

CHAPTER 20

**ADMINISTRATIVE REVIEW PROCEDURES
OF THE TOWN OF MENASHA**

20.01 PURPOSE

To insure fair play and due process in the administration of the affairs of the Town of Menasha, the Town Board hereby declares that the provisions of Chapter 68, WI Stats., as amended from time to time, relating to Municipal Administrative Review Procedures, shall be in full force and effect in the Town of Menasha, except as hereinafter provided in this chapter.

**20.02 REVIEW OF ADMINISTRATIVE
DETERMINATIONS**

Any person aggrieved by an administrative determination of a board, commission, committee, agency, officer or employee of the Town of Menasha or an 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.

20.03 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 a fermented malt beverage or intoxicating liquor license.
- (2) The suspension, revocation or non-renewal of an existing permit, license, right, privilege, or authority except the suspension or revocation of liquor and beer licenses which are subject to other statutory procedures.
- (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 municipal employee or officer, other than by a court.

**20.04 DETERMINATIONS NOT SUBJECT TO
REVIEW**

The following determinations are not reviewable under this chapter.

- (1) A Legislative Enactment. A legislative enactment is an ordinance, resolution or adopted motion of the governing body of the Town of Menasha.
- (2) Any action subject to administrative or judicial review procedures under other statutes or ordinances.
- (3) The denial of a tort or contract claim for money required to be filed with the Town pursuant to statutory procedures for the filing of such claims.
- (4) The suspension, removal or disciplining, or non-renewal of a contract of a municipal employee or officer.
- (5) The grant, denial, suspension or revocation of a fermented malt beverage license under Section 66.054(13)(b) or intoxicating liquor license under Section 176.01 or 176.12, WI Stats. Non-renewal of such a license is subject to this chapter.
- (6) Judgments and orders of a court.
- (7) Determinations made during municipal labor negotiations.
- (8) Any action which is subject to administrative review procedures under any other Town ordinance providing such procedures and insuring fair play and due process.
- (9) Any action or determination of the Town which does not involve the constitutionally-protected right of a specific person or persons to due process in connection with said action or determination.

20.05 MUNICIPAL AUTHORITY DEFINED

"Municipal authority" includes the Town governing board, all other boards of the Town of Menasha, commissions, committees, officers, employees and agents.

20.06 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 of Menasha 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 of Menasha, but may respond or intervene in a review proceeding under this chapter initiated by another.

20.07 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 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 30 days, and the office or person to whom a request for review shall be addressed.

20.08 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 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.

20.09 REVIEW OF DETERMINATION

- (1) **Initial Determination.** If a request for review is made under Section 20.08, the determination to be reviewed shall be termed an "initial determination."
- (2) **Who Shall Make Review.** A review under this section shall be made by the officer, employee, agent, agency, committee, board, commission or body which made the initial determination. However, an independent review of such determination by another person, committee or agency of the Town of Menasha, appointed by the Town Chairman without confirmation, may be provided if practicable.
- (3) **When to Make Review.** The municipal authority shall review the initial determination within 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 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.

- (5) **Decision of 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 right to appeal the decision, that appeal may be taken within 30 days, and the office or person with whom notice of appeal shall be filed.

20.10 ADMINISTRATIVE APPEAL

- (1) **From Initial Determination or Decision on Review**
 - (a) If the person aggrieved had a hearing substantially in compliance with Section 20.11 when the initial determination was made, he may elect to follow Section 20.07 through Section 20.09, but he is not entitled to a further hearing under Section 20.11 unless granted by the municipal authority. He may, however, seek judicial review under Section 20.13.
 - (b) If the person aggrieved did not have a hearing substantially in compliance with Section 20.11 when the initial determination was made, he shall follow Section 20.07 through 20.09 and may appeal under this section from the decision made under Section 20.09.
- (2) **Time within Which Appeal May be Taken under this Section.** Appeal from a decision on review under Section 20.09 may be taken within 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.

20.11 HEARING ON ADMINISTRATIVE APPEAL

- (1) **Time of Hearing.** The Town Board shall provide the appellant a hearing on an appeal under Section 20.10 within 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 10 days before such hearing. The office or person with whom the notice of appeal is filed shall immediately notify the Town Attorney, who shall forthwith advise the Town Board of such appeal. The Town Board, on its own initiative, may provide a person with a hearing substantially in compliance with Section 20.10 when any initial determination is made by the Town Board itself, in which case the provisions of Section 20.10 (reference no further hearing) shall be applicable.

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- (2) **Administrative Review Appeals Board.** It is hereby provided that the Administrative Appeals Board for the Town of Menasha shall be the Town Board. The Town Chairman shall serve as Chairman of the Appeals Board and shall vote as a member of the Board. The Board may act with less than full membership, but not less than a quorum. A member may be excused from acting in the event of a conflict.
- (3) **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 Board may issue subpoenas. No Board member shall have participated in making or reviewing the initial determination.
- (4) **Record of Hearing.** The Town Board conducting the hearing shall appoint a member to take notes of the testimony and shall mark and preserve all exhibits.
- (5) The Town Board may, and on 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.
- (6) **Hearing on Initial Determinations.** 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.

20.14 SUGGESTED FORMS

Attached hereto, for the convenience of the persons and parties, are model forms. All requests for administrative determination, requests for review of initial administrative determination, notices, etc. shall be in substantial compliance with said forms.

20.12 FINAL DETERMINATION

- (1) Within 20 days of completion of the hearing conducted under Section 20.11 and the filing of written briefs, if any, the Town Board shall mail or deliver to the appellant its written determination stating the reasons therefore. Such determination shall be a final determination.
- (2) A determination following a hearing substantially meeting the requirements of Section 20.11 or a decision on review under Section 20.09 following such hearing shall be a final determination, judicial review of which may be obtained under section 20.13.

20.13 JUDICIAL REVIEW

- (1) Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within 30 days of receipt of the final determination.
- (2) 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 indigence 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 transcript. The Court may otherwise limit the requirement for a transcript.

Form 1

REQUEST TO REDUCE ADMINISTRATIVE DETERMINATION TO WRITING

TO: _____
(Body or officer making initial determination)

YOU ARE REQUESTED on behalf of _____
_____ to reduce to writing and state the reasons for your
determination of _____, 20____.

(substance of administrative determination)

This request is made pursuant to Section 20.07, Town of Menasha Code of Ordinances.

DATED: _____, 20 _____.

Requester

Address

Form 2

WRITTEN DETERMINATION

Pursuant to your request Section 20.07, Town of Menasha Code of Ordinances, copy attached, received on _____, 20 _____, the undersigned hereby sets forth in writing (his) (our) determination in such matter.

DETERMINATIONS: Your request for _____

is hereby _____ .

REASONS FOR DETERMINATION ARE:

You have a right to have this determination reviewed by filing a written request with the Town Clerk within 30 days from the date hereof. Written evidence and arguments in support of your position with respect to this determination should accompany any request for review.

DATED: _____, 20 _____.

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BY

(Title of officer or body making decision)

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Form 3

REQUEST FOR REVIEW OF INITIAL ADMINISTRATION DETERMINATION
(Section 20.08)

TO: _____
(Body or officer making initial administrative determination)

YOU ARE REQUESTED on behalf of _____

to review your initial administrative determination of _____

_____, 20_____, _____
(substance of initial determination)

The ground or grounds upon which review is sought are:

- (1) _____
- (2) _____
- (3) _____
- (4) _____

(We request such initial determination to be reversed)

(We request such initial determination be modified as follows: _____
_____)

This request is made pursuant to Section 20.08, Town of Menasha Code of Ordinances.

DATED: _____, 20____.

(Name)

(Address)

Form 4

REVIEW OF INITIAL DETERMINATION
(Section 20.09)

Pursuant to your request, copy attached, to review the initial determination of the undersigned referred to in your request, and having reviewed such initial determination (and your written evidence and argument), the undersigned hereby (affirms) (reverses) (modifies) such determination and provides in connection therewith as follows:

You may appeal this determination by filing with or mailing to the office of the Town Clerk within 30 days of receipt of this notice a written request for a review hearing as provided in Section 20.10 of the Code of Ordinances of the Town of Menasha. Such review will be made by the Board on the basis of evidence presented at a hearing. You may represent yourself or be represented by an attorney at such hearing. You will be notified of the date, place and time of the hearing at least 10 days prior thereto.

DATED: _____, 20_____.

(Title of officer or body making decision)

Form 5

NOTICE OF ADMINISTRATIVE APPEAL FROM INITIAL DETERMINATION
(Section 20.10)

TO: _____
(Body or officer designated in the decision on review with whom notice of appeal is to be filed)

PLEASE TAKE NOTICE that _____
appeals from the decision on review of _____

(Officer or body making the decision)

DATED: _____, 20 _____.

This appeal is taken pursuant to Section 20.10, Town of Menasha Code of Ordinances.

DATED: _____, 20 _____.

(Appellant)

(Address)

Form 6

NOTICE OF HEARING OF ADMINISTRATIVE APPEAL

[Section 20.11(1)]

Appeal of _____ from initial determination of

to _____

TO: _____

YOU ARE HEREBY NOTIFIED that a hearing on the-above matter will be conducted by the Administrative Review Appeals Board of the Town of Menasha in the Town Municipal Complex at 2000 Municipal Drive, Neenah, Wisconsin, at _____(a.m.) (p.m.) on _____, 20 ____

DATED: _____, 20 _____ .

Town Clerk

Form 7

BEFORE THE ADMINISTRATIVE REVIEW APPEALS BOARD
OF THE TOWN OF MENASHA
(Section 20.12)

In the matter of the appeal of _____

from the initial determination (decision on review) of _____

DATED _____, 20 _____

FINAL DETERMINATION

Appearances:

The above named appellant, having on _____

filed an appeal from the initial determination by _____

DATED _____, 20 _____, wherein appellant alleges:

And upon proper notice a hearing on said appeal having been held at the Municipal Complex, Town of Menasha, on _____, 20 _____, before the Administrative Review Appeals Board of the Town of Menasha in the manner required by Section 20.11, Town of Menasha Code of Ordinances;

An the Administrative Review Appeals Board having considered the evidence (and the briefs filed) and being fully advised, hereby makes and files the following Findings of Fact, Conclusions, Final Determination, and Reasons for Final Determination:

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FINDINGS OF FACT:

1. _____

2. _____

CONCLUSIONS:

1. _____

2. _____

FINAL DETERMINATION:

Upon the basis of the foregoing Findings of Fact and Conclusions and for the reasons stated below, this Administrative Review Appeals Board hereby determines that the initial determination of _____

(Decision of review of _____)
is hereby _____

REASONS FOR FINAL DETERMINATION

DATED: _____, 20 _____

ADMINISTRATIVE APPEALS BOARD OF
THE TOWN OF MENASHA

BY _____

BY _____

BY _____