



City of West Allis

Legislation Text

File #: O-2016-0036, **Version:** 1

An Ordinance to Repeal and Recreate Section 9.04 of the West Allis Revised Municipal Code Relating to Cigarette and Tobacco Product Sales.

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

PART I. Section 9.04 of the Revised Municipal Code of the City of West Allis is hereby repealed and recreated to read as follows:

9.04 CIGARETTE AND TOBACCO PRODUCT SALES.

- (1) **State Statute Adopted.** Except as otherwise provided herein, Wisconsin Statute Section 134.65, as it is from time to time amended, is hereby adopted by reference.
- (2) **License Required.** No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products, as defined in Wis. Stat. Sections 139.30(3m) and 139.75(12), to any person not holding a license under Chapter 134 of the Wisconsin Statutes or a permit under Wis. Stat. Sections 139.30 to 139.41 or 139.79 without first obtaining a license from the City.
- (3) **License Requirements.** The City Clerk may not issue a license under subsection (2) unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of or give away the cigarette or tobacco products over the counter or in a vending machine, or both.
- (4) **License Issuance.** Upon filing of a proper written application and payment of the license fee of \$100, a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. Each license shall name the licensee and specifically describe the premises where such business is to be conducted.
- (5) **License Transfer Prohibited.** A license shall not be transferable from one person to another nor from one premise to another.
- (6) **Recordkeeping.** Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. Such records shall be preserved on the licensed premises for two years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.
- (7) **Revocation of License.** The City may revoke, suspend or refuse to renew any licensed issued under this section.

(a) Causes. Any duly authorized City employee may file a sworn written complaint, supported by report from a law enforcement agency, with the City Clerk, alleging at least 2 separate instances of one or more of the following about a person holding a license issued this section:

1. The person has violated Wis. Stat. Sec. 134.66(2)(a), (am), (cm), or (e), or Section 6.02(19) of the West Allis Revised Municipal Code.

2. The person's premises are disorderly, riotous, indecent, or improper.

3. The person has knowingly permitted criminal behavior, including prostitution and loitering, to occur on the licensed premises.

4. The person has been convicted of any of the following:

a. Manufacturing, distributing, or delivering a controlled substance or controlled substance analog under Wis. Stat. Sec. 961.41(1).

b. Possessing with intent to manufacture, distribute or deliver a controlled substance or controlled substance analog under Wis. Stat. Sec. 961.41(1m).

c. Possessing with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under a substantially similar federal law or substantially similar law of another state.

d. Possessing any of the materials listed in Wis. Stat. Sec. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to Wis. Stat. Sec. 961.65.

e. The person knowingly allows another person who is on the licensed premises to do any of the actions described in subsection (7)(d).

(b) Procedure. Upon the filing of the complaint, the Common Council shall issue a summons, signed by the clerk, and directed to any peace officer in the City. The summons shall command the person complained of to appear before the Common Council on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked, suspended, or not renewed. The summons and a copy of the complaint shall be served on the person complained of at least 3 days before the date on which the person is commanded to appear. Service shall be in the manner provided in Wis. Stat. Sec. 801 for service in civil actions in circuit court.

(c) Hearing.

1. If the person does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the city governing body finds the allegations to be sufficient grounds for revocation or nonrenewal, the license shall be revoked or not renewed. The City Clerk shall give notice of the revocation or nonrenewal to the person whose license is revoked or not renewed.

2. If the person appears as required by the summons and answers the complaint, both the complainant and the person complained of may produce witnesses, cross-examine witnesses, and be represented by counsel.

The person complained of shall be provided a written transcript of the hearing at his or her expense. If upon the hearing, the Common Council finds the allegations of the complaint to be true, and if the Common Council finds the allegations to be sufficient grounds for suspension, revocation, or nonrenewal, the license shall be suspended for not less than 10 days or more than 90 days, revoked, or not renewed.

3. The City Clerk shall give notice of each suspension, revocation, or nonrenewal to the person whose license is suspended, revoked, or not renewed.

4. If the Common Council finds the allegations of the complaint to be untrue, the complaint shall be dismissed without cost to the person complained of.

(d) Disqualification for License. When a license is revoked under this subsection, the revocation shall be recorded by the City Clerk and no other license may be issued under this section to the person whose license was revoked within the 12 months after the date of revocation. No part of the fee paid for any license that is revoked under this subsection may be refunded.

(e) Circuit Court Review. The action of the Common Council in suspending, revoking, or not renewing any license under this subsection, or the failure of the Common Council to suspend, revoke, or not renew any license under this subsection for good cause, may be reviewed as provided in Wis. Stat. Sec. 134.65(7)(e).

(8) Penalties. Any person shall forfeit not less than \$25 nor more than \$100 for the first offense and not less than \$25 nor more than \$200 for the second or subsequent offense, together with the costs of prosecution; in default of payment thereof, the person 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 Wis. Stat. Sec. 800.095(1)(b)1. Each and every day constitutes a separate offense.

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-Repeal&RecreateSect9.04-Cigarette&TobaccoProductSales