

RESOLUTION TO ADOPT A PROTOCOL FOR OWTS COMPLAINT HEARINGS

Resolution No. 3  
Series 2017

WHEREAS, Colorado Revised Statutes (2009), Section 31-15-101, et seq., authorizes a municipality to enact regulations that promote the health, safety and welfare, and improve order, comfort, and convenience of the municipality and inhabitants thereof; and

WHEREAS, Colorado Revised Statutes (2009), Section 25-10-106 (2) requires local boards of health to develop detailed rules for on-site wastewater treatment systems and Colorado Revised Statutes (2009), Section 25-10-106 provides the basic rules for local administration, and

WHEREAS, the Board of Trustees, acting as the local health board, may be called from time to time to hold hearings on complaints relating to alleged violations of the OWTS Ordinance, and

WHEREAS, no such hearing has been held in recent memory, and therefore the Board of Trustees, acting as the local health board, deem it to be in the Town of Pitkin's interests to adopt a hearings protocol to fairly and efficiently address such complaints.

NOW, THEREFORE, BE IT RESOLVED, that the Town of Pitkin shall conduct its OWTS complaint hearings as follows:

1. Upon receipt of a complaint for an alleged OWTS violation, the Town Clerk shall provide a copy of the complaint to each Trustee. The Mayor shall place notice of the complaint on the agenda for the next regular town meeting, or if in the Mayor's sole discretion, a special meeting is justified to address an emergency situation, a special meeting may be called. At the town meeting, the Town of Pitkin's of Board of Trustees, acting as the local board of health (referred to hereinafter as the "Local Board of Health") shall schedule a hearing date no less than twenty-one days thereafter. The Town Clerk shall also provide a copy of the complaint to the sanitarian and the environmental health agent, who shall determine if the facts alleged in the complaint pose an imminent threat of substantial harm to the environment and the people of the Town of Pitkin.
2. If the OWTS complaint alleges an emergency, and the sanitarian and/or the environmental health agent determine there may be, based upon the facts alleged in the complaint and a review of the facts underlying the complaint by the sanitarian and/or the environmental health agent, an imminent threat of substantial harm to the environment and the people of the Town of Pitkin, the Local Board of Health may schedule the hearing no less than 48 hours later. The 72 hour requirement relating to witnesses, statements, and evidence shall not apply to an expedited hearing.

3. Parties. For purposes of simplifying matters, the party who made the subject complaint shall be referred to hereinafter as the Petitioner, and the party against whom the complaint is made shall be referred to as the Respondent.
4. Notice shall be made by mailing a copy of the complaint with the notice of the hearing date to the Petitioner, the Respondent, at the address of the property that is subject to the complaint, and the owners of property adjacent to the property that is the subject of the OWTS complaint via certified mail, return receipt requested. Such notice shall be mailed no less than twenty days prior to the hearing. In the event of an expedited hearing notice shall be made by posting a copy of the complaint and hearing date, time, and location, at the subject property, adjacent properties, and the residence of the Respondent. In addition, such notice of the expedited hearing shall be placed in no less than three public locations no less than 24 hours prior to the OWTS complaint hearing.
5. Witnesses. A witness may testify as to matters directly relating to the OWTS complaint. The Petitioner, as well as up to three witnesses of her or his choosing, may testify. The adjacent property owners may also testify if they so desire. The Respondent, as well as three witnesses of her or his choosing, may testify. The chairperson may restrict the length of time in which the witnesses may testify based upon her or his discretion. The witnesses need not swear an oath prior to testifying. The members of the Local Health Board may ask the witnesses questions after they have completed their statements. The Petitioner and Respondent shall identify the names of the witnesses and brief description of their testimony by a writing filed with the Town Clerk no less than 72 hours prior to the hearing.
6. Attorneys. The Respondent and the Petitioner may be represented by attorneys, who may speak on their behalf. No questioning of the witnesses shall be done by any attorney, including the Town's attorney.
7. Statements. Any person may submit a statement regarding the subject complaint provided such statement relates directly to the subject OWTS complaint, and that the statements is delivered to Clerk no less than 72 hours prior to the hearing.
8. Evidence. The Petitioner, Respondent, and adjacent property owners may introduce evidence that is related to the subject complaint provided such exhibits are delivered to the Town Clerk no less than 72 hours prior to the hearing. The hearing packet, including the complaint form, witness lists, statements, and exhibits, will be distributed to the Local Health Board, the Petitioner, and the Respondent no less than forty-eight hours prior to the hearing.
9. Public Comments. There shall not be any public comments during the hearing.

10. Ex parte Communications. During the pendency of the hearing, the Trustees should make every effort to avoid discussion relating to the pending hearing with third parties, and disclose the nature and substance of any such communications prior to the subject hearing. The Trustees should endeavor to avoid any appearance of impropriety relating to such hearing.
11. Notice Mailing Directions. All requirements for mailing by the Town Clerk in this resolution should be the Gunnison County mailing address for tax notices.

BE IT FURTHER RESOLVED, that the following schedule shall be the presumptive hearing schedule, but the chairperson may make such reasonable deviations as may serve the interests of justice:

1. Call the meeting of the local health board to order at \_\_\_ p.m.
2. The clerk will state that she or he has provided written notice via certified mail to the following, mailed no less than twenty days prior to the hearing:
  - a. the Respondent, or if unknown, so state;
  - b. the Petitioner;
  - c. the adjacent property owners.
3. Identification if there are any conflicts of interest pursuant to C.R.S. 24-18-109 or other relevant statute. Members recusing themselves should sit in the gallery during the hearing.
4. Identification by the Trustees of any ex parte communications made during the pendency of the hearing.
5. Case presentation:
  - a. the Petitioner and three witnesses may testify.
  - b. the adjacent property owners may speak if they desire.
  - c. The Respondent and three witnesses may testify
  - d. Rebuttal - the Petitioner and the Respondent may each provide a rebuttal statement as necessary.
6. Discussion amongst the Local Board of Health
7. Vote
8. If there is a violation - sanctions segment of hearing
  - a. The Respondent may provide a statement to mitigate the damages.
  - b. Discussion amongst the board
  - c. Vote as to sanctions
9. Adjourn the meeting of the Local Board of Health

INTRODUCED, READ, AND ADOPTED THIS 11th day of April, 2017.

TOWN OF PITKIN, COLORADO, BOARD OF TRUSTEES OF THE TOWN OF  
PITKIN, COLORADO

By: Rachel New  
Rachel New, Mayor

ATTEST: SGW  
Sarah Gibb, Town Clerk

