

## **ORDINANCE 2021-20**

An ordinance to add Chapter 307 of the Monroe County Code concerning Emergency Health Order Enforcement Action Appeal.

**WHEREAS**, the Monroe County Commissioners desire to revise Chapter of the Monroe County Code to reflect changes in State Law; and,

**WHEREAS**, the Monroe County Commissioners find that the proposed amendments would promote the health, safety, comfort and general welfare of the citizens of Monroe County.

**NOW, THEREFORE**, be it ordained by the Board of Commissioners of Monroe County, Indiana that Chapter is added to read as follows:

### **CHAPTER**

#### **EMERGENCY HEALTH ORDER ENFORCEMENT ACTION APPEAL PROCEDURES**

##### **307-1. Applicability**

This Chapter only applies to enforcement action, as defined under IC 16-18-2-114.8, issued or taken by the Monroe County Board of health or local health officer in response to:

- (A) A declared local public health emergency determined by the local health department or local health officer; or
- (B) A disaster emergency declared by the governor under IC 10-14-3-12.

##### **307-2. Appeal Requirements**

- (A) The appeal must be received by the Monroe County Auditor not more than seven (7) days from the date of issuance by the enforcement action.
- (B) The appeal must be in writing, must state the name of the person appealing, that person's address, home and work telephone numbers, and the issues which are the basis of the appeal. The appeal must be signed, subject to the penalties for perjury, by the person appealing. A copy of the written health enforcement action must be attached to the appeal.
- (C) The Auditor shall, upon request, provide assistance in physically writing the appeal. However, the Auditor is not responsible for the content of the appeal and has no duty to advise the person appealing how the appeal should be written.
- (D) If the Auditor has physically written the appeal, the Auditor shall read its text to the person appealing before the person signs it.
- (F) If signature is by the mark of the person appealing, the mark shall be witnessed

by the Auditor or a notary public.

- (G) The appeal need not be in any particular form, but a form will be provided for the convenience of those who choose to use it.

### **307-3. Determination of Hearing—consolidation of appeals**

Within fifteen (15) days of receipt of the appeal, the County Commissioners may determine whether to hear the appeal based upon the criteria listed in section 4 of this chapter. If the Commissioners determine to hear the appeal, notice will be sent to the Health Department and to the person's email, if provided, and home address. The notice will state the time and place for the public meeting where the appeal will take place. Such hearing will be within fifteen (15) days of the determination. If the Commissioners determine deny a hearing on the appeal, notice of denial shall be issued in the same manner. If not determination is made within 15 days of application, the appeal is deemed denied.

If two or more appeals are filed from the same order or involve common questions of law and fact. The appellant or Health Department may request consolidation of the appeals, such request must be in writing, at least 7 days before the scheduled hearing date, with notice of the request sent to all parties by the requestor. The Commissioners can, after reviewing the request, may consolidate the appeals.

Except during the hearing, either party may only share information with the County Commissioners in writing, a copy of the writing must be shared with all parties.

### **307-4. Order of Hearing**

The order of the hearing shall be as follows:

- (A) The person appealing (hereafter, the "Appellant") shall present the basis for the appeal, and call any witnesses in support of the appeal.
- (B) The Health Department shall have the opportunity to question the appellant and supporting witnesses at the conclusion of each witness's presentation.
- (C) The Health Department shall have the opportunity to respond and call witnesses.
- (D) The appellant shall have the opportunity to question the Health Department and the Health Department's witnesses at the conclusion of each witness's presentation.
- (E) The Commissioners, or their designated hearing officer, shall have the right to question any participant at any point during the hearing.
- (F) The hearing shall be informal, and legal rules of evidence shall not apply.

### **307-5. Standards of Review**

In accordance with IC 16-20-5.5:

In determining the hearing an appeal, the Board of Commissioners or hearing officer shall

be governed by the Emergency Health Order issued by the Health Officer or Health Board, and approved by the County Commissioners. The Commissioners shall review each appeal to determine if implementation of the order causes harm due to any one of the following:

1. Enforcing the health order would have an inverse impact to individuals experiencing a disability,
2. The appellant has a compelling interest that justifies deviation from the health order and have taken measures that insures public health; or,
3. Appellant appeals that no violation of the emergency health order occurred.

**307-6. Subpoena**

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 Health Department. The Commissioners may apply for an order from the Monroe Circuit Court to enforce the subpoena.

**307-7. Attendance Requirements**

- (A) The appellant must be present at a hearing conducted by the Board of Commissioners or a hearing officer.
- (B) The Health Department shall be notified in writing of the hearing date and time pursuant to section, but the failure of the Health Department or the Department's representative to be present is not a cause for postponement of the hearing unless the Health Department requests and is granted a continuance.
- (C) A continuance requested by the Health Department does not reduce the period required for a written decision by the Commissioners.

**307-8. Decision Requirements--Hearing**

The Board of Commissioners, following any hearing under this chapter, shall issue a written decision that must:

Appear in the official records of the board;

- (1) Be issued to the appellant and the Health Department not more than fifteen (15) working days following the date of the hearing;
- (2) State the legal and factual basis for the decision;
- (3) Advise the appellant and the Health Department of the right to judicial review; and

All records of concerning a request for appeal and any documentation resulting from the investigation and hearing of the appeal, including the determination, shall be maintained by the Auditor's office.

**307-9. Hearing Officer Appointment**

(A) In the event a majority of the Board of Commissioners is unable to hear an appeal under this Chapter, any single Commissioner is authorized to act as the Hearing Officer.

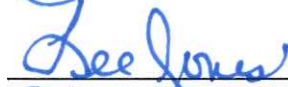
(B) The Commissioners' Attorney, or in his absence, any member of the Legal Department is appointed review officer for the purpose of screening appeal requests which he/she determines, following screening, are seriously procedurally deficient, such as those filed more than seven (7) days from the date of issuance by the enforcement action or those which are unsigned,

Adopted this 12 day of May, 2021.

**MONROE COUNTY BOARD OF COMMISSIONERS**

**"YEAS"**

  
\_\_\_\_\_  
Julie Thomas, President

  
\_\_\_\_\_  
Lee Jones, Vice President

  
\_\_\_\_\_  
Penny Githens, Commissioner

**"NAYS"**

\_\_\_\_\_  
Julie Thomas, President

\_\_\_\_\_  
Lee Jones, Vice President

\_\_\_\_\_  
Penny Githens, Commissioner

**ATTEST:**

  
\_\_\_\_\_  
Catherine Smith, Monroe County Auditor