

permitted to present the applicant's own witnesses, subject to cross-examination.

e. Committee members may ask questions of witnesses.

f. The applicant shall be permitted a brief summary statement.

**4. RECOMMENDATION.** The recommendation of the committee regarding the applicant shall be based on evidence presented at the hearing. Probative evidence concerning whether or not the license should be granted may be presented on the following subjects:

a. Whether or not the applicant meets the municipal requirements.

b. The appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems such as disorderly patrons, unreasonably loud noise, litter, and excessive traffic and parking congestion. Probative evidence relating to these matters may be taken from the plan of operation submitted with the license application.

c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of businesses of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present.

d. The applicant's record in operating similarly licensed premises.

e. Whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the activity to be permitted by the license being applied for.

f. Any other factors which reasonably relate to the public health, safety and welfare.

**5. FACTORS NOT CONSIDERED FOR RECOMMENDATION.** The recommendations of the committee regarding the applicant shall not be based on evidence presented at the hearing related to the type or content of any music, or the actual or likely financial or non-financial effects on actual or potential competitors.

**6. Committee Decision.** The committee may make a recommendation immediately following the hearing or at a later

date. Written notice of the committee's decision will be provided if the decision is made at a later date or if the applicant was not present or represented. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

**7. DOCUMENT.** If the common council grants the application for a license, the city clerk, or other city official or department authorized by the code to issue licenses, shall issue an appropriate document to the applicant confirming that fact. The document shall also contain any restrictions or conditions which the common council may place on approval.

**85-3. Notice and Service. 1. NOTICE OF POSSIBLE NON-RENEWAL, SUSPENSION OR REVOCATION.**

a. Unless otherwise provided, the city clerk, or other city official or department authorized by the code to receive applications for licenses or permits, shall provide written notice of the possibility of non-renewal, or of suspension or revocation of a license or permit to the applicant addressed to the person or agent at the address most recently provided by the applicant.

b. Written notice of possible non-renewal, suspension or revocation shall include:

b-1. The date, time and place of a hearing to be held by the committee.

b-2. A statement of the common council's intent to revoke, suspend or not renew the license or permit if objections, charges or allegations are found to be true.

b-3. A statement of the specific reasons for revocation, suspension or non-renewal.

b-4. A statement that an opportunity will be provided to respond to and challenge the reasons for revocation, suspension or non-renewal, and to present witnesses under oath and to confront and cross-examine witnesses under oath.

b-5. A statement that the applicant may be represented by an attorney of the applicant's choice at the expense of the applicant.

b-6. A statement that, if the applicant requires the assistance of an interpreter, the applicant may employ an interpreter at the expense of the applicant.

b-7. A statement that, upon conclusion of a hearing before the committee, the committee will prepare a written report and recommendation to the common council, and shall provide a copy of the report and recommendation to the applicant.

## 85-4 License and Permit Procedures

**2. SERVICE OF DOCUMENTS.** Service of notices of meetings and service of other documents including committee reports and recommendations shall be made upon any party entitled to such notice and service by placing the same in the United States first class mail, postage prepaid.

**3. OBJECTIONS. a. How Made.** Notice of an objection to the renewal of a license or in support of suspension of a license or permit by an interested party shall not be included in the notice of hearing if the objection has not been received by the city clerk within 45 days of the expiration of the license. Failure to timely submit an objection shall not be a bar to testimony or other evidence that relates to any matter actually identified in the notice of hearing as a basis for nonrenewal or suspension. An objection shall include information that could form the basis of a license nonrenewal or suspension and may be transmitted in writing or by electronic means. Any city official, or the official's delegate, shall forward an objection from an interested party, or from a resident as provided in s. 90-1-19, to the city clerk. The information provided by an official or the official's delegate to the city clerk shall include the name of the objector, contact information for the objector, and information known to the objector that may form a basis for nonrenewal or suspension. The submission by a city official or the official's delegate of a written summary of the objection to the city clerk shall be treated in the same manner as other objections. The city clerk is authorized to establish forms for the purpose of assisting persons wishing to submit an objection.

**b. Exception.** If application for renewal is filed with the city clerk after the deadline for renewal application established by the city clerk and prior to the expiration of the license, an objection may be submitted in fewer than 45 days prior to the expiration of the license and may be considered at a regularly scheduled meeting of the licensing committee provided sufficient and timely notice is given.

**85-4. Hearing Procedure; Non-Renewal, Suspension or Revocation. 1. AUTHORITY OF COMMITTEE.** The committee shall conduct hearings with respect to the non-renewal, suspension or revocation of a license or permit pursuant to this section. The chair of the committee shall be the presiding officer.

**1.5. MULTIPLE LICENSE TYPES.** When the committee conducts a hearing relating to the possible denial, non-renewal, suspension

or revocation of a business type license and the licensee holds one or more other types of licenses or permits issued by the city clerk for the same premises, the committee shall also consider possible non-renewal, suspension or revocation of the other licenses or permits at the same hearing. Notice of possible denial, non-renewal, suspension or revocation of the non-alcohol beverage licenses or permits shall be provided in accordance with s. 85-3.

**2. COMMITTEE HEARING PROCEDURE. a.** The chair shall advise the applicant of the right to proceed to a due process hearing represented by counsel with all testimony, both direct and cross examination, under oath or that the applicant may simply make a statement to the committee.

**b.** The chair shall direct that oaths be administered and subpoenas issued upon request of any party.

**c.** The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this section. The chair shall open the hearing with a statement that a notice was sent to the applicant, and, if the applicant appears, shall further inquire whether the notice was received. Unless expressly provided elsewhere in this code, the chair shall advise the licensee and parties seeking nonrenewal, suspension or revocation of the license that each side will be limited to 30 minutes for testimony and oral argument. This time may be extended by the chair, subject to approval by the committee, if additional time is necessary for a full and fair presentation of the facts and arguments. When permitted by the chair, questioning by committee members and relevant responses shall not count against the time limitation. In the event that the applicant does not admit receipt of the notice and also denies knowledge of the contents of the notice, the chair shall ascertain whether the applicant wishes to immediately proceed to a full hearing or whether the applicant wishes the matter to be held to the call of the chair or to a time certain. The decision to proceed or to hold the matter shall be made by the committee.

**d.** The chair shall rule on objections to the admissibility of evidence. Any ruling of the chair shall be final unless appealed to the committee, and the committee shall reverse such ruling only upon the vote of a majority of its members.

**3. RECORD.** An electronic or stenographic record shall be made of all licensing proceedings before the licensing committee and the common council. An

## License and Permit Procedures 85-4-4

electronic record shall audibly, accurately and completely reflect the testimony and statements made by participants in the proceedings. Recordings shall be maintained in a manner prescribed by the city clerk. An electronic record shall be made available for stenographic transcription or for transcription by other means at the expense of the person or party seeking the transcription of all or any portion of the record.

### 4. GROUNDS FOR NON-RENEWAL, SUSPENSION OR REVOCATION.

The recommendations of the committee regarding the applicant shall be based on evidence presented at the hearing. Unless otherwise specified in the code, probative evidence concerning non-renewal, suspension or revocation may include evidence of:

a. Failure of the applicant to meet municipal qualifications.

b. Pending charges against or the conviction of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the circumstances of the particular licensed or permitted activity, by the applicant or by any employe or other agent of the applicant.

c. If the activities of the applicant involve a licensed premises, whether the premises tends to facilitate a public or private nuisance or has been the source of congregations of persons which have resulted in any of the following:

- c-1. Disturbance of the peace.
- c-2. Illegal drug activity.
- c-3. Public drunkenness.
- c-4. Drinking in public.
- c-5. Harassment of passers-by.
- c-6. Gambling.
- c-7. Prostitution.
- c-8. Sale of stolen goods.
- c-9. Public urination.
- c-10. Theft.
- c-11. Assaults.
- c-12. Battery.
- c-13. Acts of vandalism including graffiti.
- c-14. Excessive littering.
- c-15. Loitering.
- c-16. Illegal parking.
- c-17. Loud noise at times when the licensed premise is open for business.
- c-18. Traffic violations.

- c-19. Curfew violations.
- c-20. Lewd conduct.
- c-21. Display of materials harmful to minors, pursuant to s. 106-9.6.
- c-22. Any other factor which reasonably relates to the public health, safety and welfare.
- c-23. Failure to comply with the approved plan of operation.

### 5. HEARING OFFICER. Where it i

s impractical for the committee to hold an evidentiary hearing, the committee may employ a hearing officer for the purposes of taking testimony and rendering recommended findings of fact and conclusions of law to the committee. When such hearing officer is employed, he or she shall prepare written findings of fact and conclusions of law which shall be simultaneously transmitted to the committee as well as to the applicant, the applicant's agent, manager, operator or any other employe of the applicant, and to the person bringing the complainant or objector. The chair of the committee shall schedule a hearing on the receipt of the report of the hearing officer in not more than 30 days from receipt of the report. Notice of the committee hearing on the report shall be given to all parties. The committee may take and reserve additional evidence at the time of said hearing. The committee may accept or reject the report of the hearing officer or make any changes to the report which are warranted by the circumstances, the evidence presented and any arguments of the parties who appeared before the hearing officer and the committee. The committee shall transmit its recommendation to the common council for action as provided in sub. 6.

6. COMMITTEE REPORT. The committee may make a report and recommendations immediately following the hearing or at a later date. The committee may recommend that the license or permit be renewed, not renewed, suspended or revoked. In addition, if the committee determines that circumstances warrant, the committee may recommend that the license or permit be renewed conditioned upon a suspension of the license or permit for a defined period of time. When the committee elects to recommend that a license or permit be renewed with a period of suspension, the license or permit may be suspended for a period of not less than 10 days and no more than 90 days.

## 85-5 License and Permit Procedures

**85-5. Council Action. 1. REPORT TO BE PROVIDED.** Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation upon the applicant and upon the complainant or objector, if any. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee. A copy of the report shall be distributed to each member of the common council.

**2. FILING WRITTEN STATEMENTS OR RESPONSES.** Following a recommendation by the committee that the license or permit not be renewed, or that the license or permit be revoked or suspended, the applicant may submit a written statement including objections, exceptions and arguments of law and fact. When the proceedings have been commenced upon the complaint or objection of an interested party who has appeared and offered evidence, the complainant or objector may also submit a written statement in response. Written statements shall be filed with the city clerk before the close of business on a day that is at least 3 working days prior to the date set for hearing by the common council.

**3. COPIES TO BE PROVIDED TO COMMON COUNCIL MEMBERS.** A copy of any statement in response to the report and recommendations of the committee that is timely filed shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

**4. PROCEDURE AT MEETING OF THE COMMON COUNCIL.** a. At a meeting of the common council following the receipt of the report and recommendations of the committee, the common council shall consider the report and recommendations. The city clerk shall notify the applicant, and the complainant or objector, if any, by United States first class mail, postage prepaid, 5 working days prior to the hearing before the common council, and shall also notify the city attorney, that the council will convene to act upon the report and recommendations.

b. Each member of the common council shall be asked to affirm that he or she has read the report and recommendations of the committee. When a written statement has been timely filed by the applicant, or by a complainant or objector, each member of the common council shall be asked to affirm that he or she has read the statement. If members of the council have not read the recommendation and report of the committee and any statement in

response that has been timely filed, the chair shall allocate time for the members to do so.

c. Oral argument on behalf of the applicant, and oral argument by the complainant or objector, if any, shall be permitted only to those parties having timely filed a written statement. Oral argument shall be limited to 5 minutes. The city attorney shall also be permitted to make an oral presentation of not more than 5 minutes.

d. Applicants shall appear only in person or by counsel. Corporate applicants shall appear only by designated agents or counsel. Partnerships shall be represented only by a partner or counsel. Limited liability companies shall be represented only by designated agents or counsel. Complainants and objectors shall appear only in person or counsel. Any person making an appearance before the council who requires the services of an interpreter shall obtain one at his or her own expense.

e. The common council shall determine by a majority roll call vote of those in attendance and voting whether to adopt the recommendation of the committee. The city clerk shall provide written notice of the decision to the applicant, and to the complainant or objector, if any, including a written statement or summary of the reasons for the decision.

f. Unless otherwise expressly provided, the revocation of a license or permit shall be effective upon service of the notice of decision upon the applicant or upon any person having charge or control of a licensed premises. Suspension of a license or permit in proceedings for revocation shall be effective upon service of the notice of decision upon the applicant or upon any person having charge or control of a licensed premises. Suspension of a license or permit in proceedings for renewal shall be effective on the date the common council takes action to suspend the license or permit, or on the date of the expiration of the license or permit, whichever is later. A license or permit may be suspended for not less than 10 days and no longer than 90 days.

g. If a retail alcohol beverage license for a premises is suspended and the licensee also holds a public entertainment premises license for the premises, the public entertainment premises license shall be suspended for the same time period as the alcohol beverage license.

## 90-12 Liquor and Tavern Regulations

d-2. At the meeting of the common council, the chair shall allow oral argument by an applicant or complainant who has timely submitted a written statement in response to the recommendations of the licensing committee. The city attorney shall also be permitted a statement. Oral arguments shall not exceed 5 minutes on behalf of any party. Applicants shall appear only in person or by counsel. Corporate applicants shall appear only by the agent or by counsel. Partnerships shall be represented only by a partner or by counsel. Limited liability companies shall be represented only by the agent or by counsel. Complainants shall appear only in person or by counsel. Any person making an appearance before the council pursuant to this subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

d-3. Prior to voting on the committee's recommendation, all members of the council who are present shall signify that they have read the recommendation and report of the licensing committee and any written statements in response that have been filed thereto. If they have not, the chair shall allocate time for the members to do so. If they have read the report and recommendation, then a roll call vote shall be taken as to whether or not the recommendation of the committee shall be accepted. The applicant shall be provided with written notice of the results of the vote taken by the common council.

3. REQUEST TO SURRENDER A LICENSE. See s. 85-17 for provisions relating to the surrender of licenses and the return of surrendered licenses.

**90-12. Revocation or Suspension of Licenses.** 1. CAUSES. Any license issued under this chapter may be suspended or revoked for cause by the common council after notice to the licensee and a hearing. Such licenses shall be suspended or revoked for the following causes:

a. The making of any material false statement in any application for a license.

b. The conviction of the licensee, his agent, manager, operator or any other employe for keeping a gambling house or a house of prostitution or any felony related to the licensed operation.

c. A showing that such licensee has violated any state law or city ordinance prohibiting the sale of intoxicating liquors or fermented malt beverages to underage persons, or to any person intoxicated or bordering on the state of intoxication.

d. The violation of the provisions in ss. 90-7 through 90-10 and 90-13 through 90-31.

e. The violation of any of the excise laws of this state.

f. The licensed premises is operated in such a manner that it constitutes a public or private nuisance or that conduct on the licensed premises, including but not limited to loud and raucous noise, has had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood; or

g. If the licensee is a corporation or licensed limited partnership, the conviction of the corporate agent, officers, directors, members or any shareholder holding 20% or more of the corporation's total or voting stock, or proxies for that amount of stock, of any of the offenses enumerated in s. 125.12(2)(ag), Wis. Stats., as amended.

h. Failure of the licensee to operate the premise in accordance with the floor plan and plan of operation submitted pursuant to s. 90-5-1-c.

i. For any other reasonable cause which shall be in the best interests and good order of the city.

3. STATE LAW APPLICABLE. Except as hereinafter provided, the provisions of ss. 125.12(2)(ag) to (c), Wis. Stats., shall be applicable to proceedings for the suspension and revocation of all licenses granted under this chapter.

4. COMMENCEMENT OF PROCEEDINGS. Suspension or revocation proceedings may be instituted by the licensing committee of the common council upon its own motion, or upon sworn written charges made and filed with the city clerk by the chief of police or upon a sworn written complaint filed with the city clerk by any city resident.

5. PROCEDURES FOR REVOCATION OR SUSPENSION. a. Complaint; Summons; Report.

## Liquor and Tavern Regulations 90-12-5-b

a-1. Whenever either sworn written charges or a sworn written complaint are filed with the city clerk setting forth specific charges against a licensee involving conduct which would violate statutes or ordinances that are grounds for revocation or suspension of a license, the city clerk shall issue a summons, as authorized by Wisconsin statutes, demanding that the licensee appear before the licensing committee, not less than 3 days nor more than 10 days from the date of issuance, to show cause why the license should not be revoked or suspended.

a-2. A police officer shall serve the summons upon a licensee in accordance with Wisconsin statutes, and shall also serve a copy of the complaint with a copy of this subsection upon the licensee.

a-3. The chief of police shall prepare a report with information relating to the allegations contained in the written charges or complaint. The report shall first state whether the chief of police has information relating to the allegations contained in the written charges or complaint. The report may be offered and made part of the permanent record of the hearing without motion. Information contained in the report shall be admissible and may be considered by the committee as a public record to the extent that the information in the report sets forth the activities of department personnel, or provides information about matters observed by police personnel under a duty imposed by law, or contains factual findings resulting from an investigation made under authority of law, unless the sources of information or other circumstances indicate lack of trustworthiness. A copy of the report shall be provided to the licensee at least 3 days prior to the time scheduled for appearance upon the summons and complaint.

b. Committee Hearing. b-1. Upon receipt of evidence that the summons has been served, the licensing committee shall convene at the date and time designated in the summons for the purpose of taking evidence and making findings of fact and conclusions of law and a recommendation to the full common council in connection with the proposed revocation or suspension.

b-2. If the licensee appears before the committee at the time designated in the summons and denies the charges contained in

the complaint, an evidentiary hearing in connection with the revocation or suspension shall be conducted by the committee at that time. If the licensee does not appear, or appears but does not deny the charges contained in the complaint, the complaint shall be taken as true and the committee shall hear the arguments of the city attorney and the licensee in connection with the revocation or suspension.

b-3. The procedure at evidentiary hearing shall be as follows:

b-3-a. The chief of police or complainant shall first present evidence in support of the complaint. The chief of police or complainant may offer the report prepared under par. a-3.

b-3-b. After the chief of police or complainant rests, the licensee may present evidence in opposition to the written charges or complaint.

b-3-c. The chief of police or complainant and the licensee may subpoena and present witnesses. All witnesses shall testify under oath and shall be subject to cross-examination.

b-3-d. The chief of police or complainant and the licensee shall each be limited to 30 minutes for testimony and oral presentation unless the chair, subject to approval of the committee, extends the time to assure a full and fair presentation.

b-3-e. Questions by committee members and responses to members' questions shall not be counted against the time limitations.

b-3-f. At the close of the testimony, the chief of police or complainant and the licensee shall be given a reasonable time to make arguments upon the evidence produced at the hearing.

b-4. The chair of the licensing committee shall be the presiding officer. The chair shall direct that oaths be administered and subpoenas issued upon request of either side. The chair shall ensure that an orderly hearing is conducted in accordance with the requirements of this subsection. The chair shall rule on objections to the admissibility of evidence. Any ruling of the chair shall be final unless appealed to the committee, and the committee shall reverse such ruling only upon the vote of a majority of its members present and voting.

b-5. At all stages of the proceedings before the committee or before the common council, the licensee shall be entitled to appear both in person and by an attorney.

## 90-13 Liquor and Tavern Regulations

b-6. A record shall be made of all licensing proceedings before the committee and before the common council as provided in s. 85-4-3.

c. Committee Report. c-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the licensee and transmit a copy thereof to the city attorney. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee. The report shall be distributed to each member of the common council.

c-2. The committee shall provide the licensee, and the complainant, if any, with a copy of the report. The licensee and complainant may file a written statement or response including objections, exceptions and arguments of law and fact to the report to the common council. A written statement or response must be filed with the city clerk before the close of business on a day that is at least 3 working days prior to the date set for hearing by the common council.

c-3. Any written statement or response to the report and recommendations of the committee shall be filed by the close of business on the day that is 3 working days prior to the date on which the matter is to be heard by the common council. Copies of written statements shall be provided to each member of the common council at least 24 hours before any vote on the question is scheduled before the common council.

d. Council Action. d-1. At a meeting of the common council following the receipt of the report and recommendations of the committee, the common council shall consider the report and recommendations. Not less than 5 working days prior to the hearing before the common council, the city clerk shall notify the licensee and complainant by United States first class mail, postage prepaid, sent to the last known address of the licensee and complainant, and shall also notify the city attorney, of the time and place that the common council will convene. Each member of the common council shall be asked to affirm that he or she has read the report and recommendations of the committee. When written statements or responses are timely filed to a committee report and recommendations that the license be suspended or revoked, each member of the common council shall be asked to affirm that he or she has read the statements or responses. If

members of the council have not read the recommendations and report of the committee and any statements or responses that have been filed, the chair shall allocate time for the members to do so. Oral argument in support of the report and recommendations presented by the city attorney, oral argument on behalf of the licensee in opposition to the report and recommendations and oral argument by the complainant objecting to the report and recommendations shall be permitted where written statements or responses have been timely filed. Argument shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendations and the written exceptions. Licensees shall appear only in person or by counsel. Corporate licensees shall appear only by the agent or by counsel. Partnerships shall be represented only by a partner or by counsel. Limited liability companies shall be represented only by the agent or by counsel. Complainants shall appear only in person or by counsel. Any person making an appearance before the council pursuant to this subsection and who requires the services of an interpreter shall obtain one at his or her own expense.

d-2. The common council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the committee. Such vote shall be a roll call vote. If the common council finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation with the committee's report and recommendation and in accordance with Wisconsin statutes, the city clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked. If the common council finds the complaint to be untrue, the proceedings shall be dismissed without cost to the accused.

7. REQUEST TO SURRENDER A LICENSE. See s. 85-17 for provisions relating to the surrender of licenses and the return of surrendered licenses.

**90-13. Alterations to Premises.** Any alteration, change or addition resulting in expansion of a licensed premises shall be approved by the licensing committee prior to issuance of a permit pursuant to s. 200-24 by the department of city development. An applicant whose permit application has been denied by the committee may appeal the decision to the common council.

**125.10 ALCOHOL BEVERAGES**

chapter and may prescribe additional regulations for the sale of alcohol beverages, not in conflict with this chapter. The municipality may prescribe forfeitures or license suspension or revocation for violations of any such regulations. Regulations providing forfeitures or license suspension or revocation must be adopted by ordinance. Any municipality may, by ordinance, regulate contests, competitions, or other events for the exhibition, demonstration, judging, tasting, or sampling of homemade wine or fermented malt beverages.

(2) **REGULATION OF UNDERAGE PERSONS.** A municipality or a county may enact an ordinance regulating conduct regulated by s. 125.07 (1) or (4) (a), (b) or (bm), 125.085 (3) (b) or 125.09 (2) only if it strictly conforms to the statutory subsection. A county ordinance enacted under this subsection does not apply within any municipality that has enacted or enacts an ordinance under this subsection.

(3) **ZONING.** Except as provided in ss. 125.05 and 125.68, this chapter does not affect the power of municipalities to enact or enforce zoning regulations.

(4) **REGULATION OF CLOSED RETAIL PREMISES.** A municipality may not prohibit the permittee, licensee, employees, salespersons, employees of wholesalers issued a permit under s. 125.28 (1) or 125.54 (1); employees of permittees under s. 125.295 with respect to the permittee's own retail premises; or service personnel from being present on premises operated under a Class "A", "Class A" or "Class C" license or under a Class "B" or "Class B" license or permit during hours when the premises are not open for business if those persons are performing job-related activities.

(5) **FERMENTED MALT BEVERAGES ON COMMERCIAL QUADRICYCLES.** (a) A municipality may, by ordinance, prohibit the consumption of fermented malt beverages by passengers on a commercial quadricycle within the municipality.

(b) Notwithstanding sub. (1), an ordinance enacted before January 1, 2014, regulating the possession or consumption of open containers of alcohol beverages in public places may not prohibit the possession or consumption of alcohol beverages by passengers on a commercial quadricycle. An ordinance that is inconsistent with this paragraph may not be enforced.

**History:** 1981 c. 79, 202; 1983 a. 74 ss. 19, 32; 1985 a. 28 ss. 5, 9; 1987 a. 168; 1989 a. 31, 253; 1991 a. 39; 1993 a. 208; 2007 a. 20; 2011 a. 32, 200; 2013 a. 106.

Chapter 125 contemplates and expressly directs that regulation is to supersede competition in the retail sale of alcohol beverages. The regulatory scheme indicates a legislative intent to make state antitrust law not applicable by authorizing contrary or inconsistent conduct by granting municipalities broad statutory authority to prescribe or orchestrate anticompetitive regulation in the sale and consumption of alcohol if that regulation serves an important public interest. Private parties are eligible for antitrust immunity when they act in concert, in an anticompetitive manner, in direct response to pressure bordering on compulsion from a municipality. *Eichenseer v. Madison-Dane County Tavern League, Inc.* 2008 WI 38, 308 Wis. 2d 684, 748 N.W.2d 154, 05-1063.

A town must renew a license, if the proper application is made and the fees are paid, unless it revokes, suspends, or non-renews the license, following the procedures outlined in s. 125.12. This section does not give towns the authority to unilaterally modify the described premises in an individual license upon renewal of that license. A town must either pass a regulation or an ordinance under this section or it must find grounds for revocation or nonrenewal under s. 125.12. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76, 342 Wis. 2d 350, 815 N.W.2d 690, 10-2900.

**125.105 Impersonating an officer.** (1) No person may impersonate an inspector, agent or other employee of the department or of the department of justice.

(2) (a) Whoever violates sub. (1) with the intent to mislead another may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) Whoever violates sub. (1) to commit, or abet the commission of, a crime is guilty of a Class H felony.

**History:** 1989 a. 253; 1997 a. 283; 2001 a. 109.

**125.11 Penalties.** (1) **GENERAL PENALTY.** Any person who violates any provision of this chapter for which a specific penalty is not provided, shall be fined not more than \$1,000 or imprisoned for not more than 90 days or both. Any license or permit issued to the person under this chapter may be revoked by the court.

(2) **FELONY.** If a person is convicted of a felony under this chapter, in addition to the penalties provided for the felony, the

court shall revoke any license or permit issued to the person under this chapter.

**History:** 1981 c. 79; 1985 a. 120, 302; 1989 a. 253.

**125.115 Responsibility for commission of a crime.**

(1) A person may be convicted of the commission of a crime under this chapter only if the criteria specified in s. 939.05 exist.

(2) This section does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

**History:** 1985 a. 47.

**125.12 Revocations, suspensions, refusals to issue or renew.**

(1) **REVOCACTION, SUSPENSION, NONISSUANCE OR NONRENEWAL OF LICENSE.** (a) Except as provided in this subsection, any municipality or the department may revoke, suspend or refuse to renew any license or permit under this chapter, as provided in this section.

(b) 1. In this paragraph, "violation" means a violation of s. 125.07 (1) (a), or a local ordinance that strictly conforms to s. 125.07 (1) (a).

2. No violation may be considered under this section or s. 125.04 (5) (a) 1. unless the licensee or permittee has committed another violation within one year preceding the violation. If a licensee or permittee has committed 2 or more violations within one year, all violations committed within one year of a previous violation may be considered under this section or s. 125.04 (5) (a) 1.

(c) Neither a municipality nor the department may consider an arrest or conviction for a violation punishable under s. 101.123 (8) (d), 945.03 (2m), 945.04 (2m), or 945.05 (1m) in any action to revoke, suspend, or refuse to renew a Class "B" or "Class B" license or permit.

(2) **REVOCACTION OR SUSPENSION OF LICENSES BY LOCAL AUTHORITIES.** (ag) *Complaint.* Any resident of a municipality issuing licenses under this chapter may file a sworn written complaint with the clerk of the municipality alleging one or more of the following about a person holding a license issued under this chapter by the municipality:

1. The person has violated this chapter or municipal regulations adopted under s. 125.10.

2. The person keeps or maintains a disorderly or riotous, indecent or improper house.

3. The person has sold or given away alcohol beverages to known habitual drunkards.

4. The person does not possess the qualifications required under this chapter to hold the license.

5. The person has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.

5m. The person has been convicted of possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.65.

6. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog.

6m. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.65 with the intent to manufacture methamphetamine.



7. The person received the benefit from an act prohibited under s. 125.33 (11).

(ar) *Summons.* Upon the filing of the complaint, the municipal governing body or a duly authorized committee of a city council shall issue a summons, signed by the clerk and directed to any peace officer in the municipality. The summons shall command the licensee complained of to appear before the municipal governing body or the committee on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served on the licensee at least 3 days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under ch. 801 for service in civil actions in circuit court.

(b) *Procedure on hearing.* 1. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the municipal governing body or the committee finds the allegations sufficient, the license shall be revoked. The clerk shall give notice of the revocation to the person whose license is revoked.

2. If the licensee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the municipal governing body and the complaint is found to be true, the license shall either be suspended for not less than 10 days nor more than 90 days or revoked, except that, if a complaint under par. (ag) 4. is found to be true with respect to a license issued under s. 125.51 (4) (v), the license shall be revoked.

3. If the hearing is held before a committee of a city council, the committee shall submit a report to the city council, including findings of fact, conclusions of law and a recommendation as to what action, if any, the city council should take with respect to the license. The committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the city council. The city council shall determine whether the arguments shall be presented orally or in writing or both. If the city council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided under subd. 2.

4. The municipal clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.

5. If the municipal governing body finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the municipal governing body finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The municipal governing body or the committee may require the complainant to provide security for such costs before issuing the summons under par. (ar).

(c) *Effect of revocation.* When a license is revoked under this subsection, the revocation shall be recorded by the clerk and no other license issued under this chapter may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee paid for any license so revoked may be refunded.

(d) *Judicial review.* The action of any municipal governing body in granting or failing to grant, suspending or revoking any license, or the failure of any municipal governing body to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the municipality. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desir-

ing review shall file pleadings, which shall be served on the municipal governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The municipal governing body, applicant or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals.

(3) *REFUSALS BY LOCAL AUTHORITIES TO RENEW LICENSES.* A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub. (2) (ag). Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in sub. (2) (b) and judicial review shall be as provided in sub. (2) (d). If the hearing is held before a committee of a city council, the committee shall make a report and recommendation as provided under sub. (2) (b) 3. and the city council shall follow the procedure specified under that subdivision in making its determination.

(3m) *REFUSALS BY LOCAL AUTHORITIES TO ISSUE LICENSES.* If a municipal governing body or duly authorized committee of a city council decides not to issue a new license under this chapter, it shall notify the applicant for the new license of the decision not to issue the license. The notice shall be in writing and state the reasons for the decision.

(4) *SUSPENSION OR REVOCATION OF LICENSES ON COMPLAINT OF THE DEPARTMENT.* (ag) *Complaint.* A duly authorized employee of the department may file a complaint with the clerk of circuit court for the jurisdiction in which the premises of a person holding a license issued under this chapter is situated, alleging one or more of the following about a licensee:

1. That the licensee has violated this chapter.
2. That the licensee keeps or maintains a disorderly or riotous, indecent or improper house.
3. That the licensee has sold alcohol beverages to known habitual drunkards.
4. That the licensee has failed to maintain the premises in accordance with the standards of sanitation prescribed by the department of health services.
5. That the licensee has permitted known criminals or prostitutes to loiter on the licensed premises.
6. That the licensee does not possess the qualifications required under this chapter to hold the license.
7. That the licensee has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41 (1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.
- 7m. That the licensee has been convicted of possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.
8. That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or

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to manufacture, distribute or deliver a controlled substance or controlled substance analog.

8m. That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

(ar) *Summons.* Upon the filing of the complaint, the clerk of the court shall issue a summons commanding the licensee to appear before the court not less than 20 days from its date of issuance and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served at least 20 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for civil actions in circuit court.

(b) *Procedure on hearing.* If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the court finds the allegations sufficient, it shall order the license either suspended for not more than 90 days or revoked, except that, for allegations under par. (ag) 6. with respect to a license issued under s. 125.51 (4) (v), it shall order the license revoked. The clerk of the court shall give notice of the suspension or revocation to the person whose license is suspended or revoked. If the licensee appears and answers the complaint, the court shall fix a date for the hearing not more than 30 days after the return date of the summons. The hearing shall be had before the court without a jury. If upon the hearing the court finds the allegations of the complaint to be true, it shall order the license either suspended for not more than 90 days or revoked, except that, if upon the hearing the court finds allegations under par. (ag) 6. to be true with respect to a license issued under s. 125.51 (4) (v), the court shall order that license revoked. If the court finds the allegations of the complaint to be untrue, the complaint shall be dismissed.

(c) *Effect of revocation or suspension.* When a license is revoked or suspended under this subsection, the clerk of court shall notify the authority which issued the license. If the license is revoked, no other license may be issued under this chapter to the person whose license was revoked or to any person related to him or her as owner, lessor, bailor or lender, within the 12 months after the date of revocation and no other license may be granted for the premises covered by the revoked license within 60 days of the date of revocation. The findings and order of the court shall be filed within 10 days after the hearing and the order shall be final unless appeal is taken to the court of appeals. If an appeal is taken from a revocation, any period during which the order is stayed shall be added to the 12 months and 60 days, respectively. No part of the fee paid for any license which is revoked may be refunded. Whenever any court has revoked or suspended any license under this subsection, no further proceedings shall be commenced under this subsection except upon grounds arising after the original revocation or suspension.

(5) **REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY THE DEPARTMENT.** The department may, after notice and an opportunity for hearing, revoke, suspend or refuse to renew any retail permit issued by it for the causes provided in sub. (4) and any other permit issued by it under this chapter for any violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6. with respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535 or 139.035, the department shall revoke the license or permit. A revocation, suspension or refusal to renew is a contested case under ch. 227.

(6) **REVOCATION OR SUSPENSION OF INTOXICATING LIQUOR WHOLESALERS' PERMITS FOR CERTAIN VIOLATIONS.** (a) Any person may file a sworn written complaint with the department alleging that an intoxicating liquor wholesaler has violated s. 125.54 (7) (a). The complaint shall identify the specific legal basis for the complaint and sufficient facts for the department to determine whether there is cause to find that a violation has occurred. The department shall provide a copy of the complaint to any wholesaler against whom allegations are made, along with notice of the

time period under par. (b) to show cause why the wholesaler's permit should not be revoked or suspended or to request a hearing.

(b) Within 30 days of receiving a copy of the complaint under par. (a), any wholesaler against whom allegations are made may file a sworn written response or a written request for an evidentiary hearing before the department under s. 227.44.

(c) Subject to pars. (d) 1. and (dm), if no request for an evidentiary hearing is made under par. (b), within 60 days of receiving any response under par. (b) or, if no response is made, within 60 days of the date on which a response or request for hearing is due under par. (b), the department shall make a written decision as to whether a violation has occurred and either dismiss the complaint or take action under par. (e). Any decision under this paragraph shall include findings of fact and conclusions of law and shall state all reasons for the decision. The department shall provide a copy of the decision to the complainant and to any wholesaler against whom allegations are made.

(cm) Subject to pars. (d) 2. and (dm), if a request for an evidentiary hearing is made under par. (b), the hearing shall be conducted in the manner specified for a contested case under ss. 227.44 to 227.50, except that the hearing shall be conducted within 45 days of receiving the request for hearing under par. (b) and the department shall make its written decision, including whether a violation has occurred and whether the complaint is dismissed or action is taken under par. (e), within 15 days after the hearing. In addition to service of the decision as provided under s. 227.48, the department shall provide a copy of the decision to the complainant.

(d) 1. If no request for an evidentiary hearing is made under par. (b), within 60 days of receiving any response under par. (b) or, if no response is made, within 60 days of the date on which a response or request for hearing is due under par. (b), the department may extend the time period for making a decision under par. (c) by an additional 60 days if the department provides notice within the time period specified in par. (c) that an additional 60 days is necessary for investigation.

2. If a request for an evidentiary hearing is made under par. (b), within 45 days of receiving the request for hearing under par. (b), the department may extend the time period for conducting the hearing by an additional 45 days if the department provides notice within 45 days of receiving the request for hearing under par. (b) that an additional 45 days is necessary for investigation.

(dm) Within 45 days of receiving any response or request for hearing under par. (b) or, if no response or request for hearing is made, within 45 days of the date on which a response or request for hearing is due under par. (b), the department may elect to file a complaint in circuit court under sub. (4) that includes all allegations of the complaint under par. (a) for which the department determines there is cause to find that a violation of s. 125.54 (7) (a) has occurred. If the department files a complaint in circuit court as provided under this paragraph, the department shall not conduct a hearing under par. (cm) or make a written decision under par. (c), but shall proceed with the matter as provided under sub. (4).

(e) If the department finds the allegations under par. (a) true and sufficient, the department shall either suspend for not less than 10 days nor more than 90 days or revoke the wholesaler's permit, and give notice of the suspension or revocation to the wholesaler.

(f) A revocation or suspension proceeding under this subsection is a contested case under ch. 227, except that ss. 227.44 to 227.50 apply to a proceeding under this subsection only if a request for an evidentiary hearing is made under par. (b).

**History:** 1981 c. 79; 1983 a. 516; 1987 a. 93; 1993 a. 98; 1995 a. 27 s. 9126 (19); 1995 a. 417, 448; 1997 a. 27, 35, 166, 187; 1999 a. 9; 2005 a. 14, 25, 442; 2007 a. 20 s. 9121 (6) (a); 2007 a. 85; 2009 a. 12.

Due process and equal protection rights of licensees are discussed. *Tavern League of Wisconsin v. City of Madison*, 131 Wis. 2d 477, 389 N.W.2d 54 (Ct. App. 1986).

A license never should have been issued when a notice of application had not been published as required under s. 125.04 (3) (g), and a license issued without publication is void under s. 125.04 (2). Selling liquor under a void license constitutes a violation of s. 125.66 (1). Under s. 125.12, a renewal licensee, if refused, is guaranteed a right to be heard by the municipality, and the municipality must show cause for refusal, but a new licensee, if refused, has no such guarantee. When an original license is void, the applicant is a new licensee. *Williams v. City of Lake Geneva*, 2002 WI App 95, 253 Wis. 2d 618, 643 N.W.2d 864, 01–1733.

Notices sent by the city did not violate the requirement in sub. (3) that the “council shall notify the licensee in writing of the municipality’s intention not to renew the license” because they stated that “there is a possibility that your application may be denied.” As the matter cannot be affirmatively decided before the hearing, it is of course only a possibility that the applicant’s license will not be renewed at the time the notice is sent. *Questions, Inc. v. City of Milwaukee*, 2011 WI App 126, 336 Wis. 2d 654, 807 N.W.2d 131, 10–0707.

A town must renew a license, if the proper application is made and the fees are paid, unless it revokes, suspends, or non-renews the license, following the procedures outlined in this section. Section 125.10 (1) does not give towns the authority to unilaterally modify the described premises in an individual license upon renewal of that license. A town must either pass a regulation or an ordinance under s. 125.10 or it must find grounds for revocation or nonrenewal under this section. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76, 342 Wis. 2d 350, 815 N.W.2d 690, 10–2900.

Acting upon a citizen complaint to revoke a liquor license that was not sworn, as required under sub. (2) (ag), constituted a fundamental error that deprived the licensing committee of jurisdiction over the matter. *Park 6 LLC v. City of Racine*, 2012 WI App 123, 344 Wis. 2d 661, 824 N.W.2d 903, 11–2282.

Centiorari is the correct standard of review for a court to apply when, pursuant to sub. (2) (d), it reviews a municipal decision not to renew an alcohol license. *Nowell v. City of Wausau*, 2013 WI 88, 351 Wis. 2d 1, 838 N.W.2d 852, 11–1045.

Sub. (2) (a) 2.’s prohibition of operating a disorderly house was not unconstitutionally vague as applied in this case. The statute’s legislative purpose concerns the health and safety of the public and its enforcement is aimed at public health. There was no doubt that the conduct cited in this case was disorderly, riotous, indecent, or improper. Such behavior falls squarely within the ambit of the statute, particularly given the public health and safety concerns involved. *Scott Hegwood v. City of Eau Claire*, 679 F.3d 600 (2012).

**125.13 Report of suspension, revocation or imposition of penalty.** Whenever a municipal governing body or court revokes or suspends a license or permit or imposes a penalty on a licensee or permittee for the violation of this chapter, the clerk of the municipality or court revoking or suspending the license or imposing the penalty shall, within 10 days after the revocation, suspension or imposition of penalty, mail a report to the department at Madison, Wisconsin, giving the name of the licensee, the address of the licensed premises and a full description of the penalty imposed.

**History:** 1981 c. 79.

**125.14 Enforcement provisions. (1) ARREST.** Subject to s. 175.38, any peace officer may arrest without warrant any person committing in his or her presence a violation of this chapter or ch. 139 and may, without a search warrant, seize any personal property used in connection with the violation.

**(2) CONFISCATION; DISPOSAL. (a) Contraband.** All alcohol beverages owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of this chapter or ch. 139 and all personal property used in connection therewith is unlawful property and may be seized by any peace officer. Any peace officer confiscating personal property under this section may proceed under this section.

**(c) Identification.** Any person seizing alcohol beverages or personal property and electing to dispose of it under this subsection shall exercise reasonable diligence to ascertain the name and address of the owner of the alcohol beverages or property and of all persons holding a security interest in the property seized. The person shall report his or her findings in writing to the department.

**(d) Order.** Upon conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting alcohol beverages in violation of this chapter or ch. 139, the court shall order part or all of the alcohol beverages or personal property seized to be destroyed if it is unfit for sale. Alcohol beverages and other personal property fit for sale shall be turned over to the department for disposition. Upon receipt of the confiscated property, the department shall exercise reasonable diligence to ascertain the names and addresses of all owners of the property and of all persons holding a security interest in the property. If a motor vehicle is confiscated, the department shall obtain the written advice of the department of transportation as to the

ownership of the motor vehicle and shall make a reasonable search for perfected security interests in the vehicle.

**(e) Disposal.** The department shall dispose of the alcohol beverages turned over to it by the court by either giving it to law enforcement agencies free of charge for use in criminal investigations, selling it to the highest bidder if the bidder is a person holding a license or permit issued under this chapter, or destroying it, at the discretion of the department. If the department elects to sell the alcohol beverages, it shall publish a class 2 notice under ch. 985 asking for sealed bids from qualified bidders. Any items or groups of items in the inventory subject to a security interest, the existence of which was established in the proceedings for conviction as being bona fide and as having been created without the secured party having notice that the items were being used or were to be used in connection with the violation, shall be sold separately. The net proceeds from the sale, less all costs of seizure, storage, and sale, shall be turned over to the secretary of administration and credited to the common school fund.

**(f) Sale.** Any personal property, other than alcohol beverages, seized under par. (a) and fit for sale, shall be turned over by the department to the department of administration for disposal at public auction to the highest bidder, at a time and place stated in a notice of sale which describes the property to be sold. The sale shall be held in a conveniently accessible place in the county where the property was confiscated. A copy of the notice shall be published as a class 2 notice under ch. 985. The last insertion shall be at least 10 days before the sale. The department of revenue shall serve a copy of the notice of sale at least 2 weeks before the date thereof on all persons who are or may be owners or holders of security interests in the property. Any confiscated property worth more than \$100 shall be sold separately, and the balance of the confiscated property shall be sold in bulk or separately at the discretion of the department of administration. The net proceeds from the sale, less all costs of seizure, storage, and sale, shall be turned over to the secretary of administration. No motor vehicle or motorboat confiscated under this section may be sold within 30 days after the date of seizure.

**(3) RECOVERY OF CONFISCATED PROPERTY. (a) Application.** Prior to sale under sub. (2) (f), the owner of confiscated property may apply to a court of record in the county where the property was seized for an order restoring the property to the owner. After the sale, the owner may apply to the court for a refund of the amount realized on the sale. After the sale, any holder of a security interest in the property may apply to the court for a refund of the sum realized on the sale of property subject to the security interest, but not more than the amount due under the security agreement.

**(b) Deadline.** The application shall be made within one year after the sale of the property. A copy of the application and the order setting a hearing on it shall be served on the department at least 20 days before the date set for hearing.

**(c) Grounds.** Relief shall be granted only after a showing by the applicant that he or she is the true owner or holder of a bona fide security interest in the property seized; that the violation which led to the confiscation was not with his or her knowledge, consent or connivance; and, that he or she had no reasonable grounds to believe or suspect that the property would be used in a violation.

**(d) Costs.** The court may determine whether the applicant shall pay the costs of seizure and sale as a condition of obtaining relief. Allowance of costs and disbursements shall be within the discretion of the court.

**(5) NUISANCES.** Any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a valid permit or license issued under this chapter or ch. 139, or where persons are permitted to drink alcohol beverages in violation of this chapter is a public nuisance and may be closed until the activity in violation of this chapter is abated. When the activity is abated, the building or place may be used for any lawful purpose.