

**WEST ALLIS COMMON COUNCIL  
LICENSE AND HEALTH COMMITTEE  
CITY OF WEST ALLIS**

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**In the Matter of the  
Complaint Against**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDATION**

**Uncle Fester's LLC,  
d/b/a Uncle Fester's,  
Ashley Kapalczynski, licensing agent.**

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**STATE OF WISCONSIN        )  
  ) ss.  
COUNTY OF MILWAUKEE    )**

Upon consideration of the complaint presented at the License and Health Committee meeting held on January 26, 2021 and subsequent hearing and deliberations on February 23, 2021, the Committee finds:

**FINDINGS OF FACT:**

1. That Uncle Fester's LLC is the current holder of a 2020-2021 combination Class B intoxicating liquor and fermented malt beverage license, identified as number 20-2251, for the premises located at 5732 W. Mitchell Street in the City of West Allis, State of Wisconsin, doing business under the trade name Uncle Fester's, with a licensing agent identified as Ashley Kapalczynski.
2. That Timothy Wergin is identified in the liquor license application as the president of the company, and has identified himself at the committee meetings as the owner of Uncle Fester's LLC.
3. That Ashley Kapalczynski and Timothy Wergin were both present via Zoom on January 26, 2021 and at the hearing on February 23, 2021.

4. That at the hearing on February 23, 2021, Uncle Fester's LLC, by agent Ashley Kapalczynski, stipulated and agreed that it was served a copy of the summons and complaint for this proceeding on January 21, 2021, through corporate service at the bar located at 5732 W. Mitchell Street in the City of West Allis, the premises associated with the liquor license.
5. That at the hearing against Uncle Fester's LLC held on February 23, 2021, Ashley Kapalczynski and Timothy Wergin admitted to the allegations in the complaint, specifically the factual allegations identified in paragraphs 6 – 17, and wanted to speak to those allegations.
6. That at the hearing on the complaint filed against Uncle Fester's LLC held on February 23, 2021, the License and Health Committee heard testimony presented by Officer Matthew Jacobsen, Officer Brett Vanden Boogard, Ashley Kapalczynski, and Timothy Wergin.
7. That based upon the admissions by the licensing agent and business owner, evidence, and testimony presented at the February 23, 2021 hearing the License and Health Committee determined that the allegations in the complaint shall be taken as true and that those allegations substantially relate to the licensed activity. The violations in the complaint that the committee was presented evidence on and found to be true include:
  - a. Violations of Wis. Stat. § 125.12(2)(ag)2 and West Allis Code § 9.02(20)a.vi. for keeping a premises that is disorderly, riotous, indecent, or improper and that is operated in a manner which constitutes a public or private nuisance on October 3, 2020, October 10, 2020, and January 1, 2021;

- b. A violation of Wis. Stat. § 941.237(2) for an employee allowing an individual to intentionally go armed with a handgun while on a licensed premises on October 10, 2020;
- c. A violation of Wis. Stat. § 125.07(2)(a)2 and West Allis Code § 9.02(20)(a)iii for selling or procuring alcoholic beverages to intoxicated persons and serving individuals to the point of intoxication on October 10, 2020;
- d. A violation of Wis. Stat. § 946.41 by an employee of Uncle Fester's LLC knowingly obstructing an officer while such officer was doing an act in an official capacity and with lawful authority on or about October 10-11, 2021.
- e. Violations of Wis. Stat. §§ 125.32(2), 125.68(2), 125.12(2)(ag)1 and West Allis Code § 9.02(20)(a)ix for operating the licensed establishment without a licensed operator or authorized individual under state law who is responsible for the acts of all persons serving alcoholic beverages on October 10, 2020 and January 1, 2021.
- f. And has violated Wis. Stat. § 125.04(5)(b) and (c) and West Allis Code § 9.02(20)(a)x. because Uncle Festers LLC, by agent Ashley Kapalczynski, has operated as a habitual law offender for the above related offenses that have occurred on separate dates.

**CONCLUSIONS OF LAW:**

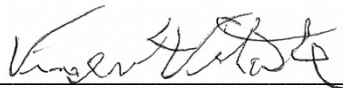
- 1) That Uncle Fester's LLC was properly served at least three (3) days before the time at which the licensee was commanded to appear and service was accomplished in the manner provided under Wis. Stat. Ch. § 801 for service in civil actions in circuit court.
- 2) That at the hearing on February 23, 2021, the aforementioned violations were found to be true based on the admissions, evidence, and testimony presented and constitute a sufficient

basis to suspend the 2020-2021 Class B intoxicating liquor and fermented malt beverage license issued to Uncle Fester's LLC, identified as number 20-2251.

**RECOMMENDATION:**

Therefore, the License and Health Committee recommends to the Common Council of the City of West Allis that the Class B intoxicating liquor and fermented malt beverage license, identified as number 20-2251, issued to Uncle Fester's LLC be suspended for thirty (30) consecutive days. The committee recommends this suspension begins on March 4, 2021, starting at 6:00 a.m. and runs for each and every day consecutively through April 3, 2021 ending at 6:00 a.m.

Dated this 24 day of February, 2021.

By:  \_\_\_\_\_

Vince Vitale  
License and Health Committee  
West Allis Common Council