



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Ordinance: O-2017-0014

File Number: O-2017-0014

Final Action:

Sponsor(s): Ald. Roadt

Ordinance to Repeal and Recreate Section 7.04 of the West Allis Revised Municipal Code Relating to Food Establishments.

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 7.04 of the Revised Municipal Code is hereby repealed and recreated to read as follows:

7.04 FOOD ESTABLISHMENTS.

(1) Definitions. The following definitions shall apply in the interpretation and the enforcement of this section:

(a) Health Commissioner. The term "Health Commissioner" shall mean the Health Commissioner of the City or designee.

(b) Permit. The document issued by the West Allis Health Department that authorizes a person to operate a retail food establishment. The term "permit" shall be used interchangeably with the term "license."

(c) Person. The term "person" shall mean any person, firm, organization, or corporation.

(d) State Administrative Fee. The term "State Administrative Fee" shall mean the amount of money paid annually to the Department of Agriculture, Trade and Consumer Protection (hereinafter "ATCP"), of the State of Wisconsin, pursuant to agency contracts between those agencies and the West Allis Health Department.

(2) State regulations. Except as otherwise provided herein, the provisions of the Wisconsin Food Code, Chapter ATCP 75 of the Wisconsin Administrative Code and its appendices, Chapter 97 of the Wisconsin Statutes, and Wisconsin Statute Section 66.0417, as they are from time to time amended are hereby adopted by reference. All retail food establishments shall comply with all applicable provisions of these regulations.

(3) Retail Food Establishment Permit Required. No person shall operate a retail food establishment in the City without a permit from the Health Commissioner. Only a person who complies with the requirements of this section shall be entitled to receive and retain a permit. Violation of any of the requirements of this section by a holder of a license issued under Section 9.02 of this Code shall be grounds for suspension or revocation of such license, in accordance with Section 9.02(20) of this Code. Permits shall be issued only in the name of the operator. Licenses are not transferable unless the operator meets the requirements in ATCP Section 75.104(3).

(4) Permit Application. A written application for the permit(s) required by this section shall be filed with the Health Commissioner upon forms provided by the Health Commissioner. Initial permit fees shall be paid at the time the application is filed. Renewal permit fees shall be paid prior to the expiration of a permit, and no person shall operate any food establishment until all renewal fees have been paid. Any renewal permit fee paid on July 1 or later shall be subject to a late fee. A permittee or applicant shall notify the Health Commissioner in writing if any information listed in the application form has changed within ten (10) days of such change.

(5) Fees for Retail Food Establishments. The fees for retail food establishment permits shall be as follows:

Permit Category	Permit Total	Permit Fee	SAF 10%	Preinspection Fee	1 st Reinspection	2 nd and Subsequent Reinspection Fee
Pre-Packaged Restaurant	\$220	\$200	\$20	\$200	\$98	\$130
Low Complexity Restaurant	\$330	\$300	\$30	\$250	\$240	\$320
Moderate Complexity Restaurant	\$451	\$410	\$41	\$300	\$353	\$470
High Complexity Restaurant	\$718	\$653	\$65.30	\$375	\$578	\$770
Mobile Restaurant	Same as restaurant depending upon complexity					
Mobile Restaurant Base	Same as restaurant depending upon complexity					

"For Profit" Organizations

Temporary Food Establishment – annual permit	\$198	\$180 annual	\$18	n/a	n/a	n/a
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"Not For Profit" Organizations

Temporary Food Establishment serving meals by exempt group for 1-3 days per year	\$0	\$0	\$0	n/a	n/a	n/a
Temporary Food Establishment serving retail food by exempt group 1-12 days per year	\$0	\$0	\$0	n/a	n/a	n/a
Temporary Food Establishment serving meals by exempt group for 4+ days per year - annual permit	\$198	\$180	\$18	n/a	n/a	n/a
Temporary Food Establishment serving retail food by exempt group for 13+ days per year - annual permit	\$198	\$180	\$18	n/a	n/a	n/a
Special Organization Serving Meals (4-12 days per year at one location)	\$204	\$186	\$18.60	n/a	n/a	n/a
Temporary or Mobile Food Estab. Inspection Fee	\$50	\$50	n/a	n/a	\$50	\$100
Additional Kitchen Area	\$88	\$80	\$8	n/a	n/a	n/a
DPI School - Production Kitchen	\$718	\$653	\$65.30	n/a	n/a	n/a
DPI School - Reheat Only	\$330	\$300	\$30	n/a	n/a	n/a
Retail Food w/ Annual Sales > \$1,000,000 processing PHF	\$1,027	\$934	\$93.40	\$375	\$450	\$450
Retail Food w/ Annual Sales > \$25,000 < \$1,000,000 processing PHF	\$396	\$360	\$36	\$412	\$190	\$190
Retail Food w/ Annual Sales > \$25,000 w/ processing but no PHF	\$295	\$268	\$26.80	\$206	\$190	\$190
Retail Food w/ Annual Sales < \$25,000 processing PHF	\$220	\$200	\$20.00	\$155	\$100	\$100
Retail Food w/ Annual Sales < \$25,000 w/ processing but no PHF	\$129	\$117	\$11.70	\$155	\$90	\$90
Retail Food w/out processing	\$97	\$88	\$8.80	\$103	\$90	\$90
Sanitation Inspection for Class B & C licensees	\$50	\$50	n/a	n/a	\$25	\$25
Operating Food Establishment w/out permit (plus PI and permit fees)	\$749	\$749	n/a	n/a	n/a	n/a
Operating w/out Certified Restaurant Manager when required	\$155	\$155	n/a	n/a	n/a	n/a

(6) Sanitation Inspections.

(a) The fee for a sanitation inspection shall be \$50 and each re-inspection fee shall be \$25.00. All fees shall be paid prior to inspection.

(b) If an inspection reveals the existence of a violation that is potentially hazardous to the health and welfare of the public, the Health Commissioner or his/her designee may order a re-inspection of the establishment.

(7) Posting Permit; Fee for Duplicate Permit. Every retail food establishment shall display its permit at all times in plain view of the public. Duplicate permits shall be issued to replace permits which are misplaced or damaged so as to be illegible. The fee for a duplicate permit shall be \$15.00.

(8) Unwholesome Food and Drink. Samples of food, drink, and other substances may be taken and examined by the Health Commissioner or his/her designee as often as may be necessary for the detection of unwholesomeness or adulteration. The Health Commissioner or his/her designee may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink that is found to be unwholesome or adulterated.

(9) Inspection of Establishments.

(a) Frequency of Inspections. The Health Commissioner or his/her designee shall inspect food establishments at least once during the license year. If the Health Commissioner or his/her designee discovers a violation of Centers for Disease Control and Prevention risk factors, priority items, priority foundation items, or any violation that is potentially hazardous to the health and welfare of patrons or employees of the retail food establishment, s/he may make a re-inspection after a lapse of five (5) business days or such time as s/he deems reasonably necessary for the violations to be corrected. Failure to correct a violation within the scheduled time shall result in additional re-inspections and may result in further legal action, including the issuance of citations. Any re-inspection shall result in the Health Department assessing the re-inspection fees listed in subsection (5) above.

(b) Inspection Report. One copy of the inspection report shall be given to the person in charge of the establishment and another copy shall be kept at the Health Department.

(c) Access to Establishments and Records Required. The person operating a retail food establishment shall, upon the request of the Health Commissioner or his/her designee, permit access to all parts of the establishment and shall permit the copying of any records of food purchased, pest control reports, or other records pertinent to conducting an inspection or foodborne illness investigation.

(10) Establishments Which May Operate. No retail food establishment shall operate within the City unless it conforms to the requirements of this section.

(11) Summary Suspension and Reinstatement of Permit.

(a) Whenever the Health Commissioner or his/her designee finds unsanitary or other conditions in the operation of a retail food establishment or establishment licensed under Section 9.02 of the Code, which in his/her opinion constitutes a substantial hazard to the public health, s/he may without warning, notice, or hearing issue a written notice to the permittee 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 permit is immediately suspended and all food service operations are to be immediately discontinued. The Health Commissioner or his/her designee 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 City Clerk, shall be afforded a hearing before the License and Health Committee. The procedure for such hearing shall be the applicable provisions of subsections (15)(c)-(f) of this section. Such hearing shall be scheduled within ten (10) days of the appellant filing the petition with the City Clerk.

(b) The permit holder, whose permit has been suspended by the Health Commissioner or his/her designee, may, at any time, make application for reinstatement of the permit. The Health Commissioner or his/her designee shall make a re-inspection and thereafter as many additional re-inspections as s/he deems necessary to ensure that the applicant is complying with the requirements; and, in the event the findings indicate compliance, shall reinstate or reissue the permit.

(12) Truth of Statements. All matters submitted in writing to the City by any applicant or permittee pertaining to any permit issued under this section shall be true.

(13) Conditions of Permit.

(a) Every applicant procuring a permit thereby consents to the entry of the Health Department, police, or other duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of City ordinances or State laws.

(b) The permittee and/or employees and agents of the permittee shall cooperate with Health Department and police investigations. "Cooperate," as used in this subsection, shall mean calling the police when a disturbance of the peace or other violation occurs on the licensed premises and providing complete and truthful responses to police and Health Department inquiries. A permittee shall also appear before the License and Health Committee when requested to do so and shall otherwise follow the lawful directives of the License and Health Committee.

(c) Each permitted premises shall be conducted in an orderly manner, and no disorderly, riotous, or indecent conduct shall be allowed at any time on any permitted premises.

(d) The permittee shall comply with all other provisions of this section and all other ordinances of the City of West Allis and the laws of the State of Wisconsin.

(14) Outdoor Cooking. An operator of a licensed retail food establishment may conduct outdoor food activities as long as the operator complies with the Wisconsin Food Code interpretation titled "Definition of Premise and Outdoor Food Activities." A copy of the interpretation shall be kept on file at the Health Department and made available to anyone who requests it.

(15) Revocation of Permit.

(a) Causes. Any permit issued under this section may be suspended, revoked, or non-renewed for cause by the Common Council after notice to the permittee and a hearing. Permits may be suspended, revoked, or not renewed for the following causes:

1. The making of any material false statement in any application for a permit.
2. The violation of any of the applicable provisions of Section 7.04.
3. The violation of any of the applicable provisions of the Wisconsin Food Code, ATCP 75 and its appendices, Wisconsin Statute Section 66.0417, and Wisconsin Statute Section Chapter 97.
4. The failure to conduct its permitted business at the authorized location for a period of thirty (30) consecutive days, unless such thirty-day period shall, for good cause shown, be extended by the Common Council.
5. The permitted premises is operated in such a manner that it constitutes a public or private nuisance or that conduct on or emanating from the permitted premises, including but not limited to loud and raucous noise, has had a substantial adverse effect upon the health, safety, convenience or prosperity of the immediate neighborhood.
6. The failure to pay any tax or forfeiture as provided in Section 1.08(9)(a)-(b).

(b) Commencement of Proceedings. Suspension, revocation, or nonrenewal proceedings may be instituted by the License and Health Committee of the Common Council upon its own motion or upon sworn written charges made and filed with the City Clerk by the Health Commissioner.

(c) Procedure.

1. Upon receipt of a sworn complaint, either from the Health Commissioner or upon directive of the Committee, the License and Health Committee shall direct the City Attorney to prepare a summons and have the summons and complaint served upon the permittee pursuant to Section 801.11 of the Wisconsin Statutes.
2. The summons and complaint shall contain: the date and time for appearance by the permittee; a statement of the Common Council's intention to suspend, revoke, or not renew the permit in the event any of the allegations are found to be true; a statement of the reasons for suspension, revocation, or nonrenewal; notification to the permittee of an opportunity to be heard, respond to and challenge the reasons for suspension, revocation, or nonrenewal and to present and cross examine witnesses under oath; notification to the permittee of the right to be represented by counsel of the permittee's choice and at the permittee's expense.
3. If the permittee fails to appear on the date and time designated in the summons, the License and Health Committee may enter a default judgment and take the allegations of the complaint to be true. The License and Health Committee shall then deliberate on what sanction, if any, to impose.
4. If the permittee appears before the License and Health Committee at the date and time designated in the summons and denies the material charges contained in the complaint, an evidentiary hearing shall be scheduled. If the permittee does not appear or appears but does not deny the material charges contained in the complaint, the complaint may be taken as true and the Committee shall hear the arguments of the complainant and, if applicable, the permittee in connection with whether to non-renew, revoke or suspend the permit and the length of the suspension.
5. If the matter proceeds to hearing before the Committee, the following procedures shall apply:
 - a. The complainant shall first present evidence in support of the complaint.
 - b. After the complainant rests, the permittee may present evidence in opposition to the charges.
 - c. The complainant and permittee may subpoena and present witnesses. All witnesses shall testify under oath or affirmation and shall be subject to cross examination.
 - d. The complainant and permittee shall each be limited to one (1) hour for testimony unless the Chair, subject to approval of the Committee, extends the time to assure a full and fair presentation.
 - e. Questions by Committee members or the advising City Attorney and answers to such questions shall not be counted against the time limitations.
 - f. At the close of testimony, the complainant and permittee shall be given a reasonable time to make arguments upon the evidence produced at hearing.

(d) Miscellaneous Procedural Matters.

1. At all stages of the proceedings, the permittee shall be entitled to appear in person or by an attorney of his or her own expense.
2. If the complaint is in the name of the Committee or is brought by a City official in his/her official capacity, the complainant shall be represented by a prosecuting City Attorney.
3. The Committee shall be, when required, advised by an advisory City Attorney who shall not be the same individual as the prosecuting City Attorney.
4. The Chair of the License and Health Committee shall be the presiding officer. The Chair shall direct that oaths and affirmations be administered and subpoenas issued upon request of either side. The Chair shall ensure that an orderly hearing is conducted in accordance with the provisions of this section. The Chair shall rule on objections to the admissibility of evidence. Any ruling of the Chair shall be final unless appealed to the Committee and a majority vote of those members present and voting reverses such ruling.
5. An audio recording or stenographic record shall be made of all proceedings at the hearing. Any interested party may obtain a copy of the recording or transcript at his or her own expense.

(e) Findings and Recommendations.

1. After the close of the hearing, the Committee shall deliberate and reach a decision. The Committee shall prepare findings on factual matters, conclusions of law, and a recommendation on what action, if any, should be taken with regard to the permit(s) at issue. The report shall be filed with the City Clerk with a copy to the permittee and complainant. The findings and recommendations shall be distributed to each member of the Common Council.

2. The permittee and complainant may file a written statement or response to the findings and recommendation, including objections, exceptions, and arguments of fact and law. A written statement must be filed with the City Clerk before the close of business on a day that is at least three (3) working days prior to the date set for determination by the Common Council. Copies of written statements shall be provided to each member of the Common Council at least twenty-four (24) hours before any vote on the matter is scheduled before the Common Council.

(f) Common Council Action.

1. Not less than five (5) working days prior to the matter being scheduled before the Common Council, the Clerk shall notify the permittee and complainant by U.S. first class mail, postage prepaid, sent to the last known address, that the Common Council will convene to determine the matter.

2. Unless an alderperson states that he/she has not read the findings and recommendations and written statements, if any, the matter shall proceed to debate amongst members of the Common Council.

Neither the complainant nor the permittee shall be permitted to make oral arguments.

3. The Common Council shall determine by a majority vote of those in attendance and voting whether to adopt the recommendation of the Committee or make such modification as is deemed appropriate. Such vote shall be a roll call vote. Upon an affirmative vote suspending, revoking, or not renewing the license(s), the Clerk shall give notice to the person whose license is affected. If the Common Council finds the complaint to be untrue or unsupported by sufficient evidence, the proceedings shall be dismissed without cost to the accused.

(g) Surrender of License.

1. A permittee may, at any time during the permit year surrender a permit to the Health Department, along with a statement, in writing, that the permittee no longer wishes to conduct permitted activity at the permitted premises.

2. Except as set forth in Subsection (g)3 below, the surrender shall operate to extinguish any right the permittee had to the permit or to conduct permitted activity at the premises listed in the permit.

3. If a summons and complaint has been issued against the permittee seeking suspension, revocation, or nonrenewal of the permit, the surrender of the permit shall be deemed a request and the matter shall be referred to the License and Health Committee. The Committee may approve the request or deny the request and proceed to hearing.

4. Any request to have a surrendered permit returned shall be treated as a new permit application and the requestor must fill out the required applications and pay the required fees. The request shall thereafter be treated as all other new permit applications.

(h) Prohibition on Future Issuance. If a permit is revoked or not renewed due to action by the License and Health Committee, at least two (2) years shall elapse before another permit may be given to the same permittee.

(16) Nuisance Enforcement. In addition to the penalties listed within this section, the City Attorney or his/her designee or the Health Commissioner or his/her designee may pursue a nuisance enforcement action against a food establishment under Chapter 18 of this Code.

PART II. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

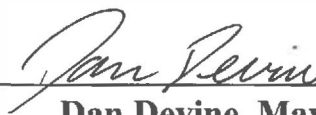
PART III. This ordinance shall take effect and be in force from and after its passage and publication.

PASSED March 21, 2017

APPROVED 3/27/17



Monica Schultz, City Clerk



Dan Devine, Mayor