



"...meeting community needs...enhancing quality of life."

LEGAL SERVICES DEPARTMENT

Office of the City Attorney


100 North Appleton Street

Appleton, WI 54911

Phone: 920/832-6423

Fax: 920/832-5962

TO: Alderperson Kathy Plank, Chair
Members of the Finance Committee

FROM: Christopher R. Behrens, Assistant City Attorney 

DATE: February 13, 2014

RE: Delinquent Debt Collection from License and Permit Applicants

It has been a long-standing practice to withhold issuing licenses and permits under Sec. 9-23 of the Municipal Code when the applicant has delinquent and unpaid debts owed to the City. The intent of this section is clear but a recent review revealed that some clarification will strengthen its application, and the City's position, when the issuance of a license or permit is withheld pending payment of delinquent debts. Following is a summary of some of the proposed amendments and attached are copies showing proposed changes as well as a clean copy.

A significant amendment involves clarifying that a license or permit will not be issued (physically given to the applicant) until the applicant satisfies all delinquent debts. This distinction is important because if granting the license or permit (the legislative action approving it) is delayed based on delinquent debts, especially in the case of a renewal, that delay could be construed as a non-renewal triggering additional hearing requirements. Stated another way, a license or permit may be granted to an applicant but the subsequent issuance will be contingent upon any delinquent debts first being satisfied.

An additional amendment includes creating two sections with one addressing delinquent debt associated with the applicant and the other section addressing debts that may be related to the property or a previously-licensed business (which would be collectible if it can be shown that the new applicant purchased the old business). After consulting with the Finance Department, language that allowed for pre-collection of personal property taxes upon sale of a business is being eliminated. This practice was abandoned quite some time ago as it was cumbersome to track, pre-collect the estimated tax and then administer a refund or collect the balance. After additional consideration, the Finance Department is not interested in resuming this practice and is satisfied the proposed amendments to Sec. 9-23 will assist with collecting this type of tax.

Finally, minor amendments are proposed for subsection (d) which outline the process for a license or permit applicant to challenge an outstanding debt they believe is erroneous. Subsection (e) includes language presently in the Code but clarifies that it is the issuance of a license or permit that will be delayed until required payments have been made as opposed to the granting of the license.

Please contact me with any questions regarding these proposed changes. Thank you.

CRB:jls

J:\Attorney\WORD\CRB\MEMOS\Finance Committee - Delinquent Debt Collection from License & Permit Applicants (Electronic) 02-13-14.doc

James P. Walsh
City Attorney

Ellen Totzke
Deputy City Attorney

Christopher R. Behrens
Assistant City Attorney

Stacy Doucette
Assistant City Attorney

Sec. 9-23. Issuance generally; display.

(a) Licenses and permits, when granted, shall be issued by the City Clerk and shall state the date thereof, the day from which the license or permit shall be in force, the name, place of residence and place of business of the person to whom the license or permit is issued, the particular purpose and the time for which issued and the amount of fee paid. The City Clerk shall keep all such applications on file and keep a record of all licenses and permits issued. Each license or permit issued shall be separately displayed on the premises or vehicle for which issued.

(b) The City Clerk shall be charged with the enforcement of all ordinances relating to licenses unless other provision is made by the Common Council for the enforcement.

(c) DELINQUENT DEBTS OWED TO THE CITY. The following are conditions precedent to the issuance of any licenses or permits provided under this code.

(1) The payment of all delinquent and unpaid personal property taxes and room taxes, special assessments and other amounts due to the City imposed pursuant to this code Wisconsin Statutes or this code, all forfeitures or judgments resulting from conviction for violation of any City ordinances, except moving traffic violations, and all other delinquent and unpaid claims of the City including assessments, special charges, municipal utility charges, invoices or judgments due and owing from any the applicant to the City at the time of the license or permit is issued. The "applicant" includes a natural person, corporation, limited liability company, partnership, limited partnership, association, cooperative or any other entity making application for a license or permit in the name of that entity.

(2) The payment of all delinquent and unpaid taxes, claims or other obligations as described in paragraph (1) relating to the property or to the previously licensed business if the new license or permit is granted conditionally upon, or subsequent to, the sale or transfer of the business or stock in trade or furnishings or equipment of the premises or the sale or transfer of ownership or control of a corporation.

~~—application for any license or permit provided for in this code and any such forfeiture or judgment relating to the property or business previously licensed if the new license is granted consequently or conditionally upon the sale or transfer of the business or stock in trade or furnishings or equipment of the premises or if the ownership or control of a corporation is a condition precedent to the granting of such license or permit. If the personal property tax bill has not been issued, the Director of Finance shall require advance payment based on the previous year's mill rate multiplied by one hundred ten percent (110%) and by the premises or property's or business' current year's valuation. No license or permit application shall be granted until the Director of Finance has notified the City Clerk in writing that all required payments have been made.~~

(d) Alleged errors in amounts claimed to be due the City may be appealed to the Finance Committee. The Committee shall have no authority to review any matter for which a review or appeal procedure has been provided by state statute or other ordinance. Within five (5) days of being informed of an amount claimed due, the person seeking review shall ~~pay the amount claimed and~~ file a written notice of appeal with the Director of Finance stating the basis for the appeal and specifying the alleged error. ~~Upon payment of unpaid amounts due, the City Clerk shall issue the applicable license or permit if otherwise qualified. As soon as practicable, Upon providing due notice,~~ the Committee shall hold a hearing at which the ~~person shall~~ applicant may be represented by counsel and both the City and the applicant shall have the opportunity to present witnesses, cross-examine witnesses and present other evidence ~~to substantiate~~ pertaining to the claimed error ~~and call witnesses on his own behalf and may cross-examine witnesses and be represented by legal counsel.~~ After holding the hearing, the Committee shall by majority vote make findings of fact and issue its conclusions regarding the alleged error. and shall correct any ~~Any~~ established errors shall be promptly corrected. Any amount improperly paid shall be refunded promptly, ~~together with simple interest at the rate of twelve percent (12%) per annum from the date the amount was paid to the City to the date of refund.~~

(e) No license or permit shall be issued until the Director of Finance or designee thereof has notified the City Clerk in writing that all required payments have been made.

J:\Attorney\WORD\Jamie\Ordinances\2014 Ords\Sec 9-23 Issuance generally; display - Amendment REDLINED.doc

Sec. 9-23. Issuance generally; display.

(a) Licenses and permits, when granted, shall be issued by the City Clerk and shall state the date thereof, the day from which the license or permit shall be in force, the name, place of residence and place of business of the person to whom the license or permit is issued, the particular purpose and the time for which issued and the amount of fee paid. The City Clerk shall keep all such applications on file and keep a record of all licenses and permits issued. Each license or permit issued shall be separately displayed on the premises or vehicle for which issued.

(b) The City Clerk shall be charged with the enforcement of all ordinances relating to licenses unless other provision is made by the Common Council for the enforcement.

(c) DELINQUENT DEBTS OWED TO THE CITY. The following are conditions precedent to the issuance of any licenses or permits provided under this code.

(1) The payment of all delinquent and unpaid personal property taxes and room taxes imposed pursuant to Wisconsin Statutes or this code and all other delinquent and unpaid claims of the City including assessments, special charges, municipal utility charges, invoices or judgments due and owing from the applicant to the City at the time the license or permit is issued. The "applicant" includes a natural person, corporation, limited liability company, partnership, limited partnership, association, cooperative or any other entity making application for a license or permit in the name of that entity.

(2) The payment of all delinquent and unpaid taxes, claims or other obligations as described in paragraph (1) relating to the property or to the previously licensed business if the new license or permit is granted conditionally upon, or subsequent to, the sale or transfer of the business or stock in trade or furnishings or equipment of the premises or the sale or transfer of ownership or control of a corporation.

(d) Alleged errors in amounts claimed to be due the City may be appealed to the Finance Committee. The Committee shall have no authority to review any matter for which a review or appeal procedure has been provided by state statute or other ordinance. Within five (5) days of being informed of an amount claimed due, the person seeking review shall file a written notice of appeal with the Director of Finance stating the basis for the appeal and specifying the alleged error. Upon providing due notice, the Committee shall hold a hearing at which the applicant may be represented by counsel and both the City and the applicant shall have the opportunity to present witnesses, cross-examine witnesses and present other evidence pertaining to the claimed error. After holding the hearing, the Committee shall by majority vote make findings of fact and issue its conclusion regarding the alleged error. Any established error shall be promptly corrected.

(e) No license or permit shall be issued until the Director of Finance or designee thereof has notified the City Clerk in writing that all required payments have been made.