

Common Council Executive Committee
(Renamed from Common Council Organizational Committee)
Rules of Procedure for Administrative Review Board Hearings
Established by the CCOC on May 7, 2013
MGO 9.49

The Common Council Executive Committee (CCEC), as constituted under sec. 33.13, MGO, serves as the Administrative Review Board (ARB) pursuant to sec. 9.49, MGO. A City approved meeting agenda shall be used to provide public notice of all hearings of the ARB. The following procedure is to be used during the “hearing” portion of the agenda, after calling the meeting to order, roll call, recusals, and any other agenda items that precede the “hearing” on the agenda.

A. Opening Remarks and Explanation by Chairperson

The Chair of the CCEC shall serve as the Chair of the ARB.

1. Call hearing to order. Announce that this is a hearing requested by (name of appellant) to appeal the determination of (city department or decision-making body) dated (date of the written determination being appealed.)
2. Determine if hearing was properly and timely requested (appeal must have been filed in writing with City Clerk within 30 days of receiving the written determination appealed from.)
3. Determine if hearing was properly noticed. (Appellant shall be notified at least 10 days before the hearing date.)
4. Check if all parties are present.

If the appellant is not present when the hearing is called to order, allow 15 minutes. If the appellant fails to appear, the ARB may entertain a motion to deny the appeal. If the appellant is present, proceed as follows:

5. Ask for appearances of the parties, for the record (name of the person who filed the appeal, name of the City’s representative(s) and any attorneys for each.)
6. Introduce members of the Administrative Review Board.
7. Explain role of the Chair:
 - Issue subpoenas (a party’s attorney of record may also issues subpoenas as authorized by Wis. Stat. s. 227.45(6m).)
 - Conduct the hearing, control the order of events consistent with these procedures
 - Administer oaths to witnesses
8. Role of Common Council staff person:
 - Receive and mark all exhibits
 - Keep accurate records of proceeding
 - Tape record the proceedings
 - If either party requests a stenographic recording, staff shall make necessary arrangements but the expense shall be borne by the requesting party. MGO 9.49(6)(b). Requests for stenographic recording must be made five (5) business days before the hearing by contacting the Common Council Legislative Services & Council Office Manager at 608-266-4074.
9. Explain the sequence of the hearing (Section B) and the Additional Rules for the Hearing (Section C.)

B. Sequence of Hearing.

1. Opening statements by the Parties – optional at the Chair’s discretion. *If opening statements are allowed, the appellant goes first, the City goes second, and the Chairperson may set a maximum time limit for the statements.*
2. Appellant presents their case, including any witnesses. The appellant may testify as a witness. The order of testimony will be:
 - a) Direct examination of the witness by appellant (*any testimony from the appellant, who need not follow a strict question & answer format.*)
 - b) Opportunity for cross-examination by City.
 - c) Opportunity for follow-up questions by appellant (only if there was cross)
 - d) Questions from Board members (if any)
3. Appellant may present exhibits at any time during the presentation of their case.

Appellant must provide at least 10 copies of each exhibit. The ARB will not make copies. CCEC Staff shall mark and receive exhibits and keep a list of all exhibits presented.
4. Appellant concludes presentation of evidence.
5. City presents its case, including any witnesses. The City representative may testify as a witness. The order of testimony will be:
 - a) Direct examination by City (*if city representative testifies, it need not follow a strict question & answer format.*)
 - b) Opportunity for cross-examination by Appellant.
 - c) Opportunity for follow-up questions by City (only if cross-examination.)
 - d) Questions from Board members (if any)
6. City may present exhibits at any time during the presentation of their case. The rules for exhibits for the City are the same as for the Appellant, above.
7. City concludes presentation of evidence.
8. Rebuttal evidence or witnesses by the Appellant (if requested.) *Rebuttal should follow the same sequence as 2. And 3 above; however the Chair may limit the scope of rebuttal as needed to control the orderly flow of the hearing.*
9. Opportunity for City to respond to rebuttal by Appellant (if requested.) *The Chair may limit the scope of City rebuttal.*
10. Closing remarks by both Parties – optional at the Chair’s discretion. *The Chairperson may set a maximum time limit for closing remarks.*

C. Additional Rules for the Hearing

1. One person speaks at a time as recognized by Chair.
2. No vulgarity; observe respect for all parties present, the board, and the staff.
3. No participation by anyone other than the parties, their counsel if any, witnesses, and Board members. Public Comment is not required at quasi-judicial hearings. See ss. 33.01(9)(d) and (e), MGO.
4. If a party needs to interrupt the proceeding for a clarification, s/he must ask for permission to speak from the Chair.
5. Once each party has concluded/ rested the presentation of evidence, no further statements from witnesses shall be allowed.
6. All witnesses speak only under oath of telling truth. Chairperson shall administer a suitable oath to all witnesses prior to the witness testifying.
7. The Board is not bound by common law or statutory rules of evidence (for court proceedings) but shall follow Wis. Stat. sec. 227.45 (formerly 227.08) as required by MGO 9.49. The Chairperson may exclude evidence that is not relevant or unduly repetitious or inadmissible under Wis. Stat. sec. 901.05.
8. If there are objections to admission of evidence, the Chairperson will give each party a chance to speak, and then make a decision on whether to consider the evidence at issue, based on the criteria in par. 7 above.
9. Findings of fact shall be based upon evidence upon which reasonable persons could rely to make a decision, subject to Wis. Stat. 227.45(1).
10. In absence of a specific procedural rule on a subject, the Chair may make a ruling consistent with these procedures and MGO 9.49.
11. If the parties have agreed to facts or evidence to be presented ("stipulations"), such stipulations may be presented, preferably at the beginning of the hearing or any other time the Chair may deem to be in order.
12. Board members should avoid *ex parte* communications on the subject of the appeal with the appellant and the City representative(s) while the appeal is pending.

D. Deliberations and Decision-making

MGO 9.49(6)(b)3. : "Within thirty (30) days of the completion of the hearing and the filing of briefs, if any, the ARB shall issue a written decision stating the reasons therefor. The ARB shall have power to affirm or reverse the written determination, or to remand it to the agency or authority with instructions for reconsideration. Such orders shall be consistent with applicable law, and, except for remands, shall be final determinations for the purpose of judicial review."

The Board may seek legal advice from its counsel in making its decision. The Board may conduct deliberations at the conclusion of the hearing or adjourn and schedule a future meeting for purposes of deliberation, consistent with the 30-day time limit in 9.49(6)(b)3.

1. The Board should render its decision in the form of a motion which is put to a vote of the members and adopted by not less than a simple majority.
2. The Board may announce its decision at the conclusion of its deliberations, however the final decision must be issued in writing as required by 9.49(6)(b)3.
3. The Common Council staff person shall mail the written decision to the applicant and the City representative with a copy to the City Attorney and the City Clerk. The written notice shall include information about judicial review found in MGO 9.49(7).

The above rules were adopted by the CCEC at its regular meeting on May 7, 2013.

Correction was made to note the renaming of the Common Council Organizational Committee to Common Council Executive Committee and CCOC to CCEC.