

TOWN OF SIOUX CREEK
BARRON COUNTY, WISCONSIN
AN ORDINANCE REGARDING
ADMINISTRATIVE APPEALS

SECTION 1. REVIEW OF ADMINISTRATIVE DETERMINATIONS

The Town Board of the Town of Sioux Creek, Barron County, Wisconsin in order to provide for a method of appeal by which citizens who disagree with a decision of the Town Board, or a commission, committee, agency, officer or employee of the Town or agent acting on its behalf may have such determination reviewed as provided in this Ordinance. The remedies under this Ordinance shall not be exclusive, but an election to proceed hereunder shall be an election of remedies.

State Law Reference: Section 68.01, Wis. Stats.

SECTION 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 and except as provided in Section 3j.
- b. The suspension, revocation or nonrenewal of an existing permit, license, right, privilege, or authority, except as provided in Section 3.e and except as provided in Section 3j.
- c. The denial of a grant of money or other thing of value under a statute or ordinance prescribing conditions of eligibility for such grant, except as provided in Section 3j.
- d. The imposition of a penalty or sanction upon any person except a municipal employee or officer, other than by a court, except as provided in Section 3j.

State Law Reference: Wis. Stat. § 68.02

SECTION 3. DETERMINATIONS NOT SUBJECT TO REVIEW

The following determinations are not reviewable under this Ordinance:

- a. A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the Town Board.
- b. Any action subject to administrative or judicial review procedures under other provisions of the Town Ordinances.
- c. The denial of a tort or contract claim for money required to be filed with the Town under Wis. Stat. § 60.44.
- d. The suspension, removal or disciplining or nonrenewal of a contract of a Town employee or officer.

- e. The grant, denial, suspension or revocation of an alcohol beverage license under Wis. Stat. § 125.12(1).
- f. Judgements and orders of a court.
- g. Determinations made during Town labor negotiations.
- h. Any action which is subject to administrative review procedures under an ordinance providing such procedures as defined in Wis. Stat. § 68.16.
- i. Notwithstanding any other provision in Chapter 68 of the Wisconsin Statutes, any action or determination of the Town Board which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.
- j. An appeal for which the Town Board of Appeals has jurisdiction.

State Law Reference: Wis. Stat. § 68.03

SECTION 4. TOWN AUTHORITY DEFINED

“Town authority” includes the Town Board, and any commission, committee, agency, office, employee, or agent of the Town making a determination under Section 2 and every person, committee, or agency of the Town to make an independent review under Section 8.b.

State Law Reference: Wis. Stat. § 68.05

SECTION 5. PERSONS AGGRIEVED

A person aggrieved includes any individual, partnership, limited liability company, 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 Town authority. No department, board, commission, agency, officer or employee of the Town who is aggrieved may initiate review under this Ordinance of a determination of any other department, board, commission, agency, officer or employee of the Town but may respond or intervene in a review proceeding under this Chapter initiated by another.

State Law Reference: Wis. Stat. §§ 68.01 and 68.06

SECTION 6. REDUCING DETERMINATION TO WRITING

If a determination subject to this ordinance is made orally or, if in writing, does not state the reasons therefor, the Town authority making such determination shall, upon written request of any person aggrieved by such determination made within ten (10) days of notice of such determination, reduce the determination and the reasons therefor 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 the right to have such determination reviewed, that such review may be obtained within thirty (30) days, and the office or person to whom a request for review shall be addressed.

State Law Reference: Wis. Stat. § 68.07

SECTION 7. REQUEST FOR REVIEW OF DETERMINATIONS

Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the Town authority which made such determination within thirty (30) days of notice to such person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision 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. An appeal filed with the Town authority shall require payment of a fee of \$50.00.

State Law Reference: Wis. Stat. § 68.08

SECTION 8. REVIEW OF DETERMINATION

a. **Initial determination.** If a request for review is made under Section 7, the determination to be reviewed shall be termed an initial determination.

b. **Who shall make review.** A review under this section may be made by the officer, employee, agent, agency, committee, board, commission or body who made the initial determination. However, an independent review of such initial determination by another person, committee or agency of the Town may be provided by the Town Board if practicable.

c. **When to make review.** The Town authority shall review the initial determination within fifteen (15) days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

d. **Right to present evidence and argument.** The person aggrieved may file with the request for review or within the time agreed with the Town authority written evidence and argument in support of the person's position with respect to the initial determination.

e. **Decision on review.** The Town authority may affirm, reverse or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the Town 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 appeal may be taken within thirty (30) days, and the office or person with whom notice of appeal shall be filed.

State Law Reference: Wis. Stat. § 68.09

SECTION 9. ADMINISTRATIVE APPEAL

a. **From initial determination or decision on review.**

1. If the person aggrieved did not have a hearing substantially in compliance with Section 10 when the initial determination was made, the person may appeal under this section from the decision on review and shall follow the procedures set forth in Sections 6 through 8, and may appeal under this Section from the decision made under Section 8.

2. If the person aggrieved had a hearing substantially in compliance with Section 10 when the initial determination was made, the person may elect to follow the procedures provided in Sections 6 through 8, but is not entitled to appeal under this section unless granted by the Town authority. The person may, however, seek review under Section 12.

b. **Time within which appeal may be taken under this section.** Appeal from a decision on review under Section 8 shall 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 office of the Town Clerk, written notice of appeal.

State Law Reference: Wis. Stat. § 68.10

SECTION 10. HEARING ON ADMINISTRATIVE APPEAL

a. **Time of hearing.** The Town shall provide the appellant a hearing on an appeal under Section 9 within thirty (30) days of receipt of the notice of appeal filed or mailed under Section 9 and shall serve the appellant with notice of such hearing by mail or personal service at least ten (10) days before such hearing. The office or person with whom notice of appeal is filed shall immediately notify the Town Attorney and Town Clerk who shall forthwith advise the Town Board Chairperson of such appeal.

b. **Conduct of hearing.** At the hearing, the appellant and the Town authority may be represented by an attorney 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 Chairperson shall provide an impartial decision maker, who may be an officer, committee, board, commission or the governing body who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. The decision maker may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in Wis. Stat. § 805.07(4) and must be served in the manner provided in § 805.07(5). The attorney shall, at the time of issuance, send a copy of the subpoena to the decision maker. The hearing may, however, be conducted by an impartial person, committee, board or commission designated to conduct the hearing and report to the decision maker.

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 shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the Town.

d. **Hearing on Initial Determination.** Where substantial existing rights are affected by an initial determination, the Town 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.

State Law Reference: Wis. Stat. § 68.11

SECTION 11. FINAL DETERMINATION

a. Within twenty (20) days of completion of the hearing conducted under Section 10 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons therefor. Such determination shall be a final determination.

b. A determination following a hearing substantially meeting the requirements of Section 10 or a decision on review under Section 8 following such hearing shall also be a final determination, judicial review of which may be obtained under Section 12.

State Law Reference: Wis. Stat. § 68.12

SECTION 12. JUDICIAL REVIEW

a. Any party to a proceeding resulting in a final determination 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 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: Wis. Stat. § 68.13

SECTION 13. LEGISLATIVE REVIEW

- a. The seeking of a review pursuant to this Ordinance does not preclude a person aggrieved from seeking relief from 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 governing body, board, commission, committee or agency shall be made part of the record on review under Section 12.
- c. The Town Board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under Section 10.

State Law Reference: Wis. Stat. § 68.14

SECTION 14. SEVERABILITY.

Should any provision of this Ordinance be declared to be invalid or unconstitutional by a court of competent jurisdiction, such adjudication shall not affect the validity of this Ordinance as a whole, but shall only affect the portion thereof declared to be invalid.

SECTION 15. EFFECTIVE DATE.

- a. This Ordinance shall take effect upon passage and publication as provided by law.

Adopted this 12th day of December, 2002.

TOWN OF SIOUX CREEK, BARRON COUNTY, WISCONSIN

Jerry Huset (signature)
TOWN BOARD CHAIR

James Severude (signature)
SUPERVISOR

Kathleen L. Martin (signature)
TOWN CLERK

Larry Larson (signature)
SUPERVISOR