

CHAPTER 4

ADMINISTRATIVE REVIEW

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4.01 PURPOSE. The purpose of this Chapter is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by all Town officers, employees, agents, agencies, committees, boards and commissions which may involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th Amendment to the U.S. Constitution. Chapter 68, Wis. Stats., relating to municipal administrative review procedure shall be in full force and effect in the Town, except as to those provisions otherwise provided in this Chapter.

4.02 REVIEW OF ADMINISTRATIVE DETERMINATIONS. Any person aggrieved by an administrative determination of the Town Board or a board, commission, committee, agency, officer or employee of the Town of Sparta 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. No department, board, commission, agency, officer or employee of the Town who is aggrieved may initiate review under this Chapter of a determination of any other department, board, commission, agency, officer or employee of the Town, but may respond or intervene in a review proceeding under this Chapter initiated by another.

4.03 DETERMINATIONS REVIEWABLE. The following determinations are reviewable under this Chapter:

- 1) The grant or denial in whole or in part after application of an initial permit, license, right, privilege or authority, except an alcoholic beverage license.
- 2) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege or authority, except as provided in sec. 4.04(5) of this Chapter.
- 3) 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.
- 4) The imposition of a penalty or sanction upon any person except a Town employee or officer, other than by a court.

4.04 DETERMINATIONS NOT SUBJECT TO REVIEW. Except as provided in sec. 4.03 of this Chapter, the following determinations are not reviewable under this Chapter:

- 1) A legislative enactment, which is an ordinance, resolution or adopted motion of the Town Board.
- 2) Any action subject to administrative or judicial review procedures under statutes other than Ch. 68, Wis. Stats.
- 3) The denial of a tort or contract claim required to be filed with the Town pursuant to procedures for the filing of such claims.
- 4) The suspension, removal or disciplining or nonrenewal of a contract of a Town employee or officer.

- 5) The grant, denial, suspension or revocation of a fermented malt beverage or intoxicating liquor license under §125.12(1), Wis. Stats.
- 6) Judgments and orders of a court.
- 7) Determinations made during Town labor negotiations.
- 8) Any action which is subject to administrative review procedures as otherwise provided in this Code.
- 9) Notwithstanding any other provision of this chapter, any action or determination of a Town 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.

4.05 MUNICIPAL AUTHORITY DEFINED. "Municipal authority" includes the Town governing board, all other boards of the Town of Sparta, commissions, committees, officers, employees and agents thereof making a determination under sec. 4.02, and every person, committee or agency of the Town appointed to make an independent review under sec. 4.09(2).

4.06 PERSON AGGRIEVED. A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, officer, department, board, commission or agencies of the Town, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.

4.07 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.

4.08 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 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.

4.09 REVIEW OF DETERMINATION.

- 1) **INITIAL DETERMINATION.** If a request for review is made under sec. 4.08, the determination to be reviewed shall be termed an initial determination.

- 2) 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 Town ("municipal authority"), appointed by the Chairperson without confirmation, shall be provided if practicable.
- 3) 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.
- 4) RIGHT TO PRESENT EVIDENCE AND ARGUMENT. The person aggrieved may file with his/her request for review, or within the time agreed with the municipal authority, written evidence and argument in support of his/her position with respect to the initial determination.
- 5) 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/her 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.

4.10 ADMINISTRATIVE APPEAL.

- 1) FROM INITIAL DETERMINATION OR DECISION ON REVIEW.
 - a) If the person aggrieved had a hearing substantially in compliance with sec. 4.11 when the initial determination was made, he/she may elect to follow sec. 4.07 through 4.09, but is not entitled to a further hearing under sec. 4.11 unless granted by the municipal authority. He/she may; however, seek judicial review under sec. 4.13.
 - b) If the person aggrieved did not have a hearing substantially in compliance with sec. 4.11 when the initial determination was made, he/she shall follow sec. 4.07 through 4.09 and may appeal under this section from the decision made under section 4.09.
- 2) TIME WITHIN WHICH APPEAL MAY BE TAKEN UNDER THIS SECTION. Appeal from a decision on review under section 4.09 may be taken within thirty (30) days of notice of such decision.
- 3) 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.

4.11 HEARING ON ADMINISTRATIVE APPEAL.

- 1) TIME OF HEARING. The Town shall provide the appellant a hearing on an appeal under sec. 4.10 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 bearing. The office or person with whom a notice of appeal is filed shall immediately notify the Town Attorney, who shall forthwith advise the Chairperson of such appeal.

- 2) **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 Chairperson shall appoint, without confirmation, an impartial decision maker who may be an officer, 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. The decision maker may issue subpoenas. The hearing may, however, be conducted by an impartial person, committee, board or commission designated by the Chairperson to conduct the hearing and report to the decision maker.
- 3) **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 Town.

4.12 FINAL DETERMINATION.

- 1) Within twenty (20) days of completion of the hearing conducted under sec. 4.11 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.
- 2) A determination following a hearing substantially meeting the requirements of sec. 4.11 or a decision on review under sec. 4.09 following such hearing shall be a final determination, judicial review of which may be obtained under sec. 4.13.

4.13 JUDICIAL REVIEW.

- 1) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within thirty (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
- 2) 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 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.

4.14 LEGISLATIVE REVIEW.

- 1) 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.

- 2) 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 sec. 4.13.
- 3) The Town Board, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under sec. 4.11.

4.15 AVAILABILITY OF METHODS OF RESOLVING DISPUTES. This Chapter does not preclude the Town and person aggrieved from employing arbitration, mediation or other methods of resolving disputes, and does not supersede contractual provisions for that purpose.

4.16 CONFLICTING CODE PROVISIONS. The provisions of this Chapter shall not be deemed to repeal or supersede the provisions of any other section of this Code in conflict herewith or providing other procedures for review of administrative determinations within the Town except when otherwise specifically provided in said sections.

4.17 thru 4.99 RESERVED.