



LEGAL SERVICES DEPARTMENT

Office of the City Attorney

100 North Appleton Street

Appleton, WI 54911

Phone: 920/832-6423

Fax: 920/832-5962

TO: Board of Health

FROM: Amanda Abshire, Assistant City Attorney

DATE: October 2, 2019

RE: Request for Clarification in the Beekeeping Permit Process

Our office recently discovered inconsistent language related to the process for hearing objections to beekeeping permits. Certain portions of the policy seem to indicate that the Board of Health makes the final determination when an objection is received — whereas other portions within the same document suggest that the Common Council makes the final determination. I have attached the relevant documents as well as summarized the process below. Staff is seeking clarification regarding the appeal process so that the language in the policy is consistent.

- **Beekeeping Permit Requirements (aka: “rooftop beekeeping”)**
 - Upon receipt of a written objection from a property owner within a 200 feet radius, the application shall be placed on the Agenda for the Board of Health (“the Board”) to be reviewed at the next regular meeting.
 - Sec. 2(a)4. details that the Board shall make a recommendation to the Common Council regarding the approval of a permit after providing the applicant and objector an opportunity to be heard. Thus, there appears to be an expectation that because the Board’s determination is merely a recommendation, the matter will be heard again by the Common Council.
 - Sec. 6 indicates that the Board may affirm, modify or set aside the order of the Health Officer after a hearing on the matter—suggesting finality in the Board’s decision. The same section then indicates that the decision of the Board is subject to review by certiorari by the court of record. This language again suggests that the determination of Board is final and thereby only appealable to the court – not subject to a hearing before the Common Council.

While the sections referenced above seem to be inconsistent, it is worth noting that the residential beekeeping permit requirements are clear in that the Board of Health makes the final determination. There is no mention regarding a recommendation, but rather, the expectation that they are making a final determination regarding the appeal. The appeal process for residential beekeeping is summarized below:

James P. Walsh
City Attorney

Christopher R. Behrens
Deputy City Attorney

Amanda Abshire
Assistant City Attorney

Darrin M. Glad
Assistant City Attorney

- **Residential Beekeeping Permit Requirements**

- Upon receipt of a written objection from a property owner within a 400 feet radius, the application shall be placed on the Agenda for the Board of Health (“the Board”) to be reviewed at the next regular meeting.
- Sec. 2(b)3. indicates that the Board shall allow the applicant and objector an opportunity to be heard on the permit. Thereafter, the Board may affirm, modify or set aside the order. The Board’s decision is subject to review by certiorari by a court of record.
- Sec. 7 reiterates that the Board of Health hears the appeal and makes the final determination – subject to review by certiorari by a court of record.

REQUEST FROM STAFF: Staff is seeking clarification in the appeal process: should the respective Board make a . . .

- ❖ recommendation to the Common Council regarding the application OR
- ❖ final determination regarding the application

Once the process is clarified, staff will draft the appropriate changes to the rules and regulations.

Thank you for your consideration. As always, please do not hesitate to reach out to me with any questions and/or concerns.