

TITLE III: ADMINISTRATION

Chapter

35. CITY POLICIES

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ADMINISTRATIVE REVIEW PROCEDURE

§ 35.01 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 the 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.
(1989 Code, § 24.01)

§ 35.02 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 § 35.03(D).

(C) The denial of a grant of money or other thing of value under a statute or ordinance prescribing conditions of eligibility for the 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 § 35.03(B) and (G).
(1989 Code, § 24.02)

§ 35.03 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 Wis. Stats. § 62.25;

(D) The grant, denial, suspension or revocation of a fermented malt beverage or intoxicating liquor license under Wis. Stats. Ch. 125;

(E) Judgments and orders of a court;

(F) Determinations made during municipal labor negotiations; and

(G) Determinations subject to grievance, arbitration or other procedures provided in collective bargaining agreements.
(1989 Code, § 24.03)

§ 35.04 MUNICIPAL AUTHORITY DEFINED.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MUNICIPAL AUTHORITY includes the Common Council, commission, committee, agency, officer, employee or agent of the city making a determination under § 35.01, and every person, committee or agency of the city to make an independent review under § 35.08(B). (1989 Code, § 24.04)

§ 35.05 PERSONS AGGRIEVED.

A person aggrieved includes any individual, partnership, corporation, association, public or private organization; and/or 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. (1989 Code, § 24.05)

§ 35.06 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 the determination shall, upon written request of any person aggrieved by the determination made within 10 days of notice of the determination, reduce the determination and the reasons therefor to writing and mail or deliver the determination and reasons to the person making the request. The determination shall be dated, and shall advise such person of his or her right to have the determination reviewed, that the review may be obtained within 30 days, and the office or person to whom a request for review shall be addressed. (1989 Code, § 24.06)

§ 35.07 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 the determination within 30 days of notice to the person of the 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 the failure has caused prejudice to the municipal authority. (1989 Code, § 24.07)

§ 35.08 REVIEW OF DETERMINATION.

(A) *Initial determination.* If a request for review is made under § 35.07, the determination to be reviewed shall be termed an initial determination.

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(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 the 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 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 or her request for review or within the time agreed with the municipal authority written evidence and argument in support of his or her 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 the decision. The decision shall advise the person aggrieved of his or her right to appeal the decision, that appeal may be taken within 30 days, and the office or person with whom notice of appeal shall be filed.

(1989 Code, § 24.08)

§ 35.09 ADMINISTRATIVE APPEAL.

(A) *From initial determination or decision on review.*

(1) If the person aggrieved had a hearing substantially in compliance with § 35.10 when the initial determination was made, he or she may elect to follow §§ 35.06 through 35.08, but is not entitled to a further hearing under § 35.10 unless granted by the municipal authority. He or she may, however, seek judicial review under § 35.12.

(2) If the person aggrieved did not have a hearing substantially in compliance with § 35.10 when the initial determination was made, he or she shall follow §§ 35.06 through 35.08 and may appeal under this section from the decision made under § 35.08.

(B) *Time within which appeal may be taken under this section.* Appeal from a decision on review under § 35.08 may be taken within 30 days of notice of the 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.

(1989 Code, § 24.09)

§ 35.10 HEARING ON ADMINISTRATIVE APPEAL.

(A) *Time of hearing.* The city shall provide the appellant a hearing on an appeal under § 35.09 within 15 days of receipt of the notice of appeal and shall serve the appellant with notice of the hearing by mail or personal service at least 10 days before the 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 the 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. The 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 the determination shall, when practicable, give any person directly affected an opportunity to be heard in accordance with this section before making the determination.

(1989 Code, § 24.10)

§ 35.11 FINAL DETERMINATION.

(A) Within 20 days of completion of the hearing conducted under § 35.10 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons therefor. This determination shall be a final determination.

(B) A determination following a hearing substantially meeting the requirements of § 35.10 or a decision on review under § 35.08 following the hearing shall be a final determination, judicial review of which may be obtained under § 35.12.

(1989 Code, § 24.11)

§ 35.12 JUDICIAL REVIEW.

(A) Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within 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 or her 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.
(1989 Code, § 24.12)

§ 35.13 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, the modification and any evidence adduced before the Common Council, board, commission, committee or agency shall be made part of the record on review under § 35.12.

(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 § 35.10.
(1989 Code, § 24.13)