



Legislation Text

File #: 040632, Version: 1

040632
SUBSTITUTE 1

THE CHAIR

A substitute ordinance relating to appeals of administrative decisions of the commissioner of city development or orders of the commissioner of neighborhood services relative to application or enforcement of the zoning code.

295-311-5-a am

295-311-5-c-0 am

295-311-5-e am

295-311-5-f am

295-311-6 cr

This ordinance clarifies the distinction between appeals of administrative decisions of the commissioner of city development relating to interpretation or application of the zoning code and appeals of orders of the commissioner of neighborhood services relating to enforcement of the zoning code.

This ordinance further provides that appeals of orders of the commissioner of neighborhood services shall be filed within 20 days of the date the order was issued, or 30 days if notification of the order was made by mail. However, if an order being appealed requires compliance in less than 20 days (or less than 30 days if notification of the order was by mail), the deadline for filing the appeal is the end of the term for compliance (or the end of the term plus 5 days if notification of the decision was by mail).

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 295-311-5-a of the code is amended to read:

295-311. Appeals.

5. APPEALS OF ADMINISTRATIVE DECISIONS. a. Purpose. To avoid results inconsistent with the purposes of this chapter, administrative decisions of the commissioner of city development ~~[[or the commissioner of neighborhood services]]~~ may be appealed to the board. This subsection establishes general provisions for appeals of administrative decisions.

Part 2. Section 295-311-5-c-0 of the code is amended to read:

c. Grounds For Appeal. The application shall state the specific grounds for the appeal ~~>>and identify the provisions of the zoning code applicable to the appeal<<~~ . Grounds for appeal shall include at least one of the following:

Part 3. Section 295-311-5-e of the code is amended to read:

e. Public Hearing. The board shall establish a reasonable time for the hearing of the appeal and give public notice thereof, as well as due notice to the interested parties. ~~[[The board shall render a decision on the appeal within a reasonable time.]]~~

Part 4. Section 295-311-5-f of the code is amended to read:

f. Actions. The board may reverse or affirm, wholly or partially, or may modify the ~~[[order,]]~~ requirement, decision or determination as appropriate.

Part 5. Section 295-311-6 of the code is created to read:

6. APPEALS OF ORDERS. a. Purpose. To avoid results inconsistent with the purposes of this chapter, orders issued by the commissioner of neighborhood services relating to enforcement of the provisions of the zoning code may be appealed to the board. This subsection establishes general provisions for appeals of orders of the commissioner of neighborhood services relating to enforcement of the zoning code.

b. Application. Every appeal shall be made upon a form which has been furnished by the board secretary and approved by the board. The appellant shall provide all information requested on the form and any additional information requested by the board chair or secretary that is necessary to inform the board of the facts of the appeal.

c. Deadline for Appeal. An appeal of an order of the commissioner of neighborhood services relating to enforcement of the provisions of the zoning code shall be made in writing within 20 days of the date the order was issued, unless the order requires compliance in less than 20 days. Whenever an order requires compliance in less than 20 days, the appeal shall be made in writing before the end of the term required for compliance. If notification of the order is made by mail, any appeal of the order shall be made in writing within 30 days of the date of the order, unless the order requires compliance in less than 30 days. Whenever an order delivered by mail requires compliance in less than 30 days, the appeal shall be made in writing before the end of a period equal to the term required for compliance plus 5 additional days. In no case, however, shall the appeal period be longer than 30 days. Citations issued by the commissioner of neighborhood services may not be appealed to the board.

d. Grounds for Appeal. The application shall state the specific grounds for the appeal and identify the provisions of the zoning code applicable to the appeal. Grounds for appeal shall include at least one of the following:

d-1. A description of the asserted error or abuse of discretion by the city officer whose decision is being appealed.

d-2. A description of how it is claimed a standard or review criterion was incorrectly applied.

d-3. A description of how the order creates an inconsistency with the city's comprehensive plan or the code of ordinances.

e. Consideration of Input From Parties of Interest. After a completed notice of appeal is filed with the officer whose action is appealed, that officer shall submit a written report to the board that describes

the reasons for the action or send a representative to the appeal hearing who will be prepared to comment on the action. The board may proceed with its hearing and decision on the appeal regardless of whether any of these parties have submitted a report to the board, provided that 30 days have elapsed since the date on which each of these parties was notified that an appeal was filed.

f. Public Hearing. The board shall establish a reasonable time for the hearing of the appeal and give public notice thereof, as well as due notice to the interested parties.

g. Actions. The board may reverse or affirm, wholly or partially, or may modify, the order being appealed.

h. Standards. An order of the commissioner of neighborhood services shall not be reversed or modified unless there is demonstrated evidence that the order:

h-1. Resulted from an error or abuse of discretion.

h-2. Resulted from an incorrect application of a standard or review criterion.

h-3. Is not supported by the evidence in the record.

h-4. Is inconsistent with the city's comprehensive plan or the code of ordinances.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Board of Zoning Appeals

LRB04314-2

JDO

09/15/04