WHEREAS, the Health Department has been working with XXXX, through the County’s enforcement process since 2013; and

WHEREAS, the restaurant owner has submitted a written request for a Formal Hearing Board outlined in the enforcement process; and

WHEREAS, in accordance with the Food Protection Program; Inspection and Enforcement Procedures, the Formal Hearing Board (appointed by the Board of Commissioners) is comprised of at least one member of the Allegan County Board of Commissioners that is not from the district the restaurant is located in, one restaurant at-large representative and two alternates, the local health officer or his/her representative; and

WHEREAS, in accordance with the Enforcement Procedures, the Formal Hearing Board will be held on February 26, 2015, 8:00-9:00AM at the Human Services Building, 3255 122nd Avenue, Allegan, MI, 49010.

THEREFORE BE IT FURTHER RESOLVED that the Allegan County Board of Commissioners hereby appoints:

- Angelique Joynes, Health Officer
- Commissioner ____________, Board Representative
• ____________, At-Large Restaurant Representative
• ____________, Alternate
• ____________, Alternate
An owner of a restaurant in Wayland Township has submitted a written request for a Formal Hearing Board. We have been working with this restaurant with our enforcement process since 2013. We are at the Formal Hearing Board step in this process.

We need to convene a Formal Hearing Board. According to the Food Protection Program; Inspection and Enforcement Procedures 2002 SECTION 03.01, the Formal Hearing Board is comprised of at least one member of the Allegan County Board of Commissioners, the local health officer or his/her representative and at least one but not more than three other members that are to be appointed by Allegan Board of Commissioners.

Based on the recommendations of the Memorandum of 2010 we are recommending as follows:
1. The BOC appoint a Board of Commissioner that is not from the district the restaurant is located in.
2. Pick one restaurant in the list supplied and two alternates.

The Formal Hearing Board must convey within 30 days of receipt of the written request. The request was received on 2/2/2015. We have set the date for the Formal Hearing Board to be on February 26, 2015 at 8:00-9:00 EST at the Humans Services Bldg. (3255 122nd Ave., Allegan, MI, 49010).

Thank you for your time,

Angelique Joynes, MPH, RN
Health Officer
MEMORANDUM

DATE: December 1, 2010
RE: Formal Hearing Board
Food Protection Program – Enforcement Procedures

The Food Protection Program in reviewing the Enforcement Procedures would like to activate the Formal Hearing Board. The following is the definition of a Formal Hearing Board is from Chapter 3 of the “Declaratory Ruling and Hearing Procedures” as adopted by the Committee on Health Services on May 9, 2002.

Chapter 03: Definitions
Section 03:02 Formal Hearing Board

A formal hearing board comprised of at least one member of the Allegan County Board of Commissioners, the local health office or his/her designated representative and at least one and not more than three other members to be appointed by the Allegan County Health Services Committee. The formal hearing board shall consist of an odd number of members and membership is limited to a maximum of five; a quorum of the formal hearing board must include the local health officer or his/her designee who acts as presiding officer. A decision of the hearing panel requires an affirmative vote of at least a majority of a quorum.

The food service staff would like to make the following recommendations and amendments –

The Hearing Board shall consist of at least three members, consisting of
i. The Health Officer or his/her designated representative.
ii. A County Commissioner on a rotating basis (as proscribed by the County Commission) and not of the Licensee’s representative district.
iii. A representative and two alternates of the Food Service Industry in Allegan County. This representative will be chosen by the County Commissioners from a pool of nominations as put forward by the Allegan County Health Department Food Service Protection staff.

For the representative of the Food Service Industry we would like to propose the following names for your consideration. All have been contacted and have agreed to be considered.

Todd White – Butler House – Saugatuck
Sharon Shanahan – Mermaid - Saugatuck
Mark Schrock – Salt of the Earth – Fennville
Marsha Wagner – The Grill House – Allegan
Mary Hoadley – Allegan Vocational Technical Center – Allegan
Mike Kowalski – UP North Sandwich and Pasties - Allegan
Terri Schrier – Auction House Café – Wayland
Eric Lauritza – Hilliard’s – Hilliard’s Corners
James Vanderhorst – Chicken Coop – Plainwell
Nancy Morehouse – Nancy’s Kitchen - Plainwell
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<th>Establishment</th>
<th>Address</th>
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<th>Zip</th>
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<tr>
<td>Mike Barber</td>
<td>The White House</td>
<td>149 Griffith Street</td>
<td>Saugatuck</td>
<td>49453</td>
<td>NEW</td>
<td>NA</td>
<td><a href="mailto:michaelbarber@chater.net">michaelbarber@chater.net</a></td>
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<td>Paul Keene</td>
<td>Hamilton Schools</td>
<td>4911 136TH AVE</td>
<td>Hamilton</td>
<td>49419</td>
<td>NA</td>
<td>NA</td>
<td><a href="mailto:pkeene@hamiltonschool.us">pkeene@hamiltonschool.us</a></td>
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<tr>
<td>Corina Mendell</td>
<td>Mug Shots</td>
<td>404 Water Street</td>
<td>Allegan</td>
<td>49010</td>
<td>NA</td>
<td>NA</td>
<td><a href="mailto:mugshotscoffee@gmail.com">mugshotscoffee@gmail.com</a></td>
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<td>Marsha Wagner</td>
<td>Grill House</td>
<td>1071 M-40 S</td>
<td>Allegan</td>
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<td>Yes (2)</td>
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<td><a href="mailto:marcia@grillhouse.com">marcia@grillhouse.com</a></td>
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<tr>
<td>James Szilagyi</td>
<td>Lynx</td>
<td>900 Lincoln Rd</td>
<td>Otsego</td>
<td>49078</td>
<td>NEW</td>
<td>NA</td>
<td><a href="mailto:jim@lynzgolfcourse.com">jim@lynzgolfcourse.com</a></td>
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<td>Mary Hoadley</td>
<td>AC VOC ED</td>
<td>M-222 2891 116TH AVE</td>
<td>Allegan</td>
<td>49010</td>
<td>Yes</td>
<td>NO</td>
<td><a href="mailto:mhoodley@alleganaesa.org">mhoodley@alleganaesa.org</a></td>
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<tr>
<td>Jim Warner</td>
<td>Sandy Pines</td>
<td>BOX 353</td>
<td>Byron Center</td>
<td>48315</td>
<td>Yes</td>
<td>NO</td>
<td><a href="mailto:jwarner@hotmail.com">jwarner@hotmail.com</a></td>
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<tr>
<td>Matt Pietsch</td>
<td>Salt of the Earth</td>
<td>PO BOX 235</td>
<td>Fennville</td>
<td>49406</td>
<td>Yes</td>
<td>NA</td>
<td><a href="mailto:matt@saltoftheearthfennville.com">matt@saltoftheearthfennville.com</a></td>
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<tr>
<td>Karen Van Dam</td>
<td>Captain Sundae</td>
<td>365 Douglas</td>
<td>Holland</td>
<td>49424</td>
<td>NEW</td>
<td>Yes</td>
<td><a href="mailto:vandamtom@yahoo.com">vandamtom@yahoo.com</a></td>
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<td>Josh Otto</td>
<td>The Wayland Hotel</td>
<td>104 S. Main Street</td>
<td>Wayland</td>
<td>49348</td>
<td>NEW</td>
<td>Yes</td>
<td><a href="mailto:jotto24@yahoo.com">jotto24@yahoo.com</a></td>
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<tr>
<td>Jennie Verplank</td>
<td>Seasons in Time</td>
<td>1640 - 142 Ave</td>
<td>Dorr</td>
<td>49323</td>
<td>NEW</td>
<td>Yes</td>
<td><a href="mailto:johnvs22@yahoo.com">johnvs22@yahoo.com</a></td>
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<td>Nancy Moorehouse</td>
<td>Nancy's Kitchen</td>
<td>615 East Bridge Street</td>
<td>Plainwell</td>
<td>49080</td>
<td>Yes</td>
<td>Yes</td>
<td><a href="mailto:nancykitchen@gmail.com">nancykitchen@gmail.com</a></td>
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<tr>
<td>Scott Zylstra</td>
<td>Old Mill Brew Pub</td>
<td>717 East Bridge Street</td>
<td>Plainwell</td>
<td>49080</td>
<td>Yes</td>
<td>Yes</td>
<td><a href="mailto:scott@oldmillbrew.com">scott@oldmillbrew.com</a></td>
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<tr>
<td>Dan Bail</td>
<td>Hambone</td>
<td>6632-118TH. AVE</td>
<td>Fennville</td>
<td>49406</td>
<td>NEW</td>
<td>Yes</td>
<td><a href="mailto:chef@hambonecafe.com">chef@hambonecafe.com</a></td>
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STATE OF MICHIGAN

BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEGAN

HEALTH DEPARTMENT - FOOD PROTECTION PROGRAM AND INSPECTION & ENFORCEMENT PROCEDURES

Your Committee on Health Services recommends approval of the attached Food Protection Program and Inspection & Enforcement Procedures. This action is required as part of the Accreditation Standards and the State of Michigan Food Protection Program. These are the procedures that are used to insure the health and safety of everyone who eats in a restaurant or public food establishment in the County. Through the State Food Law this Program has already been in effect. Upon adoption of this resolution, the Allegan County Board of Commissioners gives their support and backing for this Program.

Moved by Commissioner Thiele, seconded by Commissioner Wesbey that the report of the Committee on Health Services be adopted as read. Motion carried by roll call vote: Yeas - 9 votes. Nays - 0 votes. Absent - 0 votes.

ATTEST, A TRUE COPY

[Signature]

Clerk-Register

APPROVED: May 9, 2002

cc: Admin. - Finance - Human Resource - Health Department - State of Michigan Food Protection Program (thru Health Department)
FOOD PROTECTION PROGRAM; INSPECTION AND ENFORCEMENT PROCEDURES

CHAPTER 01: PURPOSE


Section 01.01: INSPECTION SCHEDULES

The Health Officer and/or the Allegan County Health Department shall inspect each food service establishment within Allegan County in compliance with requirements of Act 92, Public Acts of 2000.

Section 01.02 COMPLIANCE AT THE TIME OF AN INSPECTION (ROUTINE OR FOLLOW UP)

a. If a food service establishment is in compliance with the provisions of these Procedures at the time of a Routine Inspection, the Health Officer and/or the Allegan County Health Department shall continue to conduct Routine Inspections of the establishment according to the requirements of Act 92, Public Acts of 2000.

b. If an Inspection pursuant to Chapter 01.01 shows that:
   i. No Imminent or Substantial Hazards exist at the food establishment; and,

   ii. There are not critical item violations present at the food establishment, or they are corrected immediately if present or according to an agreed upon correction schedule, and any critical item violation found is not a chronic violation; and,

   iii. If less than 20 individual, non-critical violations are noted and a good faith agreed upon correction schedule is on-going with no chronic violations.

The Allegan County Health Department shall continue to conduct a six-month monitoring schedule of Routine Inspections of the establishment according to the requirements of Act 92, Public Acts of 2000.
SECTION 01.03  NON-COMPLIANCE AT THE TIME OF INSPECTION

a. If an inspection shows that a food service establishment is in violation of the provisions of these Procedures and the violation(s) constitute an Imminent or Substantial Hazard to the public’s health, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.5 of these Procedures and Section 2113 of Act 92 of the Public Acts of 2000.

b. If an inspection shows the presence of critical item violation(s) and the critical item violation(s) are not corrected prior to the conclusion of the inspection or according to an agreed upon correction schedule, or if the violation(s) also constitute a chronic violation(s), the Health Officer and/or the Allegan County Health Department shall:

   i. Take action as provided in Section 01.04.2 of these Procedures unless the violation(s) were the subject of a previous compliance agreement/correction schedule between the owner/operator and the Health Officer and/or the Allegan County Health Department.

   ii. If the violation(s) were the subject of a previous compliance agreement or correction schedule between the owner/operator and the Health Officer and/or the Allegan County Health Department, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.3 of these Procedures; or,

   iii. If the violation(s) were the subject of an Informal Hearing, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.4 of these Procedures and Section 4125 of Act 92 of the Public Acts of 2000.

c. If an inspection shows that the occurrence of insanitary conditions at the food service establishment is equal to or greater than 20 non-critical violations, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.2 of these Procedures and Section 4125 of Act 92 of the Public Acts of 2000.

d. If an inspection shows that insanitary conditions at the food service establishment constitute chronic or continuous violations of these Procedures, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.2 of these Procedures and Sections 4125 and 3117 of Act 92 of the Public Acts of 2000.

e. If an inspection shows that a person is operating a food service establishment without a license, the Health Officer and/or the Allegan County Health
Department shall take action as provided in Section 01.04.6 of these Procedures and Sections 2117 and 4101 of Act 92 of the Public Acts of 2000.

f. If any person interferes with an agent of the Health Officer in the performance of his/her duties, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.3 of these Procedures and Sections 4125 and 3117 of Act 92 of the Public Acts of 2000.

g. If any person constructs, or begins construction of, a new food service establishment without an approved plan, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 25.04.9 of these Procedures and Section 3117 of Act 92 of the Public Acts of 2000.

h. If any person remodels an existing food service establishment without an approved plan, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.9 of these Procedures and Section 3117 of Act 92 of the Public Acts of 2000.

i. If any person operates a Temporary Food Service Establishment without a license, the Health Officer and/or the Allegan County Health Department shall take action as provided in Section 01.04.6 of these Procedures and Section 3117 of Act 92 of the Public Acts of 2000.

j. If the Health Officer and/or the Allegan County Health Department determines that a food source is unapproved, adulterated or contaminated, the Health Officer and/or the Allegan County Health Department shall issue an Order to hold, test or destroy a food product in addition to any action which the Health Officer and/or the Allegan County Health Department may take under Section 01.04.10 of these Procedures and Section 2105 of Act 92 of the Public Acts of 2000.

k. After a proper inspection, and in accordance with Section 01.04.8 of these Procedures and Section 2121 of Act 92 of the Public Acts of 2000, the Health Officer and/or the Allegan County Health Department shall impose License limitations, limiting the extent of food preparation or the menu items, which a food service establishment may prepare and serve. If the Health Officer and/or the Allegan County Health Department imposes license limitations, the establishment's owner is entitled to an informal hearing.

SECTION 01.04: ENFORCEMENT STEPS:

When enforcing the provision of this Section of these Procedures, and specifically in conjunction with Section 01.03, the Health Officer and/or the Allegan County Health Department shall utilize the following steps or procedures:
01.04.1 Conduct subsequent inspection(s) to determine compliance with a mandated or agreed upon correction schedule. The correction schedule may occur as a result of a routine inspection, office conference, informal hearing, or formal hearing. If the establishment exhibits non-compliance with such orders or agreements, the Health Officer and/or the Allegan County Health Department shall proceed to the next appropriate enforcement step (for example, a Formal Hearing, if the follow-up inspection is the result of a failure to comply with a correction schedule established at an Informal Hearing).

01.04.2 Office conference. If an inspection reveals that a food service establishment is not in compliance with the provisions of these Procedures, the Health Officer and/or the Allegan County Health Department shall hold an Office Conference at the Allegan County Health Department with the owner or designated agent of the food service establishment. If the Office Conference results in an agreed upon schedule of compliance, the Health Officer and/or the Allegan County Health Department shall reduce the schedule to writing and conduct necessary inspections. If the Office Conference does not result in an agreed upon schedule of compliance, the Health Officer and/or the Allegan County Health Department shall institute an Informal Hearing pursuant to the provisions of these Procedures.

01.04.3 Informal Hearing. An informal hearing is held for the purpose of determining whether there is sufficient evidence to mandate a compliance schedule for certain violations. An Informal Hearing is to be conducted in accordance with the provisions set forth in these Procedures and the Health Officer and/or the Allegan County Health Department may direct that an Informal Hearing take place for any or all of the following reasons:

i. A person fails to comply with an order of the Health Officer and/or the Allegan County Health Department; or,

ii. A person interferes with an agent of the Health Officer and/or the Allegan County Health Department in the performance of his/her official duties; or,

iii. A person fails to correct a critical item violation(s) as agreed to in a Compliance Schedule; or,
iv. A person fails to correct a food service establishment’s chronic, repeated or continuous critical item(s) violations.

v. A food service establishment licensee requests an Informal Hearing in writing. A Licensee’s written request for an Informal Hearing must contain a description of the reason for, or subject of, the Informal Hearing.

01.04.4 Formal Hearing. A Formal Hearing is to be conducted in accordance with the provisions set forth in these Procedures and held for the purpose of:

i. Determining whether a food service license should be suspended or revoked; or,

ii. Determining whether to reverse or end an order from the Health Officer to suspend food service; or,

iii. A food service establishment licensee requests a Formal Hearing in writing. A Licensee’s written request for a Formal Hearing must contain a description of the reason for, or subject of, the Formal Hearing.

01.04.5 If the Health Officer and/or the Allegan County Health Department determines that conditions in a food service establishment constitute an imminent health hazard, the Health Officer and/or the Allegan County Health Department shall order the food service establishment to immediately cease all food service operations until the hazard is removed or corrected. The owner and/or licensee of a food service establishment must immediately comply with the order to cease food service operations. The owner and/or licensee may request that the Health Officer and/or the Allegan County Health Department conduct a Formal Hearing to determine whether the order to cease food service operations should be reversed or terminated, and the food service operation shall remain closed to the public pending the outcome of the Formal Hearing.

01.04.6 If the Health Officer and/or the Allegan County Health Department determines that a food service establishment is operating without a valid food service license, the Health Officer and/or the Allegan County Health Department shall order the owner and/or operator of the food service establishment to immediately cease all food preparation and service. No food service preparation or operations may resume until the owner and/or operator fully complies with all of the food service licensing requirements contained in these Procedures.
01.04.7 Late fees. The Allegan County Health Department shall assess fees for late food service establishment license applications in accordance with the fee schedule promulgated by the Allegan County Board of Commissioners January 11, 2001.

01.04.8 License Limitations. The Health Officer and/or the Allegan County Health Department may place restrictions on a food service establishment license which limits the preparation of food if the Health Officer and/or the Allegan County Health Department determine that such limitations are necessary to protect the public’s health. Unless the owner/licensee voluntarily agrees to the implementation of the limitations at the time of a plan review, the Health Officer and/or the Allegan County Health Department must offer the owner/licensee the opportunity to have the necessity of the limitations addressed in an Informal Hearing.

01.04.9 If the Health Officer and/or the Allegan County Health Department determines that any person is constructing or remodeling a food service establishment in violation of the provisions of these Procedures, the Health Officer and/or the Allegan County Health Department shall order the immediate cessation of the construction, alterations, conversions, or remodeling until the owner/licensee submits appropriate and acceptable plans and specifications to the Health Officer and/or the Allegan County Health Department.

01.04.10 If the Health Officer and/or the Allegan County Health Department determines that a food product constitutes a potential threat to public health, the Health Officer and/or the Allegan County Health Department shall order the person(s) in control of such food to hold, test, or destroy the food product. Failure to comply with an order to hold, test or destroy a food product will result in the creation of an imminent health hazard.
DECLARATORY RULING AND HEARING PROCEDURES

CHAPTER 02: PURPOSE

This Section of these Procedures sets out the type of declaratory ruling and hearing procedures which Allegan County will use to interpret and enforce the provisions of these Procedures; to obtain the voluntary correction of Code violations; and to provide a review of actions taken by the Health Officer and/or the Allegan County Health Department administering and enforcing these Procedures. The Hearing procedures contained in this Section are also intended to comply with the Administrative Procedures Act, Act 306, of the Public Acts of 1969, as amended.

CHAPTER 03: DEFINITIONS

SECTION 03.01: FORMAL HEARING

A Formal Hearing is used to obtain compliance with the provisions of these Procedures; to correct a violation of these Procedures and/or as an appellate review of the decision from an Informal Hearing.

SECTION 03.02: FORMAL HEARING BOARD

A formal hearing board comprised of at least one member of the Allegan County Board of Commissioners, the local health officer or his/her designated representative and at least one and not more than three other members to be appointed by the Allegan County Health Services Committee. The formal hearing board shall consist of an odd number of members and membership is limited to a maximum of five; a quorum of the formal hearing board must include the local health officer or his/her designee who acts as presiding officer. A decision of the hearing panel requires an affirmative vote of at least a majority of a quorum.

SECTION 03.03 INFORMAL HEARING

An informal hearing is held to determine if a person is in compliance with these Procedures and any other applicable laws; create schedules for correcting violations of these Procedures; and to review license requirements/limitations necessary to insure compliance with state mandated laws and County Regulations contained in these Procedures.

SECTION 03.04 INFORMAL HEARING OFFICER

The Director of the Environmental Health Department or his/her designated representative shall serve as the Informal Hearing Officer.
SECTION 03.05   RESPONDENT

The Respondent is the individual who is alleged to have violated a provision of these Procedures and has received a Notice to Appear at either an Informal Hearing or a Formal Hearing. A person who initiates an Informal Hearing or a Formal Hearing for purposes including, but not limited to, the review of a decision from an Informal Hearing, the review of a denial of a variation application, or the review of a declaratory ruling, shall also be identified as the Respondent.

CHAPTER 04:   DECLARATORY RULINGS

Section 04.01:   DECLARATORY RULINGS; PURPOSE

On request of an interested person, the Health Officer or the Allegan County Health Department may issue a Declaratory Ruling concerning the applicability of the provisions of these Procedures to an actual state of facts.

Section 04.02:   DECLARATORY RULINGS; PROCEDURE

a. A person requesting the issuance of a Declaratory Ruling must submit the request, in writing, to the Health Officer or the Allegan County Health Department. The submission must sufficiently identify the facts forming the basis for the request for a Declaratory Ruling; the Section(s) of these Procedures which apply to the factual situation; and any argument or authority which the applicant wishes the Health Officer or the Allegan County Health Department to consider when issuing a Declaratory Ruling.

b. Within thirty (30) days of receiving a written request to issue a Declaratory Ruling, the Health Officer or the Allegan County Health Department shall deny, in writing, the request to issue a Declaratory Ruling; issue a written Declaratory Ruling; or send a written request to the applicant which describes what additional information the Health Officer or the Allegan County Health Department needs to render a decision on the application for the issuance of a Declaratory Ruling.

SECTION 04.03:   DECLARATORY RULINGS; BINDING EFFECT

A written Declaratory Ruling issued by the Health Officer and/or the Allegan County Health Department is binding upon the Health Officer and the Allegan County Health Department, and the person requesting the Declaratory Ruling, unless:

a. A Court of competent jurisdiction alters or sets aside the Declaratory Ruling; or,
b. The Health Officer or the Allegan County Health Department alters or sets aside the Declaratory Ruling, but such action by the Health Officer or the Allegan County Health Department shall only have a prospective effect and no retroactive effect.

SECTION 04.04: DECLARATORY RULINGS; APPEAL

An interested person who disagrees with a written Declaratory Ruling issued by the Health Officer or the Allegan County Health Department may have the Declaratory Ruling reviewed at an Informal hearing held in accordance with the provisions of these Procedures.

CHAPTER 05: INFORMAL HEARINGS

SECTION 05.01: INFORMAL HEARING; NOTIFICATION

a. The Health Officer and/or the Allegan County Health Department shall provide all parties to an Informal Hearing with reasonable notice of the Hearing and the written notice shall include:

i. A statement of the date, hour, place and nature of the Hearing. Unless otherwise specified in the Notice, the Hearing shall take place at the principal offices of the Allegan County Health Department.

ii. A statement of the legal authority and jurisdiction under which the hearing is to be held.

iii. A reference to the particular section(s) of these Procedures will be addressed at the hearing.

iv. A short, plain and detailed statement of the matters or violations asserted by the Health Officer and/or the Allegan County Health Department. If the Health Officer and/or the Allegan County Health Department cannot provide a detailed statement at the time the first notice is sent to the Respondent, the Health Officer and/or the Allegan County Health Department shall provide a general statement of the issues involved. If the Health Officer and/or the Allegan County Health Department initially provides a general statement, it shall provide the Respondent with a detailed statement as soon as practical.

v. A statement that the Respondent may request an adjournment of the Informal Hearing date if the Respondent submits a written request for an adjournment to the Health Officer and/or the Allegan County Health Department at least 48 hours prior to the scheduled Hearing. The Health Officer and/or the Allegan County Health Department shall respond to the adjournment request prior to the scheduled Hearing and if they grant the
adjournment request they shall provide all parties involved in the Hearing with a written notice of adjournment that contains the new date and time of the Hearing.

SECTION 05.02: INFORMAL HEARING; RESPONSE TO NOTICE OF HEARING; EVIDENCE; ATTORNEYS

a. A Respondent who receives a Notice of Informal Hearing may, but is not required to, file a written answer to the Notice with the Health Officer and/or the Allegan County Health Department at any time prior to the completion of the Informal Hearing.

b. All parties involved in the Informal Hearing shall have the right to present oral and written arguments on issues of law and policy during the Informal Hearing.

c. All parties involved in the Informal Hearing shall have the right to present evidence and argument on issues of fact during the Informal Hearing.

d. A party shall have the right to cross-examine a witness, including the author of any document offered into evidence which was prepared by, on behalf of, or for the use of the Health Officer and/or the Allegan County Health Department.

e. The Hearing Officer shall, as far as practicable, require the parties to comply with the Rules of Evidence which apply in non-jury civil cases in a Circuit Court, but the hearing Officer may also admit and give probative effect to evidence which does not comply with the Rule of Evidence if it is a type commonly relied upon by reasonably prudent persons of the conduct of their affairs. The Hearing Officer may exclude irrelevant, immaterial or unduly repetitious evidence. The Hearing Officer shall give effect to legally recognized privileges such as Attorney-Client, Physician-Patient, etc.

f. All parties may, but are not required to, have an attorney represent their interests at an Informal Hearing.

SECTION 05.03: INFORMAL HEARING; FORMAT AND PROCEEDINGS; BURDEN OF PROOF

The Informal Hearing shall proceed, as much as practicable, according to the following sequence of events:

a. The Informal Hearing Officer shall call the proceeding to order and provide the parties with a brief summary of information concerning the Informal Hearing. This statement can be oral or written and shall include:

   i. The date, time and reason for the Informal Hearing
ii. An introduction of those present, including their names, titles, and the agency/person(s) they represent.

iii. A description of the Informal Hearing format and that the Hearing will be recorded.

iv. An acknowledgement that the Hearing Officer has either received, or has not received, any written statements or responses from the Respondent prior to the start of the Informal Hearing.

b. After the Hearing Officer completes all introductory remarks, the staff of the Environmental Health Department shall:

i. Present an overview/introductory statement which briefly describes the reason(s) why the Health Officer and/or Allegan County Health Department has directed the holding of the Informal Hearing; the provision(s) of the Code or Compliance Schedule which the Respondent has allegedly violated; and the evidence the staff intends to introduce during the Informal Hearing.

ii. After the staff completes its introductory statement, the Respondent may, but is not required to, make a statement in which the Respondent states his/her position and what evidence the Respondent intends to introduce during the Informal Hearing.

iii. The staff shall then present its evidence, including the testimony of witnesses, to the Informal Hearing Officer.

iv. After the staff finishes with its presentation of evidence, the Respondent has the opportunity to make an introductory statement if he/she/it has not already made such a statement and present his/her/its evidence, including the testimony of witnesses, to the Informal Hearing Officer. The Respondent is not required to present any evidence.

v. After the Respondent finishes his/her/its presentation of evidence, the staff shall have the opportunity to make a final argument in support of its position.

vi. After the staff completes its final argument, the Respondent shall have the opportunity to make a final argument in support of his/her/its position.

c. The staff bears the "burden of proof" in an Informal Hearing which requires the staff to prove its allegations against the Respondent by a preponderance of the evidence (e.g. that the evidence shows that it is more likely than not that the Respondent violated the provisions of these Procedures or a Compliance Schedule).
SECTION 05.04: INFORMAL HEARING; DECISION OF HEALTH OFFICER

a. After the conclusion of the final arguments, the Hearing Officer shall issue an oral or written decision. If the Hearing Officer issues an oral decision, he/she shall issue the decision immediately after the conclusion of final arguments and with all parties present. The Hearing Officer shall reduce an oral decision to writing and send a copy of the decision to all parties within fourteen (14) working days of the completion of final arguments.

b. All decisions, whether oral or written, must include a brief recap of testimony and evidence presented to the Hearing Officer, the Hearing Officer’s finding of facts concerning the allegations raised by the staff, Health Officer and/or the Allegan County Health Department, and a determination of whether the staff has met its burden of proof and showed that the violations exist or occurred; and, if the staff has proven a violation, the action the Respondent must take to correct the violation. Such action can include, but is not limited to, creation of a Compliance Schedule.

SECTION 05.05: APPEAL

Any party who disagrees with the decision of the Informal Hearing Officer may take an appeal from the decision by requesting that the decision be reviewed through a Formal Hearing. A Respondent must submit a written request for a Formal Hearing within thirty-five (35) days of the date on which the Informal Hearing Officer made his/her decision. The request for a Formal Hearing must contain a photocopy of the Informal Hearing Officer’s written decision and any fee required by the Board of Commissioners.

CHAPTER 06: FORMAL HEARINGS

SECTION 06.01: REQUESTS FOR FORMAL HEARINGS

The Health Officer and/or the Allegan County Health Department may request a Formal Hearing if an individual fails to comply with a decision from an Informal Hearing, including failure to adhere to a Compliance Schedule. An individual may request a Formal Hearing for purposes of reviewing/appealing a decision from an Informal Hearing. All requests for Formal Hearings shall be in writing and contain a description of the reason why the individual or staff is requesting the Formal Hearing and a copy of the written decision of the Informal Hearing Officer if the Formal Hearing Board is being asked to review or enforce such a decision. Any person requesting a Formal Hearing shall provide the other parties with a copy of the request.
SECTION 06.02: FORMAL HEARINGS; SCHEDULING; PUBLIC NOTICE; OPEN TO THE PUBLIC

a. The Director of the Environmental Health Department shall schedule a Formal Hearing to start within thirty (30) working days after the Allegan County Health Department receives a Formal Hearing request.

b. Hearings shall be open to the public and notice of such shall be posted in the principal office of the Allegan County Health Department and the County Clerk at least 24 hours before the scheduled hearing. Such notice shall include the date, time, and location of hearing and the telephone number of the Allegan County Health Department.

SECTION 06.03: FORMAL HEARINGS; NOTIFICATION

a. The Director of the Environmental Health Department shall serve a Notice of Formal Hearing on the Respondent through personal service or certified mail, restricted delivery. The Director of Environmental Health shall serve the Notice upon the Respondent at least five (5) business days before the date scheduled for the Formal Hearing unless an immediate hearing is required by these Procedures. The Notice shall include:

i. A statement of the date, hour, place, and nature of the Hearing. Unless otherwise specified in the Notice, the Hearing shall take place at the principal offices of the Allegan County Health Department.

ii. A statement of the legal authority and jurisdiction under which the Hearing is to be held.

iii. A reference to the particular Section(s) of the code which will be addressed at the Hearing.

iv. A short, plain, and detailed statement of the matters or violations asserted by the Health Officer and/or the Allegan County Health Department cannot provide a detailed statement at the time the first notice is sent to the Respondent, the Health Officer and/or the Allegan County Health Department shall provide a general statement of the issues involved. If the Health Officer and/or the Allegan County Health Department initially provides a general statement, it shall provide the Respondent with a detailed statement as soon as practicable.

v. A statement that the Respondent may request an adjournment of the Formal Hearing if the Respondent submits a written request for an adjournment to the Director of Environmental Health at least 48 hours prior to the scheduled
Hearing. The Director of the Environmental Health Department shall respond to the adjournment request prior to the scheduled Hearing and if he/she grants the adjournment request he/she shall provide all parties involved in the Hearing with a written notice of adjournment that contains the new date, time and place of the Hearing.

SECTION 06.04: FORMAL HEARING; HEARING OFFICER; DUTIES

The Hearing Officer in a Formal Hearing acts as moderator of the proceeding but does not have the authority to render any final decisions as to whether the staff has sustained its burden or proof and proven its allegations. The Formal Hearing Board shall have the sole authority to enter final decisions as to whether the staff has sustained its burden of proof and proven its allegations.

SECTION 06.05: FORMAL HEARING; RESPONSE TO NOTICE OF HEARING; EVIDENCE; ATTORNEYS

a. A Respondent who receives a Notice of Formal Hearing may, but is not required to, file a written answer to the Notice with the Director of Environmental Health at any time prior to the completion of the Informal Hearing.

b. All parties involved in the Formal Hearing shall have the right to present oral and written arguments on issues of law and policy during the Formal Hearing.

c. All parties involved in the Formal Hearing shall have the right to present evidence and argument on issues of fact during the Formal Hearing.

d. A party shall have the right to cross-examine a witness, including the author of any document offered into evidence which was prepared by, on behalf of, or for the use of the Health Officer and/or the Allegan County Health Department.

e. The Hearing Officer shall, as far as practicable, require the parties to comply with the Rules of Evidence which apply in non-jury civil cases in a Circuit Court, but the Hearing Officer may also admit and give probative effect to evidence which does not comply with the Rules of Evidence if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may exclude irrelevant, immaterial or unduly repetitious evidence. The Hearing Officer shall give effect to legally recognized privileges such as Attorney-Client, Physician-Patient, etc...

f. All parties may, but are not required to, have an attorney represent their interests at a Formal Hearing.
g. The Health Officer and/or the Allegan County Health Department shall make all records in a case, including statements by the Allegan County Health Department witnesses, available to Respondent for use on cross-examination.

h. The Hearing Officer shall be responsible for calling on appropriate members of the staff or outside professionals to act as witnesses on behalf of the Allegan County Health Department.

i. All evidence to be presented at a Hearing shall be entered only at the time of the Hearing. No evidence will be added or deleted after the hearing.

j. A deposition may be used in lieu of other evidence, if taken in accordance with the Michigan Court Rules.

k. Documentary evidence may be received in the form of a copy or excerpt. All documentary evidence incorporated by reference must be made available to the Respondent and Respondent’s counsel prior to the Formal Hearing.

SECTION 06.06: FORMAL HEARINGS; FORMAT AND PROCEEDINGS; BURDEN OF PROOF; FORMAL HEARING BOARD’S RIGHT TO ASK QUESTIONS

The Formal Hearing shall proceed, as much as practicable, according to the following sequence of events:

a. The Hearing Officer shall call the proceeding to order and provide the parties with a brief summary of information concerning the Hearing. This statement can be oral or written and shall include:

i. The date, time, and reason for the Hearing.

ii. An introduction of those present, including their names, titles, and the agency/person(s) they represent.

iii. A description of the Hearing format and that the Hearing will be recorded.

iv. An acknowledgement that the Hearing Officer has either received, or has not received, any written statements or responses from the Respondent prior to the start of the Formal Hearing.

v. At this time, the Hearing Officer shall also question the Formal Hearing Board Members as to any conflict of interest in the case before them.
b. After the Hearing Officer completes all introductory remarks, the staff of the Environmental Health Department shall:

i. Present an overview/introductory statement which briefly describes the reason(s) why the Health Officer and/or the Allegan County Health Department has directed the holding of the Formal Hearing; the provision(s) of the Code or Compliance Schedule which the Respondent has allegedly violated; and the evidence the staff intends to introduce during the Formal Hearing.

ii. After the staff completes its introductory statement, the Respondent may, but is not required to, make a statement in which the Respondent states his/her position and what evidence the Respondent intends to introduce during the Formal Hearing.

iii. The staff then shall present is evidence, including the testimony of witnesses, to the Formal Hearing Board.

iv. After the staff finishes with its presentation of evidence, the Respondent has the opportunity to make an introductory statement if he/she/it has not already made such a statement and present his/her/its evidence, including the testimony of witnesses, to the Formal Hearing Board. The Respondent is not required to present any evidence.

v. After the Respondent finishes his/her/its presentation of evidence, the staff shall have the opportunity to make a final argument in support of its position.

vi. After the staff completes its final argument, the Respondent shall have the opportunity to make a final argument in support of his/her/its position.

c. The staff bears the “burden of proof” in a Formal Hearing which requires the staff to prove its allegations against the respondent by a preponderance of the evidence (e.g. that the evidence shows that it is more likely than not that the respondent violated the provisions of the Code or a Compliance Schedule).

d. The members of the Formal Hearing Board may ask questions of the parties and witnesses at any time. The Formal Hearing Board may also ask one or all parties to submit written proposed findings of fact for the Board’s review and possible adoption.
SECTION 06.07: FORMAL HEARINGS; DECISION OF FORMAL HEARING BOARD

a. After the conclusion of the final arguments, the Formal Hearing Board shall issue an oral or written decision within thirty (30) days of the completion of the Hearing. The Board shall announce its final decision to all parties at a meeting open to the public.

b. All decisions, whether oral or written, must include a brief recap of testimony and evidence presented to the Formal Hearing Board; the Formal Hearing Board’s finding of facts concerning the allegations raised by the staff, the Health Officer and/or the Allegan County Health Department; and a determination of whether the staff has met its burden of proof and showed that the violations exist or occurred; and, if the staff has proven a violation, the action the Respondent must take to correct the violation. Such action can include, but is not limited to, creation of a Compliance Schedule.

c. The decision of the Formal Hearing Board is final concerning the issue(s) addressed in the Board’s decision.

SECTION 06.08: APPEAL

Any party who disagrees with the decision of the Formal Hearing Board may appeal the decision to the appropriate Circuit Court. A party must submit his/her/its written appeal to the Circuit Court within sixty (60) days of the date on which the Formal Hearing Board mailed or personally served its written final decision to the parties.

SECTION 06.09: FORMAL HEARINGS; PREPARATION AND MAINTENANCE OF AN OFFICIAL RECORD

The Allegan County Health Department shall prepare an official record of all hearings which shall include the following:

a. Notices, inspection reports, correspondence and conversations.

b. Questions and offers of proof made during the Formal Hearing and the objections and rulings thereon.

c. Evidence presented.

d. Matters officially noticed by the Formal Hearing Board except matters so obvious that a statement of them would serve no useful purpose.
e. Proposed findings of fact if they were requested by the Formal Hearing Board.

f. Any decisions, opinions, orders, or findings of fact by the Hearing Officer presiding at the Hearing by the Allegan County Health Department.