



“...meeting community needs...enhancing quality of life.”

TO: Board of Health

FROM: Kurt Eggebrecht, Health Officer

DATE: 3/4/2021

RE: Code Section 9-52 Operation of premises licensed for retail sales

History

In October of 2016, the Board of Health voted to approve recommended ordinance language changes because of the 2015 Wisconsin Act 55. The Food, Safety, and Licensing section of the Department of Health Services as it was merged with the Division of Food Safety at the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP), created a new “Division of Food and Recreational Safety” in WDATCP effective July 1, 2016. As a result of that merger, several existing city ordinances required modification to correct Wisconsin Administrative Code references.

With the merger, Wisconsin Local Public Health Departments that are agents for WDATCP learned that the attorney for WDATCP issued an opinion that affected the local health department’s (including ours) ability to license taverns that serve no food under our agent contracts with WDATCP.

The Board of Health at this time agreed with staff that it was important to maintain an inspection of taverns. To rectify this, taverns that serve no food were addressed in Sec 9-52, see attached ordinance – language in red.

Current

As a result, the Appleton Health Department continues to issue a local municipal health permit to taverns that do not serve food, as these establishments are exempted from state licensing requirements under our agent contract with WDATCP. This permit is issued under Appleton Municipal Code section 9-52(5) (*see attached*). It was recently determined that a change to this section is needed to clarify rules under which these establishments are regulated. Historically, the Health Department has always applied the Wisconsin Food Code (WI Administrative Code ATCP 75 – Appendix) to these establishments. These suggested revisions (*see attached*) will clarify this by specifically referencing the Wisconsin Food Code as the regulation to be enforced under this permit. The suggested language provided was prepared with the City Attorney’s Office.

Sec. 9-52. Operation of premises licensed for retail sales.

All class A and B retail licenses granted under this article shall be granted subject to the following conditions and all other conditions of this article, and subject to all other ordinances and regulations of the City applicable thereto:

- (1) Every applicant procuring a license thereby consents to the entry of police or other authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from the premises of all things and articles there in violation of City ordinances or state laws and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offense.
- (2) No retail licensee shall hire any person under twenty-one (21) years of age, except as modified by W.S.A. §125.07(4)(bm).
- (3) No gambling or games of chance shall be permitted upon the licensed premises. Dice, slot machines, or any other devices of chance are prohibited and shall not be kept upon the premises, except those permitted by law.
- (4) No premises for which a class B or class C retail license has been issued shall be permitted to remain open during the closing hours required by W.S.A. §125.32(3) or W.S.A. §125.68(4), and the premises shall be vacated during such hours.
- (5) Each premises shall be conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used. Effective July 1, 2017, taverns serving no food shall obtain a municipal health permit from the Health Department on an annual basis, pursuant to §9-190. Additionally, ~~the~~ Board of Health may make reasonable rules for the sanitation of all places of business possessing licenses under this article. Such rules or regulations may be classified and made applicable according to the class of business conducted. All such rules and regulations shall have the same force as this article and infraction thereof may be punished as a violation of this article.
- (6) A violation of this article by a duly authorized agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder.
- (7) Class "A" retail licensees shall not sell, dispense, give away or furnish, directly or indirectly, fermented malt beverages for consumption off the premises between 12 midnight and 8:00 a.m., Central Standard Time. "Class A" retail licensees shall not sell, dispense, give away or furnish, directly or indirectly, intoxicating liquors including wine for consumption off the premises between 9:01 p.m. and 8:00 a.m., Central Standard Time.
- (8) Class B or class C retail licensees shall not sell, dispense, give away or furnish directly or indirectly fermented malt beverages or intoxicating liquors for consumption off the premises between 12:01 a.m. and 8:00 a.m., Central Standard Time.
- (9) *Abandonment or non-use.* Any licensee granted or issued a license to sell alcohol beverages that abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or non-renewal of any alcohol beverage license. In this section "abandon" and "abandonment" shall mean a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the city council for a period of one (1) year. The Common Council may, for good cause shown, extend such period.
- (10) A retail class A, B or C license shall not be granted to any applicant whereby the applicant had been convicted of selling alcoholic beverages without the proper retail license within the last eighteen (18) months.

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- (5) Each premises shall be conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used. Effective July 1, 2017, taverns serving no food shall obtain a municipal health permit from the Health Department on an annual basis, pursuant to Sec. 9-190. For the purposes of this section, taverns issued a license under this section are included in the definition of Food Establishment as defined in ATCP 75 Appendix and shall be subject to and comply with the applicable provisions of ATCP 75 Appendix, unless otherwise stated herein. Additionally, the Board of Health may make additional reasonable rules for the sanitation of all places of business possessing licenses under this article. Such rules or regulations may be classified and made applicable according to the class of business conducted. All such rules and regulations shall have the same force as this article and infraction thereof may be punished as a violation of this article.

(Ord 78-16, §1, 11-8-16)