

Public Health Madison and Dane County Administrative Hearing Procedure

- A. Confirming Jurisdiction, Taking Appearances, Opening Remarks - Chairperson
1. Call hearing to order.
 2. Jurisdiction.
 - a. Determine and state whether the request for hearing was timely made.
 - b. Determine and state that all interested parties received timely and adequate notice of the hearing.
 - c. Determine and state which section of the applicable ordinance governs the proceeding (choose one):
 - 1) If the alleged violation(s) occurred in the city of Madison:
 - Madison General Ordinances (MGO) Sec. 25.22(10) (dangerous animals);
 - MGO Sec. 7.08(14) (restaurant operation); or,
 - MGO Sec. 23.18(3) (cruelty to animals).
 - 2) If the alleged violation(s) occurred outside the City of Madison:
 - Dane County Code of Ordinances (DCO) Sec. 45.22 (private water systems);
 - DCO Sec. 46.17 (private sewerage systems),
 - DCO Sec. 47.18 (dangerous dogs); or,
 - DCO Sec. 48.19 (regulation of tattooing and body-piercing)
 3. Appearances and Introductions.
 - a. Determine that all interested parties are present.
 - b. Ask each interested party to state his/her name for the record, spelling his or her last name. For any party appearing with/by an attorney, the attorney will state the party's appearance, e.g. "The appellant, Mr. John Q. Dog, appears personally and by his attorney, Ms. Legal Beagle." – and - "The respondent City/County appears by Assistant City Attorney (Corporation Counsel), Mr. Charles Barkley."
 - c. Introduce each member of the appeals panel
 - d. Introduce the lawyer for the appeals panel and the lawyer's function:
 - 1) Provide legal advice to the appeals panel
 - 2) Once appeals panel issues it ruling, produce written decision and order for chair's signature.
 - e. Introduce clerk and list the clerk's functions:
 - 1) Keep accurate records of proceeding,
 - 2) Tape record all testimony,
 - 3) Administer oaths to witnesses,
 - 4) Mail out decision of appeals panel

4. Explain *purpose* of hearing and *function* of appeals panel
 - a. Summarize the decision and order issued by the Department and state specifically the issue on appeal, if known. (E.g., “The Department of Public Health for Madison-Dane County has declared three pit bulls owned by the appellant to be dangerous. The Department recommended a disposition that would allow the appellant to keep the dogs under the following specific conditions...”)
State the basis for the hearing by referencing the hearing request filed by the appellant. (E.g., Mr. John Q. Dog has appealed the Department’s Declaration or Order on the basis that his dogs are not dangerous”).
 - b. State the function of the Administrative Hearing Appeals Panel. E.g., “Our job is to sit as a quasi-judicial body, listen to the evidence, and find one of the following:
 - 1) We agree with the Department’s decision and order; or
 - 2) We agree, in part, and disagree, in part, with the Department’s decision and order and direct the Department to reissue its decision and order as modified; or
 - 3) We disagree with the Department’s decision and order that the decision and order be rescinded.”

B. Outline sequence of proceeding; presentation of witnesses and other evidence
Chairperson

1. Opening remarks. Each party will be permitted to make brief opening remarks summarizing their case.
2. Department’s witnesses. Department will present all of its witnesses first.
 - a. Direct examination. The attorney for the Department will ask questions of the Department’s first witness.
 - b. Cross-examination. The appellant will ask questions of the Department’s first witness.
 - c. Redirect. The attorney for Department may ask follow-up questions of the Department’s first witness. Follow-up questions are limited to those topics introduced on cross-examination.
 - d. Re-cross examination. The appellant may ask follow-up questions of the Department’s first witness. Follow-up questions are limited to those topics introduced on re-direct.
 - e. Questions from the hearing panel. The members of the hearing panel may ask questions of the Department’s first witness.
 - f. The Department and appellant may ask additional questions which will be limited to the topics raised by the hearing panel’s questions.
 - g. Department will call its *additional* witnesses and the questioning of those witnesses will continue as described in a.) through e.) above.
3. Department’s Exhibits. After it has presented all of its witnesses, Department will move introduction of its exhibits into the record. At that time, the appellant may object to the introduction of the Department’s exhibits.

4. Appellant's witnesses. After the Department has concluded presenting its case, the appellant will present its witnesses and the same sequence of direct/cross-examination/re-direct and re-cross examination will apply.
 5. Appellant's exhibits. After it has presented all of its witnesses, the appellant may move introduction of its exhibits into the record. At that time, the Department may object to the introduction of the appellant's exhibit.
 6. Rebuttal witnesses may be called by either party. Rebuttal witnesses may only testify regarding evidence previously presented by the opposing party.
 7. Closing remarks.
 - a. Department goes first since it has the burden of proof.
 - b. Appellant,
 - c. Department gets the final word because of its burden.
- C. Closed session – Chairperson: After all evidence is presented by the parties and if properly noticed, the panel may go into closed session to discuss the evidence and makes its determination, in which case, again if properly notice, the panel will reconvene in open session and issue an oral decision.
- D. Rules of Proceeding – Chairperson:
1. One person speaks at a time as recognized by Chair.
 2. No vulgarity; respect for all parties present.
 3. No participation by anyone other than the parties, witnesses, and appeal panel members.
 4. Request permission to speak if you need to interrupt the proceeding for a clarification.
 5. Once testimony is closed, nothing further from witnesses.
 6. Once closing statements are in, there will be no further opportunity to speak unless requested by Chair.
 7. All witnesses will be sworn prior to testifying.
- E. Burden of Proof and Rules of Evidence - Chairperson
1. The Department carries the burden of proof. The standard of proof is that of a "preponderance of evidence". A "preponderance of evidence" means that, after considering all of the evidence presented by both parties, the panel's decision must be supported by that evidence which is of the greater weight and credibility.
 2. If there are objections to the admission of evidence, chairperson will give each party a chance to speak, and then make a ruling on admissibility.
 3. The hearing panel is not bound by rules of evidence; however, irrelevant or unduly repetitious evidence will be excluded.
 4. Rules of privilege recognized by law shall be respected
 5. Copies of documentary evidence may be received if originals are not available.
 6. Administrative notice will be taken of officially recognized facts (e.g., the time the sun set on a certain date or that an ordinance was in effect on a certain date).

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F. Procedure Regarding Witnesses

1. Ask each party to list the names of witnesses to be called (with spelling as necessary).
2. Ask clerk to administer oath or affirmation to all witnesses at same time.
3. Be ready to rule if either side requests that witnesses be sequestered.

G. Stipulations

1. Have the parties agreed to any facts; if so, what are they?
2. Repeat or clarify as necessary.
3. Ask each party if they agree to the facts as stipulated.
4. Optional: restate the issues that are before the panel. Ask if the parties agree with that restatement.

H. Final Remarks by Chair (after all evidence is presented)

1. We will consider all evidence presented.
2. Our Goal: To decide the facts, draw conclusions of law, and then to issue an Order.
3. We will issue a written decision in approximately 7-10 days.
 - a. Check to make sure we have the addresses of both parties,
 - b. Ask if there are any questions about procedures or what happens next.
4. Either party may appeal the panel's decision to the Dane County Circuit Court. Specifics regarding those appeal rights will be included with the panel's final decision.

AT END OF HEARING ANNOUNCE THAT PANEL WILL NOW GO INTO CLOSED SESSION OR ADJOURN HEARING.

All parties are free to go.

Role of the Clerk and Attorney (Corp Counsel or City Attorney) advising Appeals panel:

The attorney is present at the hearing to advise the appeals panel and to answer any legal/procedural questions that arise. The attorney will take notes and help in the drafting of the order of the appeals panel.

The Clerk will schedule the hearing and insure proper notice is sent and posted regarding the hearing. The Clerk will swear in witnesses, administer the oath, run the tape recorder and provide administrative assistance as needed.

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When the order is drafted – the attorney shall send the order to the Chair for review (with a copy to the Clerk). Once the Chair has reviewed the order the Clerk shall make any necessary changes. The Clerk shall then obtain the Chair’s signature on the Order.

The Clerk than shall attach an affidavit of mailing (as evidence to when the Order was mailed). The Clerk shall then promptly mail the Order to all involved parties, with a copy to the Director of Environmental Health.

Orders to the County Corporation Counsel shall be to the attention of the attorney and mailed to:
Corporation Counsel Office

Attn:

Room 419

210 Martin Luther King, Jr. Blvd.

Madison, WI 53703

Orders to the City Attorney’s Office shall be to the attention of the attorney and mailed to:
Office of the City Attorney

Attn:

Room 401

210 Martin Luther King, Jr., Blvd.

Madison, WI 53703