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## **CHAPTER 4: ADMINISTRATIVE DETERMINATIONS REVIEW**

### **4.0100 REVIEW OF ADMINISTRATIVE DETERMINATIONS**

#### **4.0101 REVIEW OF ADMINISTRATIVE DETERMINATIONS**

Any person aggrieved by an administrative determination of the Common Council or a board, commission, committee, agency, officer, or employee of the City or agent acting on its behalf may have such determination reviewed as provided in this Chapter. The remedies under this Chapter shall not be exclusive, but an election to proceed hereunder shall be an election of remedies.

State Law Reference: Section 68.01, Wis. Stats.

#### **4.0102 DETERMINATIONS REVIEWABLE**

The following determinations are reviewable under this Chapter:

- A. The grant or denial in whole or in part after application of an initial permit, license, right, privilege, or authority, except a fermented malt beverage or intoxicating liquor license.
- B. The suspension, revocation, or nonrenewal of an existing permit, license right, privilege, or authority, except as provided in Section 4.0103(D).
- C. The denial of a grant of money or other thing of value under a statute or ordinance prescribing conditions of eligibility for such grant.
- D. The imposition of a penalty or sanction upon any person except a municipal employee or officer, other than by a court.
- E. The suspension or removal of a City officer or employee except as provided in Section 4.0103 (B) and (G).

State Law Reference: Section 68.02, Wis. Stats.

#### **4.0103 DETERMINATIONS NOT SUBJECT TO REVIEW**

The following determinations are not reviewable under this Chapter:

- A. A legislative enactment. A legislative enactment is an ordinance, resolution, or adopted motion of the Common Council.
- B. Any action subject to administrative or judicial review procedures under State statutes or other provisions of this Code.
- C. The denial of a tort or contract claim for money required to be filed with the City under Section 62.25, Wis. Stats.
- D. The grant, denial, suspension, or revocation of a fermented malt beverage or intoxicating liquor license under Chapter 125, Wis. Stats.
- E. Judgments and orders of a court.
- F. Determinations made during municipal labor negotiations.

G. Determinations subject to grievance, arbitration, or other procedures provided in collective bargaining agreements.

State Law Reference: Section 68.03, Wis. Stats.

**4.0104 MUNICIPAL AUTHORITY DEFINED**

"Municipal authority" includes the Common Council, commission, committee, agency, officer, employee, or agent of the City making a determination under Section 4.0101, and every person, committee or agency of the City to make an independent review under Section 4.0108(B).

State Law Reference: Section 68.05, Wis. Stats.

**4.0105 PERSONS AGGRIEVED**

A person aggrieved includes any individual, partnership, corporation, association, public or private organization, officer, department, board, commission or agency of the City, whose rights, duties, or privileges are adversely affected by a determination of a municipal authority. No department, board, commission, agency, officer, or employee of the City who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, officer, or employee of the City, but may respond or intervene in a review proceeding under this Chapter initiated by another.

State Law Reference: Sections 68.01 and 68.06, Wis. Stats.

**4.0106 REDUCING DETERMINATION TO WRITING**

If a determination subject to this Chapter is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within ten (10) days of notice of such determination, reduce the determination and the reasons therefor to writing and mail or deliver such determination and reasons to the person making the request. The determination shall be dated, and shall advise such person of his right to have such determination reviewed, that such review may be obtained within thirty (30) days, and the office or person to whom a request for review shall be addressed.

State Law Reference: Section 68.07, Wis. Stats.

**4.0107 REQUEST FOR REVIEW OF DETERMINATION**

Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within thirty (30) days of notice to such person of such determination. The request for review shall state the grounds upon which the person aggrieved contends that the determination should be modified or reversed. A request for review shall be made to the officer, employee, agent, agency, committee, board, commission, or body who made the determination, but failure to make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

State Law Reference: Section 68.08, Wis. Stats.

**4.0108 REVIEW OF DETERMINATION**

A. Initial Determination

If a request for review is made under Section 4.0107, the determination to be reviewed shall be termed an initial determination.

B. Who Shall Make Review

A review under this Section may be made by the officer, employee, agent, agency, committee, board, commission, or body who made the initial determination. However, an independent review of such determination by another person, committee, or agency of the City, appointed by the Mayor without confirmation, shall be provided if practicable.

C. When to Make Review

The Municipal authority shall review the initial determination within fifteen (15) days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

D. Right to Present Evidence and Argument

The person aggrieved may file with his request for review, or within the time agreed with the municipal authority, written evidence and argument in support of his position with respect to the initial determination.

E. Decision on Review

The municipal authority may affirm, reverse, or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the municipal authority's decision on review which shall state the reasons for such decision. The decision shall advise the person aggrieved of his right to appeal the decision, that appeal may be taken within thirty (30) days, and the office or person with whom notice of appeal shall be filed.

State Law Reference: Section 68.09, Wis. Stats.

**4.0109 ADMINISTRATIVE APPEAL**

A. From Initial Determination or Decision on Review

1. If the person aggrieved had a hearing substantially in compliance with Section 4.0110 when the initial determination was made, he may elect to follow Sections 4.0106 through 4.0108, but is not entitled to a further hearing under Section 4.0110 unless granted by the municipal authority. He may, however, seek judicial review under Section 4.0112.
2. If the person aggrieved did not have a hearing substantially in compliance with Section 4.0110 when the initial determination was made, he shall follow Sections 4.0106 through 4.0108 and may appeal under this Section from the decision made under Section 4.0108.

- B. Time Within Which Appeal May Be Taken Under This Section.  
Appeal from a decision on review under Section 4.0108 may be taken within thirty (30) days of notice of such decision.
- C. How Appeal May Be Taken  
An appeal under this Section may be taken by filing with, or mailing to, the office or person designated in the municipal authority's decision on review, written notice of appeal.

State Law Reference: Section 68.10, Wis. Stats.

#### **4.0110 HEARING ON ADMINISTRATIVE APPEAL**

- A. Time of Hearing  
The City shall provide the appellant a hearing on an appeal under Section 4.0109 within fifteen (15) days of receipt of the notice of appeal and shall serve the appellant with notice of such hearing by mail or personal service at least ten (10) days before such hearing. The office or person with whom a notice of appeal is filed shall immediately notify the City Attorney, who shall forthwith advise the Mayor of such appeal.
- B. Conduct of Hearing  
At the hearing the appellant and the municipal authority may be represented by counsel and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The Mayor shall appoint, without confirmation, an impartial decision maker who may be an officer, committee, board, or commission of the City or the Common Council who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. The decision maker may issue subpoenas. The hearing may, however, be conducted by an impartial person, committee, board, or commission designated by the Mayor to conduct the hearing and report to the decision maker.
- C. Record of Hearing  
The person conducting the hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may, and upon request of the appellant, shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the City.
- D. Hearing on Initial Determination  
Where substantial existing rights are affected by an initial determination, the municipal authority making such determination shall, when practicable, give any person directly affected an opportunity to be heard in accordance with this Section before making such determination.

State Law Reference: Section 68.11, Wis. Stats.

**4.0111 FINAL DETERMINATION**

- A. Within twenty (20) days of completion of the hearing conducted under Section 4.0110 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons therefore. Such determination shall be a final determination.
- B. A determination following a hearing substantially meeting the requirements of Section 4.0110 or a decision on review under Section 4.0108 following such hearing shall be a final determination, judicial review of which may be obtained under Section 4.0112.

State Law Reference: Section 68.12, Wis. Stats.

**4.0112 JUDICIAL REVIEW**

- A. Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within thirty (30) days of receipt of the final determination.
- B. The record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at his expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the City and the person seeking review shall be furnished a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.

State Law Reference: Section 68.13, Wis. Stats.

**4.0113 LEGISLATIVE REVIEW**

- A. Seeking review pursuant to this Chapter does not preclude a person aggrieved from seeking relief from the Common Council or any of its boards, commissions, committees, or agencies which may have jurisdiction.
- B. If in the course of legislative review under this Section a determination is modified, such modification and any evidence adduced before the Common Council, board, commission, committee, or agency shall be made part of the record on review under Section 4.0112.
- C. The Common Council, board, commission, committee, or agency conducting a legislative review under this Section need not conduct the type of hearing required under Section 4.0110.

State Law Reference: Section 68.14, Wis. Stats.

