



# City of West Allis

## Legislation Text

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**File #:** O-2012-0021, **Version:** 1

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Ordinance to Create Section 7.041 of the City of West Allis Revised Municipal Code Relating to Food Peddlers.

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

PART I. Section 7.041 of the Revised Municipal Code is hereby created to read as follows:

### 7.041 FOOD PEDDLERS

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

(a) Charitable Organization. The term “Charitable Organization” shall mean any patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, person, partnership, association or corporation that is validly registered under Wis. Stat. § 440.42.

(b) Health Commissioner. The term “Health Commissioner” shall mean the Health Commissioner of the City, as set forth in Section 2.24 of the Revised Municipal Code, or his/her designee.

(c) Food. The term “food” shall mean all articles used for food, drink or condiment including ice or water used by humans, whether simple, mixed, or compound and articles used or intended for use as ingredients in the composition or preparation thereof.

(d) Food Peddler. The term “food peddler” shall mean any person who sells food in this City from a pushed, pedaled, pulled, motorized, or movable vehicle or cart, or from a carried container.

(2) Adoption of State Code. Except as otherwise provided herein, the provisions of Department of Agriculture, Trade, and Consumer Protection Chapter 75 and the Wisconsin Department of Health Services Code Chapter 196 and its appendix, the Wisconsin Food Code, are hereby adopted by reference.

(3) Permit Required. No food peddler shall engage in the sale of food without a permit. A person, on behalf of a charitable organization, selling individually wrapped, hermetically sealed, single food servings that are prepared and packaged off-premise by a licensed processor shall not require a permit; however, a person selling such food must comply with all other provisions of this section.

(4) Time Restriction. No food peddler shall remain in any location for more than one hour on any one day, except as provided in subsection (4)(a) of this section.

(a) Exceptions to One-Hour Limit.

1. A food peddler may sell in one location in excess of the one-hour limit specified in subsection (4) if:

a. The food peddler's vehicle, cart, and/or carried container is located in a nonresidential zoning district; and the food peddler's vehicle is parked in a nonresidential zoning district in compliance with all posted time limits on parking and

with all other applicable parking regulations; or,

b. Whenever any street or portion thereof has been closed to traffic in connection with any civic event, and the food peddler obtains a Special Event Direct Seller's permit, under Section 9.18(3m) from the City Clerk/Treasurer to park on or access such closed streets longer than the one-hour limit.

(5) Exemption. The provisions of Section 7.10(3) of the Revised Municipal Code relating to merchandise display on sidewalks and zoning provisions of Chapter 12 of the Revised Municipal Code relating to outdoor merchandise sales are inapplicable to persons, who possess a valid food peddler license, engaging in food peddling. A person who obtains a permit under this section, except as set forth herein, shall be deemed to have a Direct Seller's Permit under Section 9.18 of the Revised Municipal Code.

(6) Permit Fees. A food peddler shall pay a fee of \$100 for a permit. Such fee shall be paid at the time the permit application is filed with the City Clerk/Treasurer.

(7) Application. Each person requiring a permit shall make a sworn application in writing on a form provided by the City Clerk/Treasurer which shall give the following information:

(a) Name, address and telephone number of the applicant.

(b) Name, address and telephone number of the person, firm, association, or corporation that the food peddler represents or is employed by, or whose food is being sold.

(c) A description of the food offered, including a copy of the menu

(d) The location from which the business will be conducted, including a proposed route, and the proposed dates and times.

(e) Make, model and license number of any vehicle to be used by the applicant in the conduct of the business.

(f) Last municipalities, not to exceed three (3), where the applicant conducted similar business.

(g) Statement as to whether the applicant has been arrested or convicted of any crime or ordinance violation, together with the nature of the offense and the place of conviction.

(h) 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.

(i) Proof of a food-related permit issued by the West Allis Health Department.

(8) Investigation.

(a) Upon receipt of an application and fee, the City Clerk/ Treasurer may refer the application to the Chief of Police or his/her designee. The Chief of Police or his/her designee may make an investigation of the accuracy of the statements made in the application and determine whether the applicant has been convicted of a felony, misdemeanor, statutory violation punishable by forfeiture, or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor, or other offense substantially relate to the circumstances of the permitted activity and, if so, the nature and date of the offense and the penalty assessed.

(b) If, as a result of such investigation, the Chief of Police or his/her designee discovers that any representation on the application contains a material omission or inaccuracy, or the Chief of Police or his/her designee is of the opinion that the applicant is not a fit person to conduct such sales, the Chief of Police or his/her designee 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 therefore.

(c) Issuance. If the City Clerk/Treasurer does not send the application to the Chief of Police or his/her designee, or if the Chief of Police or his/her designee returns an application without disapproval, the City Clerk/Treasurer shall then issue a permit to the applicant. The permit shall be carried by the food peddler at all times s/he is engaged in food peddling and shall contain the name of the permittee, the date of issuance, the date of expiration, and the permit number.

(9) Transfer Prohibited. No permit issued under this subsection may be transferred.

(10) Licensing Year. The licensing year for the Food Peddler's Permit shall be from July 1 to June 30.

(11) Posting of Permit and Company Name.

(a) Every food peddler shall display his/her permit at all times in plain view to the public on the food peddler's vehicle, cart, container, or person.

(b) Every food peddler shall display on his/her vehicle, cart, or carrier, the name of the person to whom the permit is issued and the permittee's telephone number. Such lettering shall be not less than four (4) inches high.

(12) Permit Revocation.

(a) The Common Council may, upon sufficient cause, suspend, revoke, or not renew a permit issued under this section. Cause for suspending, revoking, or not renewing a permit shall include, but not be limited to, the following: violations of this section; violations of the City or State's food regulations; violations of West Allis Revised Municipal Ordinance 7.05; violations of the City or State's health regulations; any fraud, misrepresentation, or false statement contained in the license application; failure to comply with the directives of the Common Council, License and Health Committee, or West Allis Health Department; disorderly conduct; or theft.

(b) Whenever the Health Commissioner or his/her designee has reasonable cause to believe that any food, sanitary condition, equipment, premises or method of operation creates a danger to public health, the Health Commissioner may issue an order as set forth in sec. 66.0417(2), Wis. Stats. The License and Health Committee of the West Allis Common Council shall conduct the hearing required by sec. 66.0417(3), Wis. Stats. The decision of the License and Health Committee shall be final subject to appeal rights as provided by law.

(13) Prohibited and Required Acts.

(a) A food peddler shall not:

1. Sell food between the hours of 9 p.m. and 6 a.m.
2. Block or restrict an individual's access to a business or residential property.
3. Occupy any sidewalk so as not to permit any pedestrian at any time to have a minimum five-foot clearance.
4. Sell or offer for sale any food while the person is on a roadway median or safety island, unless the roadway has been closed to traffic under subsection (3)(b) and the food peddler is otherwise in compliance with this section.
5. Sell or offer to sell any food while located within 10 feet from a crosswalk, bus stop, or fire hydrant.
6. Make any comment, request, suggestion or proposal that is obscene, lewd, lascivious, profane, or indecent.

7. Sell food on private property or City-owned property that is not public right-of-way without written permission of the owner.

8. Sell food within 300 feet of school grounds.

9. Sell food within 100 feet of a licensed restaurant, unless such restaurant is owned by the food peddler or the food peddler has written permission from the restaurant licensee's owner or agent.

10. Sell food within 300 feet of the West Allis Farmer's Market during the hours that the market is open for business, unless the food peddler holds a valid street vendor's contract for the market with the West Allis Health Department.

11. Sell food that is unwholesome, tainted, unclean, or that has been handled in an unclean manner, or has been exposed to unclean contaminating things or conditions, or contrary to any rules or regulations adopted by the Health Commissioner.

12. Allow any person who does not possess a valid food peddler's permit to sell or assist in selling food from the food peddler permittee's vehicle, cart, or container.

(b) A food peddler shall:

1. Possess and maintain all required food-related permits issued by the West Allis Health Department.

2. Direct vending equipment and displays, including signage, away from the street.

3. Display food and signage in a manner in which attention to it is not focused from the street and which does not require or encourage prospective buyers to enter or walk upon the street to examine it.

4. Notify the City Clerk/Treasurer within 10 days of the event whenever anything occurs to change any fact set out in the application or information of any permit.

5. Comply with all inspection requests and orders from the City, including but not limited to inspections and orders from the Health Department, Building Inspection & Zoning Department, and Fire Department.

6. Comply with all lawful orders or requests from an officer of the West Allis Police Department or other police agency.

7. Comply with all local, state, and federal laws and regulations.

(14) Penalties.

(a) Any person violating this section shall, upon conviction for a first offense, forfeit not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), together with the costs of prosecution and, in default of payment, shall be imprisoned in the House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in § 800.095(4), Wis. Stat. Each and every day during which any such violation continues shall constitute a separate violation.

(b) Any person violating this section shall, upon conviction for the second or subsequent offenses, forfeit not less than three hundred dollars (\$300), nor more than two thousand dollars (\$2,000), together with the costs of prosecution and, in default of payment, shall be imprisoned in the House of Correction until such forfeiture and costs are paid, but not more than the number of days set forth in § 800.095(4), Wis. Stats. Each and every day during which any such violation continues shall constitute a separate violation.

(15) Severability. If any provision or portion of this section is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the section shall not be affected thereby.

(16) Distance Measurements. For purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the edge of the property line when measuring from real estate or the nearest edge of an object or line when measuring from a crosswalk, bus stop, or fire hydrant, or similar object, to the nearest edge of a food peddler's cart, vehicle, or container.

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

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

ATTO-Create 7.041FoodPeddlers