

ORDINANCE NO. 9858 (N.S.)

AN ORDINANCE AMENDING SECTIONS 61.101, 61.113, 61.125, 61.126, 61.127, 61.210, 61.224, 61.225, 61.230, 65.101, 67.431, 67.446, 68.913 and 68.330.1 OF THE SAN DIEGO COUNTY CODE, AND ADDING SECTION 68.1212 TO THE COUNTY CODE, RELATING TO ELECTRONIC FILING OF PERMIT APPLICATIONS, AND TO HEARINGS AND APPEALS FOR THE DENIAL, SUSPENSION OR REVOCATION OF HEALTH PERMITS

Section 1. The Board of Supervisors finds and determines that amendments to County Code of Regulatory Ordinances ("County Code") provisions concerning permit applications and application processing are needed to allow County permitting processes to efficiently adapt to electronic communication technologies. The Board of Supervisors further finds and determines that amendments to County Code provisions concerning the denial, suspension or revocation of permits issued by the County Department of Environmental Health; and concerning hearings and appeals related to such permit actions, are needed to conform to state general law and to streamline appeals processes.

Section 2. Section 61.101 of the County Code, concerning Department of Environmental Health appeals procedures generally, is amended to read as follows:

SEC. 61.101. ESTABLISHMENT OF APPEAL PROCEDURES

This chapter establishes an appeal procedure for certain permits denied, suspended or revoked by the Department of Environmental Health (DEH) pursuant to this Chapter. The appeal procedure also applies to other programs regulated by DEH in this code that refer to this appeal procedure.

Section 3. Section 61.113 of the County Code, concerning appeals related to food establishments, is amended to read as follows:

SEC. 61.113. APPEAL FROM DENIAL, SUSPENSION OR REVOCATION OF PERMIT.

- (a) The following persons may appeal pursuant to this chapter:
 - (1) A person denied a permit required under this division;
 - (2) A person notified by DEH a decision or intent to suspend or revoke a permit required under this division,
 - (3) A person ordered to show cause why a permit issued under this division should not be suspended or revoked.

(b) A person appealing pursuant to subsection (a) above shall file an appeal within 15 days of receiving notice of denial or other adverse action from DEH. Receipt of the notice shall be presumed to have occurred no later than five days after DEH mailed notice to the applicant.

(c) The hearing shall be conducted as provided in Section 61.125 of this code.

(d) Appealing the denial of a permit shall not stay the denial, nor shall it entitle an applicant to operate without a required permit.

Section 4. Section 61.125 of the County Code, concerning Department of Environmental health hearing rules and procedures generally, is amended to read as follows.

SEC. 61.125. DEPARTMENTAL HEARING RULES AND PROCEDURES.

The following rules and procedures shall govern departmental hearings for appeals based on Section 61.113(a) held pursuant to this chapter and other chapters in this title as authorized in this code

(a) Hearing Officer: The Director shall appoint the hearing officer.

(b) Time: DEH shall schedule a hearing within 30 days of the date it received a request for appeal and shall give the appellant at least 10 days notice of the hearing.

(c) Continuance: The hearing officer may continue a hearing for good cause.

(d) Transcript of Hearing: Although not required, an appellant may furnish a shorthand reporter or any other method of reporting the hearing.

(e) Findings: The hearing officer shall determine:

(1) In cases where DEH has denied a permit, whether the evidence supports DEH's decision; or;

(2) In cases where DEH proposes to suspend or revoke a permit, whether the evidence establishes the permittee committed a violation of this code, applicable State law or one or more conditions of the permit;

(3) In cases under subsection (2) above where the evidence supports DEH's proposed action, whether allowing the permittee to

continue to operate until a subsequent appeal is decided would endanger the public health, safety or welfare.

(f) Decision and Order: The hearing officer shall issue a decision and order, supported by findings, as follows:

(1) In cases where DEH denied a permit, the hearing officer shall either sustain DEH's denial or direct the department to issue the permit;

(2) In cases where DEH proposes to suspend or revoke a permit, whether the evidence establishes the appellant violated this code, State law or a permit condition. If the hearing officer finds that the evidence establishes a violation occurred the hearing officer shall sustain the proposed action and may modify the period of suspension or revocation and/or any condition DEH proposes. If the hearing officer finds the evidence does not establish the violation the hearing officer shall find in favor of the appellant.

(3) In cases under subsection (2) above, if the hearing officer sustains DEH's determination, the hearing officer shall also determine whether public health, safety or welfare would be endangered if the permittee continued to operate without special restrictions or conditions during any subsequent appeal. If the hearing officer finds a danger to the public, he shall direct the permittee not to operate during any appeal or to operate subject to certain conditions while an appeal is pending, otherwise the hearing officer may allow the permittee to operate if the permittee appeals.

(g) The decision and order of the hearing officer is final unless appealed pursuant to section 61.126.

Section 5. Section 61.125.1 is added to the County Code, concerning administrative probation, to read as follows:

SEC. 61.125.1 ADMINISTRATIVE PROBATION

(a) A permittee and DEH may modify a decision by a departmental hearing officer to suspend a permit, and agree instead on alternative conditions or a different duration for the suspension.

(b) If DEH determines a permittee violated the terms of an administrative probation it may reinstate the underlying suspension and initiate further enforcement actions. DEH's action reinstating a suspension is not appealable.

(c) The decisions of the Director to deny administrative probation, to impose specific conditions of probation, or to reinstate an underlying suspension, are final and may not be appealed.

Section 6. Section 61.126 of the County Code concerning the right to appeal Department of Environmental Health actions to a County hearing officer, is amended to read as follows.

SEC. 61.126. APPEAL TO AN COUNTY HEARING OFFICER

(a) Any permittee or applicant may appeal the decision or the order of a departmental hearing officer issued pursuant to section 61.125 to a County hearing officer, appointed pursuant to County Administrative Code, section 650. To appeal under this section the appellant shall file a written appeal to the Clerk of the Board of Supervisors within 15 days of the decision or order appealed from, setting forth the reasons for the appeal.

(b) The Clerk of the Board of Supervisors shall assign an appeal to a County hearing officer from the list of approved hearing officers, on a rotating basis.

(c) The hearing officer shall schedule a date for hearing to be held no later than 30 days after the hearing was assigned by the Clerk. At least 10 days prior to the date of the hearing on the appeal the Clerk shall notify the appellant and DEH of the date, time and place of the hearing.

Section 7. Section 61.127 of the County Code, concerning procedures for appeals of Department of Environmental Health actions generally, is amended to read as follows.

SEC. 61.127. RULES AND PROCEDURES FOR APPEALS TO A COUNTY HEARING OFFICER

The following rules and procedures shall govern appeals to a County hearing officer field under section 61.126:

(a) Effect of Appeal: Filing a notice of appeal shall stay any order of the a departmental hearing officer suspending or revoking a permit or ordering that a permitted facility be closed unless the departmental hearing officer found that the public health, safety or welfare would be endangered if a permittee continued to operate without special conditions or restrictions during an appeal. Any special conditions or restrictions specified by the department hearing officer shall remain in effect during an appeal.

(b) Hearing De Novo: The hearing under this section shall be de novo at which the parties may offer any and all relevant evidence, whether or not that evidence was before the departmental hearing officer, and may make oral arguments. The County hearing officer is not bound or limited in any way by the evidence before the departmental hearing officer, although he may consider that evidence, or by the rulings, findings, decision or order of the departmental hearing officer.

(c) Evidence at the hearing shall be taken in substantially the manner set out in Chapter 1 of Division 6 of Title 1 of this code.

(d) Continuance – Transcript – Irregularities – Findings – Decision – Order – Modification of Order – Probation. The provisions of Subsections (c), (d), (e), and (f) and (g) of Section 61.125 apply to hearings conducted pursuant to this section; provided, that in the hearings conducted pursuant to this section the County hearing officer shall exercise the powers given to the departmental hearing officer by section 61.125. The decision and order of the County hearing officer shall be final for all purposes.

(e) At the conclusion of the hearing, the County hearing officer may uphold the denial, suspension, revocation or other decision of the departmental hearing officer, or may modify or reverse the decision.

(f) The County hearing officer shall, within 5 days of the conclusion of the hearing, file with the Clerk of the Board of Supervisors written findings of fact and conclusions of law and a written decision. The decision of the County hearing officer is final when filed with the Clerk.

Section 8. Section 61.224 of the County Code, concerning wholesale food warehouses, is amended to read as follows.

SEC. 61.224. PERMIT REVOCATION

The Director may, after providing opportunity for a hearing as provided in sections 61.113 and 61.125 of this code, revoke a permit for serious or repeated violations of any of the requirements of this chapter, interference in the performance of the duty of the Director, or an immediate danger to the public health or safety. Any wholesale food warehouse for which the permit has been revoked shall close and remain closed until a new permit has been issued.

Section 9. Section 61.225 of the County Code, concerning wholesale food warehouses, is amended to read as follows.

SEC. 61.225. APPEAL OF WHOLESAL FOOD WAREHOUSE PERMIT DENIALS, SUSPENSIONS AND REVOCATIONS

A person denied a wholesale food warehouse permit, or a permittee whose permit has been suspended or revoked may appeal the denial, suspension or revocation to in the manner set forth in Sections 61.113 and 61.126 of this code.

Section 10. Section 61.230 of the County Code, concerning wholesale food warehouses, is amended to read as follows:

SEC. 61.230: ENFORCEMENT HEARING PROCEDURES OTHER THAN FOR PERMIT SUSPENSIONS OR REVOCATIONS

Hearings regarding non-compliance with this chapter that the Director does not propose be resolved through a permit suspension or revocation shall be held in the following manner:

(a) Director requirement. The Director may require the owner, operator or manager of a wholesale food warehouse to attend an administrative hearing before a departmental hearing officer pursuant to section 61.113 of this code, to discuss violations of this chapter, disposition of embargoed or impounded items, risks and risk reduction at the facility or other significant issues related to food facilities.

(b) Request of facility owner, operator or manager. The owner, operator or manager of a wholesale food warehouse may request an administrative hearing before a departmental hearing officer pursuant to section 61.113 of this code to discuss events related to the enforcement of this chapter at his food facility. Such events include notices to comply, notices of violation, risk management plan provisions, and disposition of embargoed or impounded items. The owner, operator or manager shall submit a request for a hearing within 15 days after the event. A failure to request a hearing within 15 days of the event shall be deemed a waiver of the right to a hearing. The hearing shall be held within 15 days of the receipt of the request for a hearing. When circumstances warrant, the departmental hearing officer may order a hearing at a reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) Hearing rules and procedures and appeals are pursuant to section 61.125, of this code.

Section 11. Section 65.101 of the County Code, concerning the submission of permit applications, is amended to read as follows:

SEC. 65.101. APPLICATION.

Every applicant for a permit, license or registration required by the Department of Environmental Health shall file a written application on a form prescribed by said Department. This may include an electronic application with

an electronic signature filed in a manner prescribed by the Department. The application shall state the name and address of the applicant, the description of the property by street and number wherein or whereon it is proposed to conduct the business or activity by for which the permit or license is required, the nature of the permit or license for which application is made, the character of the business or activity proposed to be conducted and any other information as the Department of Environmental Health may require.

Section 12. Section 67.431 of the County Code, concerning the abatement of nuisances, is amended to read as follows.

SEC. 67.431. ORDER TO ABATE NUISANCE.

Whenever the Director determines that an abandoned or other well is causing a nuisance by polluting or contaminating ground water, or constitutes a safety hazard, he may issue a written order requiring that the conditions productive of the nuisance be abated within a period of ten days thereafter and shall forthwith serve the order upon the person occupying the premises, if any, and if no person occupies the premises, the order shall be posted upon said premises in a conspicuous place. In addition, a copy shall be mailed to the owners of the premises as their names and addresses appear upon the last equalized assessment roll and to the responsible party, if different than the owner. The Director may for good cause extend the time specified in the order or otherwise modify or rescind the order.

The Director shall advise the possessors, responsible parties and owners of the property of their right to appeal the order of abatement pursuant to the nuisance abatement appeal provisions of this code.

Section 13. Section 67.446 of the County Code, concerning permits to install wells, is amended to read as follows.

SEC. 67.446. REVOCATION OR SUSPENSION.

1. A permit issued hereunder may be revoked or suspended by the Director if he determines that a violation of this Chapter exists, that written notice has been directed to the permittee specifying the violation and that the permittee has failed or neglected to make the necessary adjustments within 30 days after receiving the notice. A permit may also be revoked or suspended by the Director of the Department of Environmental Health if he/she determines that the person to whom any permit was issued pursuant to this Chapter has obtained the same by fraud or misrepresentation. A suspension or revocation may be appealed as set out in Sections 61.113 and 61.126 of this code.

2. The suspension or revocation of any permit shall not be effective until notice thereof in writing is mailed to the permittee, and the time for filing an appeal has expired. The notice shall advise the permittee of his right to appeal.

Section 14. Section 68.913 of the County Code, concerning Certified Unified Program Agency permits, is amended to read as follows:

SEC. 68.913. HEARINGS AND APPEALS

(a) A suspension or revocation of a Unified Program facility permit or permit element, and any administrative enforcement order issued pursuant to section 25404.1 of the California Health and Safety Code, may be appealed as provided in applicable State laws and regulations.

(b) If applicable State laws and regulations do not specify appeals procedures for an action by the Director related to a Unified Program facility, appeals may be made as provided in section 61.113 and of this code.

Section 15. Section 68.330.1 of the County Code, concerning permits to install on-site wastewater treatment and disposal systems, is amended to read as follows.

SEC. 68.330.1. ON-SITE WASTEWATER SYSTEMS -- REVOCATION OF PERMITS.

The Director may revoke any outstanding permit for the installation of an on-site wastewater system which in the judgment of the Director is not adequate for the lot and its use.

Any permittee whose permit is revoked may file an appeal pursuant to Section 61.113 of this code. Notwithstanding any other provision or this title, the filing of an appeal under this section shall not stay the order of the Director revoking the permit.

Section 16. Section 68.1212, which will be applicable to only medical wastes, is added to the County Code to read as follows:

68.1212. APPEALS

Appeals from the denial of any permit sought pursuant to section 68.1202 or 68.1203 of this Code to satisfy the requirements of the Medical Waste Management Act shall be made and conducted in accordance with sections 61.113 and 61.125 of this Code. Notwithstanding any other provision of this Title, a petition for a hearing must be filed within 20 days after the Director mails the notice that the requested permit has been denied.

Section 17. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Daily Transcript , a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 25th day of April, 2007.