

**Appeal Rules of the
Gallatin City-County Board of Health**

**Section 1
AUTHORITY & PURPOSE**

- 1.1 The Gallatin City-County Board of Health (“Board”) is authorized to adopt the following rules governing the transaction of its meetings pursuant to §50-2-116, Montana Code Annotated (MCA).
- 1.2 These rules provide the procedures by which appeal hearings shall be conducted before the Board and are adopted as an addendum to the Board’s Bylaws.
- 1.3 These rules govern all appeals over which the Board has jurisdiction.
- 1.4 Should these rules conflict with any procedural requirement set forth in any law or Regulation, such conflict shall be resolved in favor of the law or Regulation.

**Section 2
DEFINITIONS**

- 2.1 As used in these rules, the following definitions apply:
 - A. **Appeal.** The process by which a person may challenge the Health Officer’s actions, refusal to act, the justifications for a determination, or present other evidence to the Board:
 - i. As allowed by Title 50, Chapters 50, 51, 52, 53, and 57, MCA; or
 - ii. For other written decisions of the Health Officer made pursuant to Regulation or law.
 - B. **Appeal Notice.** The written document by which a person initiates an Appeal.
 - C. **Board.** The Gallatin City-County Board of Health.
 - D. **Chair.** The chairperson of the Board as set forth and appointed under the Board’s Bylaws.
 - E. **Health Officer.** The individual appointed by the Board as the local health officer, pursuant to § 50-2-116(1)(a), MCA, or an agent of the Health Officer.
 - F. **Person.** An individual or legally formed entity.
 - G. **Regulation.** Any regulation promulgated by the Board.

Section 3

GENERAL PROVISIONS

- 3.1 For any Appeal required to be held pursuant to the contested case provisions of the Montana Administrative Procedure Act, the Board waives formal proceedings and submits to the informal disposition provisions of § 2-4-604, MCA and these rules.
- 3.2 For Appeals under Section 2.1(A)(i), the Person filing the Appeal may waive formal proceedings by submitting a written waiver to the Board. If a written waiver is not made, the Appeal shall be adjudicated formally under Section 4.
- 3.3 Appeals under Section 2.1(A)(i), for which the Person filing the Appeal has waived formal proceedings, and Appeals under Section 1.2(A)(ii) shall be adjudicated informally as set forth in Section 5.
- 3.4 Unless otherwise set forth in applicable law or Regulation, an Appeal Notice, addressed to the Board, shall be delivered to the Health Officer within 30 calendar days after the issuance of the written decision of the Health Officer that is appealed.
- 3.5 Upon receipt of an Appeal Notice, the Health Officer shall schedule an appeal hearing before the Board and notify the Chair of the Appeal. The hearing shall be scheduled to occur no later than 45 calendar days from receipt of the Appeal Notice, or within such greater period of time as agreed to by the parties.
- 3.6 Within a reasonable time after the appeal hearing is scheduled, the Chair or hearings examiner shall issue to the parties a hearing notice that includes:
 - A. A statement of the time, place, and nature of the appeal hearing;
 - B. A statement of the legal authority and jurisdiction under which the appeal hearing is to be held;
 - C. A reference to the particular sections of the statutes and Regulation involved;
 - D. A short and plain statement of the matters asserted; and
 - E. For an Appeal under Section 2.1(A)(i), a statement that formal adjudication may be waived pursuant to Section 3.2.
- 3.7 In any Appeal, the Board shall affirm, modify, or reverse the decision of the Health Officer.
- 3.8 Notwithstanding the statutory requirement that appeals of certain decisions be administratively adjudicated under the contested case provisions of the Montana Administrative Procedure Act, the Board is not an “agency” under § 2-4-102(2)(b), MCA and an Appeal is not a “contested case” under § 2-4-102(4), MCA. Therefore, in adopting these rules, the Board does not consent to, nor does it waive any right to assert that it is not subject to, judicial review of the Board’s decision of an Appeal under Title 2, Chapter 4, Part 7, MCA (“Judicial Review of Contested Cases”).
- 3.9 An Appeal does not stay the decision of the Health Officer that is appealed.

Section 4
FORMAL ADJUDICATION

- 4.1 The formal adjudication of an Appeal shall be heard pursuant to the contested case provisions of Title 2, Chapter 4, Part 6, MCA and the model rules of practice adopted by the Montana Attorney General for contested case proceedings and set forth at Chapter 1, Subchapter 2 of the Administrative Rules of Montana (ARM), which model rules are hereby incorporated by reference.
- 4.2 The Chair shall immediately appoint a hearings examiner upon notice of an Appeal to be formally adjudicated.

Section 5
INFORMAL ADJUDICATION

- 5.1 The informal adjudication of an Appeal shall be heard pursuant to the following rules or such additional rules as promulgated by the Board.
- 5.2 The Chair may appoint a hearings examiner to conduct the appeal hearing before the Board and in lieu of the Chair.
- 5.3 Within 15 calendar days from the Board's receipt of an Appeal Notice, or within the timeframe otherwise agreed to by the parties to the Appeal, the Chair or hearings examiner shall conduct a conference with the parties to the Appeal to define issues, determine witnesses, and establish other stipulations.
- 5.4 The Chair or hearings examiner may continue the date set for an appeal hearing for good cause, upon oral request or in writing, for a reasonable period of time, in order to secure all the evidence that is necessary or to be fair to the parties.
- 5.5 If any party fails to appear at an appeal hearing, and good cause justifying a continuance is not shown, the Board may decide the issues and make a determination on the best evidence available.
- 5.6 If the Appeal does not involve a disputed issue of material fact, the parties may jointly stipulate in writing to waive the proceedings and may directly petition the district court for judicial review upon an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with any additional information it may consider necessary to fully review the issues, may make its decision.
- 5.7 During the appeal hearing, the Board shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, or unduly repetitious evidence must be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana.

- 5.8 Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.
- 5.9 Unless established otherwise by the Chair or hearings examiner, the order of presentation at an appeal hearing shall be as follows:
- A. Appellant presentation;
 - B. Staff presentation;
 - C. Public comment;
 - D. Staff rebuttal;
 - E. Appellant rebuttal;
 - F. Board discussion and decision.
- 5.10 The presiding officer or hearings examiner may determine, given the complexity of the issues, time limitations for each presentation made to the Board.
- 5.11 At the conclusion of the hearing the Chair or hearings examiner shall prepare written Findings of Fact and Conclusions of Law for the Board upon the evidence produced during the proceedings.
- 5.12 The Findings of Fact and Conclusions of Law shall include a statement of the substance of the evidence received or considered by the Board, the written or oral statements of the parties or other persons, relevant law and Regulation, and the proceedings. The written Findings of Fact and Conclusions may incorporate by reference the reasons for the Board's decision that are pronounced verbally by the Board at the appeal hearing.
- 5.13 The Board shall accept, reject, or modify in whole or in part the Findings of Fact and Conclusions of Law at the next regularly scheduled meeting of the Board, unless for good cause shown, this period of time is extended for an additional time not to exceed 30 calendar days. The Chair shall then sign the Findings of Fact and Conclusions of Law, which shall become final.
- 5.14 The Chair or hearings examiner shall provide a copy of the Findings of Fact and Conclusions of Law to the parties.
- 5.15 A party may object in writing to the Findings of Fact and Conclusions of Law, or may order at that party's cost a transcription of the recording, or both.
- 5.16 The record of the appeal hearing shall include the following items:
- A. Appeal Notice;
 - B. Hearing notice;
 - C. Evidence offered or considered, any objections and rulings thereon, and all comment and testimony entered into the record or made during the appeal hearing, whether orally or in writing;
 - D. Audio recording of the appeal hearing;

- E. Written minutes; and
- F. Findings of Fact and Conclusions of Law.

5.17 The decision of the Board set forth in the Findings of Fact and Conclusions of Law may be appealed to an appropriate court or tribunal in accordance with applicable law.