

Chapter 21 REVIEW OF ADMINISTRATIVE DECISIONS

Section 21.01 Purpose

The purpose of this chapter is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by municipal authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th amendment to the U.S. constitution.

State Law Reference: Section 68.001, Wis. Stats.

Section 21.02 Review of administrative determinations. Any person having a substantial interest which is adversely affected by an administrative determination of a governing body, board, commission, committee, agency, officer or employee of a municipality or agent acting on behalf of a municipality as set forth in section 21.03, may have such determination reviewed as provided in this chapter. The remedies under this chapter shall not be exclusive. No department, board, commission, agency, officer or employee of a municipality who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, officer or employee of the same municipality, but may respond or intervene in a review proceeding under this chapter initiated by another.

State Law Reference: Section 68.01, Wis. Stats.

Section 21.03 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 an alcohol beverage license.

(b) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege, or authority, except as provided in section 21.04(e).

(c) The denial of a grant of money or other thing of substantial 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.

State Law Reference: Section 68.02, Wis. Stats.

Section 21.04 Determinations not subject to review. Except as provided in section 21.03, 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 governing body of a municipality.

(b) Any action subject to administrative or judicial review procedures under other statutes.

(c) The denial of a tort or contract claim for money, required to be filed with the municipality pursuant to statutory procedures for the filing of such claims.

(d) The suspension, removal or disciplining or nonrenewal of a contract of a municipal employee or officer.

(e) The grant, denial, suspension or revocation of an alcohol beverage license under section 125.12(1) of the Wisconsin Statutes.

(f) Judgments and orders of a court.

(g) Determinations made during municipal labor negotiations.

(h) Any action which is subject to administrative review procedures under an ordinance providing such procedures as defined in section 68.16 of the Wisconsin Statutes.

(i) Notwithstanding any other provision of this chapter, any action or determination of a municipal authority which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.

State Law Reference: Section 68.03, Wis. Stats.

Section 21.05 Municipal authority defined. “Municipal authority” includes every municipality and governing body, board, commission, committee, agency, officer, employee, or agent thereof making a determination under sections 21.02 and 21.03.

State Law Reference: Section 68.05, Wis. Stats.

Section 21.06 Persons aggrieved. A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, by a determination of a municipal authority.

State Law Reference: Section 68.06, Wis. Stats.

Section 21.07 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 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 the right to have such determination reviewed, the time within which such review may be obtained, and the office or person to whom a request for review shall be addressed.

State Law Reference: Section 68.07, Wis. Stats.

Section 21.08 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 30 days of notice to such person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision 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.

Section 21.09 Review of determination.

(a) INITIAL DETERMINATION. If a request for review is made under section 21.08, the determination to be reviewed shall be termed an initial determination.

(b) WHO SHALL MAKE REVIEW. A review under this section shall be made by the officer, employee, agent, agency, committee, board, commission or body who made the initial determination.

(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 the request for review or within the time agreed with the municipal authority written evidence and argument in support of the person's 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 the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom notice of appeal shall be filed.

State Law Reference: Section 68.09, Wis. Stats.

Section 21.10 Administrative Appeal.

(a) FROM INITIAL DETERMINATION OR DECISION ON REVIEW.

(1) An aggrieved person may appeal an initial determination or a decision on review to the Town Board and shall follow the procedures set forth in section 21.11.

(2) Appeals of any order requirement, decision or determination of the Zoning Administrator shall be appealed to the Board of Adjustment under section 6.02(d)(1) of the Code of Ordinances. Any person aggrieved by a decision of the Board of Adjustment under section 6.02(f) of the Code of Ordinances may appeal the decision to the Town Board under section 21.11 of the Code of Ordinances.

(b) TIME WITHIN WHICH APPEAL MAY BE TAKEN UNDER THIS SECTION. Appeal from an initial determination or decision on review shall be taken within 30 days 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.

Section 21.11 Hearing on administrative appeal.

(a) TIME OF HEARING. The municipality shall provide the appellant a hearing on an appeal under section 21.10 within 15 days of receipt of the notice of appeal filed or mailed under section 21.10 and shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing.

(b) CONDUCT OF HEARING. At the hearing, the appellant and the municipal authority may be represented by an attorney 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 hearing shall be before the Town Board. Any Town Board member who participated in making the initial determination or the decision on review shall not hear the appeal. The Town Board may issue subpoenas. An appellant'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 section 805.07(4) of the Wisconsin Statutes and must be served in the manner provided in section 805.07(5) of the Wisconsin Statutes. The attorney shall, at the time of issuance, send a copy of the subpoena to the Town Board.

(c) RECORD OF HEARING. The hearing shall be recorded either by a recording device or a court reporter and all exhibits shall be marked and preserved. The expense thereof shall be paid by the municipality.

State Law Reference: Section 68.11, Wis. Stats.

Section 21.12 Final Determination.

(a) Within 20 days of completion of the hearing conducted under section 21.11 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant a written determination stating the reasons therefor. Such determination shall be a final determination.

(b) A determination following a hearing substantially meeting the requirements of section 21.11 shall also be a final determination.

State Law Reference: Section 68.12, Wis. Stats.

Section 21.13 Judicial review.

(a) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari to the circuit court within 30 days of receipt of the final

determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.

(b) If review is sought of a final determination, 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 the requester's 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 municipality 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.

Section 21.14 Legislative review.

(a) The seeking of a review pursuant to section 21.10 or 21.13 does not preclude a person aggrieved from seeking relief from the governing body of the municipality 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 governing body, board, commission, committee or agency shall be made part of the record on review under section 21.13.

(c) The governing body, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under section 21.11.