



# City of West Allis

## Meeting Agenda

### License and Health Committee

*Aldersperson Vincent Vitale, Chair*  
*Aldersperson Suzzette Grisham, Vice-Chair*  
*Alderspersons: Rosalie L. Reinke, Daniel J. Roadt, and Tracy Stefanski*

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Tuesday, February 23, 2021

6:00 PM

City of West Allis YouTube Channel

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**VIRTUAL REGULAR MEETING**  
**City of West Allis YouTube Channel**  
<https://www.youtube.com/user/westalliscitychannel/live>

#### A. CALL TO ORDER

#### B. ROLL CALL

#### C. APPROVAL OF MINUTES

1. [2021-0081](#) Minutes (draft) of the License & Health Committee meetings of February 8, 2021

#### D. NEW AND PREVIOUS MATTERS

2. [2021-0102](#) 2020-2022 Operator's License (Bartender/Class D Operator) application of Crystal A. Husslein

**Recommendation:** License & Health Committee recommended for Denial based on the applicant's failure to appear.

3. [2021-0126](#) 2020-2022 Operator's License (Bartender/Class D Operator) application of Ashley M. Keil

**Recommendation:** License & Health Committee recommended for Denial based on the applicant's failure to appear.

4. [2021-0041](#) Police Department Report regarding tavern violations/calls for service for the month of January 2021

**Recommendation:** License & Health Committee recommended to be Placed on File

5. [O-2021-0006](#) Ordinance to create Special Event Permits and repeal Parade and Carnival Permits

**Recommendation:** License & Health Committee recommended for Passage

**Sponsors:** Aldersperson Vitale

**E. HEARING & CLOSED SESSION**

6. [2021-0012](#) Summons & Complaint in the matter of the complaint against Uncle Fester's LLC, Ashley E. Kapalczynski, Agent, for the premises located at 5732 W. Mitchell St., d/b/a Uncle Fester's, (2020-2021 Combination Class B Tavern License No. 2251)

**Recommendation:** License & Health Committee directed the City Attorney to prepare Findings and Recommendations.

*For agenda file number 2021-0012, the committee may convene in closed session pursuant to the provisions of WI State Statutes Sections 19.85(1)(a) and (g) for the purpose of deliberating concerning a case which was the subject of any quasi-judicial hearing and conferring with the city attorney who will render oral or written advice concerning strategy to be adopted with respect to litigation in which the city is or is likely to become involved. This committee may reconvene in open session after completion of the closed session to consider the balance of the agenda.*

**F. MATTERS FOR DISCUSSION/ACTION**

7. [2021-0100](#) Review of license applicant background checks for consideration of possible approval or denial

**Recommendation:** License & Health Committee recommended Approval.

**G. ADJOURNMENT**

*City of West Allis Common Council members may attend the above License & Health Committee meeting for information gathering purposes. Should a quorum of Common Council members appear at this Committee meeting, a regular Common Council meeting may take place for the purposes of gathering information on an item listed on the Committee agenda. Should such a meeting occur, the date, time and location of the Common Council meeting will be that of the License & Health Committee as listed on the License & Health Committee agenda.*



All meetings of the License and Health Committee are public meetings. In order for the general public to make comments at the committee meetings, the individual(s) must be scheduled (as an appearance) with the chair of the committee or the appropriate staff contact; otherwise, the meeting of the committee is a working session for the committee itself, and discussion by those in attendance is limited to committee members, the mayor, other alderpersons, staff and others that may be a party to the matter being discussed.

**NOTICE OF POSSIBLE QUORUM**

It is possible that members of, and possibly a quorum of, members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information. No action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

**NON-DISCRIMINATION STATEMENT**

The City of West Allis does not discriminate against individuals on the basis of race, color, religion, age, marital or veterans' status, sex, national origin, disability or any other legally protected status in the admission or access to, or treatment or employment in, its services, programs or activities.

**AMERICANS WITH DISABILITIES ACT NOTICE**

Upon reasonable notice the City will furnish appropriate auxiliary aids and services when necessary to afford individuals with disabilities an equal opportunity to participate in and to enjoy the benefits of a service, program or activity provided by the City.

**LIMITED ENGLISH PROFICIENCY STATEMENT**

It is the policy of the City of West Allis to provide language access services to populations of persons with Limited English Proficiency (LEP) who are eligible to be served or likely to be directly affected by our programs. Such services will be focused on providing meaningful access to our programs, services and/or benefits.



# City of West Allis

## Meeting Minutes

### License and Health Committee

*Alderson Vincent Vitale, Chair*

*Alderson Suzzette Grisham, Vice-Chair*

*Aldersons: Rosalie L. Reinke, Daniel J. Roadt, and Tracy Stefanski*

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Monday, February 8, 2021

6:01 PM

City of West Allis YouTube Channel

7525 W. Greenfield Ave.

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(Draft minutes)

#### VIRTUAL SPECIAL MEETING

City of West Allis YouTube Channel

<https://www.youtube.com/user/westalliscitychannel/live>

#### A. CALL TO ORDER

*The meeting was called to order by Chair Vitale at 6:01 p.m.*

#### B. ROLL CALL

**Present** 5 - Vitale, Grisham, Reinke, Roadt, and Stefanski

*Others present: Kyle R. Kaehne, Nicholas Cerwin, Assistant City Attorney, and Rebecca Grill, City Administrator/Clerk.*

#### APPROVAL OF MINUTES

1. [2021-0113](#) Minutes (draft) of the License & Health Committee meetings of January 26, 2021

**A motion was made by Grisham, seconded by Reinke, that this matter be Approved. The motion carried unanimously.**

#### C. NEW AND PREVIOUS MATTERS

2. [2021-0102](#) 2020-2022 Operator's License (Bartender/Class D Operator) application of Crystal A. Husslein

*Nonappearance of Crystal A. Husslein. Ms. Husslein responded to the letter mailed to her to allow her an appearance before the License & Health Committee to appeal the Committee's February 2, 2021 recommendation to deny. The Committee requested she be ordered to appear at a future License & Health meeting.*

**This matter was Held.**

3. [2021-0118](#) Review of license applicant background checks for consideration of possible approval or denial

*License & Health Committee recommended approval of the following applicants.  
Operator's License (Bartender/Class D Operator) applications 2020-2022:  
Rummery, Andrea  
Sackmaster, William  
Torres, Tara  
Zavadil, Thomas*

*License & Health Committee recommended denial of the following applicants. The Clerk's Office was directed to send a letter allowing the applicant an opportunity to appear before the License & Health Committee to show competent evidence of rehabilitation.*

*Operator's License (Bartender/Class D Operator) applications 2020-2022:*

*Keil, Ashley*

**This matter was Discussed and Consensus Given.**

4. [2021-0079](#) Combination "Class A" Retailer License for the sale of Fermented Malt Beverages and Intoxicating Liquor, for the July 1, 2020 to June 30, 2021 Licensing Period. Skogen's Foodliner, Inc, d/b/a Festival Foods, 11111 W. Greenfield Avenue, West Allis, WI 53214; Agent Kyle Robert Kaehne

*Appearance by Kyle R. Kaehne. Discussion ensued regarding the Plan of Operation with alcohol sales not being allowed with the Click and Go process. The Committee asked to have the Plan of Operation not include Click and Go sales. That alcohol only be sold within the four (4) corners of the building. Mr. Kaehne, as the agent, acknowledged the amendments to only allow alcohol sales to the 4 corners of the establishment.*

**This matter was Recommended for Approval as Amended to allow alcohol sales face to face at the checkout only within the four walls of the building.**

5. [2021-0117](#) Class B Tavern License, for the July 1, 2020 to June 30, 2021 Licensing Period. Peter G. Agnos, d/b/a 84th Classic Cafe, 1650 S. 84 St.

*Nonappearance of Peter G. Agnos. The Committee requested he be ordered to appear at a future License & Health meeting.*

**This matter was Held.**

6. [O-2021-0008](#) Ordinance to authorize clerk to issue operator's licenses

**Sponsors:** Alderperson Vitale

**A motion was made by Grisham, seconded by Stefanski, that this matter be Recommended For Passage As Amended. The motion carried unanimously.**

**Aye:** 5 - Vitale, Grisham, Reinke, Roadt, and Stefanski

**No:** 0

#### D. ADJOURNMENT

*The meeting adjourned at 6:49 p.m.*



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WEST ALLIS POLICE DEPARTMENT

Patrick S. Mitchell  
Chief of Police

Robert Fletcher  
Deputy Chief of Police

Christopher Marks  
Deputy Chief of Police

February 8, 2021

To: Mayor Dan Devine

License and Health Committee:

- Aldersperson Vincent Vitale (Chair)
- Aldersperson Suzzette Grisham (Vice-Chair)
- Aldersperson Rosalie Reinke
- Aldersperson Daniel J. Roadt
- Aldersperson Tracy Stefanski
- Assistant City Attorney Nicholas Cerwin

The following is a summary of reported incidents involving licensed businesses, including reported tavern violations and calls for police service during the month of January 2021:

**INCIDENT REPORTS:**

**CASE#21-000022 – 01/01/2021 – 0433hrs. – Uncle Festers – 5732 W. Mitchell St.**

**Caller: Anonymous**

**Officer Vanden Boogard Reports....**

On 01/01/21 at approximately 0433hrs, officers responded to Uncle Festers for loud patrons outside. Upon Officer Brockmann arriving to the scene, he heard yelling coming from inside the bar and a loud crowd of patrons inside near the front door. Initially it was believed a fight was occurring, however it was determined the bartender was yelling for patrons to leave in order to close the bar. Contact was made with both bartenders, Julio A. Crespo M/W [REDACTED] and Judith L. Torres F/W [REDACTED]. Neither had a bartending license and all patrons were ordered out of the establishment. A citation will be mailed to the bar owner, Timothy E. Wergin M/W [REDACTED] and a tavern report was generated.

**CASE#21-000101 – 01/02/2021 – 0113hrs. – Buzzards Nest – 6000 W. Mitchell St.**

**Caller: Jesse R. Torres**

**Officer Vanden Boogard Reports....**

On 01/02/21 at approximately 0113hrs, Jesse R. Torres, M/W [REDACTED] was receiving medical treatment at AWAMC after he was bit by a dog while inside of Buzzard's Nest tavern at 6000 W. Mitchell St. The injury consisted of a small puncture wound on the back left leg and did not require stitches. Investigation revealed the owner, Lawrence E. Pryor M/W [REDACTED], had his



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three dogs inside the establishment during the incident. Video was obtained and the rabies quarantine order was issued to Pryor. A tavern report was also completed.

**CASE#21-000267 – 01/04/2021 – 0105hrs. – Z’s Bar – 6309 W. National Ave.**

**CALLER: Davianna A. Rodriguez**

**Cpl. Sayeg Reports...**

On 01/04/21 at approximately 0105 hours while on patrol at S 59 St and W Lapham St, I was flagged down by a Davianna A. Rodriguez F/W [REDACTED]. Rodriguez said she was at Z's bar, 6309 W National Avenue, where she got into an altercation with a group of Native American males. Investigation determined Rodriguez followed this group to this location where she alleged they fired a gun at her. I was at the location at the time of the alleged incident and saw both Rodriguez vehicle and the black Escalade. I did not hear or see any gun shots and no casings were recovered. Report for record was filed.

**CASE#21-000589 – 01/07/2021 – 0231hrs. – Spot Lite – 6426 W. Greenfield Ave.**

**CALLER: Jerud G. Sagorac**

**Officer Stuetgen Reports...**

On 01/07/21 at 0231hrs. Officers responded to the Spot Lite at 6426 W. Greenfield Ave for a subject who was shot. Officers located victim, Jerud G. Sagorac [REDACTED] who was shot several times. Sagorac was conveyed to Froedtert for medical treatment. Further investigation led to the arrest of Terrance D. Phipps M/B [REDACTED] who was charged by the Milwaukee County DA’s Office with Attempted 1<sup>st</sup> Degree Intentional Homicide and Felon in Possession of a Firearm.

**CASE#21-001208 – 01/12/2021 – 2127hrs. – Spot Lite – 6426 W. Greenfield Ave.**

**CALLER: Edward D. Bomback**

**Officer Poklasny Reports...**

On 01/12/21 at 2127hrs. Officers responded to The Spot Lite, located at 6426 W Greenfield Ave for a trouble call involving multiple subjects fighting. Investigation revealed the bartender was attacked by two exotic entertainers, "Venus" and "Stormy," after creating a disturbance and refusing to leave. During the altercation the bartender suffered an abrasion to her arm and additional property was broken. The exotic entertainers, identified as Jazmin J. Walker F/B [REDACTED] and Orlandrea A. Bates F/B [REDACTED] were each arrested and cited for disorderly





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conduct and criminal damage to property. Orlandrea received an additional citation for battery, resisting an officer, and possession of marijuana. Both parties were later released.

**CASE#21-001610 – 01/16/2021 – 1905hrs. – Tap City – 7207 W. National Ave.**

**CALLER: N/A**

**Officer Maxwell Reports...**

On 01/16/21 at approximately 1905hrs, a traffic stop was conducted on a '03 Ford bearing WI Reg [REDACTED] in the 7400BLK of W. Orchard St. The vehicle was observed leaving Tap City without headlights illuminated. Contact was made with the driver and sole occupant Michael A. Schwebke (M/W DOB [REDACTED]). Further investigation led to Michael being arrested for OWI 1st. Michael provided a breath sample, was booked, cited and released to a sober party.

**CASE#21-001900 – 01/19/2021 – 1355hrs. – Clubhouse Pub – 6922 W. Orchard St.**

**CALLER: Veronica Vargas**

**Officer Kwasinski Reports...**

On 01/19/21, at 1355hrs, victim: Veronica Vargas, f/h, [REDACTED] came into the WAPD to report she was assaulted by her cousin: Rodrigo Castandeda, m/h, [REDACTED]. The assault occurred on 01/16/21, at 2300hrs, at the Clubhouse Pub. Rodrigo punched Vargas in the chest without consent, after an argument about making amends due to family issues. Rodrigo was currently in custody for a second shift investigation that occurred on 01/18/21. The parties lived together for 4-5 years when they were in high school. DV paperwork was completed with Vargas. This case will be reviewed on 01/21/21, at 0830hrs.

**CASE#21-002154 – 01/22/2021 – 0155hrs. – Stally Cats – 6201 W. Mitchell St.**

**CALLER: Zachary M. Moore**

**Officer Otto Reports...**

On 1/22/21 at approx. 0155hrs, Officers responded to the 1700blk of S. 61st St. for the report of people arguing. Investigation led to the arrest of Austin M. Moore M/W [REDACTED] after it was discovered he was involved in a fight with his brother, Zachary M. Waite, (m/w, [REDACTED]), while at Stally Cats. Zachary suffered a bloody nose, cut lip and contusions on his head, however declined medical attention. Austin was processed at the WAPD, posted bail and was released. This incident will be reviewed by the District Attorney's Office on 1/25/20 at 0830hrs.



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**CASE#21-002394 – 01/24/2021 –1755hrs. – Kips Inn – 837 S. 108 St.**

**CALLER: Benjamin J. Popies**

**Officer Christianson Reports...**

On 01/24/21 at 1932hrs. Officers were dispatched to Kips Inn located at 837 S 108 St for a report of a physical altercation. The investigation revealed, Armondo Mendez, M/W [REDACTED] struck the victim, Benjamin J. Popies M/W [REDACTED] several times in the head after an altercation in the bar. Armondo left prior to Officers arrival and was not located. Armondo was mailed a municipal citation to his last known address.

**TAVERN RELATED INCIDENTS NOT REQUIRING INCIDENT REPORT:**

**CALL#21-001943 – 01/19/2021 – 2337hrs. – Kips Inn – 837 S. 108 St.**

**CALLER: Random Tavern Check**

**Officer Brockmann reports...**

On 01/19/21 at 2337hrs. I conducted a Tavern Check at Kips Inn. I spoke with the bartender, Olivia A. Olsen F/W [REDACTED] Olivia was only able to provide me with a Provisional Bartending License which was expired as of 09/2020. She stated she did not realize it was expired and never received anything in the mail. Olivia advised she recently moved down to Milwaukee from the Appleton area and did not notify the DMV or City Hall. She was given a warning for bartending without a license and the tavern was closed for the night. Olivia advised she would follow up with City Hall in the morning.

*\*\*I advised ACA Cerwin about the incident who followed up with City Hall. Per City Hall, Olivia did in fact have a valid bartender’s license which was issued in September 2020.*

**CALL#21-002261 – 01/22/2021 – 2356HRS. – Boosters – 7731 W. Becher St.**

**CALLER: Christopher J. Starr**

**Officer Olson Reports...**

On 01/22/21 at approx. 2356hrs, Officers responded to Boosters, 7731 W. Becher St. for a report of an altercation inside the bar. Investigation revealed a verbal argument ensued between the DJ, Jesse R. Torres [REDACTED] and the bartender Christopher J. Starr [REDACTED] Torres' friend Ronald W. Ver Bruggen M/W [REDACTED] stepped in and grabbed Starr. The altercation did not lead to any further physical altercation. Ver Bruggen was advised he was no longer allowed



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into the business and Torres packed up his equipment and left the business on his own while officers stood by.

## **TOBACCO AND ALCOHOL/TAVERN COMPLIANCE CHECKS:**

### **Tobacco compliance checks:**

No violations reported during this reporting period.

### **Alcohol compliance checks:**

No violations reported during this reporting period.

### **Tavern compliance checks:**

Tavern compliance squads check randomly selected taverns in the City of West Allis for miscellaneous tavern violations such as license violations.

*Officers trained in Class B tavern compliance checks performed 45 tavern checks at randomly selected taverns in the month of January 2021.*

## **Violation of Wisconsin Clean Air Act Smoking Ban:**

No violations reported during this reporting period.

Respectfully submitted,

Sgt. Timothy Gold

**CITY OF WEST ALLIS  
ORDINANCE O-2021-0006**

**ORDINANCE TO CREATE SPECIAL EVENT PERMITS AND REPEAL PARADE  
AND CARNIVAL PERMITS**

**REPEALING SECTION 6.031 AND 9.09; CREATING SECTION 6.032**

**WHEREAS**, events involving large numbers of people have the potential for interference with normal uses of public land and right-of-way; and

**WHEREAS**, the orderly hosting of special events help define the City’s image, build community, drive economic activity, and enhance the overall quality of life; and

**WHEREAS**, the purpose of this ordinance is to set forth a permitting process to encourage special events, yet account for their obstruction or interference with the normal use of public property and cost to the taxpayers; and

**WHEREAS**, these regulations are intended to protect, preserve and promote the safety and welfare of the general public including but not limited to ensuring the physical safety of residents and visitors and providing for emergency, medical, fire, traffic operations, and other similar public services; and

**WHEREAS**, these regulations are intended to comply with the holdings of *Kissick v. Huebsch*, 956 F. Supp. 2d 981 (W.D. Wis. 2013), *State v. Crute*, 2015 WI App 15, *Sauk Cty. v. Gumz*, 2003 WI App 165, and others;

**NOW THEREFORE**, the common council of City Of West Allis do ordain as follows:

**SECTION 1:**            **REPEAL** “6.031 Parades And Other Events Upon The Street” of the City Of West Allis Municipal Code is hereby *repealed* as follows:

R E P E A L

~~6.031 Parades And Other Events Upon The Street~~ (*Repealed*)

1. Definitions.

- a. Parade. Parade means any march or procession consisting of people, animals or vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.
- b. Chief of Police means the Chief of the West Allis Police Department or his designee.
- c. Street event means an organized competition, contest or event of twenty-five

- (25) or more people who travel on foot, wheelchair, bicycle or similar device, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.
2. Parades and Street Events Prohibited Without a Permit.
    - a. It shall be unlawful for any person to conduct a parade or street event in or upon any public street, sidewalk or alley in the City of West Allis or knowingly participate in such parade or street event unless and until a permit to conduct such parade or street event has been obtained from the Chief of Police or, as hereinafter provided, from the Common Council.
    - b. Only one Street Event permit per month shall be allowed, unless approved by the Common Council, as provided in subsection (9).
  3. Parade or Street Event for Commercial Purposes Prohibited. No permit shall be issued authorizing the conduct of a parade or street event which the Chief of Police finds is proposed to be held for the sole purpose of advertising any product, goods, wares, merchandise or commercial establishment and is designed to be held purely for private profit.
  4. Application for Permit. Any person who wants to conduct a parade or street event shall apply to the Chief of Police for a permit at least thirty (30) days in advance of the date of the proposed parade or street event. The Chief of Police may, in his discretion, consider any application for a permit which is filed less than thirty (30) days prior to the day it is proposed that the parade or street event is to be held. The application for such permit shall be made in writing on a form approved by the Chief of Police and shall contain the following information:
    - a. The name of the applicant, the sponsoring organization, the person in charge of the parade or street event, the addresses and telephone numbers of each and the signature of the applicant.
    - b. The purpose of the parade or street event, the date when it is proposed to be conducted, the location of the assembly area, the location of the disbanding area, the route to be traveled and the approximate time when it will assemble, start and terminate.
    - c. A general description of the parade or street event.
    - d. Such other information as the Chief of Police may deem reasonably necessary.
  5. Fees.
    - a. The applicant shall, at the time the application is filed, pay a five hundred dollars (\$500) parade/street event permit fee.
    - b. Refunds. Permit fee payments may be refunded, except for a fifty dollar (\$50) permit processing fee, if notification of cancellation of the parade/street event by the applicant is received by the Chief of Police at least ten (10) days prior to the scheduled event or if the event is cancelled by the Chief of Police, pursuant to section (8).
    - c. Deposit. **[Ord. O-2000-001, 7/1/2003]**
      - i. In addition to the permit fee, the applicant shall submit a two thousand dollar (\$2000.00) cash deposit, from which the Chief of Police shall deduct a fee of fifty dollars (\$50.00) for each hour of service per officer required to direct traffic, control the crowd, or otherwise related to the

conduct and supervision of the parade and the dispersal of the crowd thereafter, and from which the Director of Public Works shall deduct a fee of thirty dollars (\$30.00) for each hour of service per employee required to position barricades, sweep streets and post signage.

- ii. The applicant shall be responsible for any cost incurred by the West Allis Police Department and the West Allis Public Works Department, as described in subsection (c)(1), over and above the deposit amount, and will be billed for the excess within thirty (30) days after the completion of the parade or event. Failure to pay the amount billed may be used as a basis to deny future parade or event applications. The City Attorney is authorized to commence an action to collect the unpaid amount.
- iii. Any unused portion of the deposit will be refunded to the applicant within thirty (30) days after the completion of the parade or event.
- iv. The deposit may be refunded in full if notification of cancellation of the parade/street event by the applicant is received by the Chief of Police at least ten (10) days prior to the scheduled parade or event or if the parade or event is cancelled by the Chief of Police, pursuant to section (8).

d. Exemption. A permit fee or deposit is not required for: **[Ord. O-2000-001, 7/1/2003; Ord. O-2014-0011, 4/1/2014]**

- i. Parades or street events sponsored or co-sponsored by the City.
- ii. Public and parochial elementary and secondary school civic-oriented events.
- iii. Events sponsored by veterans' organizations.

#### 6. Issuance or Denial of Permit.

a. Standard for Issuance. The Chief of Police shall issue a parade or street event permit conditioned upon the applicant's written agreement to comply with the terms of such permit, unless the Chief finds that:

- i. The time, route or size of the parade or street event will unreasonably disrupt the movement of other traffic.
- ii. The parade or street event is of a size or nature that requires the diversion of so great a number of police officers of the City to properly police the line of movement and the areas and crowds contiguous thereto that allowing the parade or street event would deny reasonable police protection to the City.
- iii. The proposed parade or street event will interfere with another parade or street event for which a permit has been issued.

b. Standard for Denial. The Chief of Police shall deny an application for a parade or street event permit and notify the applicant in writing of such denial and the reasons therefor where:

- i. The Chief of Police makes any finding contrary to the findings required to be made for the issuance of a permit.
- ii. The information contained in the application is found to be false or nonexistent in any material detail.

- iii. The insurance required under subsection (7) has not been provided or has not been approved by the City Attorney.
  - iv. The applicant refuses to agree to abide by or comply with all conditions of the permit.
  - v. The number of permitted street events set forth in subsection (2) has been met.
7. Insurance Required. The application for a license shall be accompanied by a certificate of insurance for comprehensive general liability and automobile liability in at least the following limits of coverage:

Type of Policy	Liability Limits
Comprehensive/General Bodily Injury	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage	\$500,000 each occurrence \$500,000 aggregate
Automobile Liability (Operation of owner, hired and nonowned motor vehicles) Bodily Injury and Property Damage Combined Single Limit	\$1,000,000 each occurrence

The certificate of insurance shall have an endorsement to indemnify and hold the City of West Allis harmless from any or all damages, judgments and claims which may be asserted against the City by reason of any damages or injuries sustained by any person or to any property by the parade or street event or participants therein. The certificate of insurance shall also provide that the City be reimbursed for any damages or injury which it sustains by reason of said parade or street event or by the acts of any participant. The certificate of insurance shall be approved as to form by the City Attorney.

- 8. Cancellation. If, after issuing a parade/street event permit, an emergency arises which may threaten the health, comfort or safety of the general public or the participants of the event, the Chief of Police may cancel the permit and prohibit the proposed event.
- 9. Appeal Procedure. Upon a denial by the Chief of Police of an application made pursuant to section (4), the applicant may appeal from the Chief's determination within ten (10) days from the date of notification by filing with the City Clerk/Treasurer a written notice of appeal for hearing by the Common Council at its next meeting. Upon such appeal, the Common Council may reverse, affirm or modify, in any regard, the determination of the Chief of Police.
- 10. Officials to be Notified. Immediately upon the granting of a permit for a parade or street event, the Chief of Police shall send a copy of the permit to the Mayor, Common Council President, Fire Chief and Director of Public Works.
- 11. Conduct of Parade. **[Ord. 6342, 11/13/1997]**
  - a. No vehicle in a parade shall be operated in such a manner that the tires of the vehicle break traction or squeal due to unnecessary acceleration.
  - b. No vehicle in a parade shall be operated in such a manner that any of the tires of

the vehicle leave the ground while accelerating.

- c. No person may sell, give away, possess or use along a parade route, any device which is designed to make noise and is sufficiently loud so as to frighten or startle an animal in the parade, propel a projectile or create an offensive odor. A parade route means the streets of the parade route approved, pursuant to this section, and shall extend twenty-five (25) feet from the curb line of said streets.

12. Penalty.

- a. Any person convicted of violating any of the provisions of this ordinance shall forfeit not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each violation, together with the costs of prosecution and, in default of payment thereof, the defendant's operating privileges shall be suspended pursuant to secs. 343.30 and 345.47 of the Wisconsin Statutes, or by imprisonment in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not in excess of the number of days set forth in sec. 800.095(4) of the Wisconsin Statutes.
- b. Each day's violation shall constitute a separate offense.

~~{Ord. 6318, 5/20/1997}~~

**SECTION 2:            REPEAL "9.09 Carnival Permit" of the City Of West Allis**  
Municipal Code is hereby *repealed* as follows:

**REPEAL**

~~9.09 Carnival Permit (Repealed)~~

1. Definitions.

- a. "Carnival" is defined as an amusement show that typically consists of rides, air pillows, giant slides, ride-throughs, walk-throughs, sideshows, games of chance or skill, performing animals, public display of the skills of performers, and/or public display of objects of general interest.

2. Adoption of Administrative Code. Except as otherwise provided herein, the provisions of Wisconsin Administrative Code, Safety and Professional Services, Chapter 334 are adopted by reference and made a part hereof with the same force and effect as if fully set forth herein. **[Ord. O-2013-0020, 4/16/2013]**

3. Permit Required. No person, firm or corporation shall maintain or operate any carnival within the City unless a permit therefor shall have been obtained from the Common Council.

4. Application. The application for a permit shall be made to the Council in writing and shall set forth:

- a. The name, address, and telephone number of the applicant.
- b. If the applicant is a corporation, the address and phone number of the principal



offices of the corporation, the state of incorporation, and the name, address, and telephone number of the registered agent.

- c. The name, address, and telephone number of the person or persons to be in immediate charge of the place of amusement at all times during its operation.
  - d. The names of any sponsoring organizations and the names and addresses of the principal officers of such organization.
  - e. The date or dates of proposed operation and the location at which it is proposed to conduct the carnival.
  - f. A description of the type of acts or entertainment to be shown, a list of the proposed number of rides, and a description of the merchandise to be sold.
  - g. A statement that the applicant will directly control and supervise each activity proposed to be authorized under the permit sought, and will be responsible for the conduct, operation and management thereof.
  - h. Proof of insurance in accordance with Wisconsin Administrative Code, Safety and Professional Services, Section 334.035 with an endorsement to the effect that the City will be indemnified and held harmless from any and all claims, damages or judgments arising from the granting of the permit or the operation of the show or exhibition. **[Ord. O-2013-0020, 4/16/2013]**
  - i. A statement certifying on penalty of perjury the correctness of the information given on the application and agreeing on behalf of the applicant that there shall be full compliance of the applicant with all state and local laws in the conduct of the activities for which a permit may be granted.
  - j. Proof from the Department of Commerce that the carnival and rides are in compliance with all applicable State of Wisconsin rules and regulations.
5. Investigation.
- a. The application shall be referred to the Police Department for an investigation and report on the character, reputation and record of the applicant, the registered agent, and all of the persons listed as being in immediate charge of the operation.
  - b. The application shall be referred to the Fire Department for investigation of ride safety and fire safety.
  - c. The application shall be referred to the Building Inspection Department for investigation of compliance with the zoning requirements and local and state building codes.
  - d. If food is to be sold, the applicant shall be referred to the Health Department to apply for a food permit.
6. Granting of Permit. The Common Council shall not grant any permit unless the conduct or maintenance of the carnival at the proposed location will not, in the judgment of the Council, endanger public peace, health, safety, or welfare. In granting any permits, the Council shall impose such conditions or requirements as it deems necessary to protect public peace, health, safety, and welfare.
7. Location Restricted.
- a. Carnival operation shall comply with all applicable City zoning laws and regulations.
  - b. No carnival for which a permit is granted shall keep or use any ponies, horses,

livestock or other animals within five hundred (500) feet of any dwelling, house or restaurant within the City.

- c. No carnival shall be permitted to operate within five hundred (500) feet of a residential district in the City. This subsection shall not apply to carnivals held on the grounds of a church and/or adjoining church school; where the Business Improvement District (hereinafter "BID") is the permit holder and the carnival takes place within the BID boundaries; or to carnivals sponsored by the City.

**[Ord. O-2013-0020, 4/16/2013]**

- 8. Food Regulations. No food of any sort shall be served at the carnival unless the food handlers are in compliance with Code Section 7.04 and all local, state, and federal food regulations.
- 9. Closing Hours. No carnival licensed hereunder shall operate after 10:00 p.m.
- 10. Permit Fee and Bond.
  - a. A nonreturnable fee of fifty dollars (\$50.) shall accompany the application as an application fee.
  - b. The applicant shall pay a permit fee as follows: one hundred dollars (\$100.) for any combination of five (5) or less rides and/or stands, plus ten dollars (\$10.) for each additional ride and/or stand.
  - c. The permittee shall, in addition to payment of the permit fees established by the City, deposit with the City no later than ten (10) days prior to the first day of conducting any carnival activity and shall maintain for a period of thirty (30) days after the termination of activities under such permit as may be issued by the City, a cash bond in the sum of five thousand dollars (\$5,000.) or in lieu thereof shall post and maintain in full force and effect during said period a surety bond in the amount of five thousand dollars (\$5,000.). Such bond shall be issued by a surety company, approved by the City Attorney, and shall be in a form approved by the City Attorney. Such bond shall, by its terms:
    - i. Insure payment to the City for any damage to City property occasioned by the operation of such carnival activity, including damages occasioned by the entrance into or exit from the City of the permittee or of the equipment, facilities, or personnel of such amusement activity as shall be permitted by the permit.
    - ii. Insure the cleaning of the premises used for such amusement activity and of the immediate surrounding properties and streets of such litter and debris as may result from the operation thereof.
    - iii. Insure payment of any fines levied against the permittee for violation of this or any other section or state law while conducting amusement activities in the City.
  - d. Such bond may be waived or reduced in amount or sooner cancelled or returned by the Common Council when, in its reasonable judgment, the conditions of or reasons for requiring such bonds have been satisfactorily met. The permittee shall be promptly notified of any claims made or contemplated against such bond or surety and shall have the right to appeal from any such claim, or the amount thereof, to the Common Council.
  - e. The fees set forth herein shall be waived for churches where the carnival will be

on church grounds or the adjoining church/school grounds; within the BID and where the BID is the permit holder; and City-sponsored events. [Ord. O-2013-0020, 4/16/2013]

11. Permit Posted. Any permit granted shall be prominently displayed at all times when the carnival is in operation.
12. Conditions of License. All licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of this section, and subject to all other ordinances and regulations of the City applicable thereto:
  - a. Every applicant procuring a permit thereby consents to the entry of 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 local and state laws.
  - b. The permittee, and/or the employees and agents of the permittee, shall cooperate with police investigations of disturbances, intoxicated persons, and other violations of local and state laws. "Cooperate," as used in this subsection, shall mean calling the police when a disturbance of the peace or other violation occurs on the permitted premises and providing complete and truthful responses to police 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 at all times 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.
13. Entertainment Standards.
  - a. No person shall, on premises permitted under this section, perform acts of or acts which constitute or simulate:
    - i. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; or
    - ii. The touching, caressing or fondling of the breast, buttocks, anus or genitals; or
    - iii. The displaying of human genitals, buttocks or pubic area or the female breast below the top of the areola.
  - b. No person shall, on the permitted premises, use artificial devices or inanimate objects to perform, simulate or depict any of the prohibited conduct or activities described in Subsection (a).
  - c. It shall be unlawful for any person to show, display or exhibit on the permitted premises, any film, video, still picture, electronic reproduction or any other visual reproduction or image of any act, other visual reproduction or image of any act or conduct described in Subsections (a) and (b).
  - d. No person or corporation holding a permit under this section, or his/her/its agents or employees, shall allow or permit in or upon the permitted premises any act or conduct described in Subsections (a), (b) and (c).

14. Expiration of Permit. All permits shall expire at the time period determined by the Council, which shall be no longer than seven (7) days.

15. Penalties.

a. Penalties. Any person or entity violating any provision of this ordinance shall be required to forfeit not less than two hundred dollars (\$200.) nor more than one thousand dollars (\$1,000.). The person or entity shall be required to pay the costs of prosecution. In default of payment thereof, the person shall be imprisoned in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in Section 800.095(4) of the Wisconsin Statutes. Each and every day that an offense continues constitutes a separate offense.

16. Severability. If any part of this section is found to be unconstitutional or otherwise invalid, the validity of the remaining parts shall not be affected.

~~{Ord. O-2012-0007, 3/20/2012}~~

**SECTION 3:           ADOPTION** “6.032 Special Events” of the City Of West Allis Municipal Code is hereby *added* as follows:

#### ADOPTION

6.032 Special Events(*Added*)

(a) Definitions. In this section:

1. “Class 1 special event” means a special event that includes at least one of the following features: alcohol is available for consumption, electronically amplified outdoor sound is utilized, or more than 400 square feet of ground is covered by a tent or other temporary structure that provides shelter from the elements.
2. “Class 2 special event” means any special event that is not a Class 1 special event.
3. “Coordinator” means the sponsor or individual(s) identified by the sponsor that will be on-site at all times during a special event and are authorized to ensure compliance with this section.
4. “Direct costs” means those costs incurred by a department to provide staffing and equipment for a special event, including:
  - a. Wages and fringe benefits of city employees or contractors performing work for the special event
  - b. A reasonable rental rate for any city equipment provided for the special event
  - c. An administrative charge equal to 10% of staffing and equipment expenses
5. “Organize” means set up for, hold, arrange for, or maintain.
6. “Person” means any individual, firm, organization, association, or corporation.

7. “Public property” means any right-of-way or land owned or controlled by a federal, state, or local government.
  8. “Special event” means any organized gathering of at least 21 people that impedes the normal use of public property by persons not attending the event.
  9. “Sponsor” means the person who holds a permit to organize a special event.
- (b) Permit Required. No person may organize a special event without a valid special event permit, unless:
1. The person is an entity that has taxing authority;
  2. The special event is a funeral or funeral procession;
  3. The premises is an extension of an existing Class “B” license under Wis. Stat. § 125.26(1);
  4. The person has been issued a park use permit under West Allis Policy and Procedure #2107 Park Regulations and Permits; or
  5. The special event is authorized by the West Allis Police Department Crime Prevention Bureau.

(c) Application

1. Type and Fee

- a. Regular. Any person seeking a special event permit shall complete an official application, submit it to the city clerk at least 45 days prior to the commencement of the special event, and pay a nonrefundable \$50 special event application processing fee.
- b. Expedited. Any person seeking a special event permit shall complete an official application, submit it to the city clerk 15 to 45 days prior to the commencement of the special event, and pay a \$200 expedited special event application processing fee.

2. Information Required. An application is not complete until the all of the following is filed with the city clerk:

- a. The name, mobile phone number, and email address of the sponsor or, if the sponsor is not an individual, the individual submitting the application on behalf of the sponsor.
- b. The name and mobile phone numbers of all coordinators.
- c. The location and description of the special event premises. The application shall list an address or block number and include a map or diagram of the special event premises.
- d. The dates and times during which the special event is scheduled to take place, and any alternative dates in case a special event is postponed.
- e. A description of the characteristics of the special event, including:
  - i. Maximum capacity of people on the premises and expected peak attendance.
  - ii. Whether alcohol will be available for consumption and the type of alcohol license that will cover the premises.
  - iii. Whether electronically amplified outdoor sound will be utilized.
  - iv. Whether more than 400 square feet of ground will be covered by a tent or other temporary structure that provides shelter from

the elements.

- f. For a class 1 special event, a certificate of insurance for the duration of the special event indicating endorsements and liability coverage amounts consistent with city policy.
  - g. For a special event that closes a street, a street closure consent form signed by occupants of at least 50 percent of the residential and commercial units on the closed portion of the street
3. Indemnification. The sponsor shall indemnify and hold harmless the City against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of rights-of-way by the sponsor or its employees, agents, or contractors arising out of the rights and privileges granted by a special event permit.
4. Transferability. A sponsor may not transfer a special event permit to another person.

(d) Application Processing

1. Upon receiving a completed application, the clerk shall forward the application to the police department, fire department, department of public works, health department, and city engineer.
- a. Each department shall review the application received from the city clerk and estimate the department's charges associated with the special event.
  - b. Each department's estimated charges shall be the projected direct costs for providing the staffing and equipment for the special event as requested by the sponsor and/or deemed necessary by the department to protect the public health, safety, and welfare.
  - c. In determining staffing and equipment needs, the departments shall consider all the following:
    - i. The anticipated peak attendance.
    - ii. Whether alcohol is available for consumption.
    - iii. Whether outdoor amplified sound is utilized.
    - iv. Particular characteristics of the special event including layout, sight lines, nearby population density, parking availability, and other relevant factors.
  - d. In determining staffing and equipment needs, the departments may not consider the content of any message at the special event.
2. The clerk shall determine if the sponsor, coordinator, or any person who has an ownership interest in the sponsor owes any delinquent fees, charges, or other debts to the City.
3. Within 15 days after receiving the a regular special event permit application, or as soon as practicable after receiving an expedited special event permit application, all City departments shall supply the city clerk with the amount of the estimated charges.
4. If a City department does not timely respond to the city clerk, the city clerk may proceed with processing the application without collecting an advance deposit.

(e) Payment for Estimated Charges, Permit Issuance, and Appeal

1. Estimated Charges Payment. The payment for the estimated charges shall be made at least 7 days prior to the event or the application will be considered withdrawn.
2. Issuance. The city clerk shall issue a special event permit to the sponsor or its agent unless the applicant is disqualified.
3. Disqualifiers. A person is not eligible for a special event permit if any of the following applies:
  - a. In the 3 years prior to the date of application, the sponsor or coordinator failed to comply with the requirements of this section.
  - b. The special event permit application contains false information.
  - c. The estimated charges computed by any City department remain unpaid.
  - d. Any delinquent fees, charges, or other debts to the City owed by the sponsor, coordinator, or any person who has an ownership interest in the sponsor remain unpaid.
  - e. The clerk is processing or has issued a different special event permit for the same premise during overlapping times and dates.
4. Due Process upon Denial
  - a. Regular application. If the clerk has not issued a special event permit upon a regular application at least 30 days after receipt of the application, the person whose application was not approved may apply for a writ of mandamus.
  - b. Expedited application. If the clerk has not issued a special event permit upon an expedited application at least 7 days prior to the scheduled commencement of the special event, the person whose application was not approved may apply for a writ of mandamus.

(f) Conditions upon Permit. Upon issuance of a special event permit, each sponsor agrees to the following conditions:

1. The sponsor or at least one coordinator shall be on the special event premises at all times that the special event is open for attendees.
2. The police department, fire department, or department of public works may increase or decrease the staffing or equipment on the premises during the special event based on the actual number of attendees in order to protect the public health, safety, and welfare, and the City may charge the sponsor up to the direct costs of an increase in staffing or equipment under this paragraph.
3. The coordinator shall keep a copy of the special event permit and any other applicable permit or license on the premises for the duration of the special event.
4. The coordinator shall answer at all times that the special event is open for attendees any calls to the mobile phone for the number listed on the application from a city official or employee.
5. The sponsor and coordinator shall comply with all local, state, and federal laws.

(g) Service Charge Settlement. Within 30 days after the final date indicated on the special

event permit or the date on which a special event was closed under sub. (8), each department that incurred staffing and equipment costs for the special event may file with the city clerk an invoice showing the actual direct costs for staffing and equipment provided on premises during the special event.

1. If the total actual direct costs from all departments did not exceed the deposit for estimated charges, the city clerk shall apply the deposit to the due amount and refund any excess to the sponsor.
2. If the total actual direct costs from all departments exceeded the deposit for estimated charges, the city clerk shall apply the deposit to the due amount and invoice the sponsor for the difference. The sponsor shall pay the invoiced amount within 30 days after the invoice date and simple interest shall accrue at 1% per month on the balance due for each month the invoice is delinquent.

(h) Penalty

1. Forfeiture. Any person convicted of violating any of the provisions of this section shall forfeit not less than \$50 nor more than \$500 for each violation, together with the costs of prosecution.
2. Event Closure. A law enforcement officer may summarily invalidate a special event permit and close the special event:
  - a. If the event causes such a disturbance of public order that it is reasonable to believe that the assembly will cause injury to persons or damage to property unless it is immediately dispersed;
  - b. If there is no sponsor or coordinator on the premises; or
  - c. If the sponsor or coordinator fails to correct noncompliance with a condition of a special event permit after advanced warning to the sponsor or coordinator and reasonable opportunity to comply with that condition.
3. Other Remedies. This section does not restrict the City from seeking any other remedies allowed by law.

Note: A special event permit is appropriate for any block party, church festival, concert, parade, carnival, or other large gathering.

**SECTION 4:            AMENDMENT** “6.04 Penalties” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

6.04 Penalties

Every person, firm or corporation convicted of a violation of any of the provisions of the following enumerated section or subsections shall, for each offense, be punished by the forfeiture set forth, together with the costs of prosecution:



1. A forfeiture not to exceed fifty dollars (\$50) for a violation of any of the following:  
6.01(3) 6.02(21) - 1st Offense 6.03(1), (2), (3) or (5)
2. A forfeiture not to exceed one hundred dollars (\$100) for a violation of any of the following:  
6.01(1), (2) 6.02(18) 6.02(21) - 2nd Offense 6.025 6.03(7)-~~6.031~~6.032 6.038
3. A forfeiture not to exceed two hundred dollars (\$200) for each day a violation of section 6.01(4) continues.
4. A forfeiture not to exceed three hundred dollars (\$300) for a violation of the following:  
6.03(4)
5. A forfeiture not to exceed five hundred dollars (\$500) for a violation of any of the following:  
6.02(7), (8), (9), (10), (11), (12), (13), (14), (16) or (19) 6.02(21) - 3rd Offense 6.026 6.03(6)
6. In default of payment of such forfeiture and costs, by imprisonment in the Milwaukee County House of Correction or Milwaukee County Jail until payment of such forfeiture and costs, but not in excess of the terms set forth in sec. 800.095(a) of the Wisconsin Statutes, or by suspension of operating privileges, pursuant to secs. 343.30 and 345.47 of the Wisconsin Statutes. Each and every day during which a violation continues constitutes a separate offense.
7. Carrying Dangerous Weapons.
  - a. Definition. "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon; or, any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.
  - b. If a person violates any provision of Section 6.02 of this Code, while possessing, using or threatening to use a dangerous weapon, the penalty shall be increased two hundred dollars (\$200).

**[Ord. O-2006-0030, 6/6/2006]**

**SECTION 5:            AMENDMENT “7.035 Noise Control Regulations” of the City Of West Allis Municipal Code is hereby *amended* as follows:**

A M E N D M E N T

7.035 Noise Control Regulations

1. Statement of Purpose. The City of West Allis recognizes that excessive noise and

vibration are serious threats to the public health and welfare, public safety, quality of life and property values. Current science and technology permit abatement of noise and vibration sources which were not available in the past. Therefore, it is the policy of the City to prevent and abate excessive noise and vibration which may jeopardize the public health, safety or welfare or which would cause harm to property values or which would impair the quality of life within the City.

2. Definitions. All terminology used in this section, not defined below or elsewhere within the West Allis Revised Municipal Code, shall be given the definitions provided by applicable publications of the American National Standards Institute (hereinafter "ANSI") or its successor body.
  - a. "A-Weighted Sound Level" means the sound pressure level in decibels as measured on a sound level meter using the "A" weighting network. The level so read is designated as db(A) or dB(A).
  - b. "Ambient Noise" means the sound level of the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources from near and far.
  - c. "Authorized Emergency Vehicle" means the definition of this term as set forth in Sec. 340.01(3), Wis. Stats., and any subsequent modification, revision, or amendment of that term as set forth in that section of the Wisconsin Statutes.
  - d. "Commercial District" means any area of the City designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as C-1, C-2, C-3, C-4, or PDD-2.
  - e. "Construction" means any activity necessary or incidental to the erection, demolition, assembling, altering, installing, repairing or equipping of buildings, roadways, or utilities, including land clearing, grading, excavating and filling.
  - f. "Day" means the hours between 7:00 a.m. and 9:59 p.m.
  - g. "dB(A)" means the symbol designation of a noise level, reported in decibels, using the A-weighting network of a sound level meter, as defined in ANSI S1.4, Specification for Sound Level Meters. For example, noise will be reported as seventy-two (72) dB(A). For purposes of this section, the noise shall be measured using the slow exponential time weighting characteristic of the sound level meter unless otherwise noted.
  - h. "Decibel" means a unit of measure of the volume of a sound.
  - i. "Emergency Work" means short-term operations which are necessary to protect the public health, safety and welfare of the citizens, including emergency utility and public works operations.
  - j. "Impulse Noise" means any sound of short duration, usually less than one (1) second, with an abrupt increase, rapid decay, and a peak value that exceeds the ambient noise level by more than ten (10) dB(A). Examples of sources of impulse noise include explosions, drop forge impacts, and the discharge of firearms.
  - k. "Manufacturing District" means any area of the City designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as M-1.
  - l. "Maximum Sound Level" (hereinafter "Lmax") means the maximum sound level over a measurement interval determined by using a sound level meter set

- to "fast" response time.
- m. "Motor Vehicle" means any vehicle, including a combination of two (2) or more vehicles or an articulated vehicle, that is self-propelled, except a vehicle operated exclusively on a rail.
  - n. "Night" means the hours between 10:00 p.m. and 6:59 a.m.
  - o. "Noise Disturbance" means any sound or vibration which:
    - i. May disturb or annoy reasonable persons of normal sensitivities; or
    - ii. Causes, or tends to cause, an adverse effect on the public health and welfare; or
    - iii. Endangers or injures people; or
    - iv. Endangers or injures personal or real property.
  - p. "Person" means any individual, association, partnership, joint venture, company, or corporation.
  - q. "Place of Public Entertainment" means any building that is open to the public for entertainment purposes.
  - r. "Plainly Audible Sound" means any sound for which the information content is unambiguously communicated to the listener, such as, but not limited to, understandable speech, comprehension of whether a voice is raised or normal, repetitive bass sounds, or comprehension of musical rhythms, without the aid of any listening device.
  - s. "Power Tool" means any device powered mechanically, by electricity, by gasoline, by diesel fuel, or by any other fuel, which is intended to be used, or is actually used for, but shall not be limited to, the performance of such functions as cutting, nailing, stapling, sawing, vacuuming or drilling.
  - t. "Real Property Boundary" means an imaginary line along the ground surface and its vertical extension which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.
  - u. "Residential District" means any area of the City, designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as RE, RA-1, RA-2, RA-3, RA-4, RB-1, RB-2, RC-1, RC-2, or PDD-1.
  - v. "Root Mean Square" (hereinafter "RMS") means the square root of the mean-square value of an oscillating waveform, where the mean-square value is obtained by squaring the value of amplitudes at each instant of time and then averaging these values over the sample time.
  - w. "Sound" means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium resulting in compression and rarefaction of that medium and which propagates at finite speed to distant locations. The description of sound may include any characteristics of such sound, including duration, intensity, and frequency.
  - x. "Sound Level Meter" means an instrument, either Type I or Type II, as defined by the most current ANSI specifications. A sound level meter for purposes of this section shall contain at least an A-scale and both fast and slow response.
  - y. "Sound Pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as

produced by sound energy.

- z. "Sound Reproduction Device" means any device, instrument, mechanism, equipment or apparatus for the amplification of any sounds from any radio, computer, stereo, CD player, musical instrument, television, loudspeaker or other sound-making or sound-producing device or any device or apparatus for the reproduction or amplification of the human voice or other sound.
  - aa. "Stationary Noise" means noise the source of which is either affixed to or operated upon a fixed point of land, building, or other real property.
  - ab. "VdB" means the vibration level as measured in decibels. The reference velocity in the United States is one (1) micro-inch per second. It is calculated as  $VdB = 20 \times \log_{10}(v / (1 \times 10^{-6} \text{ in./sec.}))$ , where "v" is the RMS velocity amplitude, calculated as the average of the squared amplitude of the vibration, measured in inches per second.
  - ac. "Vibration" means a temporal and spatial oscillation of displacement, velocity, and acceleration in a solid material.
  - ad. "Vibration Velocity Level" (hereinafter "Lv") means ten (10) times the common logarithm of the ratio of the square of the amplitude of the RMS vibration velocity to the square of the amplitude of the reference RMS vibration velocity.
3. Scope and Enforcement. This section, in addition to other ordinances and statutes, shall apply to the control of noise and vibration originating within the City of West Allis. The West Allis Health Department is the primary agency responsible for the enforcement of this section, and the West Allis Police Department may also enforce the provisions of this section. The City of West Allis's policy is to comply with this section in its own operations and in the operations of its contractors and subcontractors.
4. Determining Sound Levels. Sound levels shall be measured using the following procedures:
- a. All persons conducting sound measurements to assess compliance with this section must be trained in the current techniques and principles of sound measurement equipment and instrumentation.
  - b. Sound level shall be measured with a Type 1 or Type 2 sound level meter that shall, as a minimum standard, conform to the specifications of ANSI S1.4-1983 (Revised 2001) with Amendments S1.4A-1995 for Type 1 or Type 2 sound level meters and be capable of both fast and slow meter response.
  - c. The following steps must be followed when preparing to take sound level measurements:
    - i. The sound level meter manufacturer's specific instructions for preparation and use of the sound level meter shall be followed.
    - ii. The sound level meter shall be calibrated periodically, in accordance with the manufacturer's instructions.
    - iii. When outdoor measurements are taken, a windscreen shall be placed over the microphone of the sound level meter in accordance with the manufacturer's instructions.
    - iv. The sound level meter shall be placed at an angle to the sound source, as specified by the manufacturer's instructions, and placed at least four

- (4) feet above the ground. The meter shall be placed so as not to be interfered with during the taking of sound measurements.
  - v. Impulsive noise shall be measured with the sound level meter set for fast meter response; all other noise shall be measured with the sound level meter set for slow meter response.
  - vi. All sound level measurements shall be made using an "A" weighted network of the sound level meter.
5. Determining Vibration Levels. Vibration levels shall be measured using the following procedures:
- a. All persons conducting vibration measurements to assess compliance with this section must be trained in the current techniques and principles of vibration measurement equipment and instrumentation.
  - b. The instrument manufacturer's specific instructions for preparation and use of the instrument shall be followed.
6. Maximum Permissible Sound Levels.
- a. General Limitations. Except as enumerated in Subsection (8) of this section below, in the following zoning districts, the noise emitted from any source of stationary noise shall not exceed the following dB(A) limits at any point beyond one hundred twenty-five (125) feet outside of the real property boundary of the source of the stationary noise or beyond one hundred twenty-five (125) feet of the noise source on public property:

<b>Sound Pressure Level</b>		
<b>Zone</b>	<b>Time</b>	<b>Decibel (dB(A)) Level</b>
Residential, Park District	10:00 p.m. to 6:59 a.m.	55 dB(A)
	7:00 a.m. to 9:59 p.m.	65 dB(A)
Commercial, Manufacturing	10:00 p.m. to 6:59 a.m.	60 dB(A)
	7:00 a.m. to 9:59 p.m.	70 dB(A)

- b. A reduction of five (5) dB(A) will apply to each of the limitations set forth under Subsection (6)(a) for all impulse noises.
  - c. When the ambient level is two (2) dB(A) or more above a noise limitation, a source may add no more than three (3) dB(A) to the ambient level.
7. Public Nuisance. Excessive noise and vibration, as defined in this section, is hereby deemed and declared to be a public nuisance and may be subject to summary abatement procedures, as provided in Section 7.03(3) and Section 18.04 of this Code. Such abatement shall be in addition to administrative proceedings, forfeitures, and penalties provided in this section.
8. Noise Disturbance Prohibited. No person shall make, continue, or cause to be made or continued, any noise disturbance. No person shall make, continue, or cause to be made or continued any noise which exceeds the noise limitations as set forth in this section.

Unamplified, noncommercial public speaking and public assembly activities conducted at conversational voice levels on any public property or public right-of-way shall be exempt from the operation of this article if such sound is not plainly audible beyond one hundred fifty (150) feet or does not infringe on the legitimate rights of others.

- a. Sound Reproduction Devices. No person shall operate, play, or permit the operation of or playing of any sound reproduction device at night that is plainly audible across a real property boundary. No person shall operate, play, or permit the operation of or playing of any sound reproduction device during the day that is plainly audible from one hundred fifty (150) feet beyond the real property line of the premises from which it emanates or from the source if located in a public street, public park, or other public place.
- b. Sound Amplification Device. No person shall use or operate any sound amplification device, loudspeaker, public address system, or similar device at night that is plainly audible across a real property boundary. No person shall use or operate any sound amplification device, loudspeaker, public address system, or similar device during the day that is plainly audible at a distance of one hundred fifty (150) feet.
- c. Loading and Unloading. No person shall load, unload, open, close, or otherwise handle boxes, crates, containers, building materials, garbage cans, or similar objects at night, in a manner that is plainly audible across a real property boundary.
- d. Domestic Power Tools. No person shall operate or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, leaf blower, or similar device at night.
  - i. This subsection does not apply to snowblowers being used to remove snow that has fallen within the past twenty-four (24) hours.
- e. Tampering. No person shall remove or render inoperative any noise control device, element of design, or noise label of any product other than for the purpose of maintenance, repair, or replacement; no person shall modify or replace any noise control device to increase the sound pressure level of the device.
- f. Multifamily dwellings. No person shall make, continue, or cause to be made or continued any noise disturbance at night that is plainly audible in another occupied space within any multifamily dwelling within the real property boundary.
- g. Places of Public Entertainment. No person shall operate, play or permit the operation or playing of any sound reproduction device, sound amplifier, or similar device, or any combination thereof, which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than one hundred (100) dB(A), as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign which is at least two hundred twenty-five (225) square inches in area is placed outside such place, near each public entrance, stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE

PERMANENT HEARING IMPAIRMENT."

- h. Train Warning Devices. No person owning or operating any railroad, or any of its agents and employees, shall cause the ringing of any bell or the blowing of any whistle or horn within the City limits on any locomotive under his/her control, except in the event of an emergency to avoid an impending accident or where otherwise permitted by state or federal law.
- i. Motor Vehicles.
  - i. Light Motor Vehicles. No person shall create or cause or permit noise levels from the operation of any motor vehicle of ten thousand (10,000) pounds' gross vehicle weight rating or less, including but not limited to passenger automobiles, light trucks or motorcycles, in excess of eighty (80) dB(A) at any location within the corporate limits of the City of West Allis. Measurement shall be made at a distance of fifteen (15) feet or more from the closest approach of the vehicle.
  - ii. Heavy Motor Vehicles. No person shall create or cause or permit noise levels from the operation of any motor vehicle of more than ten thousand (10,000) pounds' gross vehicle weight rating in excess of eighty-six (86) dB(A) in a zone with a speed limit of more than thirty-five (35) miles per hour. Measurement shall be made at a distance of fifty (50) feet from the closest approach of the vehicle in use.
  - iii. Stationary Testing.
    - (1) Light Motor Vehicles. Motor vehicles of ten thousand (10,000) pounds' gross vehicle weight rating or less shall not exceed ninety-five (95) dB(A) at twenty (20) inches in a stationary run-up test. Such tests shall conform to the Society of Automotive Engineers Recommended Practices SAE J1169, a copy of which is on file in the office of the Health Commissioner.
    - (2) Heavy Motor Vehicles. Motor vehicles of more than ten thousand (10,000) pounds' gross vehicle weight rating shall not exceed eighty-eight (88) dB(A) measured at fifty (50) feet in a stationary run-up test. Stationary run-up tests shall conform to the Society of Automotive Engineers SAE Standard J366b, a copy of which is on file in the office of the Health Commissioner.
- j. Refuse Collection Vehicles and Compacting Equipment.
  - i. No person shall collect refuse or permit the collection of refuse with a refuse collection truck at night.
  - ii. No person shall operate or permit the operation of the compacting equipment mechanism of any motor vehicle which compacts refuse at night.
- k. Vibration. No person shall operate or permit the operation of any device or combination of devices that creates vibration which exceeds the amounts listed in the table below, as measured at or across a real property boundary of the premises from which it emanates or from the source if located in a public street,

public park, or other public place.

Event Frequency	Lv (VdB)
Frequent (more than 70 events per day)	72
Occasional	75
Infrequent (less than 30 events per day)	80

9. Exemptions. The provisions of this section shall not apply to the following:
- a. The emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work, or the emission of sound brought about by emergency conditions where such sound is a byproduct of activities necessary for the preservation of public safety or the protection of the health, safety and welfare of any person or property.
  - b. Warning devices necessary for the protection of public safety, the emission of any noise necessary for the protection of the health, safety, or welfare of person or property or to any noise which is either necessary or required by law.
  - c. The operation of authorized emergency vehicles.
  - d. Public works projects, at or adjacent to the construction site, as authorized by the United States government, the State of Wisconsin, and/or other political subdivisions.
  - e. Limited Exemptions for Construction Noise. The provisions of this section shall not apply to equipment used in commercial construction activities when such equipment has sound control devices no less effective than those provided in the original equipment, a muffled exhaust, and are in compliance with the pertinent standards of the United States Environmental Protection Agency.
    - i. No person shall operate or permit the operation of any equipment used in construction work at night or on Sunday.
      - (1) Emergency Work. The hour limitations in this subsection shall not apply to emergency work.
  - f. ~~Parades, duly licensed, pursuant to Section~~ Special events permitted under section 6.034 6.032 of this Code.
  - g. Aircraft operations.
  - h. Any fireworks display permitted under and operated in compliance with Wis. Stat. Section 167.10.
  - i. Any bells or chimes of any building clock, public or private school building, church, synagogue, or other place of religious worship.
  - j. ~~Carnivals, duly licensed, pursuant to Section 9.09 of this Code.~~
10. Notice of Violation.
- a. When the ambient noise or vibration level of a noise producing device equals or exceeds the decibel limits provided in this section, the Health Commissioner or his/her designee shall serve a notice, by first-class mail, on the owner and



occupant of the premises that is creating or maintaining the noise. The notice shall be dated, contain a description of the violation, require the person to remove or abate the condition described in the order within the time specified therein, and advise such person of the right to apply for a variance permit and the office or person to whom the variance permit application shall be filed.

- b. For violations of Subsection (8)(a) through (g), officers of the West Allis Police Department may issue a citation without prior notice of the violation.

11. Variance.

- a. Application for Variance Permit. The owner or occupant of the premises may seek a variance from the noise and/or vibration limitations herein. A new or renewal application for a variance from the noise and/or vibration limitations in a zoning district shall be made to the City Clerk. The proper filing of an application shall toll all penalties provided in this section for any such violation until a final decision has been issued on the merits of such application. Such application shall specify the grounds upon which the variance permit is sought and the date by which the source of any excess noise or vibration for which the variance is sought shall be brought into compliance with this section.
- b. Hearing on Variance Permit. Within sixty (60) days of receiving the application for a variance permit, the License and Health Committee shall hold a public hearing. The City Clerk shall serve the variance applicant with notice of such hearing by mail or personal service at least ten (10) days before such hearing. Additionally, the City Clerk shall mail notice of the hearing to property owners within two hundred (200) feet of the affected property at least ten (10) days before such hearing. **[Ord. O-2015-0018, 3/3/2015]**
- c. Procedure at Hearing. If the matter proceeds to hearing before the Committee, the following procedures shall apply:
  - i. The variance applicant shall first present evidence in support of the variance.
  - ii. After the variance applicant rests, any person(s) who claims to be adversely affected by allowance of the variance permit may present evidence in opposition to the variance.
  - iii. After the variance applicant and any person(s) who claims to be adversely affected by allowance of the variance permit rest, the Health Commissioner may present evidence in regard to the variance application.
  - iv. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit may subpoena and present witnesses. All witnesses shall testify under oath or affirmation and shall be subject to cross examination.
  - v. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit 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.
  - vi. Questions by Committee members or the advising City Attorney and

answers to such questions shall not be counted against the time limitations.

- vii. At the close of testimony, the variance applicant, Health Commissioner, and any person(s) who claim to be adversely affected by allowance of the variance permit shall be given a reasonable time to make arguments upon the evidence produced at hearing.

d. Miscellaneous Procedural Matters.

- i. At all stages of the proceedings, the variance applicant and any person(s) who claim to be adversely affected by allowance of the variance permit shall be entitled to appear in person or by an attorney of his or her own expense.
- ii. The Health Commissioner may be represented by a City Attorney.
- iii. The Committee shall be, when required, advised by an advisory City Attorney who shall not be the same individual as the City Attorney representing the Health Commissioner.
- iv. 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 each person. 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.
- v. An audio recording or stenographic record shall be made of all proceedings at the hearing, and the Clerk shall mark and preserve all exhibits and testimony. Any interested party may obtain a copy of the recording or transcript at his or her own expense.

e. Recommendation to the Common Council.

- i. After the close of the hearing, the Committee shall deliberate and reach a decision. Based on the evidence presented at the hearing, the Committee shall recommend to the Common Council whether a variance permit should be issued and under what conditions the Committee finds necessary to protect the public health, safety and welfare, including a schedule for achieving compliance with noise and vibration limitations. In deciding whether to recommend granting the permit, the Committee shall balance the hardship to the applicant, the community, and other persons; the impact on the health, safety, and welfare of the community; the effect on the property in the area; and any other impact that the granting of the variance may have. 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 license(s) at issue. The report shall be filed with the City Clerk/Treasurer within twenty (20) days, and the Clerk shall mail a copy of the report to the last-known address of the variance applicant, Health Commissioner, and any person(s) who claim to be adversely

affected by the allowance of the variance permit. The findings and recommendations shall be distributed to each member of the Common Council.

- ii. The variance applicant, Health Commissioner, and any person(s) who claim to be adversely affected by the allowance of the variance permit 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/Treasurer before the close of business on a day that is at least three 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 Determination.

- i. Not less than five (5) working days prior to the matter being scheduled before the Common Council, the Clerk/Treasurer shall notify the variance applicant and any person(s) who claim to be adversely affected by the allowance of the variance permit by United States first-class mail, postage prepaid, sent to the last known address, that the Common Council will convene to determine the matter.
  - ii. 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 variance applicant nor any person(s) who claim to be adversely affected by the allowance of the variance permit shall be permitted to make oral arguments.
  - iii. 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, and such hearing shall constitute the final determination of the matter. The Clerk/Treasurer shall notify the variance applicant and any person(s) who claim to be adversely affected by the allowance of the variance permit by United States first-class mail, postage prepaid, sent to the last known address, of the Common Council's decision.
- g. The permit, if granted, shall contain a time limit for such activity. Variances exceeding two (2) years may be granted only in exceptional cases, including those for which, in the opinion of the Committee, control technology is unavailable or available only at a prohibitive cost. Noncompliance with any conditions imposed on the variance shall terminate the variance and subject the person or corporation holding it to those provisions of this section for which the variance permit was granted.
- h. Extension and Modification. Application for extension of time limits or

modification of other conditions specified in the variance permit shall be treated like applications for an initial variance, except that the Common Council must find that the need for such extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

i. Judicial Review. Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within thirty (30) days of receipt of the final determination.

i. If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense.

12. Penalties. Any person violating any provision of this section shall, upon conviction, be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, together with the costs of prosecution. In default of payment thereof, the person shall be imprisoned in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in Section 800.095(1)(b)1 of the Wisconsin Statutes. Each day that any violation continues shall be considered a separate offense.
13. Severability. If any provision, clause, sentence, paragraph, or phrase of this section or the application thereof to any person or circumstances is held, for any reason, by a court of competent jurisdiction, to be invalid or unconstitutional, such decision shall not affect the validity of other provisions or applications of the provisions of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable.

[Ord. 6225, 4-11-1996; Ord. O-2006-0030, 6-6-2006; Ord. O-2013-0047, 11-19-2013]

**SECTION 6:            AMENDMENT “9.18 Direct Sellers And Solicitors” of the City Of West Allis Municipal Code is hereby *amended* as follows:**

#### A M E N D M E N T

##### 9.18 Direct Sellers And Solicitors

###### 1. Statement of Purpose.

- a. The intent of this ordinance is to assist in ascertaining that the direct seller and solicitor is fair in dealing with all persons, and to assist in the event that the seller's or solicitor's conduct may threaten the health, safety or welfare of the citizens of West Allis.
- b. Findings of Fact. It is found and declared that:
- i. The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic;
- ii. Reasonable regulation of direct sale and solicitation is necessary to

protect the public health, safety and welfare.

- iii. The regulations contained in this ordinance do not prohibit pure speech by any person, but merely regulate the activities of any persons which is commercial in nature.

2. Definitions. In this ordinance:

- a. "Charitable Organization" shall mean any patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, person, partnership, association or corporation.
- b. "Clerk" shall mean the City Clerk/Treasurer.
- c. "Contributions" shall mean and include the words alms, food, clothing, money, property, financial assistance or other thing of value. A contribution, as defined herein, shall also include a sale or offer to sell any book, card, magazine, membership, merchandise, subscription, ticket or other thing in connection with which an appeal is made of any charitable or religious purpose.
- d. "Direct Sellers" means any individual who, for him/herself, or for a partnership, association or corporation, sells goods or services, or takes sales orders for the later delivery of goods or services, at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations or contributions, whether direct or indirect, required by the direct seller for the retention of goods by a donor or prospective customer.
- e. "Goods" shall include personal property of any kind and shall include goods provided incidental to services offered or sold.
- f. "Hawker" means any person who publicly displays, exposes for sale or offers for sale any goods or services from, upon or in any vehicle, nonpermanent structure or in the open, upon any property of which he is not the legally permitted occupant, including public property.
- g. "Permanent Merchant" means a direct seller who, for at least six (6) months prior to the consideration of the application of this ordinance to said merchant, has continuously operated an established place of business in this City with a business occupancy permit or has for six (6) months resided in this City and legally does business from said residence.
- h. "Permanent business place" shall mean and include any one or more of the following:
  - i. A fixed location for which a business occupancy permit has been issued, pursuant to the Building and Zoning Codes, and that the person operating the place of business intends to become a permanent merchant of the City, or
  - ii. A residence, located in this City, from which a business is lawfully operated, or
  - iii. A location in the Farmers Market, or
  - iv. Wisconsin agricultural producers who are selling their own products.
- i. "Person" shall mean any individual, firm, partnership, corporation, company, association, church, religious sect, religious denomination, society, organization

or league, or one purporting to be.

- j. "Residential premises" shall mean a building or portion of a building used for residential purposes, including the real estate upon which any such building is located, provided that the predominant use of the real estate is for residential purposes.
- k. "Solicit" and "solicitation" shall mean and include any one or more of the following:
  - i. Selling or offering for sale or taking or attempting to take orders for the sale of goods or services of any kind, character or description, primarily for personal, family or household purposes;
  - ii. Selling or offering for sale or taking or attempting to take orders for books, magazines, periodicals, newspapers and every other type or kind of publication;
  - iii. Requesting, directly or indirectly, contributions on the plea or representation that such contributions will be used for a charitable or religious purpose.

### 3. Regulation of Direct Sellers.

- a. Permit Required. No direct seller shall engage in such business within the City without first obtaining a permit from the City Clerk/Treasurer.
- b. Application. An applicant for a permit under this section shall file with the City Clerk/Treasurer a sworn application in writing on a form provided by the City Clerk/Treasurer which shall give the following information:
  - i. Name, address and telephone number of the applicant (temporary and permanent).
  - ii. Name, address and telephone number of the person, firm association or corporation that the direct seller represents or is employed by, or whose goods are being sold.
  - iii. Nature of the business to be conducted and a brief description of the goods offered and any service offered.
  - iv. The location from which the business will be conducted and the proposed dates and times.
  - v. Make, model and license number of any vehicle to be used by the applicant in the conduct of the business.
  - vi. Last municipalities, not to exceed three (3), where the applicant conducted similar business.
  - vii. Statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation related to applicant's direct sellers business within the last five (5) years, together with the nature of the offense and the place of conviction.
  - viii. Proof of a state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing devices approved by state authorities.
  - ix. Proof of a retail food permit issued by the West Allis Health Department where the applicant's business involves the handling of food.

- x. Where the sale of tangible personal property is involved, proof of a retail sales tax permit as required by § 77.52 of the Wisconsin Statutes.
    - c. Permit Fee. A nonrefundable permit fee of fifty dollars (\$50.00) shall be paid to the City Clerk/Treasurer at the time of application. If the permit is granted, as set forth in Section 9.18(3)(d), it shall be valid for a period of sixty (60) days from the date of issuance unless sooner revoked, pursuant to Section 9.18(10) **[Ord. O-2009-0033, 11/3/2009]**
    - d. Investigation/Disapproval.
      - i. Upon receipt of an application and fee, the City Clerk/Treasurer may refer the application to the Chief of Police. The Chief of Police may make an investigation of the statements made in the application.
      - ii. If, as a result of such investigation, the Chief of Police discovers that any representation on the application contains a material omission or inaccuracy, or the Chief is of the opinion that the applicant is not a fit person to conduct such sales, the Chief of Police shall disapprove the application and return it to the City Clerk/Treasurer along with the reason(s) for disapproval. Upon return of the disapproved application, the City Clerk/Treasurer shall notify the applicant that the permit has been denied, along with the reasons therefor.
      - iii. Issuance. If the City Clerk/Treasurer does not send the application to the Chief of Police, or if the Chief of Police returns an application without a disapproval, the City Clerk/Treasurer shall then issue a permit to the applicant. The permit shall be carried by the direct seller at all times he or she is engaged in direct selling and shall contain the name of the permittee, the date of issuance and expiration and permit number. The direct seller is required to display the permit to a police officer at all times the person is engaged in direct selling.
4. Special Event Direct Sellers.
- a. Definition. A special event direct seller means any individual who, for him/herself, or for a partnership, association or corporation, sells goods ~~at or along a parade or street~~ within the boundaries of a special event for which a permit has been issued, pursuant to Section ~~6.031~~ 6.032.
  - b. Permit required. No person may operate as a special event direct seller without first obtaining a permit badge. The permit badge shall be valid only for the duration of the special event.
  - c. Application. No person may operate as a special event direct seller without first obtaining a permit badge. The permit badge shall be valid only for the duration of the special event.
  - d. Fee. A fee of twenty-five dollars (\$25.00) shall be paid to the City Clerk/Treasurer at the time of application. Upon submission of a completed application and the permit fee, the City Clerk/Treasurer shall issue a permit badge. Said badge shall be individually numbered and shall identify which event the permit is valid for.

~~Editor's Note: Ord. O-2009-0033, 11/3/2009~~

e. Any person engaged in special event direct selling shall wear the permit badge in a conspicuous place and display it to a police officer upon request.

~~f. No person engaged in special event direct selling shall violate the provisions of Section 6.031(11)(c), nor shall any display or sale of merchandise or goods occur in or upon any street along the parade or street event route. "Street," for purposes of this provision, means the pavement between the curblines. No special event direct seller may display or sell goods upon a roadway during a special event that is a parade.~~

#### 5. Regulation of Hawking.

a. Permit required. No person may operate as a hawker without first obtaining a permit. A permit shall be valid for a sixty (60) day period from the date of issuance, unless sooner revoked pursuant to Section 9.18(a).

b. Application. An applicant for a permit under this section shall file with the City Clerk/Treasurer a sworn application in writing on a form provided by the City Clerk/Treasurer which shall give the following information:

i. The information required of direct sellers in Section 9.18(3)(b).

ii. Proof of written permission from the owner or tenant of the property, public or private, upon which the business will be conducted, that the applicant may conduct such business on the premises. Such written permission shall include the name, address and telephone number of the owner or tenant.

iii. Proof that adequate toilet facilities are available to the employees and patrons of the Hawker, together with hours of accessibility. Portable or temporary toilet facilities are not adequate.

c. Zoning. No hawker may display, offer for sale or sell any goods or services in a zoning district where such a use is not permitted.

d. Permit Fee. A non-refundable permit fee of fifty dollars (\$50) shall be paid to the City Clerk/Treasurer at the time of application.

e. Investigation.

i. Upon receipt of an application and fee, the City Clerk/Treasurer shall refer the application to the Chief of Police and the Building Inspector. The Chief shall make an investigation of the statements made in the application. The Building Inspector shall investigate the proposed site to determine whether secs. 9.18(5)(b) and (c) have been complied with.

ii. If, as a result of such investigation, the Chief of Police discovers that any representation on the application contains a material omission or inaccuracy, or the Chief is of the opinion that the time and location of the sale is likely to disturb the public peace or traffic flow, or that the applicant is not a fit person to hold a permit, the Chief shall disapprove the application and return it to the City Clerk/Treasurer along with the reason(s) for disapproval.

iii. If the Building Inspector discovers that the provisions of secs. 9.18(5)(b) and (c) have not been complied with, he shall disapprove the application and return it to the City Clerk/Treasurer along with the



- reason(s) for disapproval.
- iv. Upon return of the disapproved application, the City Clerk/Treasurer shall notify the applicant that issuance of a permit has been denied, along with the reasons therefor.
  - f. Issuance. If the investigation of the Chief of Police and Building Inspector is found to be satisfactory, the Chief of Police and Building Inspector shall approve the application and return it to the City Clerk/Treasurer. The City Clerk/Treasurer shall then issue the permit which shall contain the name of the permittee, the location of the business, the kinds of goods to be sold, the date of issuance and expiration and the permit number.
6. Appeal. Any person denied a permit may appeal the denial to the License and Health Committee of the Common Council, pursuant to Section 2.48(5) of the Revised Municipal Code.
  7. Exemptions. The following are exempt from the permit and registration provisions of this ordinance:
    - a. Any person renting space at the Farmers Market under Section 11.14 of the Revised Municipal Code.
    - b. Any person selling goods at wholesale to dealers in such goods.
    - c. Any person selling agricultural products which such person has grown.
    - d. Any person delivering newspapers, fuel, dairy products, bakery goods or similar goods to regular customers on established routes.
    - e. Any permanent merchant engaged in a transaction initiated by the buyer specifically requesting a home visit.
    - f. Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
    - g. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
    - h. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization; provided, that there is submitted to the Clerk proof that such charitable organization is registered under sec. 440.41 of the Wisconsin Statutes.
    - i. Any person exempt by sec. 440.51 of the Wisconsin Statutes.
  8. Prohibited Practices.
    - a. No person engaged in direct selling shall misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale or the organization he/she represents. A charitable organization direct seller shall specifically disclose, upon request, what portion of the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.
    - b. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred (100) foot radius of the source.
    - c. No seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

- d. No Hawker shall conduct his business upon City property within the City without first obtaining permission to engage in such business.
- e. No Hawker shall conduct his business upon the property of another in which he is not the legally permitted occupant, without written permission from the owner of such property.
- f. No direct seller shall conduct his business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or constitute a hazard to traffic, life or property or an obstruction to adequate access by fire, police or sanitation vehicles.
- g. No direct seller shall solicit or conduct business with persons in motor vehicles.
- h. No direct seller shall solicit without first complying with the laws of this state and all other relevant provisions of the Revised Municipal Code of the City of West Allis.
- i. No Hawker may engage in displaying or selling goods or services at a location other than the location set forth in the permit.
- j. No person shall engage in direct selling at any residential premises or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning.
- k. No person shall engage in direct selling at any residential premises or upon any other premises, after having been asked by the owner or occupant thereof to leave such premises or residence.
- l. There shall be no direct selling or solicitation upon any residential or other premises between the hours of 9 p.m. and 9 a.m., except by appointment.
- m. Not more than two (2) individuals shall engage in direct selling upon any premises for the same goods or services, or for the same religious or charitable purposes. Each individual member of a group engaged in solicitation in violation of this provision shall be deemed to have violated such provision.
- n. No person shall make more than one solicitation call at the same residential premises for identical goods or services or for the same religious or charitable purposes within any consecutive thirty (30) day period, without receiving a prior invitation thereof from the occupant of any such premises. This provision shall be construed to include solicitation upon the same premises by employees, agents or representatives of any person more than once during the aforesaid period without a prior invitation as herein provided.
- o. No person engaged in solicitation shall, at the time of initial contact with a prospective customer or donor, fail to verbally identify himself and the purpose of the solicitation.
- p. No person engaged in solicitation shall misrepresent the purpose of his solicitation or use any false, deceptive or misleading representation to induce a sale or contribution, or use any plan, scheme or use which misrepresents the status or mission of the person.
- q. No person engaged in making a solicitation shall violate any of the provisions of the Wisconsin Administrative Code, Section Ag121, concerning Referral

Selling Plans, and Ag122 concerning Chain Distributor Schemes, the provisions of which are hereby adopted by reference and made a part hereof with the same force and effect as if more fully set forth herein.

- r. No person shall sell or solicit agricultural goods within a three-hundred-foot radius of the Municipal Market during the hours that said market is open for business.
- s. No solicitation shall be made at a rear door of a residence that has a usable front entrance.
- t. No person or corporation shall engage in selling or offering for resale any admission tickets to the Wisconsin State Fair for an amount greater than the face value of the ticket within 500 feet of the Wisconsin State Fairgrounds as designated on the City of West Allis Zoning Map. This prohibition includes holders of a direct seller's permit. **[Ord. No. O-2009-0018, 6/16/2009]**
  - i. Penalty. Any person or corporation in violation of this subsection shall, upon conviction, be subject to a forfeiture of not less than five hundred dollars (\$500.) and not more than one thousand dollars (\$1,000.), together with the costs of prosecution, and, in default of payment thereof, shall be confined in the House of Correction of Milwaukee County until the forfeitures and costs have been paid, but not more than the number of days set forth in sec. 800.095(4) of the Wisconsin Statutes. Each and every day that an offense continues shall constitute a separate offense.
- u. No person, corporation, or other entity shall, during the dates established for the Wisconsin State Fair by the State Fair Park Board under Section 42.01 of the Wisconsin Statutes, engage in any direct selling under this section within an area bounded by the north City limits, the east side of South 84th Street, the north side of West Greenfield Avenue and the west side of South 77th Street. The center line of each designated street or avenue shall constitute the outer edge of the boundary. **[Ord. O-2011-0020, 6/21/2011]**

9. Disclosure Requirements.

- a. If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller at residential premises, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than twenty-five dollars (\$25.), in accordance with the procedure as set forth in secs. 423.202 and 423.203 of the Wisconsin Statutes.
- b. If the direct seller takes a sales order at a residential premises for the later delivery of goods, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.
- c. It shall be the responsibility of each solicitor to display or have available, upon demand, evidence of compliance with any license, inspection, registration or permit requirement provided for under the laws and administrative regulations

of this state and the provisions of the Revised Municipal Code of the City of West Allis. Any police officer or other authorized official of the City shall have the right to request evidence of compliance with the above provisions requiring any license, inspection, registration or permit.

10. Revocation.

- a. The permit of a hawker or direct seller, may be revoked by the License and Health Committee after notice and hearing, if the holder made any material omission or materially inaccurate statement in the application, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this section or was convicted of any crime or ordinance or statutory violation which is directly related to the permittee's fitness to engage in direct selling.
- b. Written notice of the hearing shall be served personally on the permittee at least seventy-two (72) hours prior to the time and place of hearing and a statement of the acts upon which the hearing will be based.

11. Penalty.

- a. Any person convicted of violating any provisions of this ordinance shall forfeit not less than fifty dollars (\$50.) nor more than five hundred dollars (\$500.) for each violation, together with the costs of prosecution and, in default of payment thereof, the defendant's operating privileges shall be suspended pursuant to sec. 343.30 and 345.47 of the Wisconsin Statutes, or by imprisonment in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not in excess of the number of days set forth in sec. 800.095(4) of the Wisconsin Statutes.

12. Severance Clause. The provisions of this ordinance are declared to be severable and, if any section, sentence, clause or phrase of this ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this ordinance; they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

**[Ord. 6125, 9/20/1994; Ord. 6185, 9/19/1995; Ord. 6312, 5/6/1997]**

**SECTION 7:            AMENDMENT** “12.10 General Provisions” of the City Of West Allis Municipal Code is hereby *amended* as follows:

**A M E N D M E N T**

12.10 General Provisions

1. Interpretation, Purpose and Conflict. In both interpretation and application, the provisions of this Subchapter shall be held to be the minimum requirements adopted for promoting the general health, safety, convenience and welfare of the residents of the

City of West Allis.

Whenever the regulations imposed by this Subchapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any state statute or other City ordinance or regulation, the provisions of this Subchapter shall govern. Wherever the provisions of any State Statute or other City ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations of the Subchapter, the provisions of such Statute or ordinance or regulation shall govern.

This Subchapter is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this Subchapter are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this Subchapter shall govern.

2. Accessory Buildings. Accessory buildings are permitted as a matter of right in all of the Zoning Districts established under this Subchapter. Such buildings are, however, subject to all applicable general and specific regulations set forth in this Subchapter. The following shall apply to residential uses.

- a. No accessory building, unless an integral part of the main building, shall be erected, altered or moved within ten (10) feet of the nearest wall of the main building, or within sixty (60) feet of the front lot line, or within three (3) feet of a side or rear lot line, or within five (5) feet of any alley line.
- b. Accessory buildings may not encroach upon the side yard adjacent to the street of a corner lot, nor upon the rear yard of a through lot.
- c. No accessory building shall exceed fifteen (15) feet in height.
- d. Overhanging roof eaves projecting into required setbacks as listed hereafter will not be considered an obstruction. **[Ord. O-2006-0013, 4/4/2006]**

- Side or rear yard setback, two (2) feet.
- Alley setback, two (2) feet.
- Corner or through-lot setback, two (2) feet.

e. (Reserved)

f. Area and Height. **[Ord. O-2014-0036, 6/17/2014; Ord. O-2019-0017, 6/4/2019]**

- i. Garage(s) shall not exceed one thousand (1,000) square feet in total area.
  - ii. Detached garage(s) may be built up to eighteen (18) feet in height above grade, but shall not exceed the height of the principal dwelling.
  - iii. No garage (attached or detached) shall exceed the height of the principal dwelling.
  - iv. Wall height of detached garages shall not to exceed ten (10) feet.
- g. A storage shed may not exceed one hundred fifty 50 square feet in area or 12

feet in height and may not have a door greater than five (5) feet in width. **[Ord. O-2014-0036, 6/17/2014]**

- h. A residential accessory building may not exceed one hundred fifty (150) square feet in area and may not exceed twelve (12) feet in height. **[Ord. O-2014-0036, 6/17/2014]**
- 3. Control Over Use. No building or premises shall be used, in whole or in part, except in accordance with the provisions of this Subchapter, as specified for the Zoning District in which any such building or premises is located.
- 4. Control Over Bulk. All new buildings and structures shall conform to the bulk requirements established in this Subchapter for the Zoning District in which each building or structure is located.

No existing building or structure shall be enlarged, reconstructed, structurally altered, converted or relocated in such a manner as to conflict with, or if already in conflict, in such a manner as to further conflict with, the bulk regulations of this Subchapter for the Zoning District in which such building or structure is located.

- 5. Building Must Be On a Lot. Every building hereafter erected or structurally altered shall be located on a lot and there shall be no more than one main building on a lot except in the case of those lands developed under the provisions of the Planned Development District Section of this Subchapter. In case of doubt, or in any question of interpretation of this Subchapter, the decision of the Building Inspector shall be final.
- 6. Existing Buildings and Uses. All buildings and structures erected, all uses established, and all structural alterations and relocations of existing buildings and structures occurring after the effective date of this Subchapter or any amendment thereto shall be subject to the regulations of this Subchapter, as amended for the Zoning Districts in which such building, structures or uses are located.

However, where a building permit has been issued in accordance with all other applicable regulations prior to the effective date of this Subchapter or any amendment, the permitted building or structure may be completed in accordance with the permit, as issued, and may be occupied for the originally intended use, subject to the regulations governing that use.

- 7. Unoccupied Lots. Where a lot is to be occupied for a permitted use without buildings or structures, side yard and front yard requirements normally associated with the Zoning District in which the lot is located shall be maintained, unless otherwise stipulated in this Subchapter, except that side yards shall not be required on lots used for garden purposes without buildings or structures or on lots used for public recreational purposes.
- 8. Yards Apply to Only One Building. No required yard or other open space around an existing building shall be considered as providing a yard or open space for any other building or for any other lot on which a building may be erected.

Furthermore, yards and other open spaces required under this Subchapter shall be located on the same lot as the principal building, structure or use and shall meet all minimum width, depth and area requirements set forth in this Subchapter for the Zoning District within which it is located.

9. Residential Side Yard Requirements - Corner Lots. In the case of a lot in a residential Zoning District where the side yard adjoins a street, that side yard shall be at least the minimum width required under that Zoning District, except for lots platted and recorded prior to the passage of this Subchapter. For lots platted and recorded prior to the passage of this Subchapter which are forty (40) feet or less in width, dwellings and garages of less than twenty-four (24) feet in width are permitted, however, all other bulk requirements shall be met. **[Ord. O-2003-0014, 2/18/2003]**
10. Permitted Obstructions in Required Yards. Structures are permitted to be located in required yards in accordance with the following table: **[Ord. 6628, 9/17/2002; Ord. O-2003-0012, 2/18/2003; Ord. O-2014-0036, 6/17/2014]**

<b>Permitted Structures</b>			
<b>Structure</b>	<b>Front Yards</b>	<b>Side Yards</b>	<b>Rear Yards</b>
Accessory Buildings (garages, sheds, gazebos, etc.)	See RMC 12.10(2)		
Air conditioning equipment, but in no case closer than one (1) foot to a lot line		X	X
Antennas, Radio, Television (see Sec. 12.21 of the RMC)		X	X
Arbors and trellises	X	X	X
Awnings	X	X	X
Basketball hoops, but in no event closer than three (3) feet from the side yard property line	X	X	X
Bay windows, but not exceeding five percent (5%) of the yard area and projecting not more than three (3) feet into the yard, but in no event closer than eighteen (18) inches to a lot line	X	X	X
Canopies	X	X	X
Chimneys, attached to the main building, not exceeding five percent (5%) of the yard area and projecting not more than three (3) feet into the yard, but in no event closer than eighteen (18) inches to a lot line	X	X	X
Compost areas (see Sec. 7.05(5) of the RMC)		X	X
Dog houses and kennels, no closer than			

five (5) feet to a lot line			X
Fences and walls (see Secs. 13.30 and 13.31 of the RMC)		X	X
Flag poles	X	X	X
Open accessory off-street parking spaces (see Secs. 12.19 and 12.20 of the RMC)	X	X	X
Overhanging roof eaves (main building) not more than three (3) feet	X		
Overhanging roof eaves (main building) not more than one (1) foot	X	X	X
Patios and terraces	X	X	X
Platforms, not exceeding fifteen percent (15%) of the yard area and which cannot be used for lodging purposes, and no closer than ten (10) feet to the front lot line and three (3) feet to the side lot line	X	X	X
Porches, open or enclosed, not exceeding fifteen percent (15%) of the yard area and which cannot be used for lodging purposes, and no closer than ten (10) feet to the front lot line and three (3) feet to the side lot line	X	X	X
Recreational equipment no closer than five (5) feet from a side or rear property line as follows:			
i. Ramps, halfpipes or other structures which may be used for skateboards, roller blades, skis, snowboards, bikes or other similar activities			X
ii. Trampolines		X	X
iii. Playground equipment and structures (swing sets, jungle gyms, tree houses)		X	X
Refuse containers (one- and two-family uses or as allowed by Plan Commission per RMC 12.13)		X	X
Retaining walls	X	X	X
Signs (see Sec. 13.21 of the RMC)	X	X	X



Sills, belt courses, cornices and ornamental features of the principal building projecting not more than eighteen (18) inches into a yard	X	X	X
Steps, usual and their appurtenances	X	X	X
Swimming pools, but in no event closer than three (3) feet to lot line		X	X
Landscaping, including trees, shrubs and flowers	X	X	X
Yard decorations (usual lawn, holiday and ornamental lighting)	X	X	X

All permitted structures shall be erected, constructed and maintained in accordance with this Subchapter and all other applicable City ordinances.

11. Exemptions for Public Premises. The regulations established in this Subchapter shall not apply to City premises, provided that a proposed development plan is submitted to the City Plan Commission for review and report to the Common Council, as required by Sec. 62.23 of the Wisconsin Statutes.
12. Schools; Accessory Uses. Public and private elementary and high school buildings may be used for other education, including adult and college level instruction, recreation and civic purposes, provided that the principal use of any such building is for public and private elementary or high school education purposes.
13. Root River Flood Control District. Within the area shown and designated on the Official Zoning Map as the Root River Flood Control District, no building or structure shall be erected, no existing building or structure shall be structurally altered, no building or structure shall be moved into the said area and no use of land shall be made except, in addition to all other applicable regulations of this Subchapter, in compliance with the specific regulations of the Root River Flood Control District. The regulations of the Root River Flood Control District shall be construed as supplementary to the regulations imposed on the same lands by any underlying zoning regulations. When flood control and underlying zoning regulations conflict, the most restrictive regulations shall govern.
14. The Building Inspector and Director of Development or their designees shall administer and enforce the provisions of this Subchapter. **[Ord. O-2015-0010, 2/3/2015]**
15. The restrictions on outdoor sales shall not apply to licensed activities under Sections 7.041; ~~9.09~~; and 9.265 of the Revised Municipal Code. **[Ord. O-2012-0027, 8/7/2012]**

**SECTION 8: REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

**SECTION 9: SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION 10: EFFECTIVE DATE** This Ordinance shall be in full force and effect on and after the required approval and publication according to law.

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Ald. Angelito Tenorio	_____	_____	_____	_____
Ald. Vince Vitale	_____	_____	_____	_____
Ald. Tracy Stefanski	_____	_____	_____	_____
Ald. Marty Weigel	_____	_____	_____	_____
Ald. Suzzette Grisham	_____	_____	_____	_____
Ald. Danna Kuehn	_____	_____	_____	_____
Ald. Thomas Lajsic	_____	_____	_____	_____
Ald. Dan Roadt	_____	_____	_____	_____
Ald. Rosalie Reinke	_____	_____	_____	_____
Ald. Kevin Haass	_____	_____	_____	_____

Attest

Presiding Officer

\_\_\_\_\_  
Rebecca Grill, City Clerk, City Of  
West Allis

\_\_\_\_\_  
Dan Devine, Mayor City Of West  
Allis

**CITY OF WEST ALLIS  
ORDINANCE O-2021-0006**

**ORDINANCE TO CREATE SPECIAL EVENT PERMITS AND REPEAL PARADE  
AND CARNIVAL PERMITS**

**REPEALING SECTION 6.031 AND 9.09; CREATING SECTION 6.032**

**WHEREAS**, events involving large numbers of people have the potential for interference with normal uses of public land and right-of-way; and

**WHEREAS**, the orderly hosting of special events help define the City’s image, build community, drive economic activity, and enhance the overall quality of life; and

**WHEREAS**, the purpose of this ordinance is to set forth a permitting process to encourage special events, yet account for their obstruction or interference with the normal use of public property and cost to the taxpayers; and

**WHEREAS**, these regulations are intended to protect, preserve and promote the safety and welfare of the general public including but not limited to ensuring the physical safety of residents and visitors and providing for emergency, medical, fire, traffic operations, and other similar public services; and

**WHEREAS**, these regulations are intended to comply with the holdings of *Kissick v. Huebsch*, 956 F. Supp. 2d 981 (W.D. Wis. 2013), *State v. Crute*, 2015 WI App 15, *Sauk Cty. v. Gumz*, 2003 WI App 165, and others;

**NOW THEREFORE**, the common council of City Of West Allis do ordain as follows:

**SECTION 1:**        **REPEAL** “6.031 Parades And Other Events Upon The Street” of the City Of West Allis Municipal Code is hereby *repealed* as follows:

R E P E A L

~~6.031 Parades And Other Events Upon The Street~~ (*Repealed*)

1. Definitions.

- a. Parade. Parade means any march or procession consisting of people, animals or vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.
- b. Chief of Police means the Chief of the West Allis Police Department or his designee.
- c. Street event means an organized competition, contest or event of twenty-five (25) or more people who travel on foot, wheelchair, bicycle or similar device, upon any

public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.

2. **Parades and Street Events Prohibited Without a Permit.**
  - a. It shall be unlawful for any person to conduct a parade or street event in or upon any public street, sidewalk or alley in the City of West Allis or knowingly participate in such parade or street event unless and until a permit to conduct such parade or street event has been obtained from the Chief of Police or, as hereinafter provided, from the Common Council.
  - b. Only one Street Event permit per month shall be allowed, unless approved by the Common Council, as provided in subsection (9).
3. **Parade or Street Event for Commercial Purposes Prohibited.** No permit shall be issued authorizing the conduct of a parade or street event which the Chief of Police finds is proposed to be held for the sole purpose of advertising any product, goods, wares, merchandise or commercial establishment and is designed to be held purely for private profit.
4. **Application for Permit.** Any person who wants to conduct a parade or street event shall apply to the Chief of Police for a permit at least thirty (30) days in advance of the date of the proposed parade or street event. The Chief of Police may, in his discretion, consider any application for a permit which is filed less than thirty (30) days prior to the day it is proposed that the parade or street event is to be held. The application for such permit shall be made in writing on a form approved by the Chief of Police and shall contain the following information:
  - a. The name of the applicant, the sponsoring organization, the person in charge of the parade or street event, the addresses and telephone numbers of each and the signature of the applicant.
  - b. The purpose of the parade or street event, the date when it is proposed to be conducted, the location of the assembly area, the location of the disbanding area, the route to be traveled and the approximate time when it will assemble, start and terminate.
  - c. A general description of the parade or street event.
  - d. Such other information as the Chief of Police may deem reasonably necessary.
5. **Fees.**
  - a. The applicant shall, at the time the application is filed, pay a five hundred dollars (\$500) parade/street event permit fee.
  - b. **Refunds.** Permit fee payments may be refunded, except for a fifty dollar (\$50) permit processing fee, if notification of cancellation of the parade/street event by the applicant is received by the Chief of Police at least ten (10) days prior to the scheduled event or if the event is cancelled by the Chief of Police, pursuant to section (8).
  - c. **Deposit. [Ord. O-2000-001, 7/1/2003]**
    - i. In addition to the permit fee, the applicant shall submit a two thousand dollar (\$2000.00) cash deposit, from which the Chief of Police shall deduct a fee of fifty dollars (\$50.00) for each hour of service per officer required to direct traffic, control the crowd, or otherwise related to the conduct and supervision of the parade and the dispersal of the crowd thereafter, and from which the Director of Public Works shall deduct a fee

of thirty dollars (\$30.00) for each hour of service per employee required to position barricades, sweep streets and post signage.

- ii. The applicant shall be responsible for any cost incurred by the West Allis Police Department and the West Allis Public Works Department, as described in subsection (c)(1), over and above the deposit amount, and will be billed for the excess within thirty (30) days after the completion of the parade or event. Failure to pay the amount billed may be used as a basis to deny future parade or event applications. The City Attorney is authorized to commence an action to collect the unpaid amount.
  - iii. Any unused portion of the deposit will be refunded to the applicant within thirty (30) days after the completion of the parade or event.
  - iv. The deposit may be refunded in full if notification of cancellation of the parade/street event by the applicant is received by the Chief of Police at least ten (10) days prior to the scheduled parade or event or if the parade or event is cancelled by the Chief of Police, pursuant to section (8).
- d. Exemption. A permit fee or deposit is not required for: **[Ord. O-2000-001, 7/1/2003; Ord. O-2014-0011, 4/1/2014]**
- i. Parades or street events sponsored or co-sponsored by the City.
  - ii. Public and parochial elementary and secondary school civic-oriented events.
  - iii. Events sponsored by veterans' organizations.

6. Issuance or Denial of Permit.

- a. Standard for Issuance. The Chief of Police shall issue a parade or street event permit conditioned upon the applicant's written agreement to comply with the terms of such permit, unless the Chief finds that:
  - i. The time, route or size of the parade or street event will unreasonably disrupt the movement of other traffic.
  - ii. The parade or street event is of a size or nature that requires the diversion of so great a number of police officers of the City to properly police the line of movement and the areas and crowds contiguous thereto that allowing the parade or street event would deny reasonable police protection to the City.
  - iii. The proposed parade or street event will interfere with another parade or street event for which a permit has been issued.
- b. Standard for Denial. The Chief of Police shall deny an application for a parade or street event permit and notify the applicant in writing of such denial and the reasons therefor where:
  - i. The Chief of Police makes any finding contrary to the findings required to be made for the issuance of a permit.
  - ii. The information contained in the application is found to be false or nonexistent in any material detail.
  - iii. The insurance required under subsection (7) has not been provided or has not been approved by the City Attorney.
  - iv. The applicant refuses to agree to abide by or comply with all conditions of the permit.
  - v. The number of permitted street events set forth in subsection (2) has been

met.

7. Insurance Required. The application for a license shall be accompanied by a certificate of insurance for comprehensive general liability and automobile liability in at least the following limits of coverage:

Type of Policy	Liability Limits
Comprehensive/General Bodily Injury	\$1,000,000 each occurrence \$1,000,000 aggregate
Property Damage	\$500,000 each occurrence \$500,000 aggregate
Automobile Liability (Operation of owner, hired and nonowned motor vehicles) Bodily Injury and Property Damage Combined Single Limit	\$1,000,000 each occurrence

The certificate of insurance shall have an endorsement to indemnify and hold the City of West Allis harmless from any or all damages, judgments and claims which may be asserted against the City by reason of any damages or injuries sustained by any person or to any property by the parade or street event or participants therein. The certificate of insurance shall also provide that the City be reimbursed for any damages or injury which it sustains by reason of said parade or street event or by the acts of any participant. The certificate of insurance shall be approved as to form by the City Attorney.

8. Cancellation. If, after issuing a parade/street event permit, an emergency arises which may threaten the health, comfort or safety of the general public or the participants of the event, the Chief of Police may cancel the permit and prohibit the proposed event.
9. Appeal Procedure. Upon a denial by the Chief of Police of an application made pursuant to section (4), the applicant may appeal from the Chief's determination within ten (10) days from the date of notification by filing with the City Clerk/Treasurer a written notice of appeal for hearing by the Common Council at its next meeting. Upon such appeal, the Common Council may reverse, affirm or modify, in any regard, the determination of the Chief of Police.
10. Officials to be Notified. Immediately upon the granting of a permit for a parade or street event, the Chief of Police shall send a copy of the permit to the Mayor, Common Council President, Fire Chief and Director of Public Works.
11. Conduct of Parade. **[Ord. 6342, 11/13/1997]**
- a. No vehicle in a parade shall be operated in such a manner that the tires of the vehicle break traction or squeal due to unnecessary acceleration.
  - b. No vehicle in a parade shall be operated in such a manner that any of the tires of the vehicle leave the ground while accelerating.
  - c. No person may sell, give away, possess or use along a parade route, any device which is designed to make noise and is sufficiently loud so as to frighten or startle an animal in the parade, propel a projectile or create an offensive odor. A parade route means the streets of the parade route approved, pursuant to this section, and shall extend twenty-five (25) feet from the curb line of said streets.
12. Penalty.

- a. Any person convicted of violating any of the provisions of this ordinance shall forfeit not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each violation, together with the costs of prosecution and, in default of payment thereof, the defendant's operating privileges shall be suspended pursuant to secs. 343.30 and 345.47 of the Wisconsin Statutes, or by imprisonment in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not in excess of the number of days set forth in sec. 800.095(4) of the Wisconsin Statutes.
- b. Each day's violation shall constitute a separate offense.

~~{Ord. 6318, 5/20/1997}~~

**SECTION 2: REPEAL** "9.09 Carnival Permit" of the City Of West Allis Municipal Code is hereby *repealed* as follows:

R E P E A L

~~9.09 Carnival Permit (Repealed)~~

1. Definitions.
  - a. "Carnival" is defined as an amusement show that typically consists of rides, air pillows, giant slides, ride-throughs, walk-throughs, sideshows, games of chance or skill, performing animals, public display of the skills of performers, and/or public display of objects of general interest.
2. Adoption of Administrative Code. Except as otherwise provided herein, the provisions of Wisconsin Administrative Code, Safety and Professional Services, Chapter 334 are adopted by reference and made a part hereof with the same force and effect as if fully set forth herein. **[Ord. O-2013-0020, 4/16/2013]**
3. Permit Required. No person, firm or corporation shall maintain or operate any carnival within the City unless a permit therefor shall have been obtained from the Common Council.
4. Application. The application for a permit shall be made to the Council in writing and shall set forth:
  - a. The name, address, and telephone number of the applicant.
  - b. If the applicant is a corporation, the address and phone number of the principal offices of the corporation, the state of incorporation, and the name, address, and telephone number of the registered agent.
  - c. The name, address, and telephone number of the person or persons to be in immediate charge of the place of amusement at all times during its operation.
  - d. The names of any sponsoring organizations and the names and addresses of the principal officers of such organization.
  - e. The date or dates of proposed operation and the location at which it is proposed to conduct the carnival.
  - f. A description of the type of acts or entertainment to be shown, a list of the

- proposed number of rides, and a description of the merchandise to be sold.
  - g. A statement that the applicant will directly control and supervise each activity proposed to be authorized under the permit sought, and will be responsible for the conduct, operation and management thereof.
  - h. Proof of insurance in accordance with Wisconsin Administrative Code, Safety and Professional Services, Section 334.035 with an endorsement to the effect that the City will be indemnified and held harmless from any and all claims, damages or judgments arising from the granting of the permit or the operation of the show or exhibition. **[Ord. O-2013-0020, 4/16/2013]**
  - i. A statement certifying on penalty of perjury the correctness of the information given on the application and agreeing on behalf of the applicant that there shall be full compliance of the applicant with all state and local laws in the conduct of the activities for which a permit may be granted.
  - j. Proof from the Department of Commerce that the carnival and rides are in compliance with all applicable State of Wisconsin rules and regulations.
5. Investigation.
- a. The application shall be referred to the Police Department for an investigation and report on the character, reputation and record of the applicant, the registered agent, and all of the persons listed as being in immediate charge of the operation.
  - b. The application shall be referred to the Fire Department for investigation of ride safety and fire safety.
  - c. The application shall be referred to the Building Inspection Department for investigation of compliance with the zoning requirements and local and state building codes.
  - d. If food is to be sold, the applicant shall be referred to the Health Department to apply for a food permit.
6. Granting of Permit. The Common Council shall not grant any permit unless the conduct or maintenance of the carnival at the proposed location will not, in the judgment of the Council, endanger public peace, health, safety, or welfare. In granting any permits, the Council shall impose such conditions or requirements as it deems necessary to protect public peace, health, safety, and welfare.
7. Location Restricted.
- a. Carnival operation shall comply with all applicable City zoning laws and regulations.
  - b. No carnival for which a permit is granted shall keep or use any ponies, horses, livestock or other animals within five hundred (500) feet of any dwelling, house or restaurant within the City.
  - c. No carnival shall be permitted to operate within five hundred (500) feet of a residential district in the City. This subsection shall not apply to carnivals held on the grounds of a church and/or adjoining church school; where the Business Improvement District (hereinafter "BID") is the permit holder and the carnival takes place within the BID boundaries; or to carnivals sponsored by the City. **[Ord. O-2013-0020, 4/16/2013]**
8. Food Regulations. No food of any sort shall be served at the carnival unless the food handlers are in compliance with Code Section 7.04 and all local, state, and federal food regulations.



9. Closing Hours. No carnival licensed hereunder shall operate after 10:00 p.m.
10. Permit Fee and Bond.
- a. A nonreturnable fee of fifty dollars (\$50.) shall accompany the application as an application fee.
  - b. The applicant shall pay a permit fee as follows: one hundred dollars (\$100.) for any combination of five (5) or less rides and/or stands, plus ten dollars (\$10.) for each additional ride and/or stand.
  - c. The permittee shall, in addition to payment of the permit fees established by the City, deposit with the City no later than ten (10) days prior to the first day of conducting any carnival activity and shall maintain for a period of thirty (30) days after the termination of activities under such permit as may be issued by the City, a cash bond in the sum of five thousand dollars (\$5,000.) or in lieu thereof shall post and maintain in full force and effect during said period a surety bond in the amount of five thousand dollars (\$5,000.). Such bond shall be issued by a surety company, approved by the City Attorney, and shall be in a form approved by the City Attorney. Such bond shall, by its terms:
    - i. Insure payment to the City for any damage to City property occasioned by the operation of such carnival activity, including damages occasioned by the entrance into or exit from the City of the permittee or of the equipment, facilities, or personnel of such amusement activity as shall be permitted by the permit.
    - ii. Insure the cleaning of the premises used for such amusement activity and of the immediate surrounding properties and streets of such litter and debris as may result from the operation thereof.
    - iii. Insure payment of any fines levied against the permittee for violation of this or any other section or state law while conducting amusement activities in the City.
  - d. Such bond may be waived or reduced in amount or sooner cancelled or returned by the Common Council when, in its reasonable judgment, the conditions of or reasons for requiring such bonds have been satisfactorily met. The permittee shall be promptly notified of any claims made or contemplated against such bond or surety and shall have the right to appeal from any such claim, or the amount thereof, to the Common Council.
  - e. The fees set forth herein shall be waived for churches where the carnival will be on church grounds or the adjoining church/school grounds; within the BID and where the BID is the permit holder; and City-sponsored events. **[Ord. O-2013-0020, 4/16/2013]**
11. Permit Posted. Any permit granted shall be prominently displayed at all times when the carnival is in operation.
12. Conditions of License. All licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of this section, and subject to all other ordinances and regulations of the City applicable thereto:
- a. Every applicant procuring a permit thereby consents to the entry of 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 local and state laws.

- b. The permittee, and/or the employees and agents of the permittee, shall cooperate with police investigations of disturbances, intoxicated persons, and other violations of local and state laws. "Cooperate," as used in this subsection, shall mean calling the police when a disturbance of the peace or other violation occurs on the permitted premises and providing complete and truthful responses to police 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 at all times 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.
13. Entertainment Standards.
- a. No person shall, on premises permitted under this section, perform acts of or acts which constitute or simulate:
    - i. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; or
    - ii. The touching, caressing or fondling of the breast, buttocks, anus or genitals; or
    - iii. The displaying of human genitals, buttocks or pubic area or the female breast below the top of the areola.
  - b. No person shall, on the permitted premises, use artificial devices or inanimate objects to perform, simulate or depict any of the prohibited conduct or activities described in Subsection (a).
  - c. It shall be unlawful for any person to show, display or exhibit on the permitted premises, any film, video, still picture, electronic reproduction or any other visual reproduction or image of any act, other visual reproduction or image of any act or conduct described in Subsections (a) and (b).
  - d. No person or corporation holding a permit under this section, or his/her/its agents or employees, shall allow or permit in or upon the permitted premises any act or conduct described in Subsections (a), (b) and (c).
14. Expiration of Permit. All permits shall expire at the time period determined by the Council, which shall be no longer than seven (7) days.
15. Penalties.
- a. Penalties. Any person or entity violating any provision of this ordinance shall be required to forfeit not less than two hundred dollars (\$200.) nor more than one thousand dollars (\$1,000.). The person or entity shall be required to pay the costs of prosecution. In default of payment thereof, the person shall be imprisoned in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in Section 800.095(4) of the Wisconsin Statutes. Each and every day that an offense continues constitutes a separate offense.
16. Severability. If any part of this section is found to be unconstitutional or otherwise invalid, the validity of the remaining parts shall not be affected.

**SECTION 3:           ADOPTION** “6.032 Special Events” of the City Of West Allis Municipal Code is hereby *added* as follows:

ADOPTION

6.032 Special Events(*Added*)

(a) Definitions. In this section:

1. “Class 1 special event” means a special event that includes at least one of the following features: alcohol is available for consumption, electronically amplified outdoor sound is utilized, or more than 400 square feet of ground is covered by a tent or other temporary structure that provides shelter from the elements.
2. “Class 2 special event” means any special event that is not a Class 1 special event.
3. “Coordinator” means the sponsor or individual(s) identified by the sponsor that will be on-site at all times during a special event and are authorized to ensure compliance with this section.
4. “Direct costs” means those costs incurred by a department to provide staffing and equipment for a special event, including:
  - a. Wages and fringe benefits of city employees or contractors performing work for the special event
  - b. A reasonable rental rate for any city equipment provided for the special event
  - c. An administrative charge equal to 10% of staffing and equipment expenses
5. “Organize” means set up for, hold, arrange for, or maintain.
6. “Person” means any individual, firm, organization, association, or corporation.
7. “Public property” means any right-of-way or land owned or controlled by a federal, state, or local government.
8. “Special event” means any organized gathering of at least 21 people that impedes the normal use of public property by persons not attending the event.
9. “Sponsor” means the person who holds a permit to organize a special event.

(b) Permit Required. No person may organize a special event without a valid special event permit, unless:

1. The person is an entity that has taxing authority;
2. The special event is a funeral or funeral procession;
3. The premises is an extension of an existing Class “B” license under Wis. Stat. § 125.26(1);
4. The person has been issued a park use permit under West Allis Policy and Procedure #2107 Park Regulations and Permits; or

5. The special event is authorized by the West Allis Police Department Crime Prevention Bureau.

(c) Application

1. Type and Fee

- a. Regular. Any person seeking a special event permit shall complete an official application, submit it to the city clerk at least 45 days prior to the commencement of the special event, and pay a nonrefundable \$50 special event application processing fee.
- b. Expedited. Any person seeking a special event permit shall complete an official application, submit it to the city clerk 15 to 45 days prior to the commencement of the special event, and pay a \$200 expedited special event application processing fee.

2. Information Required. An application is not complete until the all of the following is filed with the city clerk:

- a. The name, mobile phone number, and email address of the sponsor or, if the sponsor is not an individual, the individual submitting the application on behalf of the sponsor.
- b. The name and mobile phone numbers of all coordinators.
- c. The location and description of the special event premises. The application shall list an address or block number and include a map or diagram of the special event premises.
- d. The dates and times during which the special event is scheduled to take place, and any alternative dates in case a special event is postponed.
- e. A description of the characteristics of the special event, including:
  - i. Maximum capacity of people on the premises and expected peak attendance.
  - ii. Whether alcohol will be available for consumption and the type of alcohol license that will cover the premises.
  - iii. Whether electronically amplified outdoor sound will be utilized.
  - iv. Whether more than 400 square feet of ground will be covered by a tent or other temporary structure that provides shelter from the elements.
- f. For a class 1 special event, a certificate of insurance for the duration of the special event indicating endorsements and liability coverage amounts consistent with city policy.
- g. For a special event that closes a street, a street closure consent form signed by occupants of at least 50 percent of the residential and commercial units on the closed portion of the street

3. Indemnification. The sponsor shall indemnify and hold harmless the City against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of rights-of-way by the sponsor or its employees, agents, or contractors arising out of the rights and privileges granted by a special event permit.

4. Transferability. A sponsor may not transfer a special event permit to another person.

(d) Application Processing

1. Upon receiving a completed application, the clerk shall forward the application to the police department, fire department, department of public works, health department, and city engineer.
    - a. Each department shall review the application received from the city clerk and estimate the department's charges associated with the special event.
    - b. Each department's estimated charges shall be the projected direct costs for providing the staffing and equipment for the special event as requested by the sponsor and/or deemed necessary by the department to protect the public health, safety, and welfare.
    - c. In determining staffing and equipment needs, the departments shall consider all the following:
      - i. The anticipated peak attendance.
      - ii. Whether alcohol is available for consumption.
      - iii. Whether outdoor amplified sound is utilized.
      - iv. Particular characteristics of the special event including layout, sight lines, nearby population density, parking availability, and other relevant factors.
    - d. In determining staffing and equipment needs, the departments may not consider the content of any message at the special event.
  2. The clerk shall determine if the sponsor, coordinator, or any person who has an ownership interest in the sponsor owes any delinquent fees, charges, or other debts to the City.
  3. Within 15 days after receiving the a regular special event permit application, or as soon as practicable after receiving an expedited special event permit application, all City departments shall supply the city clerk with the amount of the estimated charges.
  4. If a City department does not timely respond to the city clerk, the city clerk may proceed with processing the application without collecting an advance deposit.
- (e) Payment for Estimated Charges, Permit Issuance, and Appeal
1. Estimated Charges Payment. The payment for the estimated charges shall be made at least 7 days prior to the event or the application will be considered withdrawn.
  2. Issuance. The city clerk shall issue a special event permit to the sponsor or its agent unless the applicant is disqualified.
  3. Disqualifiers. A person is not eligible for a special event permit if any of the following applies:
    - a. In the 3 years prior to the date of application, the sponsor or coordinator failed to comply with the requirements of this section.
    - b. The special event permit application contains false information.
    - c. The estimated charges computed by any City department remain unpaid.
    - d. Any delinquent fees, charges, or other debts to the City owed by the sponsor, coordinator, or any person who has an ownership interest in the sponsor remain unpaid.
    - e. The clerk is processing or has issued a different special event permit for the same premise during overlapping times and dates.
  4. Due Process upon Denial

- a. Regular application. If the clerk has not issued a special event permit upon a regular application at least 30 days after receipt of the application, the person whose application was not approved may apply for a writ of mandamus.
  - b. Expedited application. If the clerk has not issued a special event permit upon an expedited application at least 7 days prior to the scheduled commencement of the special event, the person whose application was not approved may apply for a writ of mandamus.
- (f) Conditions upon Permit. Upon issuance of a special event permit, each sponsor agrees to the following conditions:
  - 1. The sponsor or at least one coordinator shall be on the special event premises at all times that the special event is open for attendees.
  - 2. The police department, fire department, or department of public works may increase or decrease the staffing or equipment on the premises during the special event based on the actual number of attendees in order to protect the public health, safety, and welfare, and the City may charge the sponsor up to the direct costs of an increase in staffing or equipment under this paragraph.
  - 3. The coordinator shall keep a copy of the special event permit and any other applicable permit or license on the premises for the duration of the special event.
  - 4. The coordinator shall answer at all times that the special event is open for attendees any calls to the mobile phone for the number listed on the application from a city official or employee.
  - 5. The sponsor and coordinator shall comply with all local, state, and federal laws.
- (g) Service Charge Settlement. Within 30 days after the final date indicated on the special event permit or the date on which a special event was closed under sub. (8), each department that incurred staffing and equipment costs for the special event may file with the city clerk an invoice showing the actual direct costs for staffing and equipment provided on premises during the special event.
  - 1. If the total actual direct costs from all departments did not exceed the deposit for estimated charges, the city clerk shall apply the deposit to the due amount and refund any excess to the sponsor.
  - 2. If the total actual direct costs from all departments exceeded the deposit for estimated charges, the city clerk shall apply the deposit to the due amount and invoice the sponsor for the difference. The sponsor shall pay the invoiced amount within 30 days after the invoice date and simple interest shall accrue at 1% per month on the balance due for each month the invoice is delinquent.
- (h) Penalty
  - 1. Forfeiture. Any person convicted of violating any of the provisions of this section shall forfeit not less than \$50 nor more than \$500 for each violation, together with the costs of prosecution.
  - 2. Event Closure. A law enforcement officer may summarily invalidate a special event permit and close the special event:
    - a. If the event causes such a disturbance of public order that it is reasonable to believe that the assembly will cause injury to persons or damage to property unless it is immediately dispersed;

- b. If there is no sponsor or coordinator on the premises; or
- c. If the sponsor or coordinator fails to correct noncompliance with a condition of a special event permit after advanced warning to the sponsor or coordinator and reasonable opportunity to comply with that condition.
- 3. Other Remedies. This section does not restrict the City from seeking any other remedies allowed by law.

Note: A special event permit is appropriate for any block party, church festival, concert, parade, carnival, or other large gathering.

**SECTION 4:            AMENDMENT** “6.04 Penalties” of the City Of West Allis Municipal Code is hereby *amended* as follows:

A M E N D M E N T

6.04 Penalties

Every person, firm or corporation convicted of a violation of any of the provisions of the following enumerated section or subsections shall, for each offense, be punished by the forfeiture set forth, together with the costs of prosecution:

1. A forfeiture not to exceed fifty dollars (\$50) for a violation of any of the following:  
     6.01(3) 6.02(21) - 1st Offense 6.03(1), (2), (3) or (5)
2. A forfeiture not to exceed one hundred dollars (\$100) for a violation of any of the following:  
     6.01(1), (2) 6.02(18) 6.02(21) - 2nd Offense 6.025 6.03(7) ~~6.031~~ 6.032 6.038
3. A forfeiture not to exceed two hundred dollars (\$200) for each day a violation of section 6.01(4) continues.
4. A forfeiture not to exceed three hundred dollars (\$300) for a violation of the following:  
     6.03(4)
5. A forfeiture not to exceed five hundred dollars (\$500) for a violation of any of the following:  
     6.02(7), (8), (9), (10), (11), (12), (13), (14), (16) or (19) 6.02(21) - 3rd Offense 6.026 6.03(6)
6. In default of payment of such forfeiture and costs, by imprisonment in the Milwaukee County House of Correction or Milwaukee County Jail until payment of such forfeiture and costs, but not in excess of the terms set forth in sec. 800.095(a) of the Wisconsin Statutes, or by suspension of operating privileges, pursuant to secs. 343.30 and 345.47 of the Wisconsin Statutes. Each and every day during which a violation continues constitutes

a separate offense.

7. Carrying Dangerous Weapons.

- a. Definition. "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon; or, any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.
- b. If a person violates any provision of Section 6.02 of this Code, while possessing, using or threatening to use a dangerous weapon, the penalty shall be increased two hundred dollars (\$200).

[Ord. O-2006-0030, 6/6/2006]

**SECTION 5:            AMENDMENT** "7.035 Noise Control Regulations" of the City Of West Allis Municipal Code is hereby *amended* as follows:

A M E N D M E N T

7.035 Noise Control Regulations

1. Statement of Purpose. The City of West Allis recognizes that excessive noise and vibration are serious threats to the public health and welfare, public safety, quality of life and property values. Current science and technology permit abatement of noise and vibration sources which were not available in the past. Therefore, it is the policy of the City to prevent and abate excessive noise and vibration which may jeopardize the public health, safety or welfare or which would cause harm to property values or which would impair the quality of life within the City.
2. Definitions. All terminology used in this section, not defined below or elsewhere within the West Allis Revised Municipal Code, shall be given the definitions provided by applicable publications of the American National Standards Institute (hereinafter "ANSI") or its successor body.
  - a. "A-Weighted Sound Level" means the sound pressure level in decibels as measured on a sound level meter using the "A" weighting network. The level so read is designated as db(A) or dB(A).
  - b. "Ambient Noise" means the sound level of the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources from near and far.
  - c. "Authorized Emergency Vehicle" means the definition of this term as set forth in Sec. 340.01(3), Wis. Stats., and any subsequent modification, revision, or amendment of that term as set forth in that section of the Wisconsin Statutes.
  - d. "Commercial District" means any area of the City designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as C-1, C-2, C-3, C-4, or PDD-2.
  - e. "Construction" means any activity necessary or incidental to the erection,



- demolition, assembling, altering, installing, repairing or equipping of buildings, roadways, or utilities, including land clearing, grading, excavating and filling.
- f. "Day" means the hours between 7:00 a.m. and 9:59 p.m.
  - g. "dB(A)" means the symbol designation of a noise level, reported in decibels, using the A-weighting network of a sound level meter, as defined in ANSI S1.4, Specification for Sound Level Meters. For example, noise will be reported as seventy-two (72) dB(A). For purposes of this section, the noise shall be measured using the slow exponential time weighting characteristic of the sound level meter unless otherwise noted.
  - h. "Decibel" means a unit of measure of the volume of a sound.
  - i. "Emergency Work" means short-term operations which are necessary to protect the public health, safety and welfare of the citizens, including emergency utility and public works operations.
  - j. "Impulse Noise" means any sound of short duration, usually less than one (1) second, with an abrupt increase, rapid decay, and a peak value that exceeds the ambient noise level by more than ten (10) dB(A). Examples of sources of impulse noise include explosions, drop forge impacts, and the discharge of firearms.
  - k. "Manufacturing District" means any area of the City designated on the official West Allis Zoning Map, pursuant to Chapter 12 of this Code, as M-1.
  - l. "Maximum Sound Level" (hereinafter "Lmax") means the maximum sound level over a measurement interval determined by using a sound level meter set to "fast" response time.
  - m. "Motor Vehicle" means any vehicle, including a combination of two (2) or more vehicles or an articulated vehicle, that is self-propelled, except a vehicle operated exclusively on a rail.
  - n. "Night" means the hours between 10:00 p.m. and 6:59 a.m.
  - o. "Noise Disturbance" means any sound or vibration which:
    - i. May disturb or annoy reasonable persons of normal sensitivities; or
    - ii. Causes, or tends to cause, an adverse effect on the public health and welfare; or
    - iii. Endangers or injures people; or
    - iv. Endangers or injures personal or real property.
  - p. "Person" means any individual, association, partnership, joint venture, company, or corporation.
  - q. "Place of Public Entertainment" means any building that is open to the public for entertainment purposes.
  - r. "Plainly Audible Sound" means any sound for which the information content is unambiguously communicated to the listener, such as, but not limited to, understandable speech, comprehension of whether a voice is raised or normal, repetitive bass sounds, or comprehension of musical rhythms, without the aid of any listening device.
  - s. "Power Tool" means any device powered mechanically, by electricity, by gasoline, by diesel fuel, or by any other fuel, which is intended to be used, or is actually used for, but shall not be limited to, the performance of such functions as cutting, nailing, stapling, sawing, vacuuming or drilling.
  - t. "Real Property Boundary" means an imaginary line along the ground surface and

its vertical extension which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

- u. "Residential District" means any area of the City, designated on the official West Allis Zoning Map, pursuant to Chapter **12** of this Code, as RE, RA-1, RA-2, RA-3, RA-4, RB-1, RB-2, RC-1, RC-2, or PDD-1.
  - v. "Root Mean Square" (hereinafter "RMS") means the square root of the mean-square value of an oscillating waveform, where the mean-square value is obtained by squaring the value of amplitudes at each instant of time and then averaging these values over the sample time.
  
  - w. "Sound" means a temporal and spatial oscillation in pressure, or other physical quantity, in a medium resulting in compression and rarefaction of that medium and which propagates at finite speed to distant locations. The description of sound may include any characteristics of such sound, including duration, intensity, and frequency.
  - x. "Sound Level Meter" means an instrument, either Type I or Type II, as defined by the most current ANSI specifications. A sound level meter for purposes of this section shall contain at least an A-scale and both fast and slow response.
  - y. "Sound Pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as produced by sound energy.
  - z. "Sound Reproduction Device" means any device, instrument, mechanism, equipment or apparatus for the amplification of any sounds from any radio, computer, stereo, CD player, musical instrument, television, loudspeaker or other sound-making or sound-producing device or any device or apparatus for the reproduction or amplification of the human voice or other sound.
  - aa. "Stationary Noise" means noise the source of which is either affixed to or operated upon a fixed point of land, building, or other real property.
  - ab. "VdB" means the vibration level as measured in decibels. The reference velocity in the United States is one (1) micro-inch per second. It is calculated as  $VdB = 20 \times \log_{10}(v / (1 \times 10^{-6} \text{ in./sec.}))$ , where "v" is the RMS velocity amplitude, calculated as the average of the squared amplitude of the vibration, measured in inches per second.
  - ac. "Vibration" means a temporal and spatial oscillation of displacement, velocity, and acceleration in a solid material.
  - ad. "Vibration Velocity Level" (hereinafter "Lv") means ten (10) times the common logarithm of the ratio of the square of the amplitude of the RMS vibration velocity to the square of the amplitude of the reference RMS vibration velocity.
3. Scope and Enforcement. This section, in addition to other ordinances and statutes, shall apply to the control of noise and vibration originating within the City of West Allis. The West Allis Health Department is the primary agency responsible for the enforcement of this section, and the West Allis Police Department may also enforce the provisions of this section. The City of West Allis's policy is to comply with this section in its own operations and in the operations of its contractors and subcontractors.
4. Determining Sound Levels. Sound levels shall be measured using the following

procedures:

- a. All persons conducting sound measurements to assess compliance with this section must be trained in the current techniques and principles of sound measurement equipment and instrumentation.
  - b. Sound level shall be measured with a Type 1 or Type 2 sound level meter that shall, as a minimum standard, conform to the specifications of ANSI S1.4-1983 (Revised 2001) with Amendments S1.4A-1995 for Type 1 or Type 2 sound level meters and be capable of both fast and slow meter response.
  - c. The following steps must be followed when preparing to take sound level measurements:
    - i. The sound level meter manufacturer's specific instructions for preparation and use of the sound level meter shall be followed.
    - ii. The sound level meter shall be calibrated periodically, in accordance with the manufacturer's instructions.
    - iii. When outdoor measurements are taken, a windscreen shall be placed over the microphone of the sound level meter in accordance with the manufacturer's instructions.
    - iv. The sound level meter shall be placed at an angle to the sound source, as specified by the manufacturer's instructions, and placed at least four (4) feet above the ground. The meter shall be placed so as not to be interfered with during the taking of sound measurements.
    - v. Impulsive noise shall be measured with the sound level meter set for fast meter response; all other noise shall be measured with the sound level meter set for slow meter response.
    - vi. All sound level measurements shall be made using an "A" weighted network of the sound level meter.
5. Determining Vibration Levels. Vibration levels shall be measured using the following procedures:
- a. All persons conducting vibration measurements to assess compliance with this section must be trained in the current techniques and principles of vibration measurement equipment and instrumentation.
  - b. The instrument manufacturer's specific instructions for preparation and use of the instrument shall be followed.
6. Maximum Permissible Sound Levels.
- a. General Limitations. Except as enumerated in Subsection (8) of this section below, in the following zoning districts, the noise emitted from any source of stationary noise shall not exceed the following dB(A) limits at any point beyond one hundred twenty-five (125) feet outside of the real property boundary of the source of the stationary noise or beyond one hundred twenty-five (125) feet of the noise source on public property:

<b>Sound Pressure Level</b>		
<b>Zone</b>	<b>Time</b>	<b>Decibel (dB(A)) Level</b>
Residential, Park District	10:00 p.m. to 6:59 a.m.	55 dB(A)

	7:00 a.m. to 9:59 p.m.	65 dB(A)
Commercial, Manufacturing	10:00 p.m. to 6:59 a.m.	60 dB(A)
	7:00 a.m. to 9:59 p.m.	70 dB(A)

- b. A reduction of five (5) dB(A) will apply to each of the limitations set forth under Subsection (6)(a) for all impulse noises.
  - c. When the ambient level is two (2) dB(A) or more above a noise limitation, a source may add no more than three (3) dB(A) to the ambient level.
7. Public Nuisance. Excessive noise and vibration, as defined in this section, is hereby deemed and declared to be a public nuisance and may be subject to summary abatement procedures, as provided in Section 7.03(3) and Section 18.04 of this Code. Such abatement shall be in addition to administrative proceedings, forfeitures, and penalties provided in this section.
8. Noise Disturbance Prohibited. No person shall make, continue, or cause to be made or continued, any noise disturbance. No person shall make, continue, or cause to be made or continued any noise which exceeds the noise limitations as set forth in this section.

Unamplified, noncommercial public speaking and public assembly activities conducted at conversational voice levels on any public property or public right-of-way shall be exempt from the operation of this article if such sound is not plainly audible beyond one hundred fifty (150) feet or does not infringe on the legitimate rights of others.

- a. Sound Reproduction Devices. No person shall operate, play, or permit the operation of or playing of any sound reproduction device at night that is plainly audible across a real property boundary. No person shall operate, play, or permit the operation of or playing of any sound reproduction device during the day that is plainly audible from one hundred fifty (150) feet beyond the real property line of the premises from which it emanates or from the source if located in a public street, public park, or other public place.
- b. Sound Amplification Device. No person shall use or operate any sound amplification device, loudspeaker, public address system, or similar device at night that is plainly audible across a real property boundary. No person shall use or operate any sound amplification device, loudspeaker, public address system, or similar device during the day that is plainly audible at a distance of one hundred fifty (150) feet.
- c. Loading and Unloading. No person shall load, unload, open, close, or otherwise handle boxes, crates, containers, building materials, garbage cans, or similar objects at night, in a manner that is plainly audible across a real property boundary.
- d. Domestic Power Tools. No person shall operate or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, leaf blower, or similar device at night.
  - i. This subsection does not apply to snowblowers being used to remove snow that has fallen within the past twenty-four (24) hours.
- e. Tampering. No person shall remove or render inoperative any noise control

device, element of design, or noise label of any product other than for the purpose of maintenance, repair, or replacement; no person shall modify or replace any noise control device to increase the sound pressure level of the device.

- f. Multifamily dwellings. No person shall make, continue, or cause to be made or continued any noise disturbance at night that is plainly audible in another occupied space within any multifamily dwelling within the real property boundary.
- g. Places of Public Entertainment. No person shall operate, play or permit the operation or playing of any sound reproduction device, sound amplifier, or similar device, or any combination thereof, which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than one hundred (100) dB(A), as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign which is at least two hundred twenty-five (225) square inches in area is placed outside such place, near each public entrance, stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT."
- h. Train Warning Devices. No person owning or operating any railroad, or any of its agents and employees, shall cause the ringing of any bell or the blowing of any whistle or horn within the City limits on any locomotive under his/her control, except in the event of an emergency to avoid an impending accident or where otherwise permitted by state or federal law.
- i. Motor Vehicles.
  - i. Light Motor Vehicles. No person shall create or cause or permit noise levels from the operation of any motor vehicle of ten thousand (10,000) pounds' gross vehicle weight rating or less, including but not limited to passenger automobiles, light trucks or motorcycles, in excess of eighty (80) dB(A) at any location within the corporate limits of the City of West Allis. Measurement shall be made at a distance of fifteen (15) feet or more from the closest approach of the vehicle.
  - ii. Heavy Motor Vehicles. No person shall create or cause or permit noise levels from the operation of any motor vehicle of more than ten thousand (10,000) pounds' gross vehicle weight rating in excess of eighty-six (86) dB(A) in a zone with a speed limit of more than thirty-five (35) miles per hour. Measurement shall be made at a distance of fifty (50) feet from the closest approach of the vehicle in use.
  - iii. Stationary Testing.
    - (1) Light Motor Vehicles. Motor vehicles of ten thousand (10,000) pounds' gross vehicle weight rating or less shall not exceed ninety-five (95) dB(A) at twenty (20) inches in a stationary run-up test. Such tests shall conform to the Society of Automotive Engineers Recommended Practices SAE J1169, a copy of which is on file in the office of the Health Commissioner.
    - (2) Heavy Motor Vehicles. Motor vehicles of more than ten thousand (10,000) pounds' gross vehicle weight rating shall not exceed eighty-eight (88) dB(A) measured at fifty (50) feet in a stationary

run-up test. Stationary run-up tests shall conform to the Society of Automotive Engineers SAE Standard J366b, a copy of which is on file in the office of the Health Commissioner.

- j. Refuse Collection Vehicles and Compacting Equipment.
  - i. No person shall collect refuse or permit the collection of refuse with a refuse collection truck at night.
  - ii. No person shall operate or permit the operation of the compacting equipment mechanism of any motor vehicle which compacts refuse at night.
- k. Vibration. No person shall operate or permit the operation of any device or combination of devices that creates vibration which exceeds the amounts listed in the table below, as measured at or across a real property boundary of the premises from which it emanates or from the source if located in a public street, public park, or other public place.

Event Frequency	Lv (VdB)
Frequent (more than 70 events per day)	72
Occasional	75
Infrequent (less than 30 events per day)	80

- 9. Exemptions. The provisions of this section shall not apply to the following:
  - a. The emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work, or the emission of sound brought about by emergency conditions where such sound is a byproduct of activities necessary for the preservation of public safety or the protection of the health, safety and welfare of any person or property.
  - b. Warning devices necessary for the protection of public safety, the emission of any noise necessary for the protection of the health, safety, or welfare of person or property or to any noise which is either necessary or required by law.
  - c. The operation of authorized emergency vehicles.
  - d. Public works projects, at or adjacent to the construction site, as authorized by the United States government, the State of Wisconsin, and/or other political subdivisions.
  - e. Limited Exemptions for Construction Noise. The provisions of this section shall not apply to equipment used in commercial construction activities when such equipment has sound control devices no less effective than those provided in the original equipment, a muffled exhaust, and are in compliance with the pertinent standards of the United States Environmental Protection Agency.
    - i. No person shall operate or permit the operation of any equipment used in construction work at night or on Sunday.
      - (1) Emergency Work. The hour limitations in this subsection shall not apply to emergency work.
  - f. ~~Parades, duly licensed, pursuant to Section~~ Special events permitted under

~~section 6.031~~ 6.032 of this Code.

- g. Aircraft operations.
- h. Any fireworks display permitted under and operated in compliance with Wis. Stat. Section 167.10.
- i. Any bells or chimes of any building clock, public or private school building, church, synagogue, or other place of religious worship.
- ~~j. Carnivals, duly licensed, pursuant to Section 9.09 of this Code.~~

10. Notice of Violation.

- a. When the ambient noise or vibration level of a noise producing device equals or exceeds the decibel limits provided in this section, the Health Commissioner or his/her designee shall serve a notice, by first-class mail, on the owner and occupant of the premises that is creating or maintaining the noise. The notice shall be dated, contain a description of the violation, require the person to remove or abate the condition described in the order within the time specified therein, and advise such person of the right to apply for a variance permit and the office or person to whom the variance permit application shall be filed.
- b. For violations of Subsection (8)(a) through (g), officers of the West Allis Police Department may issue a citation without prior notice of the violation.

11. Variance.

- a. Application for Variance Permit. The owner or occupant of the premises may seek a variance from the noise and/or vibration limitations herein. A new or renewal application for a variance from the noise and/or vibration limitations in a zoning district shall be made to the City Clerk. The proper filing of an application shall toll all penalties provided in this section for any such violation until a final decision has been issued on the merits of such application. Such application shall specify the grounds upon which the variance permit is sought and the date by which the source of any excess noise or vibration for which the variance is sought shall be brought into compliance with this section.
- b. Hearing on Variance Permit. Within sixty (60) days of receiving the application for a variance permit, the License and Health Committee shall hold a public hearing. The City Clerk shall serve the variance applicant with notice of such hearing by mail or personal service at least ten (10) days before such hearing. Additionally, the City Clerk shall mail notice of the hearing to property owners within two hundred (200) feet of the affected property at least ten (10) days before such hearing. **[Ord. O-2015-0018, 3/3/2015]**
- c. Procedure at Hearing. If the matter proceeds to hearing before the Committee, the following procedures shall apply:
  - i. The variance applicant shall first present evidence in support of the variance.
  - ii. After the variance applicant rests, any person(s) who claims to be adversely affected by allowance of the variance permit may present evidence in opposition to the variance.
  - iii. After the variance applicant and any person(s) who claims to be adversely affected by allowance of the variance permit rest, the Health Commissioner may present evidence in regard to the variance application.

- iv. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit may subpoena and present witnesses. All witnesses shall testify under oath or affirmation and shall be subject to cross examination.
  - v. The variance applicant, Health Commissioner, and any person(s) who claims to be adversely affected by allowance of the variance permit 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.
  - vi. Questions by Committee members or the advising City Attorney and answers to such questions shall not be counted against the time limitations.
  - vii. At the close of testimony, the variance applicant, Health Commissioner, and any person(s) who claim to be adversely affected by allowance of the variance permit shall be given a reasonable time to make arguments upon the evidence produced at hearing.
- d. Miscellaneous Procedural Matters.
- i. At all stages of the proceedings, the variance applicant and any person(s) who claim to be adversely affected by allowance of the variance permit shall be entitled to appear in person or by an attorney of his or her own expense.
  - ii. The Health Commissioner may be represented by a City Attorney.
  - iii. The Committee shall be, when required, advised by an advisory City Attorney who shall not be the same individual as the City Attorney representing the Health Commissioner.
  - iv. 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 each person. 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.
  - v. An audio recording or stenographic record shall be made of all proceedings at the hearing, and the Clerk shall mark and preserve all exhibits and testimony. Any interested party may obtain a copy of the recording or transcript at his or her own expense.
- e. Recommendation to the Common Council.
- i. After the close of the hearing, the Committee shall deliberate and reach a decision. Based on the evidence presented at the hearing, the Committee shall recommend to the Common Council whether a variance permit should be issued and under what conditions the Committee finds necessary to protect the public health, safety and welfare, including a schedule for achieving compliance with noise and vibration limitations. In deciding whether to recommend granting the permit, the Committee shall



balance the hardship to the applicant, the community, and other persons; the impact on the health, safety, and welfare of the community; the effect on the property in the area; and any other impact that the granting of the variance may have. 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 license(s) at issue. The report shall be filed with the City Clerk/Treasurer within twenty (20) days, and the Clerk shall mail a copy of the report to the last-known address of the variance applicant, Health Commissioner, and any person(s) who claim to be adversely affected by the allowance of the variance permit. The findings and recommendations shall be distributed to each member of the Common Council.

- ii. The variance applicant, Health Commissioner, and any person(s) who claim to be adversely affected by the allowance of the variance permit 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/Treasurer before the close of business on a day that is at least three 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 Determination.
- i. Not less than five (5) working days prior to the matter being scheduled before the Common Council, the Clerk/Treasurer shall notify the variance applicant and any person(s) who claim to be adversely affected by the allowance of the variance permit by United States first-class mail, postage prepaid, sent to the last known address, that the Common Council will convene to determine the matter.
  - ii. 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 variance applicant nor any person(s) who claim to be adversely affected by the allowance of the variance permit shall be permitted to make oral arguments.
  - iii. 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, and such hearing shall constitute the final determination of the matter. The Clerk/Treasurer shall notify the variance applicant and any person(s) who claim to be adversely affected by the allowance of the variance permit by United States first-class mail, postage prepaid, sent to the last known address, of the Common Council's decision.
- g. The permit, if granted, shall contain a time limit for such activity. Variances exceeding two (2) years may be granted only in exceptional cases, including those

for which, in the opinion of the Committee, control technology is unavailable or available only at a prohibitive cost. Noncompliance with any conditions imposed on the variance shall terminate the variance and subject the person or corporation holding it to those provisions of this section for which the variance permit was granted.

- h. Extension and Modification. Application for extension of time limits or modification of other conditions specified in the variance permit shall be treated like applications for an initial variance, except that the Common Council must find that the need for such extension or modification clearly outweighs any adverse impacts of granting the extension or modification.
- i. Judicial Review. Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within thirty (30) days of receipt of the final determination.
  - i. If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense.

12. Penalties. Any person violating any provision of this section shall, upon conviction, be

subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, together with the costs of prosecution. In default of payment thereof, the person shall be imprisoned in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in Section 800.095(1)(b)1 of the Wisconsin Statutes. Each day that any violation continues shall be considered a separate offense.

13. Severability. If any provision, clause, sentence, paragraph, or phrase of this section or the application thereof to any person or circumstances is held, for any reason, by a court of competent jurisdiction, to be invalid or unconstitutional, such decision shall not affect the validity of other provisions or applications of the provisions of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable.

**[Ord. 6225, 4-11-1996; Ord. O-2006-0030, 6-6-2006; Ord. O-2013-0047, 11-19-2013]**

**SECTION 6:            AMENDMENT** “9.18 Direct Sellers And Solicitors” of the City Of West Allis Municipal Code is hereby *amended* as follows:

#### A M E N D M E N T

#### 9.18 Direct Sellers And Solicitors

- 1. Statement of Purpose.
  - a. The intent of this ordinance is to assist in ascertaining that the direct seller and solicitor is fair in dealing with all persons, and to assist in the event that the seller's or solicitor's conduct may threaten the health, safety or welfare of the citizens of

West Allis.

- b. Findings of Fact. It is found and declared that:
  - i. The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic;
  - ii. Reasonable regulation of direct sale and solicitation is necessary to protect the public health, safety and welfare.
  - iii. The regulations contained in this ordinance do not prohibit pure speech by any person, but merely regulate the activities of any persons which is commercial in nature.

2. Definitions. In this ordinance:

- a. "Charitable Organization" shall mean any patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, person, partnership, association or corporation.
- b. "Clerk" shall mean the City Clerk/Treasurer.
- c. "Contributions" shall mean and include the words alms, food, clothing, money, property, financial assistance or other thing of value. A contribution, as defined herein, shall also include a sale or offer to sell any book, card, magazine, membership, merchandise, subscription, ticket or other thing in connection with which an appeal is made of any charitable or religious purpose.
- d. "Direct Sellers" means any individual who, for him/herself, or for a partnership, association or corporation, sells goods or services, or takes sales orders for the later delivery of goods or services, at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations or contributions, whether direct or indirect, required by the direct seller for the retention of goods by a donor or prospective customer.
- e. "Goods" shall include personal property of any kind and shall include goods provided incidental to services offered or sold.
- f. "Hawker" means any person who publicly displays, exposes for sale or offers for sale any goods or services from, upon or in any vehicle, nonpermanent structure or in the open, upon any property of which he is not the legally permitted occupant, including public property.
- g. "Permanent Merchant" means a direct seller who, for at least six (6) months prior to the consideration of the application of this ordinance to said merchant, has continuously operated an established place of business in this City with a business occupancy permit or has for six (6) months resided in this City and legally does business from said residence.
- h. "Permanent business place" shall mean and include any one or more of the following:
  - i. A fixed location for which a business occupancy permit has been issued, pursuant to the Building and Zoning Codes, and that the person operating the place of business intends to become a permanent merchant of the City, or
  - ii. A residence, located in this City, from which a business is lawfully operated, or

- iii. A location in the Farmers Market, or
- iv. Wisconsin agricultural producers who are selling their own products.
- i. "Person" shall mean any individual, firm, partnership, corporation, company, association, church, religious sect, religious denomination, society, organization or league, or one purporting to be.
- j. "Residential premises" shall mean a building or portion of a building used for residential purposes, including the real estate upon which any such building is located, provided that the predominant use of the real estate is for residential purposes.
- k. "Solicit" and "solicitation" shall mean and include any one or more of the following:
  - i. Selling or offering for sale or taking or attempting to take orders for the sale of goods or services of any kind, character or description, primarily for personal, family or household purposes;
  - ii. Selling or offering for sale or taking or attempting to take orders for books, magazines, periodicals, newspapers and every other type or kind of publication;
  - iii. Requesting, directly or indirectly, contributions on the plea or representation that such contributions will be used for a charitable or religious purpose.

### 3. Regulation of Direct Sellers.

- a. Permit Required. No direct seller shall engage in such business within the City without first obtaining a permit from the City Clerk/Treasurer.
- b. Application. An applicant for a permit under this section shall file with the City Clerk/Treasurer a sworn application in writing on a form provided by the City Clerk/Treasurer which shall give the following information:
  - i. Name, address and telephone number of the applicant (temporary and permanent).
  - ii. Name, address and telephone number of the person, firm association or corporation that the direct seller represents or is employed by, or whose goods are being sold.
  - iii. Nature of the business to be conducted and a brief description of the goods offered and any service offered.
  - iv. The location from which the business will be conducted and the proposed dates and times.
  - v. Make, model and license number of any vehicle to be used by the applicant in the conduct of the business.
  - vi. Last municipalities, not to exceed three (3), where the applicant conducted similar business.
  - vii. Statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation related to applicant's direct sellers business within the last five (5) years, together with the nature of the offense and the place of conviction.
  - viii. Proof of a state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing devices approved by state authorities.

- ix. Proof of a retail food permit issued by the West Allis Health Department where the applicant's business involves the handling of food.
- x. Where the sale of tangible personal property is involved, proof of a retail sales tax permit as required by § 77.52 of the Wisconsin Statutes.
- c. Permit Fee. A nonrefundable permit fee of fifty dollars (\$50.00) shall be paid to the City Clerk/Treasurer at the time of application. If the permit is granted, as set forth in Section 9.18(3)(d), it shall be valid for a period of sixty (60) days from the date of issuance unless sooner revoked, pursuant to Section 9.18(10) **[Ord. O-2009-0033, 11/3/2009]**
- d. Investigation/Disapproval.
  - i. Upon receipt of an application and fee, the City Clerk/Treasurer may refer the application to the Chief of Police. The Chief of Police may make an investigation of the statements made in the application.
  - ii. If, as a result of such investigation, the Chief of Police discovers that any representation on the application contains a material omission or inaccuracy, or the Chief is of the opinion that the applicant is not a fit person to conduct such sales, the Chief of Police shall disapprove the application and return it to the City Clerk/Treasurer along with the reason(s) for disapproval. Upon return of the disapproved application, the City Clerk/Treasurer shall notify the applicant that the permit has been denied, along with the reasons therefor.
  - iii. Issuance. If the City Clerk/Treasurer does not send the application to the Chief of Police, or if the Chief of Police returns an application without a disapproval, the City Clerk/Treasurer shall then issue a permit to the applicant. The permit shall be carried by the direct seller at all times he or she is engaged in direct selling and shall contain the name of the permittee, the date of issuance and expiration and permit number. The direct seller is required to display the permit to a police officer at all times the person is engaged in direct selling.
- 4. Special Event Direct Sellers.
  - a. Definition. A special event direct seller means any individual who, for him/herself, or for a partnership, association or corporation, sells goods ~~at or along a parade or street~~ within the boundaries of a special event for which a permit has been issued, pursuant to Section ~~6.03~~ 6.032.
  - b. Permit required. No person may operate as a special event direct seller without first obtaining a permit badge. The permit badge shall be valid only for the duration of the special event.
  - c. Application. No person may operate as a special event direct seller without first obtaining a permit badge. The permit badge shall be valid only for the duration of the special event.
  - d. Fee. A fee of twenty-five dollars (\$25.00) shall be paid to the City Clerk/Treasurer at the time of application. Upon submission of a completed application and the permit fee, the City Clerk/Treasurer shall issue a permit badge. Said badge shall be individually numbered and shall identify which event the permit is valid for.

~~Editor's Note: Ord. O-2009-0033, 11/3/2009~~

- e. Any person engaged in special event direct selling shall wear the permit badge in a conspicuous place and display it to a police officer upon request.
- ~~f. No person engaged in special event direct selling shall violate the provisions of Section 6.031(11)(e), nor shall any display or sale of merchandise or goods occur in or upon any street along the parade or street event route. "Street," for purposes of this provision, means the pavement between the curblines. No special event direct seller may display or sell goods upon a roadway during a special event that is a parade.~~

5. Regulation of Hawking.

- a. Permit required. No person may operate as a hawker without first obtaining a permit. A permit shall be valid for a sixty (60) day period from the date of issuance, unless sooner revoked pursuant to Section 9.18(a).
- b. Application. An applicant for a permit under this section shall file with the City Clerk/Treasurer a sworn application in writing on a form provided by the City Clerk/Treasurer which shall give the following information:
  - i. The information required of direct sellers in Section 9.18(3)(b).
  - ii. Proof of written permission from the owner or tenant of the property, public or private, upon which the business will be conducted, that the applicant may conduct such business on the premises. Such written permission shall include the name, address and telephone number of the owner or tenant.
  - iii. Proof that adequate toilet facilities are available to the employees and patrons of the Hawker, together with hours of accessibility. Portable or temporary toilet facilities are not adequate.
- c. Zoning. No hawker may display, offer for sale or sell any goods or services in a zoning district where such a use is not permitted.
- d. Permit Fee. A non-refundable permit fee of fifty dollars (\$50) shall be paid to the City Clerk/Treasurer at the time of application.
- e. Investigation.
  - i. Upon receipt of an application and fee, the City Clerk/Treasurer shall refer the application to the Chief of Police and the Building Inspector. The Chief shall make an investigation of the statements made in the application. The Building Inspector shall investigate the proposed site to determine whether secs. 9.18(5)(b) and (c) have been complied with.
  - ii. If, as a result of such investigation, the Chief of Police discovers that any representation on the application contains a material omission or inaccuracy, or the Chief is of the opinion that the time and location of the sale is likely to disturb the public peace or traffic flow, or that the applicant is not a fit person to hold a permit, the Chief shall disapprove the application and return it to the City Clerk/Treasurer along with the reason(s) for disapproval.
  - iii. If the Building Inspector discovers that the provisions of secs. 9.18(5)(b) and (c) have not been complied with, he shall disapprove the application and return it to the City Clerk/Treasurer along with the reason(s) for disapproval.

- iv. Upon return of the disapproved application, the City Clerk/Treasurer shall notify the applicant that issuance of a permit has been denied, along with the reasons therefor.
    - f. Issuance. If the investigation of the Chief of Police and Building Inspector is found to be satisfactory, the Chief of Police and Building Inspector shall approve the application and return it to the City Clerk/Treasurer. The City Clerk/Treasurer shall then issue the permit which shall contain the name of the permittee, the location of the business, the kinds of goods to be sold, the date of issuance and expiration and the permit number.
- 6. Appeal. Any person denied a permit may appeal the denial to the License and Health Committee of the Common Council, pursuant to Section 2.48(5) of the Revised Municipal Code.
- 7. Exemptions. The following are exempt from the permit and registration provisions of this ordinance:
  - a. Any person renting space at the Farmers Market under Section 11.14 of the Revised Municipal Code.
  - b. Any person selling goods at wholesale to dealers in such goods.
  - c. Any person selling agricultural products which such person has grown.
  - d. Any person delivering newspapers, fuel, dairy products, bakery goods or similar goods to regular customers on established routes.
  - e. Any permanent merchant engaged in a transaction initiated by the buyer specifically requesting a home visit.
  - f. Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
  - g. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
  - h. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization; provided, that there is submitted to the Clerk proof that such charitable organization is registered under sec. 440.41 of the Wisconsin Statutes.
  - i. Any person exempt by sec. 440.51 of the Wisconsin Statutes.
- 8. Prohibited Practices.
  - a. No person engaged in direct selling shall misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale or the organization he/she represents. A charitable organization direct seller shall specifically disclose, upon request, what portion of the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.
  - b. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred (100) foot radius of the source.
  - c. No seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
  - d. No Hawker shall conduct his business upon City property within the City without first obtaining permission to engage in such business.

- e. No Hawker shall conduct his business upon the property of another in which he is not the legally permitted occupant, without written permission from the owner of such property.
- f. No direct seller shall conduct his business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or constitute a hazard to traffic, life or property or an obstruction to adequate access by fire, police or sanitation vehicles.
- g. No direct seller shall solicit or conduct business with persons in motor vehicles.
- h. No direct seller shall solicit without first complying with the laws of this state and all other relevant provisions of the Revised Municipal Code of the City of West Allis.
- i. No Hawker may engage in displaying or selling goods or services at a location other than the location set forth in the permit.
- j. No person shall engage in direct selling at any residential premises or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning.
- k. No person shall engage in direct selling at any residential premises or upon any other premises, after having been asked by the owner or occupant thereof to leave such premises or residence.
- l. There shall be no direct selling or solicitation upon any residential or other premises between the hours of 9 p.m. and 9 a.m., except by appointment.
- m. Not more than two (2) individuals shall engage in direct selling upon any premises for the same goods or services, or for the same religious or charitable purposes. Each individual member of a group engaged in solicitation in violations of this provision shall be deemed to have violated such provision.
- n. No person shall make more than one solicitation call at the same residential premises for identical goods or services or for the same religious or charitable purposes within any consecutive thirty (30) day period, without receiving a prior invitation thereof from the occupant of any such premises. This provision shall be construed to include solicitation upon the same premises by employees, agents or representatives of any person more than once during the aforesaid period without a prior invitation as herein provided.
- o. No person engaged in solicitation shall, at the time of initial contact with a prospective customer or donor, fail to verbally identify himself and the purpose of the solicitation.
- p. No person engaged in solicitation shall misrepresent the purpose of his solicitation or use any false, deceptive or misleading representation to induce a sale or contribution, or use any plan, scheme or use which misrepresents the status or mission of the person.
- q. No person engaged in making a solicitation shall violate any of the provisions of the Wisconsin Administrative Code, Section Ag121, concerning Referral Selling Plans, and Ag122 concerning Chain Distributor Schemes, the provisions of which are hereby adopted by reference and made a part hereof with the same force and effect as if more fully set forth herein.
- r. No person shall sell or solicit agricultural goods within a three-hundred-foot radius



of the Municipal Market during the hours that said market is open for business.

- s. No solicitation shall be made at a rear door of a residence that has a usable front entrance.
- t. No person or corporation shall engage in selling or offering for resale any admission tickets to the Wisconsin State Fair for an amount greater than the face value of the ticket within 500 feet of the Wisconsin State Fairgrounds as designated on the City of West Allis Zoning Map. This prohibition includes holders of a direct seller's permit. **[Ord. No. O-2009-0018, 6/16/2009]**
  - i. Penalty. Any person or corporation in violation of this subsection shall, upon conviction, be subject to a forfeiture of not less than five hundred dollars (\$500.) and not more than one thousand dollars (\$1,000.), together with the costs of prosecution, and, in default of payment thereof, shall be confined in the House of Correction of Milwaukee County until the forfeitures and costs have been paid, but not more than the number of days set forth in sec. 800.095(4) of the Wisconsin Statutes. Each and every day that an offense continues shall constitute a separate offense.
- u. No person, corporation, or other entity shall, during the dates established for the Wisconsin State Fair by the State Fair Park Board under Section 42.01 of the Wisconsin Statutes, engage in any direct selling under this section within an area bounded by the north City limits, the east side of South 84th Street, the north side of West Greenfield Avenue and the west side of South 77th Street. The center line of each designated street or avenue shall constitute the outer edge of the boundary. **[Ord. O-2011-0020, 6/21/2011]**

9. Disclosure Requirements.

- a. If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller at residential premises, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than twenty-five dollars (\$25.), in accordance with the procedure as set forth in secs. 423.202 and 423.203 of the Wisconsin Statutes.
- b. If the direct seller takes a sales order at a residential premises for the later delivery of goods, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.
- c. It shall be the responsibility of each solicitor to display or have available, upon demand, evidence of compliance with any license, inspection, registration or permit requirement provided for under the laws and administrative regulations of this state and the provisions of the Revised Municipal Code of the City of West Allis. Any police officer or other authorized official of the City shall have the right to request evidence of compliance with the above provisions requiring any license, inspection, registration or permit.

10. Revocation.

- a. The permit of a hawker or direct seller, may be revoked by the License and Health Committee after notice and hearing, if the holder made any material omission or materially inaccurate statement in the application, made any fraudulent, false,

deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this section or was convicted of any crime or ordinance or statutory violation which is directly related to the permittee's fitness to engage in direct selling.

- b. Written notice of the hearing shall be served personally on the permittee at least seventy-two (72) hours prior to the time and place of hearing and a statement of the acts upon which the hearing will be based.

11. Penalty.

- a. Any person convicted of violating any provisions of this ordinance shall forfeit not less than fifty dollars (\$50.) nor more than five hundred dollars (\$500.) for each violation, together with the costs of prosecution and, in default of payment thereof, the defendant's operating privileges shall be suspended pursuant to sec. 343.30 and 345.47 of the Wisconsin Statutes, or by imprisonment in the Milwaukee County House of Correction until such forfeiture and costs are paid, but not in excess of the number of days set forth in sec. 800.095(4) of the Wisconsin Statutes.

12. Severance Clause. The provisions of this ordinance are declared to be severable and, if any section, sentence, clause or phrase of this ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this ordinance; they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

**[Ord. 6125, 9/20/1994; Ord. 6185, 9/19/1995; Ord. 6312, 5/6/1997]**

**SECTION 7: AMENDMENT** “12.10 General Provisions” of the City Of West Allis Municipal Code is hereby *amended* as follows:

**A M E N D M E N T**

12.10 General Provisions

1. Interpretation, Purpose and Conflict. In both interpretation and application, the provisions of this Subchapter shall be held to be the minimum requirements adopted for promoting the general health, safety, convenience and welfare of the residents of the City of West Allis.

Whenever the regulations imposed by this Subchapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any state statute or other City ordinance or regulation, the provisions of this Subchapter shall govern. Wherever the provisions of any State Statute or other City ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a

greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations of the Subchapter, the provisions of such Statute or ordinance or regulation shall govern.

This Subchapter is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this Subchapter are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this Subchapter shall govern.

2. Accessory Buildings. Accessory buildings are permitted as a matter of right in all of the Zoning Districts established under this Subchapter. Such buildings are, however, subject to all applicable general and specific regulations set forth in this Subchapter. The following shall apply to residential uses.
  - a. No accessory building, unless an integral part of the main building, shall be erected, altered or moved within ten (10) feet of the nearest wall of the main building, or within sixty (60) feet of the front lot line, or within three (3) feet of a side or rear lot line, or within five (5) feet of any alley line.
  - b. Accessory buildings may not encroach upon the side yard adjacent to the street of a corner lot, nor upon the rear yard of a through lot.
  - c. No accessory building shall exceed fifteen (15) feet in height.
  - d. Overhanging roof eaves projecting into required setbacks as listed hereafter will not be considered an obstruction. **[Ord. O-2006-0013, 4/4/2006]**
    - Side or rear yard setback, two (2) feet.
    - Alley setback, two (2) feet.
    - Corner or through-lot setback, two (2) feet.
  - e. (Reserved)
  - f. Area and Height. **[Ord. O-2014-0036, 6/17/2014; Ord. O-2019-0017, 6/4/2019]**
    - i. Garage(s) shall not exceed one thousand (1,000) square feet in total area.
    - ii. Detached garage(s) may be built up to eighteen (18) feet in height above grade, but shall not exceed the height of the principal dwelling.
    - iii. No garage (attached or detached) shall exceed the height of the principal dwelling.
    - iv. Wall height of detached garages shall not to exceed ten (10) feet.
  - g. A storage shed may not exceed one hundred fifty 50 square feet in area or 12 feet in height and may not have a door greater than five (5) feet in width. **[Ord. O-2014-0036, 6/17/2014]**
  - h. A residential accessory building may not exceed one hundred fifty (150) square feet in area and may not exceed twelve (12) feet in height. **[Ord. O-2014-0036, 6/17/2014]**
3. Control Over Use. No building or premises shall be used, in whole or in part, except in accordance with the provisions of this Subchapter, as specified for the Zoning District in which any such building or premises is located.
4. Control Over Bulk. All new buildings and structures shall conform to the bulk requirements established in this Subchapter for the Zoning District in which each building or structure is located.

No existing building or structure shall be enlarged, reconstructed, structurally altered, converted or relocated in such a manner as to conflict with, or if already in conflict, in such a manner as to further conflict with, the bulk regulations of this Subchapter for the Zoning District in which such building or structure is located.

5. **Building Must Be On a Lot.** Every building hereafter erected or structurally altered shall be located on a lot and there shall be no more than one main building on a lot except in the case of those lands developed under the provisions of the Planned Development District Section of this Subchapter. In case of doubt, or in any question of interpretation of this Subchapter, the decision of the Building Inspector shall be final.
6. **Existing Buildings and Uses.** All buildings and structures erected, all uses established, and all structural alterations and relocations of existing buildings and structures occurring after the effective date of this Subchapter or any amendment thereto shall be subject to the regulations of this Subchapter, as amended for the Zoning Districts in which such building, structures or uses are located.

However, where a building permit has been issued in accordance with all other applicable regulations prior to the effective date of this Subchapter or any amendment, the permitted building or structure may be completed in accordance with the permit, as issued, and may be occupied for the originally intended use, subject to the regulations governing that use.

7. **Unoccupied Lots.** Where a lot is to be occupied for a permitted use without buildings or structures, side yard and front yard requirements normally associated with the Zoning District in which the lot is located shall be maintained, unless otherwise stipulated in this Subchapter, except that side yards shall not be required on lots used for garden purposes without buildings or structures or on lots used for public recreational purposes.
8. **Yards Apply to Only One Building.** No required yard or other open space around an existing building shall be considered as providing a yard or open space for any other building or for any other lot on which a building may be erected.

Furthermore, yards and other open spaces required under this Subchapter shall be located on the same lot as the principal building, structure or use and shall meet all minimum width, depth and area requirements set forth in this Subchapter for the Zoning District within which it is located.

9. **Residential Side Yard Requirements - Corner Lots.** In the case of a lot in a residential Zoning District where the side yard adjoins a street, that side yard shall be at least the minimum width required under that Zoning District, except for lots platted and recorded prior to the passage of this Subchapter. For lots platted and recorded prior to the passage of this Subchapter which are forty (40) feet or less in width, dwellings and garages of less than twenty-four (24) feet in width are permitted, however, all other bulk requirements shall be met. **[Ord. O-2003-0014, 2/18/2003]**
10. **Permitted Obstructions in Required Yards.** Structures are permitted to be located in required yards in accordance with the following table: **[Ord. 6628, 9/17/2002; Ord. O-2003-0012, 2/18/2003; Ord. O-2014-0036, 6/17/2014]**

<b>Permitted Structures</b>			
<b>Structure</b>	<b>Front Yards</b>	<b>Side Yards</b>	<b>Rear Yards</b>

Accessory Buildings (garages, sheds, gazebos, etc.)	See RMC 12.10(2)		
Air conditioning equipment, but in no case closer than one (1) foot to a lot line		X	X
Antennas, Radio, Television (see Sec. 12.21 of the RMC)		X	X
Arbors and trellises	X	X	X
Awnings	X	X	X
Basketball hoops, but in no event closer than three (3) feet from the side yard property line	X	X	X
Bay windows, but not exceeding five percent (5%) of the yard area and projecting not more than three (3) feet into the yard, but in no event closer than eighteen (18) inches to a lot line	X	X	X
Canopies	X	X	X
Chimneys, attached to the main building, not exceeding five percent (5%) of the yard area and projecting not more than three (3) feet into the yard, but in no event closer than eighteen (18) inches to a lot line	X	X	X
Compost areas (see Sec. 7.05(5) of the RMC)		X	X
Dog houses and kennels, no closer than five (5) feet to a lot line			X
Fences and walls (see Secs. 13.30 and 13.31 of the RMC)		X	X
Flag poles	X	X	X
Open accessory off-street parking spaces (see Secs. 12.19 and 12.20 of the RMC)	X	X	X
Overhanging roof eaves (main building) not more than three (3) feet	X		
Overhanging roof eaves (main building) not more than one (1) foot	X	X	X
Patios and terraces	X	X	X

Platforms, not exceeding fifteen percent (15%) of the yard area and which cannot be used for lodging purposes, and no closer than ten (10) feet to the front lot line and three (3) feet to the side lot line	X	X	X
Porches, open or enclosed, not exceeding fifteen percent (15%) of the yard area and which cannot be used for lodging purposes, and no closer than ten (10) feet to the front lot line and three (3) feet to the side lot line	X	X	X
Recreational equipment no closer than five (5) feet from a side or rear property line as follows:			
i. Ramps, halfpipes or other structures which may be used for skateboards, roller blades, skis, snowboards, bikes or other similar activities			X
ii. Trampolines		X	X
iii. Playground equipment and structures (swing sets, jungle gyms, tree houses)		X	X
Refuse containers (one- and two-family uses or as allowed by Plan Commission per RMC 12.13)		X	X
Retaining walls	X	X	X
Signs (see Sec. 13.21 of the RMC)	X	X	X
Sills, belt courses, cornices and ornamental features of the principal building projecting not more than eighteen (18) inches into a yard	X	X	X
Steps, usual and their appurtenances	X	X	X
Swimming pools, but in no event closer than three (3) feet to lot line		X	X
Landscaping, including trees, shrubs and flowers	X	X	X
Yard decorations (usual lawn, holiday and ornamental lighting)	X	X	X

All permitted structures shall be erected, constructed and maintained in accordance with

this Subchapter and all other applicable City ordinances.

11. Exemptions for Public Premises. The regulations established in this Subchapter shall not apply to City premises, provided that a proposed development plan is submitted to the City Plan Commission for review and report to the Common Council, as required by Sec. 62.23 of the Wisconsin Statutes.
12. Schools; Accessory Uses. Public and private elementary and high school buildings may be used for other education, including adult and college level instruction, recreation and civic purposes, provided that the principal use of any such building is for public and private elementary or high school education purposes.
13. Root River Flood Control District. Within the area shown and designated on the Official Zoning Map as the Root River Flood Control District, no building or structure shall be erected, no existing building or structure shall be structurally altered, no building or structure shall be moved into the said area and no use of land shall be made except, in addition to all other applicable regulations of this Subchapter, in compliance with the specific regulations of the Root River Flood Control District. The regulations of the Root River Flood Control District shall be construed as supplementary to the regulations imposed on the same lands by any underlying zoning regulations. When flood control and underlying zoning regulations conflict, the most restrictive regulations shall govern.
14. The Building Inspector and Director of Development or their designees shall administer and enforce the provisions of this Subchapter. **[Ord. O-2015-0010, 2/3/2015]**
15. The restrictions on outdoor sales shall not apply to licensed activities under Sections 7.041; ~~9.09~~; and 9.265 of the Revised Municipal Code. **[Ord. O-2012-0027, 8/7/2012]**

**SECTION 8:            REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

**SECTION 9:            SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION 10:            EFFECTIVE DATE** This Ordinance shall be in full force and effect on and after the required approval and publication according to law.

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL MARCH 02, 2021.

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Ald. Angelito Tenorio	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Vince Vitale	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Tracy Stefanski	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Marty Weigel	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Suzzette Grisham	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Danna Kuehn	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Thomas Lajsic	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Dan Roadt	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Rosalie Reinke	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>
Ald. Kevin Haass	<u>X</u>	<u>          </u>	<u>          </u>	<u>          </u>

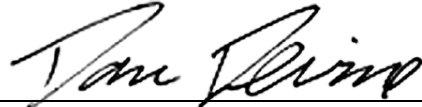


Attest

Presiding Officer



Rebecca Grill, City Clerk, City Of  
West Allis



Dan Devine, Mayor City Of West Allis

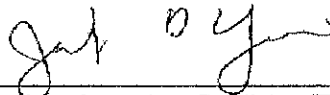


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STATE OF WISCONSIN }  
MILWAUKEE COUNTY } s.s.

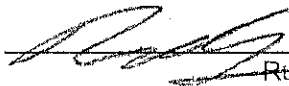
Joe Yovino, being the first duly sworn on oath, says that he or she is the Associate Publisher/Editor of THE DAILY REPORTER, which is a public newspaper of general circulation, printed and published daily in the English language in the City of Milwaukee, in said county, and fully complying with the laws of Wisconsin, relating to the publication of legal notices; that the notice of which the printed one attached is a true copy, which was clipped from the said newspaper, was inserted and published in said newspaper on

Mar. 5, 2021

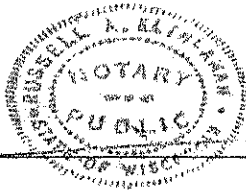


\_\_\_\_\_  
Joe Yovino, Associate Publisher/Editor

Sworn to me this 5th day of March 2021



\_\_\_\_\_  
Russell A. Klingaman  
Notary Public, Milwaukee County, Wisconsin  
My Commission Is Permanent



### NOTICE OF NEWLY ENACTED ORDINANCE

Please take notice that the City of West Allis enacted on 03-02-2021:

O-2021-0006, Ordinance to create Special Event Permits and repeal Parade and Carnival Permits.

O-2021-0022, Ordinance to amend the City of West Allis salary schedule to create the positions of Community Development Senior Planner, Customer Service Center Supervisor, Economic Development Specialist, and incorporate the Elected Officials and Miscellaneous positions compensation in the schedule

O-2021-0023, Ordinance to Adjust Class B Alcohol Licensing Fees Back to Previous Amount

O-2021-0025, Ordinance to Continue Expedited Temporary Extension of Premises Until June 30, 2021

The full text may be obtained at the City Clerk's Office, 7525 W. Greenfield Ave., West Allis, WI 53214 and through the Legislative Information Center on the City's Website at

<http://www.westalliswi.gov>.

Clerk's telephone: (414) 302-8220

Published: 3-5-2021

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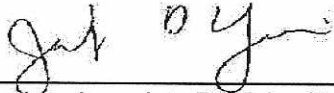
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STATE OF WISCONSIN }  
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Joe Yovino, being the first duly sworn on oath, says that he or she is the Associate Publisher/Editor of THE DAILY REPORTER, which is a public newspaper of general circulation, printed and published daily in the English language in the City of Milwaukee, in said county, and fully complying with the laws of Wisconsin, relating to the publication of legal notices; that the notice of which the printed one attached is a true copy, which was clipped from the said newspaper, was inserted and published in said newspaper on

Apr. 12, 2021



\_\_\_\_\_  
Joe Yovino, Associate Publisher/Editor

Sworn to me this 12th day of April 2021

### NOTICE OF NEWLY ENACTED ORDINANCE

Please take notice that the City of West Allis enacted on 4-7-21:

O-2021-0006, Ordinance to remove Special Event Permit exemption for Class B licensees

O-2021-0022, Ordinance to combine various entertainment-related licenses into single public entertainment license creating Section 9.037, repealing and recreating section 9.08, and repealing sections 9.032, 9.033, 9.034, 9.05, 9.06, 9.10, and 9.105

The full text may be obtained at the City Clerk's Office, 7525 W. Greenfield Ave., West Allis, WI 53214 and through the Legislative Information Center on the City's Website at

<http://www.westalliswi.gov>.

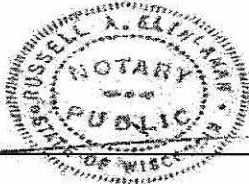
Clerk's telephone: (414) 302-8220

Published: 4-12-2021

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\_\_\_\_\_  
Russell A. Klingaman  
Notary Public, Milwaukee County, Wisconsin  
My Commission Is Permanent



# PROOF OF PUBLICATION

**Note: Italicized print is a guide to the reader. Regular text should be read out loud.**

## **HEARING PROCEDURE GUIDE**

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

I. *Convene the Hearing.*

A. I am Assistant City Attorney Rebecca Hammock. This matter is a hearing being held before the License and Health Committee of the Common Council of the City of West Allis. This license hearing is being held pursuant to sec. 125.12 of the Wisconsin Statutes, in the matter of the Complaint against Uncle Festers LLC, Ashley Kapalczynski, licensing agent.

B. Let it be noted for the record that the following Committee members are present:

*(Each Committee member Should Identify themselves by title and name.)*

One Assistant City Attorney is prosecuting this matter and another, myself, is acting as advisor to the Committee.

For the record we will now have everyone state their appearances.

*(Licensee and attorney should identify themselves. City Attorney and Prosecutor to identify themselves.)*

II. *Nature of the Hearing. (Sec. 125.12, Stats., attached.)*

A. Ashley Kapalczynski, the nature of this hearing is for the committee to make a decision as it relates to the Complaint against you, which has been filed with this Committee. Under the provisions of sec. 125.12 of the Wisconsin Statutes and section 9.02(20) of the West Allis Revised Municipal Code, this hearing has been convened for the purpose of determining whether any of the charges against you are true, and to make a recommendation based upon that determination. This Committee

will examine all the evidence concerning the charges through inquiry to both sides. The Committee will evaluate and then impartially weigh the evidence. It will determine whether or not any of the charges have been proven solely upon the evidence introduced at this hearing.

- B. This hearing is open to the public.
- C. A verbatim record of the proceedings is being made by audio recording.
- D. You may be represented by an attorney. Assistant City Attorney Nicholas Cerwin is here as the Prosecutor and will present the case against you to the Committee. I am *(The Assistant City Attorney Rebecca Hammock)* present and will serve as legal advisor to the Council. I am here to advise the Committee on questions of law and procedure and may also direct questions to witnesses on behalf of the Committee.
- E. You may present evidence, call and examine witnesses, and cross-examine witnesses against you. Such witnesses will be sworn.
- F. Both the Complainant and licensee shall be limited to one hour each for presentation of testimony, not including cross-examination or questions from the Committee or City Attorney representing the Committee. The Chair may extend the time for presentation of testimony to assure a full and fair hearing.
- G. Subject to a motion for consideration by the full Committee, made by a member of the Committee, the Chair has the final ability to rule upon all questions, objections and motions as to procedural matters, admissibility of evidence, and similar issues. All objections, questions and motions, should be directed to the Chair.
- H. You may testify on your behalf with regard to the charges against you. However, what you say will be considered as evidence. Further, if you do testify, you may be cross-examined.

- I. If a charge or charges against you are proven, you are advised that the Committee may recommend to the Common Council that your licenses be suspended, revoked, or not renewed and that the Common Council may accept or reject such recommendation and may determine, upon such recommendation, whether your licenses should be suspended, revoked or not renewed.

III. *The Complaint. (Summons and Complaint attached.)*

- A. You have been served with a Summons for this hearing and a copy of the Complaint against you, which have been filed with the Committee for a determination. I now request the Clerk to append as exhibits to the record, a copy of the Summons and Complaint, together with a copy of the Affidavit of Service.
- B. Do you admit to any of the allegations in the complaint or are there portions which are not contested?

IV. *Evidence.*

- A. At this time the prosecuting attorney, Mr. Cerwin will present evidence as to the charges before the Committee.

*All witnesses who testify before the Committee should be sworn. The form of oath which should be administered to each witness as follows:*

"Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?"

*If the witness states that he has conscientious scruples against taking the oath, or swearing in the usual form, administer the following:*

"Do you solemnly, sincerely and truly declare and affirm that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth; and that you do this under the pains and penalties of perjury?"

*(After each witness testifies on direct examination, permit the opposing party to cross examine the witness, then, if desired, allow redirect and recross examination until both sides have no further questions of each witness. The Chairman may limit the questioning in his discretion if the questions are repetitive or irrelevant.)*

B. Does any member of the Committee wish to ask questions of the witness?

C. Does the City Attorney wish to ask questions of the witness?

*(Questions of Committee members or City Attorney may prompt either side to ask additional questions. This should be permitted, following the same procedure above.)*

D. Does the Prosecutor wish to present any further evidence? *(If not, proceed.)*

E. Now *(name)* it is your opportunity to present evidence as the licensee in this matter.

*(Follow same procedure as with the complainant's evidence, i.e., swear witness, direct examination, cross-examination, etc.)*

F. Does any member of the Committee wish to ask questions of the witness?

G. Does the City Attorney have any questions of the witness?

*(Permit further questions by the parties, if requested.)*

H. Is there anything further?

*(If nothing further, proceed.)*

I. Does the Prosecutor wish to make a closing statement?

J. Does the licensee wish to make a closing statement?

K. Rebuttal by Prosecutor.

V. *Adjourn for Deliberation.*

Having heard all evidence in this case, the Committee will go into closed session, pursuant to sec. 19.85(1)(a), Stats., to deliberate. Upon completion of the deliberation, the Committee will reconvene in open session and at that time announce its findings and determinations.

VI. *Announce Deliberation.*

Read the basics of the decision the Committee arrived at.

Findings and recommendations to be drafted by Assistant City Attorney Cerwin.



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

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**In the Matter of the  
Complaint Against**

**SUMMONS**

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

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STATE OF WISCONSIN        )  
  ) ss.  
COUNTY OF MILWAUKEE    )

**THE WEST ALLIS COMMON COUNCIL TO Uncle Festers LLC by licensing agent  
Ashley Kapalczynski:**

You are hereby notified that a sworn complaint, a copy of which is attached, has been duly made and filed, requesting a hearing on suspension or revocation of the 2020-2021 Combination Class B intoxicating liquor and fermented malt beverage license, under license number 20-2251, for the premises located at 5732 W. Mitchell Street in the City of West Allis, State of Wisconsin, for the license period running July 1, 2020, and expiring on June 30, 2021, pursuant to the provisions of Wis. Stat. § 125.12 and West Allis Code § 9.02(20) for violations found in the complaint including Wis. Stat. §§ 125.04(5)(b) & (c), 125.12(2)(ag)1 & 2, 125.32(2), 125.68(2), 941.137(2), 946.41, addition to West Allis Municipal Code §§ 9.02(20)a.iii, & 9.02(20)a.vi., 9.02(20)a.ix, and 9.02(20)a.x.

**NOW THEREFORE**, you, Uncle Festers LLC by licensing agent Ashley Kapalczynski, are hereby summoned to appear before the License and Health Committee of the West Allis Common Council on January 26, 2021 at 6:00 p.m., or as soon thereafter as this matter can be

heard, to admit or deny the allegations in the complaint. You may be represented by counsel on this date.

Please note, this meeting and appearance will be held via ZOOM and will be a remote or virtual appearance only. You should access this ZOOM Meeting via the following information:

Website Access: <https://zoom.us/j/91063250839>

Meeting ID: 910 6325 0839


- Please note if you may contact the West Allis City Clerk's Office at 414 302 8220 or the West Allis City Attorney's Office at 414 302 8450 for assistance.

In the case of your failure to appear as required by this summons, the allegations in the complaint against you shall be taken as true and, if the License and Health Committee of the West Allis Common Council finds the allegations sufficient, a recommendation that your license(s) be suspended or revoked will be made to the full Common Council. The Common Council may then vote to suspend or revoke your license(s).

You are further notified that if you appear as required by this summons and contest the allegations in the complaint, a hearing will be scheduled at a later date before the License and Health Committee, at which time you may be represented by counsel, cross examine the witnesses who testify adversely against you, and present witnesses in your own behalf. A written transcript of said hearing shall be made and you may obtain a copy of the transcript of this proceeding at your expense.

Dated at West Allis, Wisconsin, this 21 day of January, 2021.

WEST ALLIS COMMON COUNCIL

By:   
Ann Marie Neff  
Deputy City Clerk

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

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**In the Matter of the  
Complaint Against**

**COMPLAINT**

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

---

STATE OF WISCONSIN        )  
  ) ss.  
COUNTY OF MILWAUKEE    )

Vince Vitale, Alderperson for the First District of West Allis and Chair of the West Allis License and Health Committee, being duly sworn, on oath deposes and states as a complaint against Uncle Festers LLC, as follows:

1. That the complainant is a resident of the City of West Allis.
2. That this complaint is based upon information contained within official records maintained by the City of West Allis and the City of West Allis Police Department, (hereafter "WAPD").
3. That Uncle Festers LLC is the current holder of a 2020-2021 Combination Class B intoxicating liquor and fermented malt beverage license, under license number 20-2251, for the premises located at 5732 W. Mitchell Street in the City of West Allis, State of Wisconsin, for the license period running July 1, 2020, and expiring on June 30, 2021.
4. That Ashley Kapalczynski is identified as the agent for the liquor license 20-2251.

5. That Timothy Wergin is identified as the President/Member of Uncle Festers LLC for the license 20-2251.
6. That on October 3, Officer Vanden Boogard reported that the West Allis Police Department received a noise complaint regarding Uncle Fester's. Officer Vanden Boogard called the bar and stated that the music was extremely loud in the background. He was able to communicate with the bartender to turn the music down. The bartender agreed to turn the music down and stated that there was a DJ working that evening.
7. That on October 10, 2020, just before midnight, officers were dispatched to a shots-fired complaint originating near the 1700 block of S. 57<sup>th</sup> Street. Officers attempted to locate evidence and surveillance video of the shooting from surrounding businesses. One of the locations officers went to was Uncle Fester's. The staff at the bar originally claimed to not know anything about a firearm or shooting. The bartenders at Uncle Fester's were Julio Crespo and Judith Tobar. Ashley Kapalczynski was also at the bar as the bar manager, however told officers that she was not at the bar earlier in the night and was just called into the bar very recently by a bartender and after hearing about the shooting incident on a police scanner.
8. While officers were obtaining evidence, Officer Sayeg had made contact with two persons in the area. Officers obtained identification information from the subjects and released them from the scene. It was later determined that the two subjects, a male and a female, were involved in the shooting. Approximately two hours after the shooting, the female subject was seen at Uncle Fester's by West Allis Police. Officers entered Uncle Fester's, searched the bar for the other individual, and eventually found him hiding in an upper unit attached to the bar, also owned by Timothy Wergin.

9. Officer Jacobsen spoke with Julio Crespo, one of the bartenders working that evening. Crespo stated he works at the bar and is dating Judith Tobar and helps when she is bartending. Crespo stated that he recognized the male shooting subject but did not know him well. Crespo originally stated that the male subject did not mention having a firearm and did not see him in possession of a firearm. Crespo initially stated that he did not know how the male shooting subject got upstairs.
10. Officer Vanden Boogard and Officer Jacobsen reviewed the interior surveillance camera footage from Uncle Fester's and saw that at approximately 7:10 p.m., the male and female shooting subjects entered Uncle Fester's and greeted Crespo. The subjects were served drinks by Crespo. The two subjects appeared to be at the bar for several more hours and just before midnight on October 10th, the male became angry and broke a pool stick over his knee. The male subject walked up to Crespo to recover some of his items that he had brought into the bar. Crespo can be seen handing the male a green bag and an item wrapped in a towel or rag. Officer Vanden Boogard reported that the male shooting subject removed the item from the towel and threw the towel onto the bar. Tobar then picked up the towel from the bar and appeared to be watching the interactions of Crespo and the male. Officer Jacobsen reported that the male shooting subject can be seen on video inserting a firearm magazine into a black and silver firearm on the bar surveillance video. Officer Jacobsen reported that the firearm appeared to be in plain view in front of Crespo, Tobar, the female shooting subject, and a separate unknown male patron. The male shooting subject then places the firearm onto the right side of his person. Officers report that the video depicts the male shooting

subject stumbling around the bar before almost falling over a chair, shaking hands with Crespo, high fiving Tobar, and then leaving with the female subject.

11. Officers determined that moments after the two shooting subjects leave Uncle Fester's the male party uses the firearm to shoot several round into the air.
12. Officer Jacobsen confronted Crespo about the surveillance video that largely discredits the version of events he had given. Crespo admitted to lying originally and stated the male was a regular in the bar. Crespo stated that when the male got to the bar, he handed Crespo a small object wrapped in a towel which Crespo immediately believe to be a firearm. Crespo placed the firearm in a drawer behind the counter. When the male subject was leaving, Crespo handed the gun back to the male and the male left the bar. Approximately two hours later, the two subjects called the bar phone and said they were coming back but were too drunk and needed a ride back. Crespo went to pick them up and brought them back to the bar. Crespo further stated that he helped the male leave out of the back of the bar but denied having him go to the upper unit.
13. Officer Jacobsen further spoke with Timothy Wergin over the phone. Wergin is the owner of the bar and stated that he was not home because he is an over-the-road trucker. He did state that he allows people like Tobar, Crespo, and the bar manager Ashley Kapalczynski to use his apartment above the bar when they need it. Wergin stated that the male shooting subject did not have his consent to be in his upper unit. A consent search was conducted of the upper apartment and nothing of evidentiary value was found at the bar location.
14. That on January 1, 2021, at approximately 4:30 a.m., the West Allis Police Department was dispatched to Uncle Fester's located at 5732 W. Mitchell Street for a noise

disturbance. Officer Brett Vanden Boogard reported that there were approximately 10-15 individuals exiting the bar with an additional 5-10 people within the bar.

15. Officer Vanden Boogard first made contact with bartender Judith Tobar. Tobar reported that she did not have a bartender's license and only helps out when the bar needs help.
16. Officer Vanden Boogard made contact with bartender Julio Crespo who stated he was one of the individuals yelling within the bar to get patrons to leave. Based on previous contacts with Crespo, officers were aware that he did not have a valid bartender's license. Officer Vanden Boogard stated that he watched surveillance video and observed Mr. Crespo serving alcohol and cleaning the bar top.
17. Officer Vanden Boogard reported that since there were no licensed bartenders working at the licensed establishment, the location was shut down for the evening and citations were issued to parties, including Timothy Wergin.
18. That based on the incidents detailed above, on at least three occasions Uncle Festers LLC, by agent Ashley Kapalczynski, has violated 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.
19. Further, on at least one occasion Uncle Festers LLC, by agent Ashley Kapalczynski assisted an individual in violating Wis. Stat. § 941.237(2) for allowing an individual to intentionally go armed with a handgun while on a licensed premises.
20. Further, that on at least one occasion Uncle Festers LLC, by agent Ashley Kapalczynski, violated 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.

21. Further, that on at least one occasion, employees of Uncle Festers LLC, by agent Ashley Kapalczynski, violated Wis. Stat. § 946.41 by knowingly obstructing an officer while such officer was doing an act in an official capacity and with lawful authority.
22. Further, on at least two occasions, Uncle Festers LLC by agent Ashley Kapalczynski has violated 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.
23. Further, the establishment 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 at least three violations of disorderly, riotous, indecent or improper conduct at the premises, allowing the establishment to operate on at least two occasions without a licensed operator, has served patrons who were intoxicated, has employed individuals who obstructed police investigations, and has employed individuals who have allowed a firearm on a licensed premises.
24. That the preceding violations are grounds for revocation or suspension of the Combination Class B intoxicating liquor and fermented malt beverage license that has been issued to Uncle Festers LLC, by agent Ashley Kapalczynski, for 2020-2021 Combination Class B intoxicating liquor and fermented malt beverage license, under license number 20-2251, for the premises located at 5732 W. Mitchell Street in the City of West Allis.




**WHEREFORE**, Alderperson Vince Vitale requests Uncle Fester's LLC, by licensing agent Ashley Kapalczynski be summoned to appear before the License and Health Committee of the West Allis Common Council to answer this complaint and, if the material allegations of the complaint are denied, that a hearing be held to determine whether the license issued to Uncle Fester's LLC should be revoked or suspended.

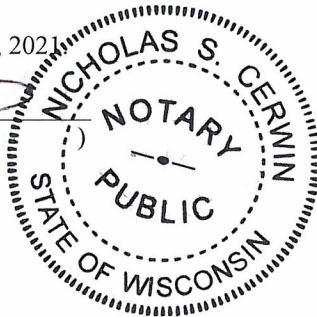
Dated this 21 day of July, 2021.

By:   
Vince Vitale  
Alderperson for the First District  
License and Health Committee Chair  
City of West Allis

Subscribed and sworn to before me  
this 21 day of January, 2021.



(Nicholas S. Cerwin  
Notary Public, State of Wisconsin  
My Commission expires: Permanent)



# Affidavit of Process Server

Court/Appearance Date: 01/26/21  
City of West Allis

Case Number \_\_\_\_\_  
Uncle Fester's LLC dba Uncle Fester's

vs

I the undersigned am an adult resident of the state and not a party to the action. I hereby swear that on January 21 2021 at 4:55 p.m. I duly served/or attempted to serve, (see nonservice section)

NAME Uncle Fester's LLC dba Uncle Fester's

<input checked="" type="checkbox"/>	DEFENDANT	<input type="checkbox"/>	PETITIONER	<input type="checkbox"/>	OTHER ATTEMPTED DATES
<input type="checkbox"/>	GARNISHEE DEFENDANT	<input type="checkbox"/>	RESPONDENT		
<input type="checkbox"/>	PLAINTIFF	<input type="checkbox"/>	WITNESS		

By serving Daniel Protic Person in Charge at \_\_\_\_\_  
 Home \_\_\_\_\_ Title/Relationship \_\_\_\_\_ Wisconsin  
 Business 5732 W. Mitchell St. \_\_\_\_\_ City of West Allis \_\_\_\_\_ Wisconsin

### Manner of Service:

- Personal Service
- Corporate Service: by leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof. After diligent search and inquiry, having made \_\_\_\_\_ attempts by leaving true & correct copies of the above documents with a competent occupant of the residence over the age of 14, and informed that person of the contents thereof. (See other Attempt Dates)
- Posting copies in a conspicuous manner to the address of the person/entity being served. (Use only for evictions)
- Copies of the documents were mailed by prepaid, first class mail on: \_\_\_\_\_ DATE \_\_\_\_\_ FROM \_\_\_\_\_

**Nonservice:** after due search, careful inquiry and diligent attempts at the address(s) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

- |                          |                         |                          |                                     |                          |   |
|--------------------------|-------------------------|--------------------------|-------------------------------------|--------------------------|---|
| <input type="checkbox"/> | Unknown at address      | <input type="checkbox"/> | Moved no forwarding                 | <input type="checkbox"/> | Refuses to cooperate in acceptance        |
| <input type="checkbox"/> | Address does not exist  | <input type="checkbox"/> | Evading                             | <input type="checkbox"/> | Service cancelled by litigant             |
| <input type="checkbox"/> | Not home three attempts | <input type="checkbox"/> | Unable to serve in a timely fashion | <input type="checkbox"/> | Search was conducted, whereabouts unknown |

### Type of Documents:

- |                                     |                                     |                          |                                      |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | SUMMONS AND COMPLAINT               | <input type="checkbox"/> | ORDER TO SHOW CAUSE & AFFIDAVIT      |
| <input type="checkbox"/>            | AUTHENTICATED SUMMONS & COMPLAINT   | <input type="checkbox"/> | BLANK FINANCIAL DISCLOSURE STATEMENT |
| <input type="checkbox"/>            | COVER LETTER                        | <input type="checkbox"/> | ADMINISTRATIVE DISMISSAL DATE        |
| <input type="checkbox"/>            | NOTICE OF MOTION & MOTION/AFFIDAVIT | <input type="checkbox"/> | SUMMONS AND PETITION                 |
| <input type="checkbox"/>            | ELECTRONIC FILING NOTICE            | <input type="checkbox"/> | CONFIDENTIAL PETITION ADDENDUM       |
|                                     |                                     | <input type="checkbox"/> | SUBPOENA/SUBPOENA DUCES TECUM        |

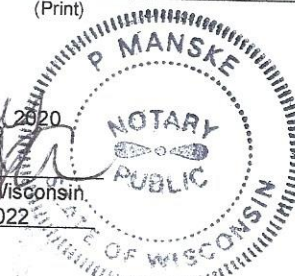
At the time of service, I did place upon it the date, time, and my name, leaving a true and correct copy thereof, and that the server knew the person so served to be the defendant (or other) mentioned and named therein.

NUMBER OF ATTEMPTS 2 NUMBER OF ADDRESSES ATTEMPTED (if more than one) \_\_\_\_\_  
 SERVICE FEE \$ 40.00 WITNESS FEE \$ \_\_\_\_\_  
 FILING FEE \$ \_\_\_\_\_ SEARCH FEE \$ \_\_\_\_\_  
 TOTAL FEE \$ 40.00 MILEAGE \$ \_\_\_\_\_

Server's Name Carlton W. Manske Server's Signature Carlton Manske  
 (Print)

Subscribed and sworn to before me  
This 23 day of January 2020

Notary Public Waukesha Co., State of Wisconsin  
My Commission expires 01/27/2022



2020-2022 Operator's License (Bartender/Class D Operator) applications:

Dresdow, Ava R.  
Martinez, Elena R.  
Matson, Amber L.  
Spanaus, Matthew P.  
Stone, Willie D.