA-PIERCE COUNTY BOARD OF HEALTH,
that the Tacoma-Pierce County Health Department is authorized to

- Adopt a procedure for Appeals of Orders and Decisions of the Health Officer;
and,
- Amend Resolution No. 2009-4196—the Tacoma-Pierce County Health
Department 2010 Fee Schedule—to revise the fee for appeals to the Hearing
Examiner, effective upon repeal of Board of Health Resolution No. 2002-3411 –
LAND USE REGULATION, as specified within the attached.

TACOMA-PIERCE COUNTY BOARD OF HEALTH



Dick Muri, Chair, Board of Health

February 3, 2010
Date of Adoption



BOARD OF HEALTH ACTION REQUEST FORM

1. Requesting Division Environmental Health	Presenter Brad Harp, Environmental Health Liaison	Phone/Extension (253) 798-2851
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2. **Preparation of an Agenda Request/Resolution for the Board of Health meeting.** Date: Feb. 3, 2010.

3. **Request Summary:** Authorization to

Adopt a procedure for Appeals of Orders and Decisions of the Health Officer; and,

Amend Resolution No. 2009-4196—the Tacoma-Pierce County Health Department 2010 Fee Schedule—to revise the fee for appeals to the Hearing Examiner, effective upon the repeal of Board of Health Resolution No. 2002-3411 – LAND USE REGULATION.

4. **Background Information / Comments:**

- ◆ The Health Department's only general appeals process is currently articulated within the LAND USE REGULATION, which is being repealed. Adoption of this resolution will provide a clear and consistent avenue for Appeals of Orders and Decisions of the Health Officer, except for those orders and decisions already governed by another appeals process.
- ◆ The Tacoma-Pierce County Health Department 2010 Fee Schedule is amended such that the fee for an appeal will be changed from *At Cost* to *At Cost With a \$1,000 Deposit*. This fee covers only costs billed to the Health Department by the Hearing Examiner. Appellants are entitled to a full refund if they prevail and are responsible for all Hearing Examiner costs if they do not prevail.

5. **Recommended Board of Health Action:** Approve Resolution No. 2010-4224.

6. **List all materials attached as backup information for the request:**

1) Copy of Proposed Appeals of Orders and Decisions of the Health Officer; and 2) Copy of Page 3 of the Tacoma-Pierce County Health Department 2010 Fee Schedule

7. **Finance Information/Additional Revenue:**

Grantor/Contractor:

Source of Revenue:

Federal: \$

State: \$

County Special: \$

City Special: \$

Other: \$

Total: \$

Additional Expenditure:

Program Name:

Acct. #:

Total: \$

Division Director Approval

Finance Approval

Director of Health Approval



Appeals Process for Orders and Decisions of the Health Officer

REGULAR AGENDA
Resolution No. 2010-4224
2/3/10
Att. 1, 4 Pages

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SECTION 1: Authority

The Tacoma-Pierce County Health Department Board of Health (Board of Health) enacts these regulations under the general authority of Article 11, §11 of the Washington Constitution, RCW 70.05.060 and the specific authority of other state statutes and regulations.

SECTION 2: Purpose

The purpose of this Appeals Process for Orders and Decisions of the Health Officer is to:

- A. Provide broad powers to the Tacoma-Pierce County Health Department (Health Department) and its appointed health officer to administer and enforce these regulations, in a fair and equitable manner, in order to protect, preserve, promote, and improve public health; and
- B. Provide an appeal process for any matter, issue, or dispute not otherwise addressed in the Health Department's Environmental Health Code.

SECTION 3: Appeals of Decisions and Orders of the Health Officer

- A. Hearing examiner.
 - 1. The Director of the Health Department may recommend and the Board of Health may appoint a hearing examiner and one or more alternate hearing examiners.
 - 2. The hearing examiners shall continue to serve at the pleasure of the Board of Health or until their resignation and shall be compensated while hearing appeals and drafting decisions.

- B. Jurisdiction of the hearing examiner.

An appeal may be convened for the following causes, except as described in subsection 3, below:

- a. To appeal an administrative hearing decision, or other decision or order of the health officer; or
 - b. If both the health officer and the aggrieved person agree, to bypass any applicable prior administrative hearing process.
- 2. Appeals governed by Chapter 1 – General Provisions of the Environmental Health Code or other adopted regulations of the Board of Health shall be made in accordance with the procedures described therein.
- 3. Exceptions.

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- a. If a party seeks to appeal either the grant, denial, revocation, modification, refusal to modify, or failure to revoke a solid waste permit, then the hearing examiner shall not have jurisdiction and the appeal of the Health Department's decision shall be to the Pollution Control Hearings Board or its successor agency if within its powers or otherwise to Superior Court.
 - b. If a party seeks to appeal an action of the Health Department taken under Chapter 64.44 RCW, then the hearing examiner shall not have jurisdiction and the provisions of RCW 64.44.030 shall apply.
 - c. In the event of a conflict between state or federal law and this Appeals Process for Orders and Decisions of the Health Officer, state or federal law shall govern.
- C. Filing.
 - 1 The appeal shall be commenced by filing a written request on forms prescribed by the Health Department and must be filed with the health officer within 10 days of the date of the decision or order which is the subject of the appeal.
 - 2. The appeal must cite with particularity the order or decision appealed from and the reasons for the appeal. A copy of the order or decision appealed from should be attached to the appeal.
 - 3. The appeal filing shall be accompanied by the applicable filing fees as described below.
- D. The hearing examiner shall have authority to determine initially whether any such appellant has standing to challenge a decision or final order of the health officer and whether such appeal was timely filed.
- E. The hearing examiner may join appeals that present substantially similar issues that arise from approval of the same permit or modification, or that otherwise reasonably should be joined.
- F. As provided by RCW 70.05.060(7), the fee for an appeal shall be the cost of the hearing examiner's services for that appeal. A party that appeals a decision of the Health Department to the hearing examiner shall pay a deposit of \$1,000, or an alternative amount as established by the Board of Health via the current fee schedule, with the papers seeking the appeal. Upon receiving the hearing examiner's final invoice for the appeal, the Health Department shall either refund any unused part of the deposit or bill the appellant for the balance of the cost of the hearing examiner, which shall be a personal obligation of the appellant and shall be paid within 30 days of the date of receipt. In the event the hearing examiner concludes that the appellant is the prevailing party, then the Health Department shall be responsible for the cost of the appeal and shall make full refund of the appellant's deposit.

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- G. The filing of the appeal shall stay the health officer's approval of a permit. All other orders and decisions of the health officer shall remain in effect during the pendency of appeals until reversed in a final decision. If the appeal challenges the health officer's decision to grant a permit, then the permit applicant shall receive the same notice and have the same opportunity to be heard afforded the appellant and shall be considered a party to the appeal for all purposes.
- H. Upon receipt of an appeal, the health officer shall forward the appeal to the hearing examiner who shall set a time and place for a hearing and shall give the appellant at least 21 days written notice thereof. If the hearing examiner is unable to hear the appeal, the hearing examiner shall promptly forward the appeal to an alternate hearing examiner.

The appellant, the applicant, if different or the health officer may ask the hearing examiner in writing to postpone the hearing. Following an opportunity for the other parties to comment on the request in writing, the hearing examiner shall respond in writing including the reasons for granting or denying the request.

- J. At the hearing, the hearing examiner shall provide each party an opportunity to be heard, to present evidence, and to show why the health officer's order or decision should be sustained, modified, or reversed.

- K. Process for hearings.

In conducting hearings, the hearing examiner shall not be bound by the regular rules of evidence pertaining to superior court trials. Within this framework, the hearing examiner shall make such rulings on evidence and procedure as he/she deems appropriate and may develop guidelines for the conduct of such hearings.

2. The record made at all hearings shall be capable of being transcribed at the request of the parties or the hearing examiner.
3. Where not specifically covered herein or in rules and procedures adopted by the hearing examiner, the hearing examiner shall be guided by the rules and procedures of the Washington State Administrative Procedures Act, chapter 34.04 RCW.

- L. Standard of review.

1. The hearing examiner may grant, modify, or reverse the order or decision of the health officer if and only if he finds that such order or decision is either arbitrary and capricious or contrary to law.
2. The hearing examiner may not grant relief that will in any way either tend to jeopardize the public health, safety, or welfare or authorize actions contrary to the laws of the State of Washington.

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- M. After the hearing, the hearing examiner shall enter a written decision together with Findings of Fact and Conclusions of Law and an appropriate order sustaining, modifying, or reversing the order or decision of the health officer and serve them on all the parties within 35 days of the close of the hearing.
- N. All decisions of the hearing examiner shall be final unless an aggrieved person files an appeal with the Superior Court for the Pierce County within 21 days from the date of decision. Such appeals to the Superior Court shall be on the record and neither new testimony nor evidence shall be taken. Such appeals shall not operate as a stay of any required action or approval contained in the decision of the hearing examiner.
- O. Reconsideration.
- 1 Any party of record may file a written request for reconsideration within ten calendar days of the date of the hearing examiner's decision. The reconsideration request must state a specific error of fact or law and must state the basis for the reconsideration request. The party requesting reconsideration must serve a copy of the request on all other parties of record. No party may file a response to the request unless requested by the hearing examiner.
 2. Within fifteen calendar days of receiving the request the hearing examiner may deny the request, revise the decision based on the record without additional hearing, or schedule an additional hearing or timeline for the parties to submit a response.
 3. Upon receipt of the hearing examiner's reconsidered decision or order, a person with standing to appeal may bring an appeal to the superior court within 21 days.
- P. Failure to comply.
- 1 It is unlawful for any person to fail to comply or otherwise violate a decision or order resulting from a hearing examiner.
 - 2 Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be a separate and distinct violation.
 3. Any person in violation of this section shall be subject to enforcement and penalties.
 - 4 The failure to comply with, or to otherwise violate a decision or order resulting from a hearing examiner is designated as a Class 1 civil infraction pursuant to Chapter 7.80 RCW.

General & Medical Records Fees

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2010

Appeal Fee.....	At Cost - With a \$1,000 Deposit
Photocopy Charge in Response to Requests Made under the Public Disclosure Act, per page.....	0.15
Pierce County Recording Fee.....	62.00
↳ NOTE: plus per page photocopy charge.....	1.00
Non-sufficient funds (NSF) Check Charge.....	35.00
Expert Witness Fee, per hour.....	75.00
Witness Fee – per hour.....	Per RCW 2.40.010
Notary Fee.....	5.00
Standard Photocopy Charge, per page.....	0.15
Medical Record Retrieval and File Copy.....	23.00
↳ NOTE: plus per page photocopy charge for first 30 pages.....	1.02
↳ NOTE: plus per page photocopy charge for all other pages.....	0.78
Official Copy of Immunization Record without Vaccine Administration.....	10.00
Computer Printout of Immunization Record without Vaccine Administration.....	5.00
Certification Letter of Tuberculosis Treatment for Employment.....	10.00
Record of PPD Results.....	10.00
Hepatitis Screening Results Letter.....	5.00