Title 4 – 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 Town Board or a board, commission, committee, agency, officer or employee of the Town of Oshkosh 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*:** §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 Town officer or employee except as provided in Section 4-1-3(b) and (g).

***State Law Reference*:** §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. 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 Sec. §62.26, Wis. Stats.

(d) The grant, denial, suspension or revocation of a fermented malt beverage license under Ch. §125, Wis. Stats.

(e) Judgments and orders of a court.

(f) Determination made during municipal labor negotiations.

(g) Determinations subject to grievance, arbitration or other procedures provided in collective bargaining agreements.

***State Law Reference*:** §68.03, Wis. Stats.

Sec. 4-1-4 Municipal Authority Defined.

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

***State Law Reference*:** §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 Town,

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 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.

***State Law Reference*:** §68.01 and §68.08, Wis. Stats.

Sec. 4-1-6 Reducing Determination to Writing.

If a determination subject to this Chapter is made orally (or if in writing) and does not state the reasons for the decision, 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*:** §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 part shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

***State Law Reference*:** §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 to 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 Town ("municipal authority"), appointed by the Chairperson 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/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.

***State Law Reference*:** §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/she 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 grated 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/she 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*:** §68.10, Wis. Stats.

Sec. 4-1-10 Hearing on Administrative Appeal.

(a) **Time of Hearing.** The Town 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 may notify the Town Attorney and advise the Chairperson 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 Chairperson shall appoint, with 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.

(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 stenograph 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.

***State Law Reference*:** §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 therefor. Such determination shall be 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*:** §68.12, Wis. Stats.

Sec. 4-1-12 Judicial Review.

(a) Any party to a proceeding resulting in a final determination may seek review therof by writ of certiorari within thirty (30) days of receipt of the final determination.

(b) The record of the proceeding 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 this 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*:** §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 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 4-1-12.

(c) The Town Board, board commission, commit 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*:** §68.14, Wis. Stats.