

ORDINANCE NO. 2021-09

**VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN**

**AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 2 OF THE CODE OF
ORDINANCES FOR THE VILLAGE OF YORKVILLE ENTITLED “ADMINISTRATIVE
REVIEW PROCEDURE”**

**THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE COUNTY,
WISCONSIN, DO ORDAIN AS FOLLOWS:**

1. That Article VII of Chapter 2 of the Code of Ordinances for the Village of Yorkville be, and hereby is, amended to read as set forth on the attached Exhibit A.

2. That this ordinance shall be effective upon adoption and publication as provided by law.

Adopted by the Village Board of the Village of Yorkville, Racine County, Wisconsin, this 25th day of October, 2021.

VILLAGE OF YORKVILLE

Ayes: 5

Nays: 0

Abstentions: 0

Absences: 0

By: /s/ Douglas Nelson
Douglas Nelson, President

Attest: /s/ Michael McKinney
Michael McKinney, Administrator/Clerk

Exhibit “A”

Article VII. Administrative Review Procedure

State Law reference— Municipal administrative procedure, Wis. Stat. ch. 68.

Sec. 2-391. Review of administrative determinations.

Any person aggrieved by an administrative determination of the Village Board or a board, commission, committee, agency, officer or employee of the village or an agent acting on its behalf may have such determination reviewed as provided in this article. The remedies under this article shall not be exclusive, but an election to proceed under this article shall be an election of remedies.

(Code 1982, § 24.01)

Sec. 2-392. Determinations reviewable.

The following determinations are reviewable under this article:

- (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 nonrenewal of an existing permit, license, right, privilege or authority, except as provided in section 2-393(4).
- (3) The denial of a grant of money or other thing of 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.

(Code 1982, § 24.02)

Sec. 2-393. Determinations not subject to review.

The following determinations are not reviewable under this article:

- (1) A legislative enactment is an ordinance, resolution or adopted motion of the Village Board.
- (2) Any action subject to administrative or judicial review procedures under state statutes or other provisions of this Code.
- (3) The grant, denial, suspension or revocation of a fermented malt beverage license or intoxicating liquor license under Wis. Stat. ch. 125.

- (4) Judgments and orders of a court.
- (5) Determinations made during village labor negotiations.
- (6) Determinations subject to grievance, arbitration or other procedures provided in collective bargaining agreements.
- (7) Any action or determination which does not involve the constitutionally protected right of a specific person to due process in connection with the action or determination.

(Code 1982, § 24.03)

Sec. 2-394. Municipal authority defined.

The term "municipal authority" includes the Village Board, commission, committee, agency, officer, employee or agent of the village making a determination under section 2-391, and every person, committee or agency of the village authorized to make an independent review under section 2-398(b).

(Code 1982, § 24.04)

Cross reference— Definitions generally, § 1-2.

Sec. 2-395. Persons aggrieved.

A person aggrieved includes any individual, partnership, corporation, association, public or private organization, and any officer, department, board, commission or agency of the village, whose rights, duties or privileges is adversely affected by a determination of a municipal authority. No department, board, commission, agency, officer or employee of the village who is aggrieved may initiate review under this article of a determination of any other department, board, commission, agency, officer or employee of the village, but may respond or intervene in a review proceeding under this article initiated by another.

(Code 1982, § 24.05)

Sec. 2-396. Reducing determination to writing.

If a determination subject to this article is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within ten 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 his right to have such determination reviewed, shall advise that such review may be taken within 30 days and shall name the office or person to whom a request for review shall be addressed.

(Code 1982, § 24.06)

Sec. 2-397. 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. If the person aggrieved is seeking a modification or waiver from any requirement of an ordinance pursuant to section 2-404, the person shall provide the information required under section 2-404(a)(2). 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.

(Code 1982, § 24.07)

Sec. 2-398. Review of determination.

- (a) *Initial determination.* If a request for review is made under section 2-397, 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.
- (c) *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.
- (d) *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.
- (e) *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 his right to appeal the decision, shall advise that the appeal may be taken within 30 days and shall name the office or person with whom notice of appeal shall be filed. If a request has been made to grant a modification or waiver as part of a request for review of an 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 Village Board and make a recommendation with respect to the request for modification and waiver.

(Code 1982, § 24.08)

Sec. 2-399. Administrative appeal.

- (a) *From initial determination or decision on review.*
 - (1) If the person aggrieved had a hearing substantially in compliance with section 2-400 when the initial determination was made; he may elect to follow sections 2-396 through 2-398 but is not entitled to a further hearing under section 2-400 unless granted by the municipal authority. The aggrieved person may, however, seek judicial review under section 2-402.
 - (2) If the person aggrieved did not have a hearing substantially in compliance with section 2-400 when the initial determination was made; he shall follow sections 2-396 through 2-398 and may appeal under this section from the decision made under section 2-398.
- (b) *Time within which appeal may be taken under this section.* Appeal from a decision on review under 2-398 may be taken within 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 administrator/clerk a written notice of appeal.

(Code 1982, § 24.09)

Sec. 2-400. Hearing on administrative appeal.

- (a) *Time of hearing.* The village shall provide the appellant a hearing on an appeal under section 2-399 within 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 days before such hearing.
- (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. The person conducting the hearing shall swear such witnesses. The Village President shall appoint, without confirmation, an impartial decision-maker, who may be an officer, committee, board or commission of the village or the Village Board who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal and who may issue subpoenas. The hearing may, however, be conducted by an impartial person, committee, board or commission designated by the Village President to conduct the hearing and report to the decision-maker.

- (c) *Record of hearing.* The person conducting the hearing or a person employed for the purpose of making a record of the hearing 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 village.
 - (d) *Hearing on initial determination.* 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.
- (Code 1982, § 24.10)

Sec. 2-401. Final determination.

- (a) Within 20 days of completion of the hearing conducted under section 2-400 and the filing of briefs, if any, the decision-maker shall mail or deliver to the appellant its written determination, 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 section 2-404. Such determination shall be a final determination.
 - (b) A determination following a hearing substantially meeting the requirements of section 2-400, or a decision on review under section 2-398 following such hearing, shall be a final determination, judicial review of which may be obtained under section 2-402.
- (Code 1982, § 24.11)

Sec. 2-402. Judicial review.

- (a) 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.
 - (b) 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 transcript at his expense. If the person seeking review establishes indigency to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the village; 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.
- (Code 1982, § 24.12)

Sec. 2-403. Legislative review.

- (a) Seeking review pursuant to this article does not preclude a person aggrieved from seeking relief to have the ordinance modified by the Village 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 Village Board, board, commission, committee or agency shall be made part of the record on review under section 2-402.
- (c) The Village Board, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under section 2-400.

(Code 1982, § 24.13)

Sec. 2-404. Modification or Waiver

(a) Authority; Application

- (1) **Authority.** Where, in the judgment of the Village Board, it would be inappropriate to apply literally the provisions of an ordinance because an exceptional circumstance exists, the Village Board may waive or modify any requirements to the extent deemed just and proper. Only the Village Board may grant a waiver or modification. If an employee, officer, agent, committee, or commission of the Village has been requested to grant a modification or waiver as part of a request for review of initial determination, the person conducting the clarification 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 Village 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 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 Village 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 Village Board may consider the following factors, in addition to any other factors deemed relevant by the Village 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 be detrimental to the management and control of Village property, finances, highways, streets, navigable waters, and public service, or otherwise be detrimental to the health, safety, welfare and convenience of the public.
 - (3) Whether the request for waiver or modification, if granted, would benefit the person aggrieved in a way that is not consistent with the Village'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 2-403, 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 Village 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 section 2-404(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 Village. Any decision to grant a modification or waiver shall not be arbitrary, capricious, or prejudicial in nature.
- (d) **Granting by the Village Board.**
- (1) The Village 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 section 2-400, or in conducting a legislative review under section 2-403.
 - (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 Village 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 the hearing.
 - (4) If the Village 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 the 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 administrative appeal, unless specifically stated otherwise in the decision of the Village Board.

Secs. 2-405—2-430. Reserved.