

**DELAWARE COUNTY HEALTH DEPARTMENT
RULES AND REGULATIONS**

100.1. DECLARATION OF POLICY. The purpose of these Rules and Regulations is to provide for the protection and promotion of the health of the people of Delaware County, and to this end, these Rules and Regulations are intended to embrace all matters to which the regulatory or police powers and duties of the Delaware County Health Department extend.

100.2. GENERAL DEFINITIONS. For the purpose of these Rules and Regulations, the following definitions shall apply:

Approved: Any construction or procedure of operation which is in accordance with the standards of the Delaware County Health Department.

Board: The Delaware County Board of Health.

County: Delaware County.

Department: The Delaware County Health Department, or its authorized representative.

Director: The Delaware County Health Director or his/her authorized representative.

Emergency Occurrence: An occurrence such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent food borne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health.

Municipality: Any city, town, borough, township, county, or other public body created by or pursuant to State Law, or any combination thereof acting cooperatively or jointly.

Person: Any individual, partnership, corporation, company, firm, institution, trustee, association, or any other public or private entity.

Public Facility: The definition includes, but is not limited to any facility, group, organization and/or other entity that admits individuals with little or no restriction(s). Individuals may be solicited by marketing and/or advertisement and may be subject to membership fees.

Regulated Establishment: Any public facility, whether commercial or institutional, which requires License(s) and/or Certificate(s) to operate issued by the Delaware County Health Department, or any facility that requires inspection by the Delaware County Health Department.

Secretary: The secretary of the Delaware County Board of Health.

100.3. LOCAL REGULATION.

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No city, township, borough, or other municipality located within Delaware County, except those municipalities which are exempt from the jurisdiction of the Department by Section 14 of the "Local Health Administration Law" (16 P.S. §12014), shall adopt any rule, regulation, standard, or procedure not in conformity with the Rules and Regulations of the Delaware County Health Department, and any such rule, regulation, standard, or procedure presently in existence shall be superseded to the extent that it is inconsistent with the Rules and Regulations adopted by the Department.

100.4. ENTRY AND INSPECTION OF PROPERTY, RECORDS, AND EQUIPMENT.

100.4.1. Under the authority of Section 12(c) of the "Local Health Administration Law" (16 P.S. §12012(c)), and subject to the limitations of the Constitutions of the United States and of the Commonwealth of Pennsylvania, the Director, upon showing proper identification of office, may enter and inspect any property, records, and equipment, at all reasonable times and in an emergency at any time.

100.4.2. The owner, operator, employee, or any other person having custody or control of such property, records, or equipment shall give the Director free access for the purpose of such inspection.

100.5. ALLEGED VIOLATIONS.

100.5.1. NOTICE. Whenever the Director determines that there has been a violation of any provision of these Rules and Regulations so as to cause a nuisance detrimental to the public health, he/she shall give notice of the alleged violation, in the manner provided herein, to the person responsible for compliance under these Rules and Regulations.

The notice shall:

- a. Be in writing;
- b. Specify the violation which exists, with reference to the applicable provision of these Rules and Regulations, together with a brief statement of the remedial action required; and
- c. Provide a reasonable time for the correction of any violation alleged.

100.5.2. SERVICE. A notice of violation shall be served upon the owner, operator, occupant, or any other party in interest, as the case may require. Service of the notice of violation shall be made in the following manner:

- a. By handing the notice to the person to be served; or

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- b. By handing the notice to the persons designated for receipt of service of original process under the Rules of Civil Procedure promulgated by the Supreme Court of Pennsylvania; or
- c. By mailing the notice to the last known address of the person to be served, by registered mail, postage prepaid, accompanied with a request for a return receipt; or, if service cannot be accomplished in this manner,
- d. By posting the notice of violation in a conspicuous place on the property.

100.5.3. REPEATED VIOLATIONS. The notice requirements of this section pertain only to first violations of any specified section. Upon a second and each successive violation, no notice to the alleged violator is required under this section. Where repeated violations occur at a regulated establishment, as defined in Chapter 600 of these Rules and Regulations, the License(s) and/or Certificate(s) to operate such a facility may be suspended and/or revoked in accordance with Chapter 600, §605.3.7.1.

100.6. EMERGENCY ORDERS.

100.6.1. Under the authority of Section 12(d) of the "Local Health Administration Law" (16 P.S. §12012(d)), the Director, whenever he/she determines that an emergency exists which necessitates immediate action to protect the public health, shall, without prior notice, issue a written order reciting the existence of the emergency and requiring corrective action necessary to meet the emergency.

100.6.2. Notwithstanding any other provisions of this Chapter, such emergency order shall be effective upon posting the notice of violation in a conspicuous place on the property and shall be complied with immediately.

100.7. NON-COMPLIANCE WITH EMERGENCY ORDERS.

100.7.1. In the event of the failure to comply with an order issued pursuant to any provision of these Rules and Regulations, the Director may take any action which is authorized by Section 12(d), of the "Local Health Administration Law" (16 P.S. §12012(d)), including, but not limited to, abatement of the nuisance, the cost of said abatement being recoverable from the owner of the premises where the nuisance or the cause of the nuisance was located, or from any other person who may have caused the nuisance, in the same manner as debts of like character are now collected by law, or in the manner provided by law for the collection of municipal claims.

100.7.2. In accordance with 100.7.1, immediately above, the Director may institute appropriate actions or proceedings at law or in equity to restrain, correct, or abate the violation of the order, or he/she may cause the order to be carried out at the expense of the County.

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100.7.3. Any legal action necessary to recover the expenses described in 100.7.2., immediately above, may be instituted by the Delaware County Council.

100.7.4. In lieu of, or in addition to the above procedures, the Delaware County Council may, upon the advice of the Director seek relief from a nuisance or threatened nuisance detrimental to the public health by instituting proceedings in a court of equity, in accordance with Section 12(d) of the "Local Health Administration Law" (16 P.S. §12012(d)).

100.7.5. Any action taken by the Director pursuant to this section will be reported to the Board of Health and the Delaware County Council within 24 hours.

100.8. HEARINGS AND APPEALS

100.8.1. PURPOSE. This section provides for appeals to and hearings before the Director of the Delaware County Health Department, sets forth definitions, and outlines procedures governing hearings and appeals.

100.8.2. DEFINITIONS. In addition to the definitions in 100.2. above, the following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

ACTION- Any order, notice, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any person.

NOTICE OF APPEAL- A written appeal that complies with all of the requirements of 100.8.4 of this section.

PARTY- Includes:

- a. Any person perfecting an application for hearing or appeal under the provisions of this section;
- b. Any person permitted by the Director to intervene in a hearing or appeal conducted pursuant to the provisions of this section;
- c. The Delaware County Health Department; and
- d. Any person against whom action may be taken after hearing or opportunity for hearing.

SECTION- This section (100.8) of the Rules and Regulations of the Delaware County Health Department governing hearings and appeals.

100.8.3. RIGHT TO APPEAL. Any person aggrieved by an action of the Department and who has a direct interest in such action may file a notice of appeal.

100.8.4. APPEALS.

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- a. The notice of appeal shall be filed no later than 10 days after written notice or issuance of the action by which the appellant is aggrieved.
- b. The notice of appeal must be signed by the person aggrieved or by his or her duly authorized attorney or agent and must contain the names, addresses, and telephone numbers of the appellant and his or her duly authorized attorney or agent, if any, and shall set forth with particularity the manner in which the appellant is aggrieved by the action of the Department, the extent to which the appellant has a direct interest in the action and the grounds for his or her appeal.
- c. The notice of appeal shall be filed in the Office of the Director, Department of Health, Media, Pennsylvania.
- d. All actions of the Department shall become final 10 days after written notice or issuance if no appeal has been perfected within that period under the provisions of this section.

100.8.5. HEARINGS.

- a. The Director shall schedule a full evidentiary hearing to determine any material or substantial issue of fact raised in any notice of appeal filed under the provisions of this section. Within 20 days after receipt of a notice of appeal, the Director shall give written notice to all parties of the time and place of the scheduled hearing.
 - 1. If the parties, in writing, stipulate to all material facts, agree to waive their right to a hearing, or agree to submit all evidence in writing, by affidavit or deposition, no hearing shall be held.
 - 2. If the Director determines that a formal hearing will not contribute to a determination of an appeal raising only physical or technical issues of fact that can be resolved by inspection, examination or testing, or raising only legal issues, no hearing shall be held. In lieu of holding a formal hearing, the Director shall comply with the provisions of 100.8.8. of this section.
 - 3. If a hearing is not held, the Director may consider written materials, including, but not limited to, briefs, photographs and affidavits which, within the time prescribed by the Director, shall be filed in the office of the Director and served upon all parties.
- b. The Director, on his or her own motion, may initiate a hearing by issuing a notice of hearing, which shall notify a person of his or her right to appear and show cause why the Department should not take such action as is proposed and specified therein. All notices of hearing shall be in writing and shall be served upon all parties at least 10 days prior to the hearing and shall state the time and place of the hearing, and the proposed action of the Department.

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- c. The Director may cause notice of any hearing to be published on the Department's website and in one newspaper of general circulation.
- d. Procedure at hearing.
 - 1. Any person may be represented at a hearing by counsel. A partnership maybe represented by any of its members, a corporation or association by any of its officers, and an authority or agency by an officer, or employee duly authorized in writing to represent the authority or agency.
 - 2. Examination and cross-examination of witnesses shall be permitted by all parties.
 - 3. No document or written material of any kind shall be introduced in evidence until a copy of the document or writing is furnished to every party.
 - 4. The Director may, on his or her own motion, or at the request of any party, subpoena witnesses and any material relevant to the proceedings.
 - 5. All hearings shall be open to the public unless deemed confidential by the Director acting upon his or her own motion or upon consideration of any party's motion, for good cause shown or when confidentiality is required by law.
 - 6. The Director may provide that all testimony be stenographically recorded and may keep a full and complete record of the proceedings. In the event the Director does not provide for recording of the testimony, such testimony shall be stenographically recorded at the request of any party agreeing to pay the costs thereof.
 - 7. The person filing the appeal shall bear the burden of proof and the burden of going forward with respect to all issues.
 - 8. In hearings held pursuant to this section, the Director shall hear and admit only such testimony and evidence as is relevant to the matters and issues set forth in the notice of appeal.
 - 9. The Director may dismiss any appeal, or part thereof, upon failure of the appellant to appear at any scheduled hearing or to go forward with respect to any issue.
- e. All requests for postponements of any scheduled hearings shall be filed in writing with the Director at the Department of Health office in Media, PA, and written notice given to all parties at least three days before the date set for such hearing. All postponements shall be within the discretion of the Director.

100.8.6. DECISION OF DIRECTOR. The Director shall, within a reasonable period of time after service of all materials submitted by the parties, after close of any hearing or rehearing, or after any inspection or test is conducted under 100.8.8, render a written decision on the matter in

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controversy. The Director shall make findings, give reasons for the decision and the decision shall be served personally or by mail upon all parties.

100.8.7. CONFERENCES.

- a. The Director, on his or her own motion, or at the request of any party, may hold a conference prior to, or during, or in lieu of, a hearing for the purpose of hearing offers of settlement or compromise or for the purpose of narrowing the matters in controversy. Any agreement entered into at such conference shall be in writing and shall be signed by all parties.
- b. All parties to the proceedings shall be notified of the time and place of the conference and shall have the right to be present at the conference.
- c. The Director may close the conference to the public.

100.8.8. DISPOSITION OF APPEAL WITHOUT HEARING. Where only legal questions or physical or technical facts are at issue in an appeal, and the Director determines that a formal hearing will not contribute to a resolution of the matters in issue, he or she must, within 20 days from receipt of the notice of appeal, conduct or order the conduct of an inspection, examination, or test, or request the filing of written briefs. The Director must otherwise comply with every other provision of this section.

100.8.9. REHEARING. The Director may, at the request of any party, grant the right to a rehearing. All applications for rehearing shall be filed in the office of the Director and served upon all parties within 15 days after the date of the decision of the Director. The application shall include a short and concise statement setting forth the grounds for the request. The Director shall, within a reasonable period of time after request for rehearing, deny the rehearing or give notice of the time and place of the rehearing, and conduct that hearing in accordance with 100.8.5. of this section.

100.8.10. APPEALS TO COURT OF COMMON PLEAS. Any party who is aggrieved by any decision of the Director rendered pursuant to 100.8.6. of this section may appeal therefrom to the Court of Common Pleas of Delaware County as provided by law.

100.8.11. STAY OF PROCEEDINGS. The filing of a notice of appeal shall not stay any action by the Department or hold in abeyance any order of the Director unless a stay of proceedings is granted by the Director.

- a. A petition for stay of proceedings may be filed at any time during the pendency of an appeal in the office of the Director and shall set forth with particularity the reasons for which it is requested. Copies of any such petition shall be served on all parties.
- b. The Director may, upon petition, or on his or her own motion, grant a stay of proceedings, except that a stay may not be granted where it may result in serious and immediate danger to the public health and welfare.

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c. The grant of a stay shall suspend the effect of the appealed action of the Department, but shall not stay any action of the Department, which is not subject to the appeal, nor shall it stay the enforcement of any Department rule or regulation.

100.8.12. SERVICE. Where notice is given by United States mail, the time of service of such notice shall be the date of posting.

100.8.13. APPLICABILITY.

a. This section shall not govern procedures in informal conferences held by the Department in the ordinary course of the administration of its rules and regulations, nor shall it in any way limit the right of the Department to conduct such conferences or the right of any person to request that such conferences be held.

b. This section shall not apply to the procedures governing the employment or dismissal of Department personnel.

100.9. SEVERABILITY. If any provision of these Rules and Regulations, or the application of any provision to particular circumstances is held invalid, the remainder of these Rules and Regulations, or the application of such provision to other circumstances, shall not be affected. The Rules and Regulations are to be liberally construed by the Department and applied to promote its underlying purpose of protecting public health.

100.10. PENALTIES. Any person who violates any of the provisions of these Rules and Regulations, or who interferes with a Health Officer or any other agent of the Department in the discharge of the applicant's official duties, shall be subject to the penalty provisions of the enabling legislation for these Rules and Regulations, namely, Section 27 of the "Local Health Administration Law", Act 315, approved August 24, 1951, as amended, as found in 16 P.S. §12027.

100.11. ADOPTION BY REFERENCE. The Local Health Administration Law, Act 315, as amended, as found in 16 P.S. §12001 et seq., and its corresponding regulations, are adopted by reference. Subsequent amendments of Act 315 and its corresponding regulations are also automatically adopted.

100.12. REPEAL OF PRIOR REGULATIONS. Any rules and regulations regarding functions now covered under the Delaware County Health Department which were previously adopted and approved by the Delaware County Council, as amended, are hereby expressly repealed as of the effective date of the present Rules and Regulations.