

Ordinance 0009-24 – Appeals of Health Officer Determinations

An ordinance to:

- Part 1: amend Chapter 2, Article III, Division I, Section 2-166, cross reference;
- Part 2: repeal and delete Chapter 2, Article III, Division 6;
- Part 3: amend Chapter 10, Article II, Section 10-43(d);
- Part 4: amend Chapter 18, Article II, Section 4, Section 18-109;
- Part 5: amend Chapter 18, Article V, Division 2, Section 18-718;
- Part 6: amend Chapter 18, Article VI, Division 2, Section 18-755;
- Part 7: amend Chapter 22, Article XXI, Section 22-690;
- Part 8: amend Chapter 22, Article XXXI, Section 22-1195;
- Part 9: amend Chapter 42, Article II, Section 42-37(h)(2);
- Part 10: amend Chapter 42, Article II, Section 42-37(h)(3);
- Part 11: repeal, delete, and recreate Chapter 42, Article VI, Division 2, Section 42-184(a)(4);
- Part 12: amend Chapter 54, cross reference;
- Part 13: create Chapter 54, Article I, Section 54-3;
- Part 14: amend Chapter 54, Article III, Section 54-65;
- Part 15: amend Chapter 114, Article II, Division 1, Section 114-34(i); and
- Part 16: create Chapter 2, Article III, Division 8, Section 2-263(h).

of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Chapter 2, Article III, Division I, Section 2-166, cross reference is amended by deleting the words “health and sanitation appeals board, § 2-236 et seq.” and substituting the words “due process board, § 2-261 et seq.” therefor.

Part 2: Chapter 2, Article III, Division 6 of the Municipal Code of the City of Racine is repealed and deleted in its entirety.

Part 3: Chapter 10, Article II, Section 10-43(d) of the Municipal Code of the City of Racine is amended by:

- deleting the word “department” and substituting “officer” therefor from the first sentence; and
- deleting the words from “shall have the right to an informal review” to the end of subsection (d) and substituting “may appeal the health officer’s determination pursuant to section 54-3.” therefor.

Part 4: Chapter 18, Article II, Division 4, Section 18-109 of the Municipal Code of the City of Racine is amended by deleting the words “or to the health and sanitation appeal board, whichever has jurisdiction over the subject of the appeal”.

Part 5: Chapter 18, Article V, Division 2, Section 18-718 of the Municipal Code of the City of Racine is amended by deleting the words from “, within the time given for correction” to the end of this section and substituting “appeal the health officer’s determination pursuant to section 54-3.” therefor.

Part 6: Chapter 18, Article VI, Division 2, Section 18-755 of the Municipal Code of the City of Racine is amended by deleting the words from “, within the time given for correction” to the end of this section and substituting “appeal the health officer’s determination pursuant to section 54-3.” therefor.

Part 7: Chapter 22, Article XXI, Section 22-690 of the Municipal Code of the City of Racine is amended by deleting the words from “request and shall be granted a hearing” to the end of this section and substituting “appeal the health officer’s determination pursuant to section 54-3.” therefor.

Part 8: Chapter 22, Article XXXI, Division 1, Section 22-1195 of the Municipal Code of the City of Racine is amended by deleting the words from “, within the time given for correction” to the end of this section and substituting “appeal the health officer’s determination pursuant to section 54-3.” therefor.

Part 9: Chapter 42, Article II, Section 42-37(h)(2) of the Municipal Code of the City of Racine is amended by:

- deleting the words “health and sanitation appeal board within ten days” and substituting the words “due process board within thirty days” therefor in the first sentence; and
- deleting the words “health and sanitation appeal board” and substituting the words “due process board” therefor in the second sentence.

Part 10: Chapter 42, Article II, Section 42-37(h)(3) of the Municipal Code of the City of Racine is amended by deleting the words “health and sanitation appeal board” and substituting “due process board” therefor in the first sentence.

Part 11: Chapter 42, Article VI, Division 2, Section 42-184(a)(4) of the Municipal Code of the City of Racine is deleted and recreated as follows:

(4) Review of determination.

- a. Any person aggrieved by a notice of condemnation issued by the health officer may appeal the health officer’s determination pursuant to section 54-3.
- b. Any person aggrieved by a notice of condemnation issued by the chief building inspector may appeal the chief building inspector’s determination pursuant to section 18-109.

Part 12: Chapter 54, cross reference is amended by deleting the words “health and sanitation appeal board, § 2-236 et seq.” and substituting “due process board, § 2-261 et seq.” therefor.

Part 13: Chapter 54, Article I, Section 54-3 of the Municipal Code of the City of Racine is created to state as follows:

Sec. 54-3. – Review of health officer determinations.

- (a) *Aggrieved person.* A person aggrieved includes any individual, partnership, limited liability company, corporation, association, or public or private organization whose rights, duties, or privileges are adversely affected by a determination of the health officer.
- (b) *Request for review of determination.* Any person aggrieved may have a written or oral determination made by the health officer or his or her designee reviewed by written request mailed or delivered to the health officer within 15 days of notice to such person of such determination. If a request for review is made under this subsection, the determination to be reviewed shall be termed an initial determination. The request for review shall state the ground(s) upon which the person aggrieved contends that the initial determination should be modified or reversed.
- (c) *Review of initial determination.* The health officer shall review the initial determination within 15 days of receipt of the request for review. The health officer may affirm, reverse, or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the health officer’s decision on review, which shall state the reasons for such decision. The decision shall advise the person aggrieved of the right and process by which to appeal the decision on review.
- (d) *Appeal of decision on review.* Any person aggrieved may appeal from the decision on review by filing with or mailing to the health officer written notice of appeal within 15 days of notice to such person of such decision on review. The notice of appeal shall state the ground(s) upon which the person aggrieved contends that the decision on review should be modified or reversed.
- (e) *Hearing on appeal.* Not more than 30 days from receipt of the notice of appeal, the due process board shall convene for a hearing on the appeal. The city shall serve the appellant with notice of such hearing by mail or personal service at least 7 days before such hearing. At the hearing, the parties may present evidence, call and examine witnesses, and cross examine witnesses of the other party.
- (f) *Final determination.* Within 10 days of the completion of the hearing, the due process board shall mail or deliver to the appellant its written final determination to affirm, reverse, or modify the decision on review and therein shall state the reasons therefor. The final determination shall advise the person aggrieved of the right to judicial review of the final determination.

- (g) *Judicial review.* Any party to a proceeding resulting in a final determination may seek judicial review within 30 days of notice to such party of such final determination.
- (h) *Governing procedure.* The city elects not to be bound by Wisconsin Statutes chapter 68 for purposes of this section.
- (i) *Enforcement stayed.* Enforcement of the initial determination shall be stayed pending appeal of the initial determination, decision on review, or final determination.

State Law reference – Election not to be governed by this chapter, Wis. Stat. § 68.16.

Part 14: Chapter 54, Article III, Section 54-65 of the Municipal Code of the City of Racine is amended by deleting the words from “request and shall be granted a hearing on the matter” to the end of this section and substituting “appeal the health officer’s determination pursuant to section 54-3.” therefor.

Part 15: Chapter 114, Article II, Division 1, Section 114-34(i) of the Municipal Code of the City of Racine is amended by deleting the words “and sanitation appeal board” and substituting “officer” therefor.

Part 16: Chapter 2, Article III, Division 8, Section 2-263 of the Municipal Code of the City of Racine is amended to create subsection (h) as follows:

- (h) Conduct due process hearings on appeal filed by any person aggrieved by the health officer’s decision on review under section 54-3(c). Within 10 days after such hearing, the board shall mail or deliver to the appellant its written determination to affirm, reverse, or modify the health officer’s decision on review and state therein the reasons therefor.

Fiscal Note: None.

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor’s signature, or upon failing to approve or disapprove within 5 days, which fact shall be certified thereon by the clerk. If the mayor disapproves, the mayor’s objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.