REQUEST FOR BOARD ACTION

ITEM NO. 13.

DATE OF MEETING: October 20, 2014

REQUESTED BY: Carolyn Moser, Health and Human Services Director, Pender County Health Department.

SHORT TITLE: Resolution to Approve the Pender County Board of Health's Administrative Policies for *Adjudication Process* and for *Residency of Department Head.*

BACKGROUND: The Pender County Commissioners serving as the Pender County Board of Health is to review and update Administrative Policies at least annually.

SPECIFIC ACTION REQUESTED: To consider a resolution accepting the Pender County Board of Health's updated Administrative Policies for *Adjudication Process* and for *Residency of Department Head.*

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

DM
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the board hereby authorizes to approve a resolution to accept the Pender County Board of Health's updated Administrative Policies for *Adjudication Process* and for *Residency of Department Head.* The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED_____ SECONDED_____

APPROVED_____ DENIED_____UNANIMOUS

YEA VOTES: Williams_____ McCoy ____ Brown ____ Tate_____ Ward_____

_____ 10/20/14
James David Williams, Chairman Date

_____ 10/20/14
ATTEST Date

PENDER COUNTY HEALTH DEPARTMENT

Title: Adjudication Process	**Department: Administration/BOCC** **Board of Health**
Effective Date: May 10, 2012	**Last Revised: September 10, 2014**
Approved by: _____ David Williams, Chair Pender Co. Commissioners	_____ Carolyn Moser, Health Director

Background and Purpose: To assure the Pender County Health Department follows procedures for adjudication set forth in NC G.S. 130A-24.

Scope: Pender County Commissioners serving in the role of Pender County Board of Health and Pender County Health Director

Applicable Laws and Rules:

NC General Statutes 130A-24
NC General Statutes 130A-34
NC General Statutes 130A-39
NC General Statutes 130A-41

Policy: The Pender County Health Department and the Pender County Board of Health shall follow the adjudication process as outlined in NC G.S. 130A-24.

PENDER COUNTY HEALTH DEPARTMENT

Title: Residency of Department Head

Department: Administration/
Pender Co. Advisory Board of Health/
Pender Co. Commission

Effective Date: November 18, 2008

Last Revised: January 12, 2012
September 12, 2013
September 10, 2014

Approved by:

Jimmy Holland, Chair — Date
Pender County Board of Health

Carolyn Moser, MPA — Date
Health Director

David Williams, Chair, Pender Co. Commission — Date

Background and Purpose: The Pender County Commission has revised the residency policy for county department heads. Department heads are no longer required to reside within the county.

Scope: This policy applies to the Health Director.

Procedure: The Health Director who accepts employment with Pender County shall be encouraged to establish permanent legal residency within the County with twelve (12) months from the date of initial employment. Residency requirements can be subject to change based on the decision of the Pender County Commissioners.

§ 130A-39. Powers and duties of a local board of health.

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Public Health or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Public Health or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health rule shall become effective upon adoption unless a later effective date is specified in the rule.

(e) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of this State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", for services performed pursuant to Part 11, Article 8 of this Chapter, "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 476, s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4; 1983, c. 891, s. 2; 1985, c. 175, s. 1; 1989, c. 577, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 10; 1993 (Reg. Sess., 1994), c. 670, s. 2; 1995, c. 507, s. 26.8(c); 2006-202, s. 6; 2007-182, s. 2.)

Effect of Amendments. — Session Laws 2006-202, s. 6, effective August 7, 2006, added "and for services performed pursuant to G.S. 87-97" and made a minor stylistic change at the end of the second sentence of subsection (g).

Session Laws 2007-182, s. 2, effective July 5, 2007, substituted "Commission for Public Health" for "Commission for Health Services" twice in subsection (b).

Legal Periodicals. — For note, "Preemption Hogwash: North Carolina's Judicial Repeal of Local Authority to Regulate Hog Farms in Craig v. County of Chatham," see 80 N.C.L. Rev. 2121 (2002).

CASE NOTES

Rule-Making Powers. — A board of health acts within its rule-making powers when it enacts a regulation which (1) is related to the promotion or protection of health, (2) is reasonable in light of the health risk addressed, (3) is not violative of any law or constitutional provision, (4) is not discriminatory, and (5) does not make distinctions based upon policy concerns traditionally reserved for legislative bodies. City of Roanoke Rapids v. Peedin, 124 N.C. App. 578, 478 S.E.2d 528 (1996).

Although the county board of health could adopt rules more strict than those adopted at the state level to protect the public health, under G.S. 130A-39(b), its rules attempting to regulate swine farms more strictly than the state could not stand because they insufficiently expressed a rationale for the county's stricter regulation. Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

Limited Powers. — County boards of health and other administrative agencies, being creatures of statute, have only such powers as are conferred upon them by statute, either expressly or by necessary implication. Champion v. Vance County Bd. of Health, 221 N.C. 96, 19 S.E.2d 239 (1942), decided under former statutory provisions.

Powers Exceeded. — Enactment of county smoking rules exceeded the general limitations imposed upon rule-making powers of boards of health. City of Roanoke Rapids v. Peedin, 124 N.C. App. 578, 478 S.E.2d 528 (1996).

Findings of Board Not Final. — The finding of the county board of health that the maintenance of a cemetery upon the watershed is a nuisance to the public health has not the same force as the positive declarations of statute, and it may be shown in answer to a notice to show cause why an injunction should not be continued to the final hearing that the particular cemetery, as maintained, was not a nuisance entitling the plaintiff to injunctive relief. Board of Health v. Lewis, 196 N.C. 641, 146 S.E. 592 (1929), decided under former statutory provisions.

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

Cited in Houck & Sons v. Transylvania County, 852 F. Supp. 442

violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure of an establishment to maintain a minimum grade of C. The Secretary of Environment and Natural Resources shall immediately give notice of the suspension or revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23.

(e) The Secretary of Environment and Natural Resources shall have all of the applicable rights enumerated in this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1987, c. 827, s. 1; c. 438, s. 3; 1993, c. 211, s. 2; 1993 (Reg. Sess., 1994), c. 732, s. 2; 1995, c. 123, s. 15; 1997-443, s. 11A.65.)

§ 130A-24. Appeals procedure.

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(a1) Any person appealing an action taken by the Department pursuant to this Chapter or rules of the Commission shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a). The petition shall be filed not later than 30 days after notice of the action which confers the right of appeal unless a federal statute or regulation provides for a different time limitation. The time limitation imposed under this subsection shall commence when notice of the agency decision is given to all persons aggrieved. Such notice shall be provided to all persons known to the agency by personal delivery or by the placing of notice in an official depository of the United States Postal Service addressed to the person at the latest address provided to the agency by the person.

(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with this subsection and subsections (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the person not less than 10 days' notice of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The scope of review in district court shall be the same as in G.S. 150B-51.

(e) The appeals procedures enumerated in this section shall apply to appeals concerning the enforcement of rules, the imposition of administrative penalties, or any other action taken by the Department of Environment and Natural Resources pursuant to Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248; 1993, c. 211, s. 1; 1997-443, s. 11A.66; 1998-217, s. 33.)

CASE NOTES

Subject Matter Jurisdiction. — Trial court was without subject matter jurisdiction to enter findings or conclusions regarding an animal rights organization's claim against a private agency for alleged violations by the agency of G.S. 130A-192, as enforcement of the statute was proper against the local board of health in the Office of Administrative Hearings under G.S. 130A-4(a) and G.S. 130A-24. Justice for Animals, Inc. v. Lenoir County SPCA, Inc., 168 N.C. App. 298, 607 S.E.2d 317, 2005 N.C. App. LEXIS 254 (2005).