



# City of West Allis

## Legislation Details (With Text)

**File #:** O-2013-0014 **Version:** 3

**Type:** Ordinance **Status:** Passed

**File created:** 3/19/2013 **In control:** License and Health Committee (INACTIVE)

**On agenda:** 4/2/2013 **Final action:** 4/2/2013

**Title:** Ordinance to Repeal and Recreate Subsection 9.02(4) of the City of West Allis Revised Municipal Code Relating to Description of Premises and Plan of Operation; to Create Subsection 9.02(4m) of the Revised Municipal Code Relating to the Truth of Statements Made in Alcohol Beverage License Applications; to Amend Subsection 9.02(10) of the Revised Municipal Code Relating to the Numbering, Expiration, and Posting of Licenses; to Repeal and Recreate Subsection 9.02(16) of the Revised Municipal Code Relating to Operator's Licenses; and to Repeal and Recreate Subsection 9.02(20) of the Revised Municipal Code Relating to the Suspension, Revocation, and Nonrenewal of Alcohol Beverage Licenses.

**Sponsors:** License and Health Committee (INACTIVE)

**Indexes:**

**Code sections:**

**Attachments:** 1. O-2013-0014

Date	Ver.	Action By	Action	Result
4/2/2013	3	Common Council	Passed as Amended	Pass
3/26/2013	1	License and Health Committee (INACTIVE)		
3/26/2013	2	License and Health Committee (INACTIVE)		Pass
3/19/2013	1	Common Council		
3/19/2013	1	License and Health Committee (INACTIVE)	Held	

Ordinance to Repeal and Recreate Subsection 9.02(4) of the City of West Allis Revised Municipal Code Relating to Description of Premises and Plan of Operation; to Create Subsection 9.02(4m) of the Revised Municipal Code Relating to the Truth of Statements Made in Alcohol Beverage License Applications; to Amend Subsection 9.02(10) of the Revised Municipal Code Relating to the Numbering, Expiration, and Posting of Licenses; to Repeal and Recreate Subsection 9.02(16) of the Revised Municipal Code Relating to Operator's Licenses; and to Repeal and Recreate Subsection 9.02(20) of the Revised Municipal Code Relating to the Suspension, Revocation, and Nonrenewal of Alcohol Beverage Licenses.

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

PART I. Subsection 9.02(4) of the Revised Municipal Code is hereby repealed and recreated to read as follows:

9.02 ALCOHOLIC BEVERAGES.

\* \* \*

(4) Right to Premises, Floor Plan, and Plan of Operation.

(a) No applicant will be considered unless the applicant has the right to possession of the premises described in the application for the license. The applicant shall present documentation, in a form acceptable to the City Attorney, of proof of right to possession for the license period. Loss of the right to the premises subjects the license to immediate revocation.

(b) In any application for an alcohol beverage retail establishment license, excepting special Class B Beer and Wine Licenses, the applicant shall file a detailed floor plan on an 8 ½ inch by 11 inch sized sheet of paper for each floor of the licensed premises. The floor plan shall include:

1. Area in square feet and dimensions of the licensed premises.
2. Locations of all entrances and exits to the premises together with a description of how patrons will enter the premises, the proposed location of the waiting line, and the location where security searches or identification verification will occur.
3. Locations of all seating areas, bars, and, if applicable, food preparation areas.
4. Locations and dimensions of any alcohol beverage storage and display areas.
5. Locations and dimensions of any outdoor areas available at the premises for the sale, service or consumption of alcohol beverages.
6. North point and date.
7. Any other reasonable and pertinent information the License and Health Committee may require either for all applicants or in a particular case.

(c) Plan of Operation. A completed plan of operation on forms provided therefore by the Clerk/Treasurer. The plan of operation shall require:

1. The current or planned hours of operation for the premises.
2. The legal occupancy capacity of the premises.
3. What plans the applicant has to insure the orderly appearance and operation of the premises with respect to noise and litter. This shall include a description of designated or likely outdoor smoking areas, the number and location of exterior and interior trash receptacles.
4. What other types of business enterprises, if any, are planned or currently conducted at the premises.
5. What other licenses and permits, if any, are planned or currently issued for the premises.
6. Whether, pursuant to Section 9.02(3)(c), the premises is less than 300 feet from any school, hospital, or church.
7. The number of security personnel expected to be on the premises, their responsibilities, and the equipment they will use in carrying out their duties.
8. Any other reasonable information the License and Health Committee may require either for all applicants or in a particular case.

(d) Renewals. For any renewal application for an alcohol beverage retail establishment license for which there is no change in any information that is reported in the floor plan and plan of operation as submitted with the original or previous renewal application, the licensee may re-file the previous documents. The License and Health Committee may require changes to a floor plan or plan of operation based on the licensee's past operation.

(e) Alterations/Amendments. Any alteration, change, or addition to the licensed premises shall be approved by the License and Health Committee prior to the issuance of any building, zoning, or other permits.

PART II. Subsection 9.02(4m) of the Revised Municipal Code is hereby created to read as follows:

9.02 ALCOHOLIC BEVERAGES.

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(4m) Truth of Statements. All matters submitted in writing to the city by any applicant or licensee pertaining to an alcohol beverage license shall be true. Any person who submits in writing any untrue statement to the city in connection with any such license or application shall forfeit not more than five hundred dollars (\$500.00) together with the costs of prosecution, and in default shall be imprisoned in the Milwaukee County House of Correction for the maximum number of days set forth in Section 800.095(1)(b) of the Wisconsin Statutes. In addition, any license granted shall be subject to revocation and no alcohol beverage license of any kind whatsoever shall thereafter be granted to such person for a period of one year from the date of such revocation.

PART III. Subsection 9.02(10) of the Revised Municipal Code is hereby amended to read as follows:

9.02 ALCOHOLIC BEVERAGES.

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(10) Numbering, Expiration, and Posting of Licenses.

(a) Each license holder shall be assigned a number which shall remain the same for that license holder annually except that the year when the license year commences shall change each license year, shall state clearly the specific premises for which granted, the date of issuance, the fee paid, the name of the licensee, and a statement that the license shall expire on the 30<sup>th</sup> day of June thereafter, unless revoked by state law or city ordinance.

(b) Every person licensed under this Section shall post the license and maintain it posted while in force in a conspicuous place in the room or place where alcohol beverages are drawn or removed for service or sale. It shall be unlawful for any person to post the license upon premises other than those identified in the application and grant, or to knowingly deface or destroy the license.

PART IV. Subsection 9.02(16) of the Revised Municipal Code is hereby repealed and recreated to read as follows:

9.02 ALCOHOLIC BEVERAGES.

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(16) Operator's Licenses.

(a) Operator's License. An Operator's License shall entitle the holder thereof to work as an operator upon premises licensed under a retail Class "A" Intoxicating Liquor or Fermented Malt Beverage license, a retail Class "B" Intoxicating Liquor or Fermented Malt Beverage license, or a retail Class "C" Wine license. Such licenses will be issued by the Common Council only to persons meeting the requirements set forth in Sections 125.04(5) and 125.17(6) of the Wisconsin Statutes. The license shall be valid for a period of two years, except that it shall be deemed to have been issued July 1 and shall expire on June 30 of the second year.

(b) Provisional Operator's License. The City Clerk is authorized to issue a Provisional Operator's License.

Such provisional license shall be issued only when the City Clerk has determined that the applicant has a satisfactory record. Or, the City Clerk shall issue a provisional operator's license to an applicant who, at the time of application for an operator's license and payment of the fee, files with the City Clerk a certified copy of a valid operator's license issued by another municipality. Any false statements made by the licensee on the application may result in revocation of the license by the City Clerk. Such provisional license shall be valid for not to exceed sixty (60) days or until action of the Common Council, whichever first occurs.

(c) Temporary License. The City Clerk is authorized to issue a temporary operator's license to applicants meeting the qualifications of Subsection (a) if the applicant will be employed by or donating his services to nonprofit corporations and has not held another temporary license during the license year. The temporary license shall be valid for up to fourteen (14) days and the period for which it is valid shall be stated on the license.

(d) Application. A written application shall be filed biennially with the City Clerk, stating the name, residence, age and sex of applicant. The application shall be referred to the Chief of Police for a report. A license fee and record check fee must accompany the application. There will be no refund of the fees if the license is not subsequently granted.

(e) Possession. Each person who holds an operator's license shall carry that license on his person while engaged in serving alcoholic beverages.

PART V. Subsection 9.02(20) of the Revised Municipal Code is hereby repealed and recreated to read as follows:

#### 9.02 ALCOHOLIC BEVERAGES.

\* \* \*

##### (20) License Suspension, Revocation, or Nonrenewal.

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

1. The making of any material false statement in any application for a license.
2. The conviction of the licensee, his agent, manager, operator, or any other employee for keeping a gambling house or a house of prostitution or any felony related to the licensed operation.
3. A showing that the licensee has violated any state law or city ordinance prohibiting the sale of intoxicating liquors or fermented malt beverages to underage persons or to any person who is intoxicated or bordering on intoxication.
4. The violation of any of the applicable provisions of Section 9.02.
5. The violation of any of the excise laws of this state, or failure to provide proof that the licensee is in good standing as required by Sections 77.61(1) and 125.04(5)(a) of the Wisconsin Statutes.
6. The licensed premises is operated in such a manner that it constitutes a public or private nuisance or that conduct on or emanating from the licensed premises, including but not limited to loud and raucous noise, has had a substantial adverse effect upon the health, safety, convenience or prosperity of the immediate neighborhood.
7. Failure of the licensee to operate the premises in accordance with the floor plan or plan of operation submitted

pursuant to Section 9.02(4).

8. If the licensee is a corporation or licensed limited partnership, the conviction of the corporate agent, officers, directors, members or any shareholders holding twenty percent or more of the corporation's total or voting stock, or proxies for that amount of stock, or any of the offenses enumerated in Section 125.12(2)(ag) of the Wisconsin Statutes.

9. Any of the grounds set forth in Section 125.12(2)(ag) of the Wisconsin Statutes.

10. The licensee is a habitual law offender as set forth in 125.04(5)(b) of the Wisconsin Statutes.

11. The failure to pay any tax or forfeiture as provided in Section 1.08(a).

12. The city has been notified pursuant to Section 125.33(7)(b) and 125.69(4)(b) of the Wisconsin Statutes, that the licensee has failed to pay for alcohol beverages.

(b) State Law Applicable. Except as otherwise provided herein, the provisions of Section 125.12(2)(ag) to (c) and 125.12(3) of the Wisconsin Statutes, shall be applicable to proceedings for the suspension, revocation, and non-renewal of all licenses granted under this Section.

(c) Commencement of Proceedings. Suspension, revocation, or nonrenewal proceedings may be instituted by the License and Health Committee of the Common Council upon its own motion, upon sworn written charges made and filed with the Clerk/Treasurer by the Chief of Police, or upon a sworn written complaint filed with the Clerk/Treasurer by any city resident.

(d) Procedure.

1. Upon receipt of a sworn complaint, either from the Chief of Police, a resident of the city, or upon directive of the Committee, the License and Health Committee shall direct the City Attorney to prepare a summons and have the summons and complaint served upon the licensee pursuant to Section 125.12(2)(ar) of the Wisconsin Statutes.

2. The summons and complaint shall contain: the date and time for appearance by the licensee; a statement of the Common Council's intention to suspend, revoke, or not renew the license in the event any of the allegations are found to be true; a statement of the reasons for suspension, revocation, or nonrenewal; notification to the licensee of an opportunity to be heard, respond to and challenge the reasons for suspension, revocation, or nonrenewal and to present and cross examine witnesses under oath; notification to the licensee of the right to be represented by counsel of the licensee's choice and at the licensee's expense.

3. If the licensee fails to appear on the date and time designated in the summons, the License and Health Committee may enter a default judgment and take the allegations of the complaint to be true. The License and Health Committee shall then deliberate on what sanction, if any, to impose consistent with Section 125.12 of the Wisconsin Statutes.

4. If the licensee appears before the License and Health Committee at the date and time designated in the summons and denies the material charges contained in the complaint, an evidentiary hearing shall be scheduled. If the licensee does not appear or appears but does not deny the material charges contained in the complaint, the complaint may be taken as true and the Committee shall hear the arguments of the complainant and, if applicable, the licensee in connection with whether to non-renew, revoke or suspend the license and the length of the suspension.

5. If the matter proceeds to hearing before the Committee, the following procedures shall apply:

a. The complainant shall first present evidence in support of the complaint.

b. After the complainant rests, the licensee may present evidence in opposition to the charges.

- c. The complainant and licensee may subpoena and present witnesses. All witnesses shall testify under oath or affirmation and shall be subject to cross examination.
- d. The complainant and licensee shall each be limited to one hour for testimony unless the chair, subject to approval of the Committee, extends the time to assure a full and fair presentation.
- e. Questions by Committee members or the advising City Attorney and answers to such questions shall not be counted against the time limitations.
- f. At the close of testimony, the complainant and licensee shall be given a reasonable time to make arguments upon the evidence produced at hearing.

(e) Miscellaneous Procedural Matters.

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

(f) Findings and Recommendations.

- 1. After the close of the hearing, the Committee shall deliberate and reach a decision. The Committee shall prepare findings on factual matters, conclusions of law, and a recommendation on what action, if any, should be taken with regard to the license(s) at issue. The report shall be filed with the City Clerk/Treasurer with a copy to the licensee and complainant. The findings and recommendations shall be distributed to each member of the Common Council.
- 2. The licensee and complainant may file a written statement or response to the findings and recommendation, including objections, exceptions, and arguments of fact and law. A written statement must be filed with the City Clerk/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 24 hours before any vote on the matter is scheduled before the Common Council.

(g) Common Council Action.

- 1. Not less than five working days prior to the matter being scheduled before the Common Council, the Clerk/Treasurer shall notify the licensee and complainant by U.S. first class mail, postage prepaid, sent to the last known address, that the Common Council will convene to determine the matter.
- 2. Unless an alderperson states that he/she has not read the findings and recommendations, and written statements, if any, the matter shall proceed to debate amongst members of the Common Council. Neither the complainant nor the licensee shall be permitted to make oral arguments.

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

(h) Surrender of License.

1. A licensee may, at any time during the license year surrender a license to the City Clerk/Treasurer, along with a statement, in writing, that the licensee no longer wishes to conduct licensed activity at the licensed premises.

2. The Clerk/Treasurer shall notify the License and Health Committee of the surrender. Except as set forth in 3. below, the surrender shall operate to extinguish any right the licensee had to the license or to conduct licensed activity at the premises listed in the license.

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

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

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

PART VII. This ordinance shall take effect and be in force commencing August 1, 2013. All new and renewal applications and licensed activity shall thereafter comply with the provisions of this ordinance.

ATTO-Repeal&RecreateSubSec9.02(4)(10)(16)(20)-Create9.02(4m) AlcoholicBeverages-AMENDED