

TITLE 4

Administrative Determinations Review

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
Chapter 1	Review of Administrative Determinations	2004-05(b)	6-1-04

CHAPTER 1

Review of Administrative Determinations

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
4-1-1	Review of Administrative Determinations		
4-1-2	Determinations Reviewable		
4-1-3	Determinations Not Subject to Review		
4-1-4	Definitions		
4-1-5	Clarification of Initial Determination in Writing		
4-1-6	Request for Review of Initial Determination		
4-1-7	Review of Determination		
4-1-8	Administrative Appeal		
4-1-9	Hearing on Administrative Appeal		
4-1-10	Final Determination		
4-1-11	Judicial Review		
4-1-12	Legislative Review		
4-1-13	Modification or Waiver		
4-1-14	Chapter 68 of the Wisconsin Statutes		

SEC. 4-1-1 REVIEW OF ADMINISTRATIVE DETERMINATIONS.

Any person having a substantial interest which is adversely affected by an administrative determination of the Town Board or a board, commission, committee, agency, officer or employee of the Town 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. Any time requirements under this Title may be modified by written mutual agreement.

State Law Reference: Section 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 an alcohol beverage 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 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 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: Section 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) A determination or action subject to administrative or judicial review procedures set forth 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.
- (d) The grant, denial, suspension or revocation of an alcohol beverage license under Ch. 125, Wis. Stats.
- (e) Judgments and orders of a court.
- (f) Determinations made during municipal labor negotiations.
- (g) Determinations subject to grievance, arbitration or other procedures provided in collective bargaining agreements.

State Law Reference: Section 68.03, Wis. Stats.

SEC. 4-1-4 DEFINITIONS.

- (a) **Initial Determination.** The initial administrative determination under Sec. 4-1-1, prior to any review or appeal, made by a commission, committee, agency, officer or employee of the Town or agent acting on its behalf.
- (b) **Municipal Authority.** The Town Board or commission, committee, agency, officer, employee or agent of the Town making a determination under Section 4-1-1, making a clarification under Section 4-1-5, and every person, committee or agency of the Town to make an independent review under Section 4-1-7(b). State Law Reference: Section 68.05, Wis. Stats.

- (c) **Persons Aggrieved.** A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization, and officer,
- (d) department, board, commission or agency of the Town, whose rights, duties or privileges are adversely affected by a determination of a Municipal Authority.

State Law Reference: Sections 68.01 and 68.08, Wis. Stats.

SEC. 4-1-5 CLARIFICATION OF INITIAL DETERMINATION IN WRITING.

If an Initial Determination subject to this Chapter is made orally or, if in writing does not state the reasons therefor, an Aggrieved Person seeking a review of the Initial Determination shall submit a written request within 10 days of notice of the Initial Determination to the Municipal Authority to issue a written clarification of the Initial Determination. The Town Administrator, or his designee, shall verify the Initial Determination and reduce the Initial Determination and the reasons therefor to writing and mail or deliver such determination within thirty (30) days to the person making the request. The clarification of Initial Determination shall be dated and shall advise such person of his right to have such determination reviewed, that such review may be obtained by filing a request for review within thirty (30) days pursuant to Sec. 4-1-6, and the office or person to whom a request for review shall be addressed. Requests under this section shall not be made via electronic mail. Requests received via electronic mail shall not be considered valid requests under this Section.

State Law Reference: Section 68.07, Wis. Stats.

SEC. 4-1-6 REQUEST FOR REVIEW OF INITIAL DETERMINATION.

Any Person Aggrieved may have a written or oral Initial Determination reviewed by written request mailed or delivered to the Municipal Authority which made such determination within thirty (30) days of notice of the Initial Determination or receipt of a clarification of Initial Determination. The request for review shall state the grounds upon which the Person Aggrieved contends that the Initial Determination should be modified or reversed. If the Person Aggrieved is seeking a modification or waiver from any requirement of an ordinance under Sec. 4-1-13, the person shall provide the information required under Sec. 4-1-13(a)(2). A request for review shall be made to the officer, employee, agent, agency, committee, board, commission or body who made the Initial 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. Requests under this section shall not be made via electronic mail. Requests received via electronic mail shall not be considered valid requests under this Section.

State Law Reference: Section 68.08, Wis. Stats.

SEC. 4-1-7 REVIEW OF INITIAL DETERMINATION.

- (a) **Who Shall Make Review.** A review under this Section shall be made by the Town Administrator, his or her designee or the supervising body of the employee, agent, officer, committee, commission or body who made the Initial Determination, unless the Initial Determination was made by the head of a Department. If the Initial Determination was made by the head of a Department, then the Town Administrator shall make the review, unless the Initial Determination was made by the head of the Parks Department or Health Department, then the supervising body of that Department shall make the review. If the Initial Determination was made by the Town Administrator, then the Town Clerk shall make the review. However, the Town Board, in its discretion, may provide for a review of such Initial Determination by another person, committee or agency of the Town or may skip the review of Initial Determination and provide for a hearing under Sec. 4-1-9 before the Town Board. The individual making the review of the Initial Determination shall not be precluded from making such review by virtue of having been aware of the Initial Determination prior to the request for its review or been consulted on or provided direction on the Initial Determination prior to the request for its review.
- (b) **When to Make Review.** The Municipal Authority shall review the Initial Determination within forty (40) days of receipt of a request for review under Sec. 4-1-6. The time for review may be extended by agreement with the Person Aggrieved.
- (c) **Right to Present Evidence and Argument.** The Person Aggrieved may file with the request for review, or within the time agreed with the Municipal Authority, written evidence and argument in support of the person's position with respect to the Initial Determination. The maker of the Initial Determination may also present written evidence and argument in support of the Initial Determination.
- (d) **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 the right to appeal the decision, that any appeal must be taken within thirty (30) days, and that written notice of appeal shall be filed with the Town Administrator pursuant to Sec. 4-1-8. If a request has been made to grant a modification or waiver as part of request for review of Initial Determination, the person conducting the review shall conduct the same pursuant to ordinance. If it is determined that a modification or waiver may be appropriate, the employee, officer, agent, committee, or commission shall refer the matter to the Town Board and make a recommendation with respect to the request for modification and waiver.

State Law Reference: Section 68.09, Wis. Stats.

SEC. 4-1-8 ADMINISTRATIVE APPEAL.

- (a) **From Initial Determination or Decision on Review.**
 - (1) If the Person Aggrieved had a hearing substantially in compliance with Section 4-1-9 when the Initial Determination or its review was made, the person may elect to follow Sections 4-1-5 through 4-1-7, but is not entitled to a further hearing under

Section 4-1-9 unless granted by the Municipal Authority. The person may, however, seek judicial review under Section 4-1-11.

- (2) If the Person Aggrieved did not have a hearing substantially in compliance with Section 4-1-9 when the Initial Determination or its review was made, the person shall follow Sections 4-1-5 through 4-1-7 and may appeal under this Section from the decision made under Section 4-1-7.
- (b) **Time Within Which Appeal May Be Taken Under This Section.** Appeal from a decision on review under Section 4-1-7 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 Town Administrator a written notice of appeal. Upon receipt of a notice of appeal, the Town Administrator shall notify the Town Board and the Town Attorney. Written notice of appeal under this section shall not be made via electronic mail. Written notice of appeal received via electronic mail shall not be considered valid notice under this Section.

State Law Reference: Section 68.10, Wis. Stats.

SEC. 4-1-9 HEARING ON ADMINISTRATIVE APPEAL.

- (a) **Time of Hearing.** The Town shall provide the appellant a hearing on an appeal under Section 4-1-8 within thirty (30) 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, unless such notice is waived in writing by the appellant.
- (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 Town Board shall conduct the hearing and serve as decision maker, unless at its discretion it appoints an impartial decision maker to conduct the hearing and make the decision on administrative appeal. The impartial decision maker may be an officer, committee, board or commission of the Town who did not participate in making or reviewing the Initial Determination. The decision maker may issue subpoenas. The Town Board may also provide for the hearing to be conducted by an impartial person, committee, board or commission designated by the Town Board and to report the record of hearing to the decision maker for a decision on administrative appeal.
- (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, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the Town.

SEC. 4-1-10 FINAL DETERMINATION.

- (a) Within twenty (20) days of completion of the hearing conducted under Section 4-1-9 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination on administrative appeal stating the reasons therefor and, if applicable, including any approval of a modification or waiver of an ordinance or any portion of it pursuant to Sec. 4-1-13. Such determination shall be a final determination of the Municipal Authority.
- (b) A determination following a hearing substantially meeting the requirements of Section 4-1-9 or a decision on review under Section 4-1-7 following such hearing shall be a final determination, judicial review of which may be obtained under Section 4-1-11.

State Law Reference: Section 68.12, Wis. Stats.

SEC. 4-1-11 JUDICIAL REVIEW.

- (a) Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within thirty (30) days of receipt of the final determination from the Municipal Authority. 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 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 a transcript. The court may otherwise limit the requirement for a transcript.

State Law Reference: Section 68.13, Wis. Stats.

SEC. 4-1-12 LEGISLATIVE REVIEW.

- (a) Seeking review pursuant to this Chapter does not preclude a Person Aggrieved from seeking relief to have the ordinance modified by 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 4-1-7.
- (c) The Town Board, board, commission, committee or agency conducting a legislative review under this Section need not conduct the type of hearing required under Section 4-1-9.

State Law Reference: Section 68.14, Wis. Stats.

SEC. 4-1-13 MODIFICATION OR WAIVER.

(a) **Authority; Application.**

- (1) **Authority.** Where, in the judgment of the Town Board, it would be inappropriate to apply literally the provisions of an ordinance because an exceptional circumstance exists, the Town Board may waive or modify any requirements to the extent deemed just and proper. Only the Town Board may grant a waiver or modification. If an employee, officer, agent, committee, or commission of the Town has been requested to grant a modification or waiver as part of request for clarification or review of Initial Determination, the person conducting the clarification or review shall conduct the same pursuant to ordinance. If it is determined that a modification or waiver may be appropriate, the employee, officer, agent, committee, or commission shall refer the matter to the Town Board and make a recommendation with respect to the request for modification and waiver.
- (2) **Application.** Application for any such modification or waiver shall be made by the Person Aggrieved in writing as part of the request for clarification or review of Initial Determination, stating fully all facts relied upon in requesting the modification or waiver, and shall be supplemented with any additional data that may aid the Town Board in the analysis of the proposed modification or waiver. This application may be supplemented at any time during the review process.

(b) **Considerations.** The Town Board may consider the following factors, in addition to any other factors deemed relevant by the Town Board:

- (1) Whether the request for a waiver or modification, if granted, would be consistent with the general intent of the ordinance.
- (2) Whether the request for a waiver or modification, if granted, would adversely affect any property owners in the Town.
- (3) Whether the request for waiver or modification, if granted, would benefit the Person Aggrieved in a way that is not consistent with the Town's interests.
- (4) Whether, instead of granting the request for a waiver or modification, the ordinance itself should be changed to accommodate the kind of situation presented by the Person Aggrieved and therefor addressed under Section 4-1-12, Legislative Review.
- (5) Whether, the conditions upon which the request for a modification or waiver is based are unique to the situation or property for which the modification or waiver is sought and are not applicable generally to other situations or property.

(c) **Conditions for Granting.** The Town Board shall not grant a modification or waiver to an ordinance unless it makes findings based upon the evidence presented to it in each specific case and based upon the consideration of the factors under Sec. 4-1-13(b), that the granting of the modification or waiver will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the Town. Any decision to grant a modification or waiver shall not be arbitrary, capricious, or prejudicial in nature.

(d) **Granting by Town Board.**

- (1) The Town Board, if it approves of the modification or waiver of an ordinance or any portion of it, shall do so only after a hearing under Sec. 4-1-9 or in conducting a legislative review under Sec. 4-1-12.
- (2) Such relief shall be granted without detriment to the public good and without impairing the intent and purpose of the ordinance.

- (3) A majority vote of the Town Board shall be required to grant any modification or waiver to an ordinance. The reasons why such modification or waiver was granted shall be entered as part of the record of hearing.
- (4) If the Town Board grants a modification or waiver, the Board may also order that the ordinance itself be changed to accommodate the kind of situation presented by the Person Aggrieved.
- (e) **Past Non-compliance Not Waived.** A waiver or modification that is granted pursuant to a written request as described in this Section shall not waive any fines, forfeitures or other penalties that may have accrued due to violations of the ordinance that took place prior to the date of the Administrative Appeal, unless specifically stated otherwise in the decision of the Town Board.

SEC. 4-1-14 CHAPTER 68 OF THE WISCONSIN STATUTES.

- (a) Pursuant to section 68.16, Wis. Stats., the Town of Caledonia elects not to be governed by those provisions of Chapter 68 which are in conflict with this Title. In the event of any conflict between this Title and Chapter 68, the provisions of this Title shall govern.