



Legislation Text

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981367
SUBSTITUTE 4

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A substitute ordinance relating to denial, nonrenewal, suspension and revocation of licenses for food dealers and filling stations.

68-4-3 rc
68-4-4 rc
68-4-5 rc
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84-45-6-d rn
84-45-6-d cr
84-45-6-e rn
84-45-6-f rn
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84-45-11 rp
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84-45-12-d rn
84-45-12-e rn
84-45-13 rn
84-45-14 rn
84-45-15 rn
84-45-16 rn
84-45-17 rn
- Analysis -

This ordinance establishes the following as causes for denial, nonrenewal, suspension or revocation of a food dealer's license or a filling station license:

- a. Failure of the applicant or licensee to meet the statutory and municipal license qualifications.
- b. A false or materially incorrect statement made by the applicant in his or her application.
- c. Violation of any provision of the licensing regulations by the applicant, licensee or any employe of the food establishment or filling station.
- d. The conviction of the applicant or licensee, his or her agent, manager, operator or any other employe for sale or possession with intent to sell any controlled substance or for any felony related to the licensed operation.
- e. A showing that the applicant or licensee has violated any state law or city ordinance prohibiting the sale of tobacco products to underage persons.
- f. The violation of any of the excise laws of the state.
- g. A showing that the licensed premises has been the source of congregations of persons which have resulted in one or more of the following:
 - g-1. Disturbance of the peace.

- g-2. Illegal drug activity.
- g-3. Public drunkenness.
- g-4. Drinking in public.
- g-5. Harassment of passers-by.
- g-6. Gambling.
- g-7. Prostitution.
- g-8. Sale of stolen goods.
- g-9. Public urination.
- g-10. Theft.
- g-11. Assaults.
- g-12. Battery.
- g-13. Acts of vandalism, including graffiti.
- g-14. Excessive littering.
- g-15. Loitering.
- g-16. Illegal parking.
- g-17. Loud noise at times when the licensed operation is open for business.
- g-18. Traffic violations.
- g-19. Curfew violations.
- g-20. Lewd conduct.
- g-21. Display of materials harmful to minors.

In conjunction with establishing these causes for denial, nonrenewal, suspension or revocation of food dealers' licenses, this ordinance also establishes new procedures for the denial, nonrenewal, suspension or revocation of such licenses by the common council that are similar to the existing procedures for denial, nonrenewal, suspension or revocation of filling station licenses. (However, the current procedure for suspension or revocation by the commissioner of health for reasons relating to unsanitary or other health-related conditions shall be retained).

Proceedings for the denial or nonrenewal of a food dealer's license shall begin when the commissioner of health, the local common council member or any neighbor or other interested person objects to issuance of the license. The utilities and licenses committee shall then hold a hearing on the issue of granting the license and shall make a recommendation to the common council based on the causes listed above.

The proceedings for suspension or revocation of a food dealer's license for reasons not related to unsanitary or other health-related conditions shall begin whenever there are sworn written charges filed by the chief of police or there is a sworn written complaint filed by any city resident. The licensee shall be summoned to appear at an evidentiary hearing of the utilities and licenses committee. The committee shall receive testimony from both sides and make a report (findings of fact) and a recommendation to the common council. The licensee shall have an opportunity to file written objections to the committee's report and recommendation prior to the council meeting and to present an oral argument in opposition to the report and recommendation at the council meeting.

This ordinance further provides that when it is impractical for the utilities and licenses 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. (This provision applies to both food dealer licenses and filling station licenses.)

Finally, this ordinance establishes license disqualification conditions for food dealers' licenses following nonrenewal, suspension or revocation of such licenses. In addition, it allows a food dealer licensee to file, with the utilities and licenses committee, a written request to surrender his or her license following receipt of a notice of a hearing on revocation or suspension.

This ordinance shall be effective July 1, 1999.
The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 68-4-3 to 9 of the code is repealed and recreated to read:

68-4. Food Dealer License.

3. PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE. a. The commissioner shall issue a license to each applicant for a new or renewal license who meets all the requirements of this section and has paid to the city treasurer the fee required in s. 60-21 unless there is an objection by the commissioner, the department of neighborhood services, the common council member in whose district the food establishment is located, or any neighbor or other interested person. If there is an objection to the issuance or renewal of a license, the procedure for considering the license application shall be as specified in sub. 10.

b. The late renewal fee for licenses issued under ss. 60-21 to 60-31 may not be waived unless definite proof exists that the delay is the fault of the department.

4. POSTING. Each licensee shall post his or her license in a conspicuous place on the food establishment premises.

5. CHANGES TO BE REPORTED. a. A licensee shall notify the commissioner whenever there is a change in any information that is reported in the application form or renewal application form. The licensee shall make this notification in writing within 5 days after the change occurs.

b. The owner of any premises for which a license has been granted shall promptly notify the department in writing of his or her intention to cease operations.

c. An individual applicant or licensee who resides outside Wisconsin or who leaves the state for an extended period of time shall provide the commissioner or the commissioner's authorized agent with the name, address and telephone number of a responsible person or agent within the state of Wisconsin upon whom any process, notice or demand required or permitted under this section to be served upon the licensee may be served. Violation of this section may result in suspension or revocation of the license.

6. INSPECTION BY HEALTH DEPARTMENT. Authorized employees of the health department, upon presenting proper identification, shall be permitted to enter any food establishment at any reasonable time for the purpose of inspecting to determine compliance with city and state health regulations. The representative shall be permitted to examine the records of the food establishment to obtain information about gross annual food sales for restaurant and retail stores, food and supplies purchased, received or used.

7. SUSPENSION FOR NONRENEWAL. The commissioner shall notify the appropriate city officials and order the immediate enforcement of this section in cases involving failure to renew a food dealer's license. Such a licensee shall be prohibited from manufacturing, offering for sale, distributing or selling food until a valid license has been applied for and obtained under this section.

8. INSUFFICIENCY OF FUNDS; NONPAYMENT OF FEES. a. If payment for a license fee is made by check or other draft drawn upon an account containing insufficient funds, the applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash, the fees, late fees and processing charges as specified by city code. Nonpayment of all applicable fees, late fees and processing charges within 15 days after the applicant received notice of the insufficiency shall deem the license null and void. The establishment shall close until a new application is made, a new license obtained, and the applicable fees are paid.

b. Any individual or corporation that owes the city for unpaid fines, late fees, or license fees relating to a current or previous food operation shall pay all such outstanding fees before a license is issued.

9. OBSTRUCTION OF HEALTH DEPARTMENT EMPLOYEES. No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the commissioner or an authorized agent in the performance of his or her duties under this section, nor shall the operator give false information with the intent to mislead the commissioner or authorized agent. Violation of this subsection may result in revocation of a license.

Part 2. Section 68-4-10 to 18 of the code is created to read:

10. PROCEDURE FOR DENIAL OR NONRENEWAL OF LICENSE. a. If there is an objection to an application for a new or renewal license, the commissioner shall so notify the city clerk. The utilities and licenses committee shall hold a hearing on whether to issue the license. Causes for denial or nonrenewal of an application or license shall be those specified in sub. 11.

b. The city clerk shall give each applicant at least 3 working days notice of the date and time of the hearing and of the specific charges upon which the hearing will be conducted. The applicant shall have an opportunity to appear at the hearing, be represented by counsel, cross-examine witnesses who oppose the renewal of the license and present evidence in favor of issuance or renewal of the license.

c. At the conclusion of the hearing, the committee shall make a recommendation to the common council concerning issuance of a new or renewal license. The committee shall provide a written report of its findings and recommendations to the city attorney, the commissioner, the licensee or applicant and each member of the common council.

d. Where it is impractical for the utilities and licenses 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 utilities and licenses committee as well as the licensee, the licensee's agent, manager, operator or any other employee of the licensee and to the person bringing the complaint or objection. The chair of the utilities and licenses 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 of the hearing officer. Notice of the utilities and licenses committee hearing on the report shall be given to all parties. The utilities and licenses committee may take and reserve additional evidence at the time of said hearing. The utilities and licenses committee may accept or reject the report of the hearing officer and 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 utilities and licenses committee shall transmit its recommendation to the full common council for action.

e. Whenever the utilities and licenses committee recommends nonrenewal of an existing license, the applicant shall be given no less than 5 days notice of the date set for hearing by the common council.

f. At the meeting of the common council, the chair shall allow oral argument by an applicant who, at least 2 days prior to the date of the meeting, has presented written objections to the recommendations of the utilities and licenses committee. The city attorney shall also be permitted to make a statement. Oral arguments shall be limited to 5 minutes on behalf of each party.

g. A roll call vote of the common council shall be taken as to whether the recommendation of the committee shall be accepted. The applicant shall be provided with written notice of the results of the common council vote.

h. All objections to renewal of a license shall be heard and acted upon by the common council at least 60 days before expiration of the license.

11. CAUSES FOR COUNCIL DENIAL, REVOCATION OR SUSPENSION OF LICENSE. An application for a new or renewal food dealer's license may be denied, or any license issued under this section may be suspended or revoked, by the common council for any of the following causes:

a. Failure of the applicant or licensee to meet the statutory and municipal license qualifications, except for failure to meet sanitary or other health-related qualifications or other circumstances described in s. 68-6 as grounds for license revocation or suspension by the commissioner of health.

b. A false or materially incorrect statement made by the applicant in his or her application.

c. Violation of any provision of this section by the applicant, licensee or any employe of the food establishment.

d. The conviction of the applicant or licensee, his or her agent, manager, operator or any other employe for sale or possession with intent to sell any controlled substance or for any felony related to the licensed operation which, in the judgment of the common council, is pertinent to the license being applied for or renewed.

e. A showing that the applicant or licensee has violated any state law or city ordinance prohibiting the sale of tobacco products to underage persons.

f. The violation of any of the excise laws of the state.

g. A showing that the licensed premises has been the source of congregations of persons which have resulted in one or more of the following:

g-1. Disturbance of the peace.

g-2. Illegal drug activity.

g-3. Public drunkenness.

g-4. Drinking in public.

g-5. Harassment of passers-by.

g-6. Gambling.

g-7. Prostitution.

g-8. Sale of stolen goods.

g-9. Public urination.

g-10. Theft.

g-11. Assaults.

g-12. Battery.

g-13. Acts of vandalism, including graffiti.

g-14. Excessive littering.

- g-15. Loitering.
- g-16. Illegal parking.
- g-17. Loud noise at times when the licensed operation is open for business.
- g-18. Traffic violations.
- g-19. Curfew violations.
- g-20. Lewd conduct.
- g-21. Display of materials harmful to minors, pursuant to s. 106-9.6.

12. DISQUALIFICATION FOR LICENSE. a. Whenever any licensee is denied renewal by the common council, it shall be so entered on the record by the commissioner and no other food dealer's license shall be so granted to such person for that location within 12 months of the date of nonrenewal.

b. When any license is surrendered in lieu of pending nonrenewal proceedings, no other food dealer's license shall be granted to such person within 12 months of the date of its surrender.

13. PROCEEDINGS TO SUSPEND OR REVOKE LICENSE FOR REASONS RELATING TO UNSANITARY CONDITIONS. Proceedings to suspend or revoke a food dealer's license for reasons relating to unsanitary or other health-related conditions or for serious or repeated violations of any of the requirements of this chapter shall be conducted in accordance with the provisions of s. 68-6.

14. COMMENCEMENT OF PROCEEDINGS TO SUSPEND OR REVOKE LICENSE FOR REASONS NOT RELATING TO UNSANITARY CONDITIONS. Proceedings to suspend or revoke a food dealer's license for reasons other than the grounds for suspension or revocation described in s. 68-6 may be initiated by the utilities and licenses committee of the common council upon its own motion, upon sworn written charges made and filed with the commissioner by the chief of police or upon a sworn written complaint filed with the commissioner by any city resident.

15. PROCEDURES FOR REVOCATION OR SUSPENSION. a. Complaint; Summons.

a-1. Whenever any person files either sworn written charges or a sworn written complaint with the commissioner setting forth specific charges against a licensee relating to any of the causes for revocation or suspension of a license set forth in sub. 11, the city clerk shall issue a summons, as authorized by Wisconsin statutes, demanding that the licensee appear before the utilities and licenses committee of the common council, 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.

b. Committee Hearing. b-1. Upon receipt of evidence that the summons has been served, the utilities and licenses committee of the common council 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 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. At any evidentiary hearing required by this subsection, the city attorney shall first present evidence in support of the complaint. After the city attorney rests, the licensee shall present evidence in opposition to the complaint. Each may subpoena witnesses. All witnesses shall testify under oath and shall be subject to cross-examination under oath. At the close of the testimony, each shall be given a reasonable time to make arguments upon the evidence adduced at the hearing.

b-4. The chair of the utilities and licenses 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.

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.

b-6. A stenographic record shall be made of all proceedings before the committee and before the common council when written exceptions have been filed. Any interested party may at any stage of the proceedings order a copy of the transcript of the record or portions thereof at his or her own expense.

c. **Hearing Officer.** Where it is impractical for the utilities and licenses 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 utilities and licenses committee as well as the licensee, the licensee's agent, manager, operator or any other employe of the licensee and to the person bringing the complaint or charges. The chair of the utilities and licenses 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 of the hearing officer. Notice of the utilities and licenses committee hearing on the report shall be given to all parties. The utilities and licenses committee may take and reserve additional evidence at the time of said hearing. The utilities and licenses committee may accept or reject the report of the hearing officer and 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 utilities and licenses committee shall transmit its recommendation to the full common council for action.

d. **Committee Report.** d-1. Within 10 working days after it reaches a decision, the committee shall prepare and serve a report and recommendation on the proposed license revocation or suspension and transmit copies thereof to the city attorney, the commissioner, the licensee and each member of the common council. The report and recommendations shall include specific findings of fact and conclusions of law made by the committee.

d-2. If the committee recommends that the license be revoked or suspended, then within 7 days of the receipt of the report and recommendation of the committee, the licensee shall file written exceptions, if any, to the report and recommendations of the committee.

d-3. Any exceptions filed by the licensee to the report and recommendations of the committee 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.

e. **Council Action.** e-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 recommendation. Not less than 5 days prior to the hearing before the common council, the city clerk shall notify the licensee by certified mail and also notify the city attorney that the common council will convene. If written exceptions are filed, the hearing shall be at the time set for such proceedings by the council's rules. Each member of the common council shall be asked to affirm that he or she has read the report and recommendation of the committee. When written exceptions are filed to a committee report and recommendation 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 exceptions. If members of the council have not read the recommendation and report of the committee and any exceptions that have been filed thereto, the chair shall allocate time for the members to do so. Oral argument in support of the report and recommendation presented by the city attorney and oral argument on behalf of the licensee in opposition to the report and recommendation shall be permitted only at the discretion of the chair. If such argument is permitted by the chair, each side shall be limited to 5 minutes and the arguments shall be limited to the subject matter of the report and recommendation and the written exceptions.

e-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 this section, the commissioner 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. If the common council finds the complaint to be malicious and without probable cause, the cost shall be paid by the complainant upon invoice from the city.

f. **Effective Date of Suspension or Revocation.** All suspensions and revocations shall be effective upon service of notice of the suspension or revocation upon the licensee or person in charge of the food establishment at the time of service.

16. **REQUEST TO SURRENDER A LICENSE.** In the event that a licensee wishes to surrender his or her license after receiving a notice for a hearing on possible revocation or suspension under this section, the licensee shall request, in writing, permission from the utilities and licenses committee of the common council to do so prior to the commencement of the hearing. The committee may approve the request, or deny the request and proceed with the suspension or revocation hearing.

17. **DISQUALIFICATION FOR LICENSE.** a. Whenever any license is revoked by the common council it shall be so entered on the record by the commissioner and no other food dealer's license shall be granted to such person within 12 months of the date of its revocation nor shall any part of the money paid for any license so revoked be refunded.

b. No other food dealer's license shall be granted within 30 days from the date of license revocation by the common council to any other person to operate a food establishment on the premises operated by the licensee whose license has been so revoked.

c. When any license is surrendered in lieu of pending revocation or suspension proceedings pursuant to sub. 16, no other food dealer's license shall be granted to such person within 12 months of the date of its surrender nor shall any part of the money paid for any license that has been surrendered be refunded.

Part 3. Section 84-45-6-d to g is renumbered 84-45-6-e to h.

Part 4. Section 84-45-6-d of the code is created to read:

84-45. Filling Stations.

6. PROCEDURE FOR DENIAL OF LICENSE.

d. Where it is impractical for the utilities and licenses 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 utilities and licenses committee as well as the licensee, the licensee's agent, manager, operator or any other employe of the licensee and to the person bringing the complaint or objection. The chair of the utilities and licenses 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 of the hearing officer. Notice of the utilities and licenses committee hearing on the report shall be given to all parties. The utilities and licenses committee may take and reserve additional evidence at the time of said hearing. The utilities and licenses committee may accept or reject the report of the hearing officer and 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 utilities and licenses committee shall transmit its recommendation to the full common council for action.

Part 5. Section 84-45-7 of the code is repealed and recreated to read:

7. CAUSES FOR COUNCIL DENIAL, REVOCATION OR SUSPENSION OF LICENSE. An application for a new or renewal filling station license may be denied, or any license issued under this section may be suspended or revoked, by the common council for any of the following causes:

- a. Failure of the applicant or licensee to meet the statutory and municipal license qualifications.
- b. A false or materially incorrect statement made by the applicant in his or her application.
- c. Violation of any provision of this section by the applicant, licensee or any employe of the filling station.
- d. The conviction of the applicant or licensee, his or her agent, manager, operator or any other employe for sale or possession with intent to sell any controlled substance or for any felony related to the licensed operation which, in the judgment of the common council, is pertinent to the license being applied for or renewed.
- e. A showing that the applicant or licensee has violated any state law or city ordinance prohibiting the sale of tobacco products to underage persons.
- f. The violation of any of the excise laws of the state.
- g. A showing that the licensed premises has been the source of congregations of persons which have resulted in one or more of the following:
 - g-1. Disturbance of the peace.
 - g-2. Illegal drug activity.
 - g-3. Public drunkenness.
 - g-4. Drinking in public.
 - g-5. Harassment of passers-by.
 - g-6. Gambling.
 - g-7. Prostitution.
 - g-8. Sale of stolen goods.
 - g-9. Public urination.
 - g-10. Theft.
 - g-11. Assaults.
 - g-12. Battery.
 - g-13. Acts of vandalism, including graffiti.
 - g-14. Excessive littering.
 - g-15. Loitering.
 - g-16. Illegal parking.

g-17. Loud noise at times when the licensed operation is open for business.

g-18. Traffic violations.

g-19. Curfew violations.

g-20. Lewd conduct.

g-21. Display of materials harmful to minors, pursuant to s. 106-9.6.

Part 6. Section 84-45-11 of the code is repealed.

Part 7. Section 84-45-12 and 13 of the code is renumbered 84-45-11 and 12.

Part 8. Section 84-45-12-c to e of the code is renumbered 84-45-12-d to f.

Part 9. Section 84-45-12-c of the code is created to read:

12. PROCEDURES FOR REVOCATION OR SUSPENSION.

c. Hearing Officer. Where it is impractical for the utilities and licenses 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 utilities and licenses committee as well as the licensee, the licensee's agent, manager, operator or any other employe of the licensee and to the person bringing the complaint or charges. The chair of the utilities and licenses 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 of the hearing officer. Notice of the utilities and licenses committee hearing on the report shall be given to all parties. The utilities and licenses committee may take and reserve additional evidence at the time of said hearing. The utilities and licenses committee may accept or reject the report of the hearing officer and 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 utilities and licenses committee shall transmit its recommendation to the full common council for action.

Part 10. Section 84-45-14 to 17 of the code is renumbered 84-45-13 to 16.

Part 11. This ordinance shall take effect July 1, 1999.

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: _____

98495-5

JDO

5/26/99