

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

October 18, 2011
CCOC _____

Amending Section 9.49 of the Madison General Ordinances to replace citizen appointees on the Administrative Review Board with City employees and make procedural changes.

Drafted by: Michael May

Date: October 11, 2011

SPONSOR: Mayor Soglin

DRAFTER'S ANALYSIS: State law requires that the City have an administrative review process. Madison has created an Administrative Review Board (ARB) in Sec. 9.49, MGO. Currently, the Board is made up of citizen appointees. The ARB rarely meets. This amendment modifies Sec. 9.49 to replace the current citizen appointees with 5 City Managers: The Director of Civil Rights, the Director of IT, the City Clerk, the City Engineer and the City Treasurer. Any appeal will be heard by 3 of these persons, chosen on a rotating basis by the City Attorney. No Manager may serve on the appeal board if the appeal concerns an action taken by that Manager's department.

Because the City Clerk is added to the Board, staff duties are transferred to the City Attorney. This is in line with the actual practice.

The Common Council of the City of Madison do hereby ordain as follows:

Section 9.49 entitled "Review of Administrative Determinations" of the Madison General Ordinances is amended to read as follows:

"9.49 REVIEW OF ADMINISTRATIVE DETERMINATIONS.

- (1) Legislative Purpose. The City of Madison elects not to be governed by any of the provisions of Chapter 68, Wisconsin Statutes, ~~1975~~. This election is made pursuant to the provisions of Wis. Stat. § 68.16.

The purpose of this section is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by City authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th Amendment to the U.S. Constitution, and for which appeal procedures are not already created by other ordinances or statute. There is no intention to create any new or additional rights to administrative review beyond those already guaranteed by the Constitution.

- (2) Review of Administrative Determinations. A person aggrieved shall be defined as any person having a substantial interest which is adversely affected by an administrative determination of any official, agent, or employee acting on behalf of the City, as set forth in Subsection (3). A person aggrieved by such determination may have it reviewed by following the procedure set forth in Subsection (6).

- (3) Determinations Reviewable. Except as limited by Subsection (4), the following determinations are reviewable under this section:

- (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~~

Approved as to form:

- ~~liquor license or permit issuable under Chapter 38, MGO, or an adult entertainment license.~~
- (b) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege, or authority except a ~~fermented malt beverage or intoxicating liquor license or permit issuable under Chapter 38, MGO.~~
 - (c) 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.
 - (d) The imposition of a penalty or sanction upon any person except a City employee or officer, other than by a court.
- (4) Determinations Not Subject to Review. The following determinations are not reviewable under this section:
- (a) Any action which is subject to review procedures provided by any other ordinance, resolution, statute, or rule.
 - (b) A legislative enactment. A legislative enactment is an ordinance or resolution adopted by the Common Council.
 - (c) Denial of a claim.
 - (d) Suspension, removal, demotion, or discipline, or nonrenewal of a contract of a City employee or officer.
 - (e) The grant, denial, suspension or revocation of a fermented malt beverage or intoxicating liquor license or other license or permit issuable under Chapter 38, MGO.
 - (f) Determinations made or actions taken during labor negotiations.
 - (g) Decisions made by the City pursuant to its contracting, budgeting, or employment authority.
 - (h) The grant, denial, renewal, nonrenewal, revocation or suspension of an adult entertainment license.
 - (i) Notwithstanding any other provision of this section, any action or determination which does not affect the constitutionally protected right of a specific person or persons to due process of law in connection with the action or determination.
 - (j) Any action of a City governmental body, including boards, commissions or committees, for which a method of direct review by the circuit court is provided by ordinance. Such method of review may adopt the procedures of Wis. Stat. § 68.13 by reference.
- (5) Administrative Review Board. There is hereby created an Administrative Review Board, consisting of the following five (5) persons, Director of the Department of Civil Rights, City Engineer, City Clerk, Information Technology Director, and Treasurer appointed by the Mayor, and approved by the Common Council. When this Board is first constituted, three (3) members shall be appointed for terms of two (2) years and two (2) members shall be appointed for terms of one (1) year. Thereafter, members shall serve for terms of two (2) years. The Board shall elect a President and Secretary and may adopt rules of procedure. The full Board shall adopt rules of procedure. On any appeal or group of appeals to the Board, the City Attorney shall choose, on a rotating basis, three (3) of the Board members to act as the appeal board and hear the appeal, with two (2) members constituting a quorum of the appeal board. The Board shall choose one of its members to serve as chair for purpose of the appeal. No member may serve as the appeal of a matter involving the member's department. The City Clerk/Attorney shall provide staff support and legal advice to the Board.
- (6) Procedure for Review.
- (a) Written Determination. Any person aggrieved, as defined in Subsection (2), may request a written statement of reasons for a determination subject to the provisions of this section. Such request shall be in writing, and shall be filed within thirty (30) days after the person receives notice of the determination. The request shall be filed with the City Clerk/Attorney and the ~~Clerk~~City Attorney shall immediately forward it to the authority responsible by law for the decision. The requested written statement shall be approved by the responsible authority or officer, shall be dated, and shall be provided to the requester within thirty (30) days. It shall also inform the requester of procedures to be followed in seeking review.

The responsible authority or officer shall consider any revised application, or supplemental facts or argument supplied to him/her in writing, but is not required to provide an interview or hearing, although he/she is permitted to do so. Unless otherwise provided, the determination shall be in effect during the appeal process, if appeal is taken.

(b) Appeal From Determination.

1. Notice of Appeal. The written determination may be appealed to the Administrative Review Board, if the person aggrieved files a written notice of appeal within thirty (30) days after he/she receives the determination. Such notice shall be filed with the City ~~Clerk~~Attorney. The Board shall hold a hearing within thirty (30) days after the notice is filed with the ~~Clerk~~City Attorney. The appellant shall be notified at least ten (10) days before the hearing.
2. Hearing. At the hearing, the appellant and the responsible City official or authority may be represented by counsel, may present evidence, and may call and examine witnesses and cross-examine witnesses of the other party. The ~~President~~Chair of the Board shall conduct the hearing, administer oaths to witnesses, and may issue subpoenas. The rules of evidence provided in Wis. Stat., 227.08 for administrative proceedings shall be followed. The ~~Secretary of the Board~~Chair shall receive and mark all exhibits, and the staff shall record all of the proceedings on tape. If either of the parties requests a stenographic recording, the staff shall make the necessary arrangements but the expense shall be borne by the requesting party.
3. Decision. Within thirty (30) days of the completion of the hearing and the filing of briefs, if any, the Board shall issue a written decision stating the reasons therefor. The Board 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.

(7) Judicial Review.

- (a) Any party to a proceeding resulting in a final determination hereunder may seek review thereof by certiorari within 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.
- (b) 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 municipality 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 of a transcript."