



Legislation Text

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THE CHAIR

An ordinance reordering, revising and clarifying language of food license regulations.

60-23 rc

68 rc

74 rp

75-25 rn

90-24-2 am

95-1-1-b am

95-1-2-a-8 am

95-2-2-b-5 am

105-91-3 am

This ordinance reorganizes food license regulations, including food dealer and food peddler regulations for the purposes of consolidating food license regulation provisions into a single chapter of the code.

In addition, this ordinance moves existing temporary food dealer license regulations from ch. 60, which contains fees charged by the health department for health-related activities to ch. 68 to consolidate all food license regulations in a single chapter.

This ordinance also adds a definition for a farmer's market, a type of temporary food dealer license. The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 60-23 of the code is repealed and recreated to read:

60-23. Temporary Food Dealer License. 1. FEES. a. Restaurants. a-1. The fee for a restaurant temporary event that operates not more than one day shall be \$83.

a-2. The fee for a restaurant temporary event that operates for more than one day shall be \$83 for the first day, and \$35 for each additional day.

a-3. The applicant shall pay any state of Wisconsin administrative fees as required by sub. 5.

b. Retail. b-1. The fee per temporary event for a temporary food operation that processes food at the point of sale shall be \$83.

b-2. The fee per temporary event for a temporary food operation that does not process food at the point of sale shall be \$54.

b-3. The applicant shall pay any state of Wisconsin administrative fees as required by sub. 5.

c. Farmer's Market. c-1. The fee for an annual temporary food dealer license for a vendor who sells foods other than restaurant foods shall be \$89.

c-2. The applicant shall pay any state of Wisconsin administrative fees as required by sub. 5.

d. Temporary Extension. The following fees shall apply to a licensed food establishment that extends its operation to the outside on a temporary basis:

d-1. If the application is filed on or before the filing deadline established by the city clerk, \$50.

d-2. If the application is filed after the filing deadline established by the city clerk, \$100.

e. Special Nonprofit Temporary Event. e-1. For one to 3 days, the fee for the license shall be \$25.

e-2. For 4 to 14 days, the fee for the license shall be \$150.

2. EXPEDITED APPLICATION FEE. There shall be an expedited application fee of \$50 for an application that is filed less than one business day prior to the event.

3. LATE FEE. a. Any person who does not meet the application filing deadline provided in s. 68-31-1-d shall pay a late application fee of \$75 for each individual food operation, site, location or stand where food is prepared, served or sold at the temporary event.

b. Any person meeting the application filing deadline for a temporary food dealer license shall pay the fee for the temporary food dealer license within 10 days of the date of application or be assessed a late fee of \$75.

4. DUPLICATE LICENSE. The fee for a duplicate license shall be \$11.

5. STATE FEES. The applicant shall pay any state of Wisconsin administrative fees, the amount of which is on file with the Wisconsin department of health services or department of agriculture, trade and consumer protection.
(See ss. 68-21 and 68-31.)

Part 2. Chapter 68 of the code is repealed and recreated to read:

CHAPTER 68 FOOD LICENSE REGULATIONS

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SUBCHAPTER 1 GENERAL PROVISIONS

68-1. Definitions. In this chapter: **1. CARRIED CONTAINER** means a container carried on foot which contains food for sale.

2. CCDTV means a closed circuit digital television system.

3. CD means a compact disc suitable for recording digital video images.

4. CD-R means a compact disc suitable for recording digital video images that cannot be altered or

erased once recorded.

5. COMMISSIONER means the commissioner of health.

6. CONVENIENCE FOOD STORE means a store that is:

a. A food operation licensed under s. 68-21.

b. One of the following:

b-1. Has as its primary business the sale of basic food items and in addition sells household products. Basic food items may include, but are not limited to, milk and dairy products, bread products, prepared sandwiches, frozen entrees, refrigerated food and baby food. Household products include, but are not limited to, cleaning products, paper products, baby products and pet food.

b-2. A filling station that sells basic food items and in addition sells household products, as described in subd. 1.

c. Contains less than 5,000 square feet of retail sales space.

7. DVD means a digital video disc suitable for recording digital video images.

8. DVD-R means a digital video disc suitable for recording digital video images that cannot be altered or erased once recorded.

9. FARMER'S MARKET means a public marketplace where fresh foods, including, but not limited to, produce, meat products, fruits as well as prepared foods and beverages from the region are sold directly to consumers by the individuals who have grown, gathered, prepared, raised or caught the fresh foods.

10. FOOD means all articles of food, drink or condiment, including ice and water used for human consumption, whether simple, mixed or compound, and articles used or intended for use as ingredients in the composition or preparation thereof.

11. FOOD DISTRIBUTOR means an individual who transports food for sale to retail and wholesale establishments and does not perform any processing or repacking of food items.

12. FOOD MANUFACTURER means an individual who uses raw ingredients to create a new food product for sale to retail or wholesale establishments.

13. FOOD PEDDLER means any person who sells food from a food peddler vehicle or from a carried container.

14. FOOD PEDDLER VEHICLE means any pushed, pedaled, pulled or motorized vehicle from which food is prepared or sold.

15. ICE CREAM PEDDLER means any person who physically operates an ice cream vending vehicle or any person who physically conducts ice cream vending from such a vehicle or from a carried

container.

16. ICE CREAM VENDING VEHICLE means a vehicle from which the retail sale of ice cream or similar frozen confections for human consumption is conducted. An ice cream vending vehicle may be pushed, peddled, pulled or motorized.

17. MEDIA means CDs, DVDs, CD-Rs, DVDRs, computer hard drives or any materials used to record or store digital video images, text, graphics and audio data.

18. MINOR means any person under 18 years of age.

19. MINOR FOOD PEDDLER means any minor who sells, offers for sale, solicits for sale, collects for sale, displays, or distributes any food on any street or other public place, or from house to house whether or not from a vehicle or carried container.

20. MOTORIZED VEHICLE means a vehicle which uses a mechanical engine to propel it.

21. NONPROFIT ORGANIZATION means a religious, fraternal, youth, civic or patriotic organization, service club or religious assembly.

22. OWNER means the person, corporation, partnership, joint venture or other group enterprise licensed to do business at that location.

23. PERSON means any individual, firm or corporation.

24. PUSHED, PEDALED OR PULLED VEHICLE means a vehicle which does not have a mechanical engine to propel it and is moved by human power.

25. RESPONSIBLE OLDER YOUTH OR ADULT means any person having actual or legal care, custody or control of a minor, including any person who enlists, directs, or otherwise engages a minor in activities commonly associated with street trade, except for older youth under 18 years of age and less than 2 years older than the minor engaged in activities commonly associated with street trade.

26. TEMPORARY EVENT means a single event such as a fair, festival, fundraiser for a nonprofit organization, carnival, circus, public exhibition, anniversary sale or occasional sales promotion that is held at a fixed location not lasting more than 14 consecutive days or 20 non-consecutive days during the license period.

27. VETERAN means any ex-soldier of the United States in any war who has a 25% disability or more or has a cardiac disability recognized by the U. S. department of veterans affairs.

68-3. Adoption of State Code. Except as otherwise provided in this chapter, the city of Milwaukee adopts chs. 97 and 98, Wis. Stats., chs. ATCP 75, 80, 88 and DHS 196, Wis. Adm. Code, as amended, and where pertaining specifically to food operation premises, SPS 314, 316, and 361 to 365 Wis. Adm. Code, as amended, as part of this code.

68-5. Adoption of Municipal Code. Except as otherwise provided in this chapter, the city of Milwaukee adopts, for enforcement by the commissioner of health, ch. 214 where pertaining

specifically to fire prevention in food operation premises.

68-7. Enforcement. **1. REGULATIONS.** The commissioner or the commissioner's duly authorized representative shall enforce the regulations of this chapter and may issue orders to effect corrections of violations and may issue citations pursuant to the procedure set forth in s. 50-25, except orders to correct violations of ch. 214 shall be enforced as specified in ch. 200.

2. ANNUAL REPORT REQUIRED. The commissioner of health shall by March 1 submit annually to the common council and the mayor a written restaurant compliance report on restaurant sanitary conditions. The report shall include the following information:

a-1. Summary of the extent of critical risk Wisconsin food code violations reported citywide, by inspection district and by type of establishment.

a-2. Comparison and analysis of inspection results over time to determine the extent of progress being made to reduce and eliminate critical restaurant violations that can lead to foodborne illness.

68-9. Inspection and Reinspection. As a condition of license renewal, all establishments licensed under this chapter shall submit to an annual inspection and reinspection. License renewal may be withheld pending inspection, reinspection and compliance with these regulations.

68-11. Construction or Alteration of Licensable Food Establishments. **1. PLAN EXAMINATION.**

a. No person shall erect, construct, enlarge or alter a food establishment without first submitting to the commissioner plans (drawings) which clearly show and describe the amount and character of the work proposed and without first receiving approval of submitted plans. The plans shall include floor plans, equipment plans and specifications; wall, floor and ceiling finishes; and plans and specifications for food service kitchen ventilation. Submitted plans shall give all information necessary to show compliance with applicable health codes. Submitted plans shall be retained by the commissioner of health.

b. At the option of the commissioner, plans may not be submitted to execute minor alterations to a food establishment. Approved plans shall not be changed or modified unless approval of the changes or modifications shall have first been obtained from the commissioner of health.

c. Plan examination fees shall be paid as required in s. 60-25 and prior to the plan examination.

2. SITE EVALUATION. a. There shall be a site evaluation by the health department for any food establishment in a location where the immediate predecessor was not a food operation or where a food establishment has not been in operation at that location in the past 5 years, except when this requirement is waived by the health department or for a nonprofit organization.

b. A site evaluation by the health department is not required for any food operation that has a change in operator or that is remodeled or altered. A food operation may voluntarily request a site evaluation by the health department and the health department, shall perform a site evaluation whenever a request is made. Any food operation that voluntarily requests a site evaluation shall pay a site evaluation fee.

c. Site evaluation fees shall be paid as required in s. 60-72.

68-13. Food License Review Board. 1. ESTABLISHMENT. There is established a food license review board consisting of 3 professional environmental health personnel, including sanitarians, appointed by the commissioner. Board members shall be appointed to serve 4-year terms and shall not be required to be city residents. Elected officials and municipal employees who serve on the board shall do so without remuneration.

2. DUTIES. The food license review board shall serve as an appeal board to all petitions for the reinstatement of food dealers' licenses which have been suspended or revoked by the commissioner of health under the provisions of this chapter.

SUBCHAPTER 2 FOOD DEALER LICENSE

68-21. Food Dealer License. 1. REQUIRED. a. No person, partnership, association or corporation may establish a food operation, manufacture, offer for sale, store, distribute or sell food within the city without first having obtained a food dealer license or license with conditions allowing temporary operation of a food establishment. The license shall be required of any person selling or distributing food, with the exception that a license shall not be required of a person holding a food peddler permit or meal service permit issued by the commissioner.

b. Only a person, association or corporation in compliance with the applicable requirements of this section shall be eligible to receive and retain a food dealer license.

c. A food dealer license may not be transferred from one person or entity to another or from one premise to another except an individual may transfer a license to an immediate family member, as defined in s. 254.64(4)(1)2, Wis. Stats., if the individual is transferring operation of the restaurant. See s. 85-19 for additional provisions relating to the transfer of licenses.

d. The commissioner or an authorized agent may grant a license with conditions for the temporary operation of a food establishment prior to the completion of orders and the issuance of a regular food dealer license, provided that the business is in substantial compliance with this section and the operation of the food establishment will not jeopardize the life, health and safety of the public and property, and the department of neighborhood services has approved an occupancy permit. The issuance of a license with conditions shall be revoked after 30 days, and the operation shall cease unless all conditions are met and a regular license issued. The regular license application shall be granted or denied before the license with conditions expires. The issuance of a license with conditions shall not apply to renewals.

e. No person may sell food door-to-door, except for occasional sales by representatives of a religious, fraternal, youth, civic or patriotic organization, service club or church. In this paragraph, "occasional sales" means that food is offered for sale for not more than 3 days in any 12-month period.

2. LICENSE NOT REQUIRED. A food dealer license shall not be required for the following:

a. A person selling only bottled or canned non-alcohol drinks that do not require refrigeration and no other food items.

b. A religious, fraternal, youth, civic or patriotic organization, service club or religious assembly that sells food only one day during a fiscal year.

c. A stand, not connected with any temporary event as defined in s. 68-1-26, located on private property in a residential area operated by a child under the age of 14 who sells homemade beverages or food items not requiring heating or refrigeration.

3. APPLICATION. Applications for a food dealer license shall be made in writing to the office of the city clerk on forms provided by the city clerk and shall contain the following information:

a. The name, address and date of birth of the applicant.

b. The trade name and address of the food service establishment.

c. Whether the applicant is a person, corporation or partnership.

c-1. If the applicant is a corporation, the application shall contain the registered agent's name, address and date of birth, and verification that the corporation has been registered with the secretary of state as provided in ch. 180, Wis. Stats.

c-2. If the applicant is a partnership, the application shall include the names and addresses of the partners.

d. Such other reasonable or pertinent information the city clerk, commissioner or chief of police may require.

4. 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 person affected by the operation or proposed operation of the applicant.

b. If either the common council member or the commissioner recommends against an application, no permit shall be issued unless the applicant requests, in writing, an appeal before the licensing committee. An appeal shall be requested no more than 10 working days after the date on which the applicant was notified of the recommendation of the commissioner and the common council member. Appeals shall be forwarded to the licensing committee for its recommendation as to whether a license should be granted. The procedure for considering an appeal shall be as provided in sub 10.

c. If there is an objection to the renewal of a license, the procedure for considering the renewal license application shall be as specified in sub. 10.

d. The late renewal fee for a license 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.

5. POSTING. Each licensee shall post his or her license in a conspicuous place on the food establishment premises. The licensee shall also post a decal or placard issued by the health department in a conspicuous place on the premises of the licensed establishment readily and easily visible to the public, patrons and diners, that states the establishment's name, number, last date of inspection, address, and the name of the licensee.

6. CHANGES TO BE REPORTED. a. A licensee shall notify the 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 10 days after the change occurs.

b. The owner of any premises for which a license has been granted shall promptly notify the 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 more than 30 days 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.

7. 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 to determine compliance with city and state health regulations. The health department employee 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.

8. SUSPENSION FOR NONRENEWAL. The 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. 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.

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.

10. PROCEDURE FOR DENIAL OR NONRENEWAL OF LICENSE. a. If there is an objection to an application for a new or renewal license, 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.

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 recommendations to the city attorney, the commissioner, the licensee or applicant and each member of the common council. The written report shall also include the committee's findings of fact and conclusions of law when the committee recommends nonrenewal or suspension of a license.

d. If it is impractical for the licensing committee to hold an evidentiary hearing, the committee may employ a hearing officer for taking testimony and rendering recommended findings of fact and conclusions of law to the committee. When a 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 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 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 committee hearing on the report shall be given to all parties. The committee may take and reserve additional evidence at the time of the hearing. The 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 committee shall transmit its recommendation to the common council for action.

e. Whenever the licensing committee recommends nonrenewal of an existing license, the applicant shall be given no less than 5 working days notice of the date set for hearing by the common council. An applicant whose existing license has been recommended for non-renewal may submit a written statement containing objections, exceptions and arguments of law and fact, if any. If the committee hearing was initiated upon the objection of an interested party who has appeared and offered evidence, the objector may also submit a written statement or response. Any written statement or response shall be filed in the office of the city clerk before the close of business on a day that is 3 working days before the day set for hearing by the council.

f. At the meeting of the common council, the chair shall allow oral argument by an applicant for a renewal license and by an objector under sub. 3-a, if any, who has timely filed a written statement or response to the report and recommendations of the licensing committee. An applicant for license renewal shall appear in person or by counsel. A corporate licensee shall appear only by its designated agent or by counsel. A partnership shall appear only by a partner or by counsel. A limited liability company shall appear only by its designated agent or by counsel. Any person making an appearance before the common council pursuant to this paragraph and who requires the services of an interpreter shall obtain one at his or her own expense. 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 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. 68-25 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 employee of the food establishment.
- d. The conviction of the applicant or licensee, his or her agent, manager, operator or any other employee 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.

h. A showing that the premises proposed for licensing will be a convenience store as defined in s. 68-1-6, whether or not exempt as provided in s. 68-55-2, and that the proposed operation of the premises will tend to contribute to neighborhood incidents and conditions identified in par. g as the result of an over-concentration of food dealers licensed under s. 68-21 to offer for sale, sell or distribute food in the neighborhood. Evidence that a neighborhood is adequately served by existing retail food establishments may be considered in reaching a determination about whether granting a new license will result in over-concentration.

i. The city clerk shall promptly inform the commissioner, the police department and commissioner of neighborhood services upon receipt of an application for a new food dealer license. The city clerk shall also promptly advise the common council member in whose district a new food dealer licensee proposes to operate licensed premises. The 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. 68-1-6, whether or not the convenience store may be exempt under s. 68-55-2, 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 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 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.

L. Nothing in this section shall affect the authority or responsibility of the commissioner of health to suspend or revoke a food dealer license whenever the commissioner finds unsanitary or other conditions in the operation of a food service establishment as provided in s. 68-25.

12. DISQUALIFICATION FOR LICENSE. Whenever any application is withdrawn, denied, or license not renewed, revoked or surrendered, the procedures for disqualification for license and change of circumstances provided in ss. 85-13 and 85-15 shall apply.

13. PROCEEDINGS TO SUSPEND OR REVOKE LICENSE. a. 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. 68-25.

b. Reasons Unrelated to Unsanitary Conditions. Proceedings to suspend or revoke a food dealer's

license for reasons other than the grounds for suspension or revocation provided in s. 68-25 may be initiated by the licensing committee upon its own motion, 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.

14. PROCEDURE FOR REVOCATION OR SUSPENSION. a. Notice and Service. Whenever either sworn written charges or a sworn written complaint are filed with the 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.

b. Committee Hearing. The licensing committee shall convene and hear the matter upon the complaint for revocation or suspension filed and noticed under par. a in the manner provided in s. 85-4-1 and 2 and shall prepare and submit a report as required by ss. 85-4-5 and 85-5-1. Grounds for revocation and suspension shall be those provided in sub. 11.

c. Council Action. Written statements in response to the findings and recommendations of the licensing committee shall be filed with the city clerk in the manner provided in s. 85-5-2, and copies shall be provided to common council members in the manner provided in s. 85-5-3. The procedures provided in s. 85-5-4 shall govern the conduct of the meeting of the common council.

68-23. Meal Service Establishments. Any person, association or organization who prepares food or receives food prepared or processed by others who already possess a valid food dealer license, and makes available such food solely to the needy as a meal, shall obtain a food dealer license. If the operation is fewer than 4 days during a 12-month period, a license will not be required. The food dealer license shall be issued and remain valid under the following conditions:

1. The application is fully and accurately completed and is accompanied by the fee provided in s. 60-21-5.
2. An inspection by the department reveals sanitary facilities, equipment and food-handling procedures exist.
3. An applicable valid building inspection occupancy permit exists.
4. There is compliance with all applicable food sanitation regulations.

68-25. Suspension or Revocation. 1. INSPECTION. The commissioner or the commissioner's duly assigned agents, after proper identification, shall be permitted to enter, at any reasonable time, any food service establishment within the city for the purpose of making inspections to determine compliance with this ordinance. The commissioner shall be permitted to conduct a reasonable examination of the licensee's records which may be pertinent and necessary to the carrying out of the duties assigned in this chapter and to the protection and health and welfare of employees and the public.

2. NOTICES. If upon inspection the commissioner shall find that any licensed place is conducted or managed in violation of the provisions of this chapter or in violation of any of the ordinances or regulations of the city, or the laws of the state of Wisconsin, it shall be the duty of the commissioner

of health to serve a written order upon the licensee, the licensee's agent, or employee, in charge of the licensed premises notifying the licensee of the violations.

3. SUSPENSION OF LICENSES. Notwithstanding other provisions of this chapter, whenever the commissioner 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, the commissioner may without warning, notice or hearing, issue a written notice to the licensee, operator or employee in charge of the licensed premise citing the condition, specifying the corrective action to be taken, and specifying the time period within which the action shall be taken; and, if deemed necessary, 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 an order is issued shall comply immediately therewith, but upon written petition to the commissioner, 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.

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 or her duties, the license may be permanently revoked after an opportunity for a hearing has been provided by the food license review board. Prior to the action, the commissioner of health shall notify the licensee 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 the notice, unless a request for a hearing is filed with the commissioner of health by the licensee within the 5-day period. The commissioner shall promptly notify the city clerk of any revocation.

5. APPEALS TO FOOD LICENSE REVIEW BOARD. a. A person who seeks to appeal an order or other action of the department or the commissioner shall file a written appeal with the food license review board within 5 working days after the person has received written notice of the order or action being appealed. The appeal shall state with specificity the reason that the appellant believes the order or action was taken in error.

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.

c. The board shall serve the appellant with written notice of the hearing. The notice shall be served so that the appellant has at least 5 working days' notice of the hearing. The hearing notice shall contain:

c-1. The date, time and place of the hearing.

c-2. A statement that an opportunity will be given to the appellant to challenge the order or action, present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c-3. A statement that the appellant may be represented by an attorney of the appellant's choice at the appellant's expense, if the appellant so wishes.

d. At the hearing, the board chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the appellant admits notice. The chair shall advise the appellant that

the appellant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the appellant may simply make a statement to the board.

e. A due process hearing shall be conducted in the following manner:

e-1. All witnesses shall be sworn in.

e-2. The department or commissioner shall proceed first.

e-3. The appellant shall be permitted an opportunity to cross-examine.

e-4. After the conclusion of the evidence of the department or commissioner, the appellant shall be permitted to present the appellant's own witnesses, subject to cross-examination.

e-5. Board members may ask questions of witnesses.

e-6. Both the department or commissioner and the appellant shall be permitted a brief summary statement.

e-7. The board, in its discretion, may allow the filing of written briefs.

f. The recommendations of the board regarding the appellant shall be based on evidence presented at 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.

6. OPERATION AFTER SUSPENSION OR REVOCATION PROHIBITED. No person, association or corporation may operate after a license suspension or revocation unless the suspension is released in writing or the revocation is not upheld by the food license review board or a court.

SUBCHAPTER 3 TEMPORARY FOOD DEALER LICENSE

68-31. Temporary Food Dealer License. 1. Licenses. a. General. Each individual temporary food operation, site, location or stand where food is prepared, processed, served or sold shall be connected to a temporary event or a fundraiser for a nonprofit organization when issued a temporary food dealer's license and be assessed fees in accordance with this section.

b. Exemption. The following shall be exempt from the requirement provided in par. a:

b-1. A licensed food establishment that extends its operation to the outside on a temporary basis and has obtained a temporary extension license.

b-2. A food peddler with a valid food dealer license who operates on private property as part of a

development center-licensed event, as long as the food operation remains unchanged from that conducted routinely under the operator's existing food peddler permit.

b-3. A food peddler with a valid Wisconsin department of agriculture, trade and consumer protection traveling license, if the operator has registered with the city clerk and paid the applicable fee and a copy of the license has been provided.

b-4. A nonprofit organization serving meals one day during a fiscal year at a temporary event.

c. Application and Issuance. Applications for a temporary food dealer license shall be made pursuant to the procedures set forth in s. 68-21-3 and 4. Licenses shall be issued for the following categories:

c-1. Restaurant.

c-2. Retail.

c-3. Farmer's market.

c-4. Special nonprofit temporary event.

d. Application Deadline. Failure to pay and obtain a license to operate a temporary event one business day prior to the event occurring shall result in the applicant not being allowed to participate in the event. No application may be made or paid at the event or accepted after the commencement of the event regardless of whether the event occurs during hours of city operation or not. Any applicant who has failed to pay for a previous temporary event and has not withdrawn the application prior to the previous event shall pay any outstanding fee prior to any other temporary event application being accepted.

e. Fees. Application for a temporary food dealer license shall be accompanied by the fees specified in s. 60-23.

2. FARMER'S MARKET REGULATIONS. If food is processed offsite from a farmer's market, the operator shall hold a valid food dealer license, as defined in s. 68-21, for the site at which food is processed.

3. SPECIAL NONPROFIT TEMPORARY EVENT REGULATIONS. A special nonprofit temporary event license shall allow a nonprofit organization, as defined in s. 68-1-21, to conduct temporary events at multiple locations up to 14 days in a license period.

a. Requirements. A nonprofit organization shall meet each of the following requirements:

a-1. A booth or stand used for a special nonprofit temporary event shall be no more than 100 square feet in total area.

a-2. A special nonprofit temporary event shall not be on the premises owned by the nonprofit organization seeking the license.

a-3. If food processing is conducted, the operation shall be supervised by an individual meeting the requirements provided in DHS 196.10, Wis. Adm. Code.

a-4. The location and date of each event shall be provided at the time of application.

a-5. If multiple licenses are obtained by a single nonprofit organization, the total number of days in operation shall not exceed 14 days cumulatively for all licensed temporary event food activities in a license period.

a-6. All activities shall be held in conjunction with a single event or celebration such as a fair, carnival, circus, public exhibition, anniversary sale or occasional sales promotion.

b. Exception. No special nonprofit temporary event license shall be issued for a nonprofit temporary event held at the Henry Maier Festival Park.

c. Fees. Application for a special nonprofit temporary event license shall be accompanied by the fees specified in s. 60-23.

SUBCHAPTER 4 FOOD PEDDLER PERMIT

68-41. Food Peddlers. 1. FINDINGS. The common council finds that regulation of the health conditions of food sold by food peddlers is necessary for the prevention of disease and sickness within Milwaukee and such regulation is vital to the health, safety and welfare of residents of and visitors to the city.

2. PERMIT REQUIRED. a. General. No person shall engage in the sale of any food from any vehicle on public streets without first receiving from the city clerk a food peddler permit. A permit issued under this section shall not permit any person to sell food from a temporary or permanent structure, or a vehicle other than a vehicle selling food on public streets or contrary to any other ordinance of the city.

b. Exceptions. A person selling only bottled or canned non-alcohol drinks that don't require refrigeration and no other food items is not required to have a permit issued under this section but shall comply with all other requirements of this section.

3. APPLICATION. Application for a food peddler permit shall be made in writing to the city clerk on forms provided by the city clerk and shall contain the following information:

a. Name, home address and telephone number of the applicant. Post office box numbers shall not be acceptable for addresses required on applications.

b. Applicant's date of birth.

c. Motor vehicle driver's license number used.

d. If the applicant intends to sell food provided by a food service establishment, the name and address of the establishment.

e. The category of permit being applied for specified in sub. 5, including whether the applicant is a veteran or is applying for a night operation permit.

f. A description of the location or locations where the applicant intends to sell food.

g. The hours of the day during which the applicant intends to sell food.

h. Whether the applicant is an individual, corporation or partnership, including:

h-1. If the applicant is a corporation, the registered agent's name, address and date of birth, and verification that the corporation has been registered with the secretary of state as provided in ch. 180, Wis. Stats.

h-2. If the applicant is a partnership, the names and addresses of the partners.

i. A unique serial number, vehicle identification number or a permanent unique number or alpha identifier distinguishing each food peddler vehicle or carried container to be permitted.

j. Such other reasonable and pertinent information the city clerk, commissioner or chief of police may from time to time require.

4. FEE. a. All new and renewal applications shall be accompanied by the applicable fees specified in ss. 60-29 and 60-31.

b. A veteran upon presenting proof to the city clerk that he or she satisfies the conditions provided in s. 68-1-27, shall be granted a food peddler permit for one motorized, pushed, pedaled or motorized vehicle or container without payment of any fee. The veteran shall be the operator of the food peddler vehicle or carried container for which the fee has been waived.

5. PROCEDURE FOR ISSUING NEW OR RENEWAL PERMIT. a. Issuance. All applications shall be referred to the commissioner who shall cause an investigation to be made. The city clerk shall issue a permit to each applicant for a new or renewal permit who meets all the requirements of this section, has paid to the city treasurer the applicable fees, provided approval has been made by the commissioner of a satisfactory investigation. Permits shall be issued for the following categories:

a-1. Pushed, pedaled or pulled vehicles.

a-2. Motorized vehicles.

a-3. Carried containers.

b. Night Operation. The city clerk shall provide for issuance of a of a sub-category of each of the permit types identified in par. a to allow for a food peddler to sell food between the hours of 9 p.m. and 3 a.m., in addition to sales between 6 a.m. and 9 p.m., except that a food peddler with a nighttime sales permit may sell food until 3:30 a.m. on Saturday and Sunday and at any time on January 1. The applicant for a permit allowing nighttime sales shall pay a surcharge required under s. 60-31.

c. Peddler Permit Sticker. Together with each permit, the city clerk shall issue a peddler permit sticker with the words "City of Milwaukee Food Peddler - permit no.....," stamped on it. Any food peddler, before engaging in the sale of any food products, shall have the peddler permit sticker affixed to the peddler's vehicle or container in a prominent place. Each peddler shall at all times have available for inspection the paper permit whose number matches the number on the peddler permit sticker.

6. TRANSFER OF PERMIT OR CHANGE OF NAME. See s. 85-19 for provisions relating to the transfer of permits and change of permittee names.

7. RULES AND OPERATING REGULATIONS. a. **Identifying Signage.** Each food peddler vehicle or carried container used for business purposes subject to permitting as a food peddler under this section shall have identifying signs printed or affixed, in a prominent position, to 2 sides of the vehicle or container. Each identifying sign shall include the name of the business or person operating the vehicle or container, a valid telephone number for the business, and the unique serial number, vehicle identification number, permanent unique number or alpha identifier distinguishing the food peddler vehicle or carried container in lettering not less than 3 inches high.

b. **Agents of Permit Holders.** Whenever a business, organization or individual holds a food peddler permit and individual peddlers make sales under the authority of that permit, each individual peddler shall be an agent of that business, organization or individual for purposes of those sales. Any violation of this section by an agent shall be imputed to the business, organization or person that holds the food peddler permit under which the agent's sales are made.

c. **Sales on the Public Way Only.** All sales shall be made on the public way directly from pushed, pedaled, pulled or motorized vehicles or carried containers.

d. **Parked One Hour or Less.** Any person engaged in the sale of any food from a vehicle shall not remain in any location adjacent to any one block area, which block contains only nonresidential occupancy or use, more than one hour on any one day, except as follows:

d-1. Whenever any street or portion thereof has been closed to traffic by common council resolution in connection with any civic event, the city clerk may, upon receipt of the required fee, issue a permit to any person holding a permit for the sale of food from a vehicle further permitting the person to park on the closed streets longer than the one-hour limit provided in this paragraph. The permit shall specify the dates for which it is issued, and the fee required in ch. 60 shall be charged for each date. No permit shall be issued without the approval of the chief of police, unless the common council by resolution shall so direct.

d-2. A motorized food peddler vehicle may be parked in one location on a nonresidential block in excess of the one-hour limit specified in this paragraph, provided the vehicle is parked in compliance with all posted time limits on parking and with all other applicable parking regulations.

d-3. The number of vehicles at any given event, in any given block, and the spacing of vehicles, as well as the number of blocks within the closed traffic section allocated for vehicles, shall be determined by the police department in cooperation with the local council member and sponsoring group.

e. **Exceptions.** The common council may, by resolution, designate specific exceptions as to locations, dates or individual events, to the provisions of par. d.

f. **Penalty.** Any vehicle parking in a closed traffic section, or parking outside the barricaded street section longer than allowed under par. d by existing code provisions, without a permit shall be fined \$100, and the vehicle shall be towed away at the owner's expense.

g. Keeping of Perishable Food. All perishable foods shall be kept in one of the following ways:

g-1. Frozen.

g-2. Refrigerated at 41° F or lower by means of mechanical refrigeration.

g-3. Heated and maintained at 135° F.

h. Scale Required. A food peddler shall provide a scale for items that are sold by weight and weighed at the time of sale. The scale shall be approved and licensed under ss. 60-91 and 82-14.

i. Noise Restricted. A food peddler shall comply with the noise nuisance regulations of s. 80-65-4 and all other noise regulations of this code.

j. Parking Restrictions. A food peddler shall comply with all parking regulations provided under ch. 101, ss. 105-56 and 115-45.

k. Sale of Soda Water. Soda water shall be sold in single-service bottles, cups or aluminum cans only.

8. PROHIBITED ACTIVITIES. a. Permits and Peddler Permit Stickers Not Transferable. Permits and peddler permit stickers shall be nontransferable, except upon order of the commissioner or as otherwise permitted under s. 85-19. Any food peddler selling, giving away or exchanging any permit or permit sticker, or any food peddler obtaining a permit by misrepresentation, or improperly registering his or her name or address shall be subject to the forfeitures provided for in sub.11.

b. Sale of Unwholesome Food Prohibited. No food peddler shall sell any food or food product that is unwholesome, as defined in s. 97.42(1)(m), Wis. Stats., or tainted, or that is unclean, or that has been handled in an unclean manner, or has been exposed to unclean or contaminating things or conditions, or contrary to any rules or regulations adopted by the commissioner.

c. Sales from the Median or Safety Island Prohibited. No food peddler shall sell or offer for sale any food while the person is on a roadway median or safety island, except when the roadway has been closed to traffic under sub. 7-d-1 and the peddler is otherwise in compliance with this section.

d. Sale of Food Between the Hours of 9 p.m. and 6 a.m. Prohibited. The sale of food between the hours of 9 p.m. and 6 a.m., the following morning shall be prohibited. This prohibition shall not apply on January 1, Memorial Day, Juneteenth, the 3rd and 4th of July, Labor Day, on city streets adjacent to State Fair Park during the run of the Wisconsin State Fair or during any other specific dates specified by the common council by resolution. Nor shall it apply to a food peddler to whom the commissioner has issued a food peddler permit allowing nighttime operation, pursuant to sub. 5-b.

e. Blocking Pedestrian Access to Doorways Prohibited. Blocking or restricting an individual's access to a business or residential doorway shall be prohibited.

f. Blocking Sidewalk Prohibited. Occupying any sidewalk so as not to permit any pedestrian at any time to have a minimum 5-foot clearance shall be prohibited.

g. Lewd Comments Prohibited. Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent shall be prohibited.

h. Door-to-Door Sales Prohibited. Selling food door-to-door shall be prohibited except as provided under s. 68-21.

i. Horn Use Prohibited. A food peddler with a permit for a carried container or pushed, pedaled or pulled vehicle shall not use any type of horn.

9. AUTHORITY OF COMMISSIONER. The commissioner may make and adopt written rules and regulations as may be necessary for the proper enforcement of this section. The commissioner shall file a certified copy of all rules and regulations which he or she may adopt with the city clerk, and a certified copy of the rules and regulations shall also be on file in the office of the commissioner. The rules and regulations shall have the same force and effect as the provisions of this section, and the penalty for violations thereof shall be the same as the penalty for violations of this section.

10. PERMIT SUSPENSION AND REVOCATION. a. Any permit issued in accordance with this section shall be subject to summary revocation by the commissioner or any of the commissioner's authorized agents at any time that the permit holder thereof is guilty of a violation of any of the provisions of this code or state laws governing the sale or handling of food. Any person to whom an order is issued shall immediately comply with the order, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of the petition.

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 the condition, specifying the corrective action to be taken, and specifying the time period within which the action shall be taken. If the commissioner deems it necessary, the order shall state that the permit shall be immediately suspended and all food service operations shall be immediately discontinued. The commissioner shall promptly notify the city clerk of any suspension. Any person to whom an order is issued shall immediately comply with the order, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of the 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 as 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 shall be subject to revocation, and advising that the permit shall be revoked at the end of 5 working days following service of the notice, unless the permit holder files with the commissioner a request for a hearing within the 5-day period. The commissioner shall promptly notify the city clerk of any revocation.

d. The commissioner may, following the same procedures set forth in pars. a to c, suspend or revoke only the portion of a permit allowing late-night sales pursuant to sub. 5-b.

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 the hearing, the commissioner shall enforce the decision of the board. The commissioner shall furnish the permit holder and the city clerk with a written report of the hearing decision.

f. No person, association or corporation may operate after a permit suspension or revocation unless the suspension is released in writing or the revocation is not upheld by the food license review board or court.

11. PENALTIES. a. Any person who shall sell any food product from any vehicle or any carried container as provided in this section without having first received a permit in accordance with the provisions of this section, or who shall violate any of the other provisions of this section, except sub. 7-c, g to j and sub. 8-d to i, shall be subject to penalty as set forth in s. 61-8.

b. A person who violates sub. 7-c, g to j and sub. 8-d to i shall be subject, at the discretion of the court, to any or all of the following penalties:

b-1. A forfeiture of not less than \$20 nor more than \$200 for each violation.

b-2. A suspension of the peddler permit sticker described under sub. 5-d for not less than 10 days nor more than 30 days, or a revocation of the identifying device for the remainder of its term.

b-3. A suspension of the food peddler's license for not less than 10 days nor more than 30 days, or a revocation of the food peddler's license for the remainder of its term.

c. At the discretion of the court, a penalty under par. b may be imposed as follows:

c-1. A penalty may be imposed on an agent.

c-2. Whenever the court finds that the business, organization or person that holds the food peddler's permit under which the agent's sales are made has failed to properly supervise the agent, a penalty may be imposed on the business, organization or person.

c-3. A penalty as provided under subds. 1 and 2 may be imposed on both an agent and the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

68-43. Ice Cream Peddler License. 1. FINDINGS. The common council finds that individuals involved in the business of ice cream peddling are placed in substantial contact with children. Additionally individuals peddling ice cream from an ice cream vending vehicle are also responsible for driving safely when operating a motor vehicle making frequent stops and dealing with customers congregating near the path of the vehicle. Therefore, on that basis, the common council finds it necessary for the safety and welfare of the public to license individuals peddling ice cream.

2. LICENSE REQUIRED. No person shall operate or act as an ice cream peddler within the city

without first having obtained an ice cream peddler license. The ice cream peddler license required by this section shall be in addition to the food peddler permit required in s. 68-41. No ice cream peddler license shall be required if all retail sales are conducted at a temporary event as defined in s. 68-1-26, provided that average daily attendance is estimated at 5,000 persons or more.

3. APPLICATION. Application for a new or renewal license shall be filed with the city clerk. The application shall contain:

- a. The applicant's name, date of birth, permanent address and telephone number.
- b. A driver's license or some other proof of identity as may be reasonably required.
- c. Submit with the application form a separate document bearing all 10 fingerprints of each applicant, or if the applicant has less than 10 fingers, the record shall so indicate.
- d. Photos. Each applicant for an ice cream peddler license shall file with the application 2 recent photographs suitable in size and form, as determined by the city clerk, for inclusion on the applicant's official license. One photograph shall be attached to the license when issued, and the other photograph shall be filed with the application with the city clerk.
- e. Such other reasonable or pertinent information the commissioner, city clerk or the chief of police may from time to time require.

4. DEPOSIT OF FEE. At the time of application, each applicant shall deposit with the city clerk the full amount of the fee required in s. 60-48. The city clerk shall to accept the deposit, issue a receipt therefore, and cause a record to be kept thereof.

5. INVESTIGATION. a. An application received by the city clerk shall be forwarded to the chief of police for review and criminal check.

b. Upon review and report of the chief of police and subject to the requirements of s. 111.335, Wis. Stats., the license shall be granted to an applicant who has not been required to register as a sex offender pursuant to s. 301.45, Wis. Stats.; or who has not been convicted of violating s. 940.22(2), 940.225(1), (2) or (3), 944.06, 948.02(1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11(2)(a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31, Wis. Stats., if the victim was a minor; or who has not been convicted of operating a vehicle under the influence of an intoxicant or other drug pursuant to s. 346.63, Wis. Stats., in the past 3 years. These provisions shall also apply to the granting of this license to any applicant who has been convicted pursuant to similar statutes in foreign jurisdictions.

c. If an application for a new or renewal license is denied, the applicant may appeal the denial to the administrative review appeals board.

6. REVOCATION. a. Any license issued under this section may be revoked by the health department upon conviction of a licensee for violation of any provision specified in sub. 5-b. The commissioner shall promptly notify the city clerk of any revocation.

b. Any license revoked by the health department under this section may be appealed to the

administrative review appeals board. If the commissioner has cause to seek revocation of a license under this section, he or she shall give prompt notice to the licensee of the intent to revoke the license with an opportunity to appeal the revocation to the administrative review appeals board.

7. PENALTY. a. Any person who violates sub. 2 shall be liable upon conviction to a Class I penalty under s. 61-15.

b. Any person licensed under s. 68-41, who employs a person required to obtain a license under sub. 2 and who is not licensed, shall be liable upon conviction to a Class I penalty under s. 61-15.

68-45. Peddling of Food by Minors. 1. PURPOSE. The common council finds that minors under 18 years of age are susceptible to injury and other harm when engaged in street trades, and particularly when engaged in activities involving the sale or distribution of food and beverages, including water on highways, streets and alleys of the city. The common council further finds that state policy, which defines street trades in setting child labor standards at s. 103.21(6) Wis. Stats., to include the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles or goods on any street or public place. Section 103.23(1), Wis. Stats., further provides that a minor under 12 years of age shall not be employed or permitted to work at any time in any street trade. This section has for its purpose, among other objects, to secure the health, safety and welfare of minors engaged in activities on the city highways, and to promote the responsible and lawful care, supervision and control of younger children by older youth and adults who are in a position to direct, supervise or otherwise control the activities of children engaged in peddling food or beverages.

2. DEFINITION. In this section, “food” has the meaning ascribed at s. 68-1-10, and includes canned or bottled soda, water and all other beverages.

3. REGULATION; PROHIBITED ACTIVITIES. a. No minor under 12 years of age may engage in or participate in the activities of a minor food peddler.

b. No responsible older youth or adult shall engage a minor less than 12 years of age in the activities of a minor food peddler.

c. No minor shall engage in, nor be permitted to engage in, the activities of a minor food peddler except in accordance with applicable permit and other requirements of state law and this code.

d. No minor food peddler shall sell, distribute or offer for sale any food or beverage, including water, while on a roadway median or safety island, and no minor food peddler may be directed, instructed or permitted to sell, offer for sale, or distribute any food or beverage, including water, by any responsible older youth or adult while the minor is on a roadway median or safety island.

e. No person, whether a responsible older youth or adult or a minor food peddler, shall enter on foot into any street or roadway, including any alley in which there is vehicular traffic and no responsible older youth or adult shall encourage or permit a minor food peddler to enter on foot into any street or roadway, including any alley in which there is vehicular traffic, while engaged in activities related to the activities of a minor food peddler, except while proceeding across designated pedestrian crosswalks and crossing areas.

4. EXCEPTION. The provisions of sub. 3-d shall not apply when the roadway, street or alley has been closed to traffic under s. 68-41-7-d-1 and the minor food peddler and any responsible older youth or adult are otherwise in compliance with this chapter and with the provisions of chs. 68 to 73, where applicable. .

5. PENALTIES. a. Any person violating the provisions of sub. 3-b shall be subject to a Class D penalty, as provided in s. 61-10.

b. Any person violating sub. 3-c shall be subject to the fine for a Class A penalty, as provided in s. 61-7.

c. Any person violating sub. 3-d and e shall be subject to a Class F penalty, as provided in s. 61-12.

d. Any person violating any provision of this section who is subject to sanction as a juvenile, shall not be subjected to a forfeiture or other penalty greater than that permitted by state law.

SUBCHAPTER 5 OPERATING REGULATIONS

68-51. Sanitary Regulations. No person shall manufacture, prepare for sale, offer, expose for sale or sell food as defined in s. 68-1-10 unless it is securely protected from filth, flies, dust or contamination or unclean, unhealthful or unsanitary conditions.

68-53. Impure Food, Drugs, Water or Ice. It shall be unlawful for any person, firm, company or corporation, or any agent or employee thereof, to keep for sale, offer for sale, or exchange or sell or deliver or expose for sale any food or drugs not conforming to the rules and standards adopted pursuant to s. 68-3 and any water, liquids, ice or human food which shall be impure, unwholesome, adulterated, or to which any harmful or injurious foreign substance has been added.

68-55. Security in Certain Convenience Food Stores. 1. REGULATIONS. All convenience food stores not exempted under sub. 2 shall:

a. Locate the cash register in a manner so that at the time of a sales transaction, the employee and customer are both visible from the sidewalk, if any, if the location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred. If there is no sidewalk, the cash register shall be located so that at the time of a sales transaction, a person directly outside the store has an unobstructed view of the employee and customer, if such location can be accomplished without incurring additional cost that would not otherwise be ordinarily incurred.

b. Keep glass entrance and exit doors clear of any signs or advertisements, with the exception of a sign which states that the cash register contains \$50 or less and that the safe is not accessible to employees.

c. Maintain one of the following on the licensed premise:

c-1. A safe that was in use at the convenience food store on August 17, 1994.

c-2. A drop-safe or time release safe that weighs at least 500 pounds or which is attached to or set into the floor in a manner approved by the police department.

d. Provide lighting for the store's parking area during all hours of darkness when employees or customers are on the premises at a minimum average of 2-foot candles per square foot, unless the store is not open for business after sunset and before sunrise.

e. Install, maintain in proper working order and operate during all hours the store is open to customers at least 2 high resolution surveillance security cameras which can produce reproducible digital color images from a digital video recorder. Each camera shall display a date and time stamp on each image, and produce retrievable images suitable for permanent police records. Digital video recording equipment shall be maintained in proper working order at all times during store operating hours. Additional cameras shall be installed as needed to record views and images stipulated in s. 68-1. The police may encourage convenience stores to position and use cameras in addition to the 2 required by this section to bolster overall crime prevention efforts.

e-1. At least one camera shall provide an overall view of the counter and register area, and at least one camera shall be positioned to provide a clear, identifiable, full-frame image of the face of each person entering and leaving the store. Camera views shall not be obstructed by store fixtures or displays.

e-2. If a time-lapse digital video recorder is operated, recorded images shall not be recorded at a slower speed than 24 hours.

e-3. All digital video records shall be stored on CD-Rs or DVD-Rs and maintained in good viewing order for 30 days after recording, and made available upon request to the licensing committee and law enforcement officers. Digital video recordings shall be dated and time stamped, and all CD-Rs and DVD-Rs used to store video recordings shall be marked with the date the media was recorded. At least one blank CD-R or DVD-R per camera shall be available during all hours the store is open to customers to replace CD-Rs or DVD-Rs provided to the licensing committee or law enforcement officers, or to replace video recording media that fail.

e-4. CCDTV systems must be capable of copying all images to CD-Rs or DVD-Rs while maintaining the native format. Digital video recordings recorded by CCDTV systems on CDs or DVDs shall to copied onto CD-Rs or DVD-Rs whenever the system's video recording media reaches capacity, but not less frequently than once every 30 days. All CCDTV system recorded images requested by the licensing committee and law enforcement officers shall be provided on CDRs or DVD-Rs. CCDTV playback software needed to view recorded images shall be copied onto each CD-R or DVD-R used to store CCDTV recorded video images.

e-5. On-duty store employees shall provide a copy of recorded digital images to law enforcement officers immediately upon request.

f. Have customer entrance and customer exit doors that are made of glass or other transparent material, except that a store that does not have such doors on August 17, 1994 shall not be required to install such doors until the holder of the store's food dealer license changes.

2. EXEMPTIONS. a. The requirements of this section do not apply to a convenience food store that

conforms to either of the following descriptions:

a-1. The store is located in an enclosed shopping structure, enclosed commercial building or hospital. A convenience food store is not in an enclosed structure or building if a customer can enter it directly from the outside.

a-2. The store physically separates employees from customers with a solid partition that bars a person from entering the employee area from the customer area, has a secure lock on the employee side of any door between the employee area and the customer area, and conducts all transactions through a service window or similar arrangement.

b. At the commissioner's discretion, a convenience store may be exempted from any or all of the regulations specified in sub. 1. The owner or operator of a convenience food store that seeks an exemption under this paragraph shall submit to the commissioner a written exemption request that includes the specific reasons that the applicant believes the exemption should be granted. The commissioner may grant an exemption to a requestor if the commissioner finds that the security provisions at the location are adequate.

3. ROBBERY PREVENTION TRAINING. Owners and employees of convenience food stores shall be required to complete a training course in robbery prevention approved of or provided by the police department within 120 days of ownership or employment.

68-57. Food Wrappers; Premiums or Tokens. 1. CONTAMINATION. a. Subject to Spoilage. No person, firm or corporation shall within the city give away, sell or offer for sale any food, as defined in s. 68-1 which is pronounced by the commissioner liable to contamination, putrefaction or other types of spoilage, by using wrappers, covers, containers, or include in the package or wrapping any token or other symbol which may be returned to any person, firm or corporation for premiums, or anything of other value.

b. Use of Token. Whenever the condition of sale provides that the token, symbol, or other item, which is to be returned for anything of value, can be mailed only to an office or other location where food as defined in s. 68-1 is not prepared, processed, stored or offered for sale, in order to receive a premium or other thing of value; and where the premium or other items of value do not include articles of primary interest to children, the use of such tokens, symbols or other items shall not be in violation of the provisions of this section.

2. FEDERAL REGULATIONS. Nothing herein contained shall be construed as in any way interfering with or contrary to any federal regulation in regard to the return of any of the classes of articles specified in this section.

68-59. Use of Common Drinking Cup. 1. PROHIBITED. The use of the common drinking cup or receptacle for drinking water in any public place or in any public institution, hotel, theater, factory, department store, public hall or public school, or in any railroad station, in the city, or the furnishing of such common drinking cup or receptacle for use in any such place, shall be prohibited.

2. PENALTY. Any person who shall furnish, install or offer for public use such common drinking cup or receptacle for drinking water in any public place, or in any public institution, hotel, theater, factory, department store, public hall or public school, or in any railroad station in the city,

shall be punishable by a fine of not less than \$5 nor more than \$25.

68-61. Penalty. Any person who violates or fails to comply with this chapter shall be liable upon conviction to a Class N penalty as provided in s. 61-20 in addition to any other penalty set forth herein. In addition, citations may be issued with or without prior notice as set forth in s. 50-25.

Part 3. Chapter 74 of the code repealed.

Part 4. Section 75-25 of the code renumbered 68-15.

Part 5. Section 90-24-2 of the code is amended to read:

90-24. Sanitary Requirements.

2. As stated in s. 17-13 of the charter, in order to promote and secure the general health and welfare of the city whenever the commissioner of health finds unsanitary or other conditions in the operation of a food or drink service establishment, including any Class "B" fermented malt beverage or intoxicating liquor licensed premises, which in the commissioner's judgment constitutes a substantial hazard to the public health, the commissioner may without warning, notice or hearing issue a written notice to the operator of the establishment citing such condition, specifying the time period within which such action shall be taken. If deemed necessary for the health of the public, the order shall state that all food and drink service operations, including the service of all intoxicating liquor or fermented malt beverages, are to be immediately discontinued. Any person to whom such an order is issued shall immediately comply therewith, but upon written request to the commissioner of health shall be provided a hearing as stated in ~~[[s. 68-6]]~~ >>s. 68-25<< for suspension or revocation of a food dealer's license.

Part 6. Section 95-1-1-b of the code is amended to read:

95-1. Direct Sellers.

1. DEFINITIONS.

b. "Direct seller" means any person who sells goods or takes sales orders for the later delivery of goods on any public way or other public premises, and includes peddlers and solicitors. "Direct seller" does not include a transient merchant; a permanent merchant conducting a temporary sidewalk sale; or a food peddler, who is regulated under ~~[[ch. 74]]~~ >>ch. 68<<.

Part 7. Section 95-1-2-a-8 of the code is amended to read:

2. LICENSE REQUIRED.

a-8. A food peddler who is only selling food licensed under ~~[[ch. 74]]~~ >>ch. 68<<.

Part 8. Section 95-2-2-b-5 of the code is amended to read:

95-2. Transient Merchants.

2. LICENSE REQUIRED; EXEMPTION.

b-5. A food peddler licensed under ~~[[s. 74-1]]~~ >>s. 68-41<<.

Part 9. Section 105-91-3 of the code is amended to read:

105-91. Retail Establishment Security Measures.

3. PROCEDURE. Whenever the chief of police determines 3 or more incidents of violent or firearms-related crime have occurred at a retail establishment on separate days within a one-year period, the chief of police may notify the premises owner in writing that the owner is required to install a security camera system and comply with all regulations set forth in ~~[[s. 68-4.3]]~~ >>s. 68-55<<. In addition, cameras installed in a Class "B" tavern shall be installed so as to provide a clear image of the entire premises as described on the license as well as the public right-of-way abutting the premises and any off-street parking lot used expressly for patron parking. The premises owner shall have 60 days from the date of notification to install a security camera. This notice shall be deemed to be properly delivered if sent either by first class mail to the premises owner's last known address or if delivered in person to the premises owner. If the premises owner cannot be located, the notice shall be deemed to be properly delivered if a copy of it is left at the premises owner's usual place of abode in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there and who shall be informed of the contents of the notice. If a current address cannot be located, it shall be deemed sufficient if a copy of the notice is sent by first class mail to the last known address of the owner as identified by records of the commissioner of assessments. This notice shall contain:

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:_____

City Clerk-Legislative Reference Bureau

LRB148967-1

Amy E. Hefter

2/20/2014