

TITLE 4

Administrative Determinations Review

Chapter 1 Review of Administrative Determinations

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SEC. 4- 1-1 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.

SEC. 4-1-2 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 4-1-3(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 except as provided in Sections 4-1-3(b) and (g).

State Law Reference: Section 68.02, Wis. Stats.

SEC. 4-1-3 DETERMINATIONS NOT SUBJECT TO REVIEW.

The following determinations are not reviewable under this Chapter:

- (a) A legislative enactment. 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 statute 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 Sec. 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 or the City's personnel rules and regulations.

State Law Reference: Section 68.03, Wis. Stats.

SEC. 4-1-4 MUNICIPAL AUTHORITY DEFINED.

"Municipal authority" includes the Common Council, commission, committee, agency, office, employee, or agent of the City making a determination under Section 4-1-1 and every person, committee, or agency of the City to make an independent review under Section 4-1-8(b).

State Law Reference: Section 68.05, Wis. Stats.

SEC. 4-1-5 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.

SEC. 4-1-6 REDUCING DETERMINATION TO WRITING.

If a determination subject to this Chapter is made orally or, if in writing, does not state the reasons therefore, 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 therefore 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.

SEC. 4-1-7 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.

SEC. 4-1-8 REVIEW OF DETERMINATION.

(a) **Initial Determination.** If a request for review is made under Section 4-1-7, 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 who notice of appeal shall be filed.

State Law Reference: Section 68.09, Wis. Stats.

SEC. 4-1-9 ADMINISTRATIVE APPEAL.

(a) **From Initial Determination or Decision on Review.**

(1) If the person aggrieved had a hearing substantially in compliance with Section 4-1-10 when the initial determination was made, he may elect to follow Sections 4-1-6 through 4-1-8, but is not entitled to a further hearing under Section 4-1-10 unless granted by the municipal authority. He may, however, seek judicial review under Section 4-1-12.

- (2) If the person aggrieved did not have a hearing substantially in compliance with Section 4-1-10 when the initial determination was made, he shall follow Sections 4-1-6 through 4-1-8 and may appeal under this Section from the decision made under Section 4-1-8.

(b) **Time Within Which Appeal May be Taken Under This Section.** Appeal from a decision on review under Section 4-1-8 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.

SEC. 4-1-10 HEARING ON ADMINISTRATIVE APPEAL.

(a) **Time of Hearing.** The City shall provide the appellant a hearing on an appeal under Section 4-1-9 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 and City Clerk-Treasurer 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 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.

SEC. 4-1-11 FINAL DETERMINATION.

(a) Within twenty (20) days of completion of the hearing conducted under Section 4-1-10 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 4-1-10 or a decision on review under Section 4-1-8 following such hearing shall be a final determination, judicial review of which may be obtained under Section 4-1-12.

State Law Reference: Section 68.12, Wis. Stats.

SEC. 4-1-12 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 established 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.

SEC. 4-1-13 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 4-1-12.

(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 4-1-10.

State Law Reference: Section 68.14, Wis. Stats.

CHAPTER 2

ADMINISTRATIVE PROCEDURE

- 4-2-1 Applicability
- 4-2-2 Conduct of Hearings
- 4-2-3 Evidence and Official Notice

SEC. 4-2-1 APPLICABILITY.

The procedures set forth in this Chapter shall be applicable to the following proceedings:

- (a) Hearings before the Common Council for the suspension, revocation, refusals to issue or renew alcohol beverage licenses pursuant to Wisconsin Statutes §125.12
- (b) Hearing before the Police and Fire Commission under Wisconsin Statutes §62.13(5) for disciplinary actions against subordinates.

SEC. 4-2-2 CONDUCT OF HEARINGS.

- (a) Public hearings shall be held at the date, time and place designated in the notice of hearing, and as designated by the chairperson of the hearing authority. The chairperson of the hearing authority conducting the hearing shall:
 - (1) Explain the purpose of the hearing and describe how testimony will be received.
 - (2) At the beginning of the hearing, present a summary of the factual information upon which the hearing is predicated, including any complaint which shall have been filed with the hearing authority.
 - (3) Afford each interested person or a representative the opportunity to present facts, opinions or arguments in writing, whether or not there is an opportunity to present them orally.
 - (4) Keep a record of the hearing in a manner the hearing authority considers desirable and feasible.
- (b) The chairperson of the hearing authority conducting the hearing may:
 - (1) Limit oral presentations if the hearing would be unduly lengthened by repetitious testimony.

- (2) Question or allow others present to question the witnesses or other persons appearing.
 - (3) Administer an oath or affirmation to any person appearing to give testimony, unless such be designated to another qualified person.
 - (4) Continue or postpone the hearing to a specified date, time and place.
- (c) If a record of the hearing has been made, arguments before the hearing authority shall be limited to the record of the hearing.
 - (d) The procedures required by this section do not supersede specific procedures required by any statute or municipal code provision relating to a specific hearing authority before which a hearing may be held.

SEC. 4-2-3 EVIDENCE AND OFFICIAL NOTICE.

- (a) A hearing authority shall not be bound by common law or statutory rules of evidence. The hearing authority shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under Wisconsin Statutes §901.05. The hearing authority shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
- (b) All evidence, including records and documents in the possession of the hearing authority of which the hearing authority desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- (c) A hearing authority may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.
- (d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- (e) A party may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

- (f) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in Wisconsin Statutes §805.07 (4) and must be served in the manner provided in Wisconsin Statutes §805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the chairman of the hearing authority responsible for conducting the proceeding.
- (g) Pre-hearing discovery shall not be permitted. All witnesses must appear in person to give testimony.

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