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11/3/2010	0	COMMON COUNCIL	ASSIGNED TO		
11/19/2010	1	CITY CLERK	DRAFT SUBMITTED		
11/19/2010	0	LICENSES COMMITTEE	HEARING NOTICES SENT		
11/23/2010	0	LICENSES COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	3:0
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12/6/2010	1	MAYOR	SIGNED		
12/10/2010	1	CITY CLERK	PUBLISHED		

100900

SUBSTITUTE 1

THE CHAIR

A substitute ordinance relating to the transfer of food license processing from the health department to the city clerk.

68-4-2-0 am
68-4-3-b am
68-4-5 am
68-4-7 am
68-4-8-a am
68-4-10-a am
68-4-11-i am
68-4-11-j am
68-4-11-k am
68-4-12 am

68-4-14 am
68-4-15-a am
68-4-17-a am
68-6-3 am
68-6-4 am
68-6-5-b am
68-6-5-g am
74-1-5 am
74-1-6-b am
74-1-6-c am
74-1-6-e am
74-2-4-0 am
74-2-4-d am
74-2-5 am
74-2-6-a am
74-2-7-b am
75-5-2 am
75-5-4-a am
75-5-4-f am
75-5-6 am
75-5-7 am

This ordinance amends pertinent provisions of chs. 68 and 74 of the code to shift food dealer license processing from the health department to the city clerk's license division.

This ordinance also shifts bed and breakfast permit processing from the health department to the city clerk's license division.

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

Part 1. Section 68-4-2-0 of the code is amended to read:

68-4. Food Dealer License.

2. APPLICATION. Applications for a food dealer's license shall be made in writing to the ~~[[health department]]~~ >> office of the city clerk << on forms provided by the ~~[[health department]]~~ >> the city clerk << and shall contain the following information:

Part 2. Section 68-4-3-b of the code is amended to read:

3. PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE.

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 >> health << department >> or the city clerk <<.

Part 3. Section 68-4-5 of the code is amended to read:

5. CHANGES TO BE REPORTED. a. A licensee shall notify the ~~[[commissioner]]~~ >> city clerk << 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]]~~ >>city clerk<< 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>>, and the commissioner shall notify the city clerk<<. Violation of this subsection may result in suspension or revocation of the license.

Part 4. Section 68-4-7 of the code is amended to read:

7. SUSPENSION FOR NONRENEWAL. The ~~[[commissioner]]~~ >>city clerk<< shall notify the appropriate city officials>>,<< and >>the commissioner shall <<order the immediate enforcement of this section in cases involving failure to renew a food dealer's license. ~~[[Such a]]~~ >>The<< 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.

Part 5. Section 68-4-8-a of the code is amended to read:

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]]~~ >>city clerk<<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.

Part 6. Section 68-4-10-a of the code is amended 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]]~~licensing 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.

Part 7. Section 68-4-11-i to k of the code is amended to read:

11. CAUSES FOR COUNCIL DENIAL, REVOCATION OR SUSPENSION OF LICENSE.

i. The ~~[[commissioner]]~~ >>city clerk<< shall promptly inform >>the commissioner, << the police department and the department of neighborhood services upon receipt of an application for a new food dealer license. The ~~[[commissioner]]~~ >>city clerk<< shall also promptly advise the common council member in whose district a new food dealer licensee proposes to operate licensed premises. The ~~[[commissioner]]~~ >>city clerk<< shall establish a written procedure for informing persons and parties neighboring the

premises of a proposed new food dealer licensee intending to operate a convenience store within the definition of s. 68-4.3-1, whether or not the convenience store may be exempt under s. 68-4.3-3, and the persons and parties neighboring the premises of a licensed convenience store proposed for renewal if written objections to renewal have been received by the [\[\[commissioner\]\] >>city clerk as provided in s. 85-3-3,<<](#) and not considered in previous licensing proceedings.

j. Any person has the right to object to a new or renewal food dealer license based upon any matter specified in par. g and, upon receipt of a written objection, the [\[\[commissioner\]\] >>city clerk<<](#) shall request that the licensing committee schedule a hearing upon the application. The procedures of ch. 85 shall apply to the conduct of the hearing and to common council consideration of the recommendations of the licensing committee, except that the applicant shall not have the right to be heard orally before the common council.

k. A proceeding for revocation of a food dealer license may be commenced upon a sworn complaint [>>to the city clerk <<](#)by any interested party alleging that the operation of the licensed premises contributes to any of the conditions specified in par.

g. If the common council finds that the licensed food dealer has contributed to any of the conditions or circumstances described in par. g, it may revoke the food dealer license or suspend the food dealer license for a period of not less than 10 days nor more than 90 days.

Part 8. Section 68-4-12 of the code is amended to read:

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 [\[\[commissioner\]\] >>city clerk<<](#) 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 [>>to the city clerk <<](#)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.

Part 9. Section 68-4-14 of the code is amended to read:

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 licensing committee upon its own motion, upon sworn written charges made and filed with the [\[\[commissioner\]\] >>city clerk <<](#) by the chief of police or upon a sworn written complaint filed with the [\[\[commissioner\]\] >>city clerk<<](#) by any city resident.

Part 10. Section 68-4-15-a of the code is amended to read:

15. PROCEDURE FOR REVOCATION OR SUSPENSION. a. Notice and Service. Whenever either sworn written charges or a sworn written complaint are filed with the [\[\[commissioner\]\] >>city clerk<<](#) 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 procedures for notice and service of notice provided in s. 85-3 shall apply.

Part 11. Section 68-4-17-a of the code is amended to read:

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]]~~ >> city clerk << 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.

Part 12. Section 68-6-3 of the code is amended to read:

68-6. Suspension or Revocation.

3. SUSPENSION OF LICENSES. Notwithstanding other provisions of this chapter, whenever the commissioner of health finds unsanitary or other conditions in the operation of a food service establishment, which in his or her opinion constitute a substantial hazard to the public health, he or she may without warning, notice or hearing, issue a written notice to the license holder, operator or employee in charge of ~~[[said]]~~ >> the << licensed premise citing ~~[[such]]~~ >> the << condition, specifying the corrective action to be taken, and specifying the time period within which ~~[[such]]~~ >> the << action shall be taken; and, if deemed necessary, ~~[[such]]~~ >> the << order shall state that the license is immediately suspended and all food service operations are to be immediately discontinued. >> The commissioner shall promptly notify the city clerk of any suspension. << Any person to whom ~~[[such]]~~ an order is issued shall comply immediately therewith, but upon written petition to the commissioner of health shall be afforded a hearing before the food license review board in accordance with sub. 5. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension >>, and the commissioner shall promptly notify the city clerk of this failure <<.

Part 13. Section 68-6-4 of the code is amended to read:

4. REVOCATION OF LICENSES. For serious or repeated violations of any of the requirements of this chapter, or for interference with the commissioner of health in the performance of his duties, the license may be permanently revoked after an opportunity for a hearing has been provided by the food license review board. Prior to ~~[[such]]~~ >> the << action, the commissioner of health shall notify the license holder in writing, stating the reasons for which the license is subject to revocation, and advising that the license shall be permanently revoked at the end of 5 days following service of ~~[[such]]~~ >> the << notice, unless a request for a hearing is filed with the commissioner of health by the license holder within ~~[[such-5-day]]~~ >> the << 5-day period. >> The commissioner shall promptly notify the city clerk of any revocation.

Part 14. Section 68-6-5-b and g of the code is amended to read:

5. APPEALS TO FOOD LICENSE REVIEW BOARD.

b. Upon receipt of a written appeal, the board shall within 10 days notify the appellant >> and the city clerk << of the date, time and place of the hearing.

g. The board may affirm, reverse or modify the original order or action of the department or commissioner. The board may make a decision immediately following the hearing or at a later date. The board shall provide its decision in writing to the

commissioner>>, [the city clerk](#)<< and the appellant.

Part 15. Section 74-1-5 of the code is amended to read:

74-1. Vehicular Food Peddlers.

5. APPLICATION. Each person requiring a permit shall make written application therefor to the ~~[[commissioner of health]]~~>>[city clerk](#)<< on blanks provided therefor and shall personally present this application at a place to be designated by the ~~[[commissioner of health]]~~>>[city clerk](#)<<.

Part 16. Section 74-1-6-b, c and e of the code is amended to read:

6. PERMIT SUSPENSION AND REVOCATION.

b. Whenever the commissioner finds unsanitary or other conditions related to the operation of a food peddler which are in violation of this section, rules and regulations adopted by the commissioner, state statutes or rules promulgated by an agency of the state, and the violations, in the commissioner's opinion, constitute a substantial hazard to the public health, safety and welfare, the commissioner may, without warning, notice or hearing, issue a written order to the permit holder, operator or employee in charge of the food peddler operation citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken. If the commissioner deems it necessary, the order shall state that the permit is immediately suspended and all food service operations are to be immediately discontinued. >>[The commissioner shall promptly notify the city clerk of any suspension.](#) <<Any person to whom ~~[[such]]~~ an order is issued shall immediately comply therewith, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of such petition. Failure to allow an inspector immediate access to determine whether such grounds exist shall be grounds for suspension>>,
[and the commissioner shall promptly notify the city clerk of this failure](#)<<.

c. For serious or repeated violations of any of the requirements of this section, or for interference with the commissioner in the performance of his or her duties, a permit may be revoked after an opportunity for a hearing has been provided by the food license review board. Prior to such action, the commissioner shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation, and advising that the permit shall be revoked at the end of 5 working days following service of such notice, unless the permit holder files with the commissioner a request for a hearing within ~~[[such]]~~>>[the](#)<< 5-day period. >>[The commissioner shall promptly notify the city clerk of any revocation.](#)<<

e. The hearings provided for in this section shall be conducted by the food license review board at a time and place designated by the commissioner. Based upon the record of ~~[[such]]~~>>[the](#)<< hearing, the commissioner shall be charged with enforcing the decision of the board. The commissioner shall furnish the permit holder >>[and the city clerk](#) << with a written report of the hearing decision.

Part 17. Section 74-2-4-0 and d of the code is amended to read:

74-2. Ice Cream Peddler License.

4. APPLICATION. Application for a new or renewal license shall be filed with the ~~[[commissioner of health]]~~>>[city clerk](#)<< on a form provided therefore. The application

shall state:

d. Such other reasonable or pertinent information the commissioner of health >> city clerk<< or the chief of police may from time to time require.

Part 18. Section 74-2-5 of the code is amended to read:

5. DEPOSIT OF FEE. At the time of application, each applicant shall deposit with the ~~[[health department]]~~ >> city clerk<< the full amount of the fee required in s. 60-48. It shall be the duty of the ~~[[health department]]~~ >> city clerk << to accept the deposit, issue a receipt therefore, and cause a record to be kept thereof.

Part 19. Section 74-2-6-a of the code is amended to read:

6. INVESTIGATION. a. An application received by the ~~[[commissioner of health]]~~ >> city clerk<< shall be forwarded to the chief of police for review and criminal check.

Part 20. Section 74-2-7-b of the code is amended to read:

7. REVOCATION.

b. Any license revoked by the health department under this section may be appealed to the administrative review appeals board. If the commissioner of health has cause to seek revocation of a license under this section he or she shall give notice to the licensee of the intent to revoke with an opportunity to appeal the revocation to the administrative review appeals board. >> The commissioner shall promptly notify the city clerk of any revocation. <<

Part 21. Section 75-5-2 of the code is amended to read:

75-5. Bed and Breakfast Establishments.

2. APPLICATION. ~~[[When all applicable provisions of this section have been complied with by the applicant and]]~~ >> Application forms shall be obtained from the city clerk. When the applicant has complied with all applicable provisions of this section, <<an occupancy certificate has been issued by the department of city development >>and fees required in s. 60-13 have been paid<<, the commissioner shall issue a permit to operate a bed and breakfast establishment~~[[upon the payment of the fees required in s. 60-13]]~~.

Part 22. Section 75-5-4-a and f of the code is amended to read:

4. REGULATIONS. a. Adoption of State Code. The city of Milwaukee adopts ss. ~~[[HSS]]~~ >> DHS<< 197.03(2), (3) and (5) to (8), 197.04 to 197.08, 197.09~~[[{(2) to (6)}]]~~, 197.10 and 197.11(1), Wis. Adm. Code, as amended.

f. Animals. ~~[[Live pets]]~~ >> Animals<< shall not be allowed in any room or area in which food is prepared, stored or served.

Part 23. Section 75-5-6 of the code is amended to read:

6. SUSPENSION. Notwithstanding the other provisions of this section, whenever the commissioner finds unsanitary or other conditions in the operations of a bed and breakfast establishment, which, in his or her opinion constitute a substantial hazard to the public health, the commissioner may without warning, notice or hearing, issue a written notice to the permit holder, operator or employee in charge of the premises citing

such condition, specifying the corrective action to be taken, and the time period within which such action shall be taken. If deemed necessary, the order shall state that the permit is immediately suspended and the bed and breakfast operation shall be immediately discontinued. >>[The commissioner shall promptly notify the city clerk of any suspension.](#)<< Any person to whom an order is issued shall comply immediately but, upon written petition to the commissioner, shall be afforded a hearing within 10 days of the petition. Failure to allow an inspector immediate access to the premises to determine whether such grounds exist shall be grounds for suspension>>, [and the commissioner shall promptly notify the city clerk of this failure](#)<<.

Part 24. Section 75-5-7 of the code is amended to read:

7. REVOCATION. For flagrant or repeated violations of this section, or for interference with the commissioner in the performance of his or her duties, the permit may be revoked after an opportunity for hearing has been provided. Prior to such action, the commissioner shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation, and advising that the permit may be revoked at the end of 5 days following service of notice, unless a request for a hearing is filed with the commissioner, by the permit holder within the 5-day period. >>[The commissioner shall promptly notify the city clerk of any revocation.](#)<<

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: _____

License Division

#123279-2

ANC

11/18/10

clerical correction--12/15/10--lp