

Regulation – Hearing Procedures for Appeals from Mask Mandate Order

This regulation establishes procedures for conducting an administrative hearing in regard to orders of the Lexington-Fayette Urban County Health Department made pursuant to its authority set forth in 902 KAR 2:210E and any related Executive Order of the Governor of Kentucky.

1. A person who has received a citation and/or order holding them in violation of a mask mandate (“Appellant”) may request an evidentiary hearing by submitting a request in writing or by specified email.
 - a. The request for hearing must be received by LFCHD within the period of time set forth in the Notice to Correct, Form DFS 210.
 - b. The request for hearing must contain:
 - (i) the name and physical address or e-mail address of the person requesting the hearing;
 - (ii) a copy of the order being appealed from;
 - (iii) a statement explaining why the person requesting the hearing is entitled to administrative relief; and
 - (iv) a request for specific relief.
2. Upon receipt of a request for a hearing, LFCHD will send a notice of hearing to the Appellant.
 - a. The notice will be sent to the Appellant’s address, whether physical or email, set forth in the request for a hearing, unless otherwise expressly requested by the Appellant.
 - b. The hearing shall be held no later than thirty (30) days after receipt of the request for a hearing. The thirty day period does not include the date of receipt of the request.
 - c. The notice of hearing shall set forth the time, date and method of attendance for the hearing, which may include a hearing by telephone and/or video teleconference. If the Appellant cannot attend the hearing on the date or time established by the notice of hearing, they may request a different time or date for a hearing, which may be set more than five days after receipt of the request for a hearing.

3. Conduct of the hearing.

a. The hearing shall be administered by a hearing officer who shall conduct the administrative hearing and shall administer oaths and affirmations, rule on evidentiary matters, and otherwise regulate the course of the proceedings.

b. The Appellant shall have:

- i. the right to counsel;
- ii. the right to present evidence;
- iii. the right to cross-examine any witness

c. Following the close of the evidentiary hearing, the hearing officer shall make a recommended order to the Commissioner of Health. The recommended order shall contain findings of fact, conclusions of law and a recommendation of whether the relief requested by the Appellant should be granted or denied. The recommended order shall contain a statement of the parties' rights to further administrative or judicial review, along with the address for the filing of any objections to the recommended order.

i. Notice and a copy of the recommended order shall be provided to the Appellant, which shall be sent through the same method and to the same address as used for requesting the evidentiary hearing unless otherwise expressly requested.

ii. The parties shall have ten (10) business days from service of the notice and copy of the recommended order to file any objections to the recommended order with the Commissioner of Health.

d. The Commissioner of Health shall have five business days from the deadline to file exceptions to review the recommended order and any objections thereto and enter a final order.

i. The final order may accept, reject or modify the recommended order.

ii. Any appeal of the Commissioner's final order may be taken to the Lexington-Fayette Urban County Board of Health ("Board of Health") as set forth in the Bylaws of the Lexington-Fayette Urban County Board of Health and Health Department. No new evidence shall be permitted during the proceedings before the Board of Health unless such evidence was unavailable through reasonable means at the time of the hearing before the hearing officer, as described herein.

4. Effect of the Proceeding. The scheduling or holding of a hearing pursuant to this regulation shall not operate to terminate or stay any notice to correct and/or citation, or the affirmative obligations imposed upon a person by the same.