
5.20.032 Cancellation.

- A. Findings of fact and purpose. The common council finds that the nonuse of alcohol licenses that are available in limited numbers is generally contrary to the public's best interest. This is because alcohol licenses, if used responsibly, can attract and retain businesses such as restaurants and hotels, and thereby create jobs and provide non-alcohol-related entertainment and service opportunities for the general public. Furthermore, the nonuse of alcohol licenses, limited by quotas, is unfair to persons or businesses that seek to earn income through the use of a license, but are unable to receive a license because of the limited number available to be issued by the city.
- B. Cancellation for nonuse. Any "Class A" or "Class B" license granted under this chapter may be cancelled by the common council 1) if it is not used within sixty days after its initial issuance (this sixty-day nonuse provision applies only to initial license issuance and does not apply to license renewals); 2) if its usage is discontinued for a period of ninety consecutive days or more; 3) if the holder does not use the license for at least fifty days during the one-year period of the license term; 4) if the licensee does not open and use its license on the minimum days and hours it submits under subsection C three or more times during a license term.

For the purpose of this section, a day within the yearly license term shall be defined as a day during which the license grantee or holder is open for business and therein uses the license for a minimum period of six hours. Said hours shall be consecutive on the particular day. In order to be considered open, a "Class B" licensed premises must have a licensed bartender on duty and available and present on the premises to dispense alcohol. If there are two licensed premises in any one building, each premises must have a separate bartender available, present, and on duty during the time the premises is required to be open.

- C. Reporting requirements: Each "Class A" or "Class B" licensed premises shall complete a form as part of the initial and annual renewal application process that lists the specific days of the week and specific hours it represents will be open which satisfies the minimum opening and use requirements set forth above. If any licensee changes its minimum required days or hours of operation stated in the application, the licensee shall immediately report the change in writing to the municipal clerk. Licensees are not required to disclose all hours it or they expect to be open, rather only those mandatory minimum hours it will be open.
- D. Exceptions: In the event the grantee or holder of a "Class A" or "Class B" license issued under this chapter demonstrates to the satisfaction of the city council that, due to undue hardship or unusual circumstances beyond the grantee's or holder's control, the grantee or holder could not meet the minimum use requirements set forth herein within the yearly term of the license, the license grantee or holder may request that the city council grant an exception to the requirements found in subsections B and C above. Exceptions which the city council may consider in not imposing the requirements of subsections B and C are the following:
 - (1) Damage to the licensed premises rendering it temporarily unfit for safe operation under the license;
 - (2) Closing for reasonable periods of time to alter, repair, remodel or redecorate the premises;
 - (3) Certain factors of death, illness or contractual impossibility;
 - (4) Any other unusual circumstances not under the control of the license grantee or holder.
- E. Investigations and inspections to determine compliance with this section may be conducted by the City of Whitewater police department, or any city employee or official directed by the city manager to conduct an investigation or inspection to determine compliance. If a licensee is found to be in violation of the terms of this section, future inspections shall subject the licensee to the imposition of reinspection fees under Chapter 1.29. Violations of this section shall also subject a licensee to the imposition of the penalties set forth in Section 5.20.160.

F. Prior to cancellation: Prior to the cancellation of any license, the city shall notify the licensee in writing of the city's intention to cancel the license for nonuse and provide the licensee with an opportunity for a due process hearing. Such hearing shall be conducted by the alcohol license review committee generally under the procedures set forth in Whitewater Municipal Code 5.20.025.

(Ord. 1106 §1, 1987).

(Ord. No. 1720A, § 1, 3-3-2009)