

Montgomery County Board of Commissioners

Ordinance 2021-27

AN ORDINANCE AMENDING COUNTY CODE REGARDING HEALTH DEPARTMENT

Whereas, Senate Enrolled Act 5 (2021) modified the emergency powers, appointment powers, removal powers and other powers of the local Health Department; and

Whereas, under Senate Enrolled Act 5, the Board of County Commissioners (Board) is required to develop an appeal procedure which relates to the appeal of orders made by the Local Health Officer related to any public health emergency or disaster emergency; and

Whereas, the Board finds that Section 33.16 should be added to the County Code of Ordinances in order to comply with Senate Enrolled Act 5.

Therefore, it is ordained that a new section, Section 33.16 of the Montgomery County Code, is hereby added to the County Code and that this new section shall read as follows:

“33.16 HEALTH DEPARTMENT

(A) Establishment. Pursuant to Indiana Code §16-20, there is established the Montgomery County Health Department. The Department is an agency of the County government and is administratively responsible to the Board of County Commissioners.

(B) Board. The Health Department is governed by the Montgomery County Health Board. The members of the Board are appointed by the Board of Commissioners.

(1) Composition. The Board is comprised of seven (7) members. Four (4) members must be knowledgeable in public health. Two (2) members must be licensed physicians, and two (2) must be a registered nurse, registered pharmacist, licensed dentist, hospital administrator, social worker, attorney with expertise in health matters, school superintendent, licensed veterinarian, registered professional engineer or environmental scientist. Two (2) members must represent the public, and one (1) member must be either a person knowledgeable or a member of the public.

(2) Officers. The Board will elect a chair, vice chair, and other officers the Board consider necessary.

(3) Removal. A member of the Board shall be removed if the member (1) is absent for three consecutive meetings, (2) is absent for four or more meetings during a calendar year, or (3) fails to perform his or her duties.

(4) Vacancies. If a vacancy occurs, the Board will provide to the Board of Commissioners a list of five names of potential new members. This list must contain at least three (3) persons with professional experience and must include at least one licensed physician. The Board of Commissioners will appoint a member to fill the vacancy.

(5) Term. Each Board Member will serve a 4-year term. These terms will be staggered.

(6) Eligibility. In order to be eligible to serve on the board, a person must be a United States citizen and must reside in Montgomery County.

(7) Procedures. The Board may adopt procedural rules for the Board's guidance and may establish administrative and personnel policies of the Department that are consistent with the administrative operating policy of the Montgomery County government.

(8) Compensation. The Board members may receive compensation as determined by the Montgomery County Council.

(C) Board Duties. The Board shall:

(1) Submit to the Board of Commissioners and the County Council an annual budget at the regular time for consideration of annual budgets;

(2) provide, equip and maintain suitable offices, facilities and appliances for the Department;

(3) publish a pamphlet, within 90 days of January 1st each year, for free distribution, an annual report for the previous year which shows the following:

(a) the amount of money received from all sources;

(b) the name of donors;

(c) how all money has been expended and for what purpose;

and

(d) other statistics and information concerning the work of the Health Department that the Board considers to be of general interest.

(4) prescribe the duties of all officers and employees;

(5) authorize payment of salaries and all other Department expenses from the proper fund;

(6) take action authorized by statute or rule of the Indiana Department of Health to control communicable diseases;

(7) make, or delegate a representative to make, sanitary and health inspections in order to carry out state law; and

(8) appoint the Local Health Officer, subject to approval by the Board of County Commissioners.

(D) Board Powers: The Board may:

(1) adopt procedural rules for the Board's guidance and to establish administrative and personnel policies of the Department that are consistent with the administrative operating policy of the Board of County Commissioners;

(2) enter into contract(s) with the Indiana State Department of Health, other local boards, other units of government, a private individual, or a corporation for the provision of health services in Montgomery County. The private contracts are subject to approval by the Board of County Commissioners;

(3) contract with or purchase from any individual, organization, limited liability company, partnership or corporation for planning services considered essential to the Department; and

(4) with approval of the Board of County Commissioners, establish and collect fees for specific services and records established by local ordinance or state law, as long as the fees do not exceed the cost of services provided.

(E) Local Health Officer

(1) **Appointment.** The Board shall appoint a Local Health Officer. A person must be a licensed physician. This appointment is, after June 30, 2021, subject to approval by the Board of County Commissioners.

(2) **Term.** The term of appointment is four (4) years;

(3) **Duties.** The Local Health Officer shall:

(a) make to the Board a monthly report of the work done and, after approval by the Board, make the report a permanent record of the Department;

(b) keep full and permanent records of his or her public health work and minutes of the Board meetings;

(c) make reports to the Indiana State Department of Health as required by the State;

(d) attend all meetings of the Indiana State Department of Health, when requested, for consultation concerning any matter concerning public health;

(e) collect, record and report to the Indiana State Department of Health the vital statistics of Montgomery County;

(f) be the registrar of all births and deaths in Montgomery County and, by the 4th day of each month, forward to the Indiana State Department of Health the original record thereof;

(g) enforce the health laws, ordinances, rules and regulations of the County Health Department and Indiana State Department of Health; and

(h) upon receiving a complaint asserting that a person has instituted, permitted or maintained any condition that may transmit, generate or promote disease, document the complaint and, upon verifying those conditions, order the abatement of those conditions and, if the person refuses or neglects to obey the order, transmit the information to the County Attorney who shall institute proceedings in the courts for enforcement.

(4) **Powers.** The Local Health Officer may:

(a) appoint and employ public health nurses, environmental health specialists, computer programmers, clerks and other personnel, and an administrator of public health, subject to confirmation of the Board, as is necessary and reasonable to carry out and perform the duties of the Local Health Office;

(b) receive financial assistance from an individual, or organization or the State of federal government, subject to the approval of such assistance by the Board and the Board of County Commissioners;

(c) make sanitary inspections and surveys of all public buildings and institutions;

(d) inspect private property in compliance with Indiana Code 16-20-1-23;

(e) order schools closed and forbid public gatherings when considered necessary to prevent and stop epidemics; and

(f) order religious organizations closed only if the order complies with Indiana Code 10-14-3-12.5 through 10-14-3-12.7.

(5) **Removal.** The Board may remove the Local Health Officer for failure to perform the Officer's statutory duties, failure to enforce rules of the Indiana State Department of Health, or other good cause, subject to Indiana Code 16-19-3-12, 13 and 15. If the Board intends to remove the Local Health Officer, the Board must provide written notice to the Officer of its intention, the grounds asserts and the date, time and place of the public meeting at which the action will be considered. This notice must be delivered to the Officer at least five (5) days prior to the meeting. The Officer is entitled to representation by an attorney at this meeting.

(F) Employees of Department

(1) Employees shall perform the duties of the Local Officer, as delegated by the Local Health Officer, with approval of the Board.

(2) Employees must meet the minimum qualifications established by the Board;

(3) Employees shall perform additional duties prescribed by the rules of the Indiana State Department of Health and Board under the general supervision of the Local Health Officer;

(4) Employees are, by local ordinance, part of the County classification system for the respective public health personnel positions;

(5) If an appointee or employee of a Local Health Officer is not a licensed water well driller under Indiana Code 25-3-9-3, the appointee or employee may not inspect the drilling of a water well.

(6) The County Council shall fix the compensation of the employees of the Department, in a manner prescribed by Indiana Code 36-2-5 or 36-3-6, after consideration of the recommendations of the Board.

(G) **Mandatory Additional Services.** A proposed rule of the Indiana State Department of Health or the Board mandating additional or revised local services must include a general fund impact statement of the rule or ordinance.

(H) Enforcement Actions During Public Emergencies or Disaster Emergency

(1) **Authorization for Enforcement Actions.** During a declared public health emergency or disaster emergency, all enforcement actions related to such emergencies or disasters must be authorized by the Board of County Commissioners.

(2) **Right of Appeal.** Any enforcement action taken by the Local Health Officer in response to either a declared local public health emergency determined by the Health Department or the Local Health Officer or a disaster emergency declared by the Governor under Indiana Code 10-14-3-12 is appealable by any aggrieved person to the Board of County Commissioners.

(2) **Procedure for Appeal.** Any appeal must be filed within seven (7) days of the receipt of notice of the issuance of the enforcement action, must be in writing, and delivered to the County Auditor. The Board of County Commissioner may enter an order staying the enforcement during the appeal. Within fifteen (15) days of receipt of the appeal, the Board of County Commissioners will schedule a hearing on the appeal and provide notice of the appeal hearing to the appellant and to the Local Health Officer of the date, time and place of the hearing.

(3) **Appeal Hearing.** The Board of County Commissioners will conduct an appeal hearing within fifteen days of the issuance of the notice of hearing. The appellant must attend the hearing or be represented at the hearing. At the hearing, the appellant will be allowed to present evidence which supports the appeal. After presentation of the appellant's evidence, the Local Health Officer, or his or her designee, may respond to the appeal and present evidence which supports the enforcement order. All parties have the right to present evidence and witnesses and to be represented by attorneys at the hearing. The County Attorney will represent the Local Health Officer at the hearing.

(4) **Pre-Hearing Exchange of Information and Continuances.** At least five (5) days prior to the hearing, both the appellant and the Local Health Officer will provide to the Board of County Commissioners and to the other party to the appeal any and all documents and a brief summary of evidence each intends to offer at the hearing. The Local Health Officer may request a continuance of the hearing if more time is needed or if the Officer is not available at the time scheduled by the Board of County Commissioners.

(5) **Standard For Review.** During an appeal, the Board of County Commissioners will consider whether the enforcement action is supported by the evidence, consistent with applicable ordinance or law, and taken with

proper procedural due process. The Board of County Commissioners will, within fifteen (15) days of the hearing, issue written findings and conclusions which support its decision of the appeal. These findings and conclusions will be mailed to the appellant and the Local Health Officer.

(6) **Consolidation of Appeals.** The Board of County Commissioners may consolidate two or more appeals filed from the same order or involving a common question of law or fact.

(7) **Record of Appeal.** The appeal hearing will be recorded, and the Board of Commissioners will maintain the record and all documents related to the appeal.

(8) **Dismissal.** If the appellant fails to attend the hearing, either in person or by way of a representative, the appeal will be dismissed.

(9) **Appeal of Decision of County Commissioners.** Either party may appeal the decision of the Board of County Commissioners to the Montgomery Circuit Court. Any such appeal must be filed within thirty (30) days of the decision by the Board of County Commissioners at a public meeting.

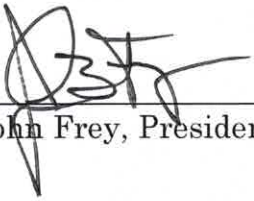
(I) **Local Orders Addressing Executive Orders.** If a local order addresses any aspect of a declared emergency that is either not addressed by an Executive Order or if the local order is more stringent than the Executive Order, the local order may not take effect until and unless approved by the Board of County Commissioners. Local orders which are less stringent than the Executive Order, to the extent such orders are allowed under the Executive Order, do not require approval by the County Commissioners."

It is further ordained that this ordinance shall be effective upon adoption.

It is further ordained that all other provisions of the Montgomery County Code of Ordinances which are not specifically amended by this ordinance shall remain in full force and effect.


Adopted this 23rd day of August, 2021.

Montgomery County Board of
Commissioners:



John Frey, President

James D. Fulwider, Vice President



Dan Guard, Member

Attest:



Jennifer Andel, Auditor