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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1601**

Jody L. Wiza, d/b/a Shack Bar, LLC,  
Relator,

vs.

City Council of the City of Dover, Minnesota, et al.,  
Respondents

**Filed July 9, 2018  
Affirmed  
Reyes, Judge**

City of Dover  
Resolution Nos. 9-18-17B; 9-18-17D

Frederick S. Suhler, Jr., Rochester, Minnesota (for relator)

Robb L. Olson, Peter J. Frank, White Bear Lake, Minnesota (for respondents)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Randall,  
Judge.\*

**UNPUBLISHED OPINION**

**REYES, Judge**

In this certiorari appeal, relator argues that respondent city council failed to follow  
lawful procedures by (1) failing to adhere to the Minnesota administrative-agency rules;

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

(2) failing to rule on her motions; and (3) denying her right to cross-examine witnesses. Relator also argues that insufficient evidence supports the city council's determination that she violated the city ordinance and that the city council erred by considering relator's building-code violations in imposing sanctions on her. We affirm.

## **FACTS**

Relator Jody Wiza, who owns the Shack Bar, applied for a Sunday liquor license on June 1, 2017. Respondent city council of the city of Dover (the city council) denied her application because of allegations that relator violated city ordinances.

On September 6, 2017, the city council held an evidentiary hearing to address relator's alleged violations. Prior to the hearing, relator filed motions requesting: (1) appointment of an independent hearing officer; (2) a stenographic record of the proceedings; (3) recusal of one of the council members;<sup>1</sup> and (4) discovery. The city council discussed the motions at the beginning of the hearing but neither granted nor denied them.

The city council then addressed the first allegation that relator violated Dover, Minn., City Ordinance (DCO) No. 93-4 (1993), which prohibits the display of nudity, nude dancing, or certain sexual activities in a licensed liquor establishment. The city council played a video from relator's bar depicting a man dancing while wearing only underwear. The city council then allowed relator the opportunity to present her arguments and evidence, but relator claimed that the city council bore the burden of proof and that she had

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<sup>1</sup> During the hearing, relator orally requested that the city council require recusal of a second council member.

no obligation to prove the falsity of the allegations. When the city council allowed the public to make comments, relator objected, claiming that the witnesses should be sworn in under oath and available for cross-examination. The city council did not rule on relator's objection.

The city council next addressed relator's alleged violations of Dover, Minn., Municipal Regulation and Licensing (DMRL) § 402.04, subd. 3 (2008), for allowing customers to consume alcoholic beverages in unlicensed areas of the premises, and of the State Building Code, Minn. Stat. §§ 326B.101-16 (2016), for violating the building permit.<sup>2</sup> The city council followed the same procedure used for the first violation: the city council presented its evidence, gave relator an opportunity to present evidence and arguments, and allowed public comments. Relator did not attempt to ask questions or reply to those who made comments.

On September 18, 2017, the city council adopted and approved three resolutions determining that relator violated DCO No. 93-4, DMRL § 402.04, subd. 3, and the State Building Code, and suspended relator's liquor license for three days and imposed a \$1,000 fine. Relator's appeal by writ of certiorari follows.

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<sup>2</sup> The city-council resolution does not delineate which section of the State Building Code that relator violated, nor does the record disclose this information.

## DECISION

### I. Minnesota Administrative Rules do not apply to the city council's hearing.

Relator argues that the city council failed to follow the procedures for contested cases under the administrative agency rules. Minn. R. 1400.5010-8400 (2017).<sup>3</sup> We are not persuaded.

Relator's argument requires us to first determine whether chapter 1400 of the rules applies to the city council's evidentiary hearing. We review questions of interpretation and application of administrative regulations de novo. *Gist v. Atlas Staffing, Inc.*, 910 N.W.2d 24, 31 (Minn. 2018); *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

The procedures of Minn. R. 1400.5010-8400 "govern all contested cases conducted by the *office* under Minnesota Statutes, chapter 14." Minn. R. 1400.5010 (emphasis added). "Office" refers to the Minnesota Office of Administrative Hearings (the OAH). Minn. R. 1400.5100, subp. 6. If a word is defined by statute, we construe it according to that definition and do not turn to the common-law definition of the word. *State v. Schmid*, 859 N.W.2d 816, 820 (Minn. 2015); see *Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs.*, 713 N.W.2d 817, 828 n.9 (Minn. 2006) (stating that administrative regulations are governed by rules of construction that apply to statute). Rules 1400.5010 and 1400.5100 unambiguously limit the scope of rules for contested cases

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<sup>3</sup> She claims that the city council (1) did not provide for discovery pursuant to Minn. R. 1400.6700; (2) did not have witnesses sworn in and testify under oath pursuant to rule 1400.7200; (3) did not satisfy its burden of proving that relator violated city ordinances pursuant to rule 1400.7300; and (4) conducted the hearing in a chaotic manner, violating rule 1400.7800.

to a hearing conducted by the OAH. Here, the city council, not the OAH, conducted the evidentiary hearing.

Minn. Stat. § 340A.415 provides that MAPA, Minn. Stat. §§14.57-.69 (2016) applies to a license-revocation hearing conducted by an authority issuing a liquor license. But the city council is not required “to conduct the hearing before an employee of the [OAH].” Minn. Stat. § 340A.415 (2016) (governing the rules and procedures that the authority issuing a liquor license should follow in imposing civil penalty). Therefore, the procedures for contested cases under Minn. R. 1400.5010-8400 do not apply to the evidentiary hearing conducted by the city council, and the city council had no duty to follow the procedure outlined by these rules.

**II. Relator waived her claim that the city council’s failure to rule on the motion seeking recusal of the council members was an unlawful procedure.**

Relator claims that the city council did not follow lawful procedure because it failed to consider relator’s motion seeking recusal of the council members for conflict of interest. However, this claim is forfeited as relator cites no argument or authority to support it. *See Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (“An assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection.”)

### **III. The city council did not deny relator's request to conduct cross-examination.**

Relator argues that the city council failed to observe lawful procedure by denying her right to cross-examine witnesses.<sup>4</sup> Relator misconstrues the record.

Under MAPA, the parties have the right to conduct cross-examination. Minn. Stat. § 14.60, subd. 3. Here, the city council did not deny relator this right. Relator never questioned the witnesses after they testified, although she had ample opportunity to do so. When the city council provided relator the opportunity to present her arguments and evidence, she did not discuss the witnesses' testimony, nor did she ask the city council whether she could question the witnesses. Although relator briefly mentioned her right to cross-examine the witnesses two times during the hearing, it was only in the context of asking the city council to swear in the witnesses. Therefore, it was relator, not the city council, who elected not to conduct cross-examination.

### **IV. Sufficient evidence supports the city council's determination that relator violated DCO No. 93-4.**

Relator argues that the city council's determination that relator willfully violated DCO No. 93-4 is not supported by sufficient evidence. We disagree.

"Municipal authorities have broad discretion to determine the manner in which liquor licenses are issued, regulated, and revoked." *Bourbon Bar & Cafe Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991). However, after review of the entire

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<sup>4</sup> Although relator only cites to Minn. R. 1400.7100 to support her claim that the city council should have allowed her to conduct cross-examination, we review this argument separately because Minn. Stat. § 14.60, subd. 3, also grants the parties the right to conduct cross-examination.

record, we may reverse or modify a municipal authority's decision if the petitioner's substantial rights are prejudiced because the administrative finding, inferences, conclusion, or decisions are unsupported by substantial evidence. Minn. Stat. § 14.69 (e). "Substantial evidence, for the purpose of appellate review of an administrative agency's decision, is: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; and (5) evidence considered in its entirety." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001). We defer to the municipal authority's fact-finding process, and it is the challenger's burden to establish that the findings are not supported by the evidence. *Id.* Therefore, we accept inferences made by the municipal authority if not manifestly unjust, even though contrary inferences would be better supported by the record. *Id.*

DCO No. 93-4 prohibits "nude dancing" and "touching of nude human genitals" in premises licensed to serve on-sale liquor. One definition of "nude" provided in the city ordinance is "the display of human male genitals in a discernably turgid state, even if completely and opaquely covered." DCO No. 93-4, § 2.

The city council determined that relator violated the ordinance based in part on the video evidence showing a man dancing in his underwear for a woman seated on a chair, who reached her hand toward the man's genitals. Implicit in its determination are the inferences that the man's genitals were in a turgid state and that the woman touched his genitals.

Relator dances around the argument that the man was not “nude” and the woman did not touch the man’s genitals. However, relator did not submit any evidence to support her argument. Because we defer to the city council’s findings of fact, which were supported by the video, we accept the inferences made by the city council.

**V. Relator waived her argument that the city council erred by considering relator’s building-code violations.**

Relator also argues that, because the State Building Code is not related to the protection of health, safety, or morals of the public, the city council should not have imposed sanctions on relator based on this violation. However, relator did not make any legal argument or cite to legal authority, and therefore this issue is forfeited. *See Scheffler*, 890 N.W.2d at 451.

**Affirmed.**