

## Chapter 2.40

### ADMINISTRATIVE REVIEW

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**2.40.010 Review of administrative determinations.**

Any person aggrieved by an administrative determination of the town board or a board, commission, committee, agency, official or employee of the town, or an 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. (Prior code § 24.01)

**2.40.020 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 2.40.030(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 town official or employee, except as provided in Section 2.40.030(B) and (G). (Prior code § 24.02)

**2.40.030 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 town board;

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 town under Section 60.44, Wis. Stats.;

D. The grant, denial, suspension or revocation of a fermented malt beverage license 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 agreements for collective bargaining;

H. Any action or determination which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination. (Prior code § 24.03)

**2.40.040 Municipal authority defined.**

“Municipal authority” includes the town board, commission, committee, agency, official, employee or agent of the town making a determination under Section 2.40.010, and every person, committee or agency of the town authorized to make an independent review under Section 2.40.080(B). (Prior code § 24.04)

**2.40.050 Persons aggrieved.**

A person aggrieved includes any individual, partnership, corporation, association, public or private organization, and any official, department, board, commission or agency of the town, whose rights, duties or privileges are adversely affected by a determination of a municipal authority. No department, board, commission, agency, official or employee of the town who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, official or employee of the town, but may respond or intervene in a review proceeding under this chapter initiated by another. (Prior code § 24.05)

**2.40.060 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, shall advise that such review may be taken within thirty (30) days and shall name the

office or person to whom a request for review shall be addressed. (Prior code § 24.06)

**2.40.070 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 official, 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. (Prior code § 24.07)

**2.40.080 Review of determination.**

A. Initial Determination. If a request for review is made under Section 2.40.070, 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 official, 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 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, advise that the appeal may be taken within thirty (30) days and name the office or person with whom notice of appeal shall be filed. (Prior code § 24.08)

#### **2.40.090 Administrative appeal.**

A. From Initial Determination or Decision on Review.

1. If the person aggrieved had a hearing substantially in compliance with Section 2.40.100 when the initial determination was made, he may elect to follow Sections 2.40.060 through 2.40.080, but is not entitled to a further hearing under Section 2.40.100 unless granted by the municipal authority. He may, however, seek judicial review under Section 2.40.120.

2. If the person aggrieved did not have a hearing substantially in compliance with Section 2.40.100 when the initial determination was made, he shall follow Sections 2.40.060 through 2.40.080, and may appeal under this section from the decision made under Section 2.40.080.

B. Time Within Which Appeal May be Taken. Appeal from a decision on review under Section 2.40.080 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 town clerk a written notice of appeal. (Prior code § 24.09)

#### **2.40.100 Hearing on administrative appeal.**

A. Time of Hearing. The town shall provide the appellant a hearing on an appeal under Section 2.40.090 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.

B. Conduct of Hearing. At the hearing, the appellant and the municipal authority may be represented by counsel and may present evidence, call and examine witnesses, and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The town chairman shall appoint, without confirmation, an impartial decision-maker, who may be an official, committee, board or commission of the town or the town board who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal and who may issue subpoenas. The hearing may, however, be conducted by an impartial person, committee, board or commission designated by the town chairman to conduct the hearing and report to the decision-maker.

C. Record of Hearing. The person conducting the hearing, or a person employed for the purpose of making a record of the hearing, 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 town.

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. (Prior code § 24.10)

**2.40.110 Final determination.**

A. Within twenty (20) days of completion of the hearing conducted under Section 2.40.100 and the filing of briefs, if any, the decision-maker shall mail or deliver to the appellant its 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 2.40.100, or a decision on review under Section 2.40.080 following such hearing, shall be a final determination, judicial review of which may be obtained under 2.40.120. (Prior code § 24.11)

**2.40.120 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 town; 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. (Prior code § 24.12)

**2.40.130 Legislative review.**

A. Seeking review pursuant to this chapter does not preclude a person aggrieved from seeking relief from the town board 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 town board, board, commission, committee or agency shall be made part of the record on review under Section 2.40.120.

C. The town board, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under Section 2.40.100. (Prior code § 24.13)