



Council Agenda Item

Meeting Date:

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Cigarette, Tobacco, Electronic Vape license hearings held at ALC

Staff Contact (name, email, phone):

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BACKGROUND

(Enter the who, what, when, where, why)

A question arose at the July 15, 2025 Common Council meeting as to adding Tobacco License Review hearings to Licensing Committee. Tobacco licensing is controlled by Wis. Stat. § 134.65. The Wisconsin legislature had determined tobacco licensing, which includes cigarette, electronic vaping devices and tobacco product retailers, a matter of state-wide concern and has specifically limited authority for cities within Wisconsin to adopt any ordinance that does not strictly conform to the state statutes. Under the Wisconsin statute the City is obligated to issue a license upon receipt of the properly completed application and payment of the license fee, unless the applicant fails to provide proof of obtaining a seller's permit or use tax registration certificate or the applicant is a habitually law offender or convicted of a felony and has not been pardoned. The process created by Wis. Stat. § 134.65 is intended as an administrative process instead of a discretionary decision for the City to make.

Whitewater Ordinance § 5.21.010 adopts Wis. Stat. § 134.65. The City has also adopted Wis. Stat. Ch. 68 which provides for appeals of administrative decisions within the City by Ordinance 2.43.010. Under Ch 68 appeal the denial of a license other than alcohol beverage license is a decision which can be appealed. The administrative official who made the original determination is tasked with reviewing the appeal and deciding within 15 days if their initial decision will stand or if they will reconsider the decision. They are then required to provide a written determination of their decision regarding the appeal. If the individual still wishes to appeal after reviewing the written determination they are able to request a review of the determination within 30 days of receipt of the written decision. The appeal is to the City Manager who may hold a hearing on administrative appeal, providing an opportunity for the appellant to provide additional information argument or relevant evidence for why the decision should be overturned. The City manager is required to hold the hearing within 15 days of receipt of a notice of appeal and must provide the appellant notice at least 10 days prior to the hearing. The City Manager must make a determination within 20 days of the completion of the hearing.

If a person is not satisfied with the decision of the City Manager they are able to appeal the City Manager's determination within 30 days to a circuit court. In addition to seeking relief through the courts, a person is also able to raise the issue to the Common Council for its input on the administrative decision. The Common Council does then have the authority to refer questions or topics to any of its committee's for more in-depth discussion and recommendation.

The City could adopt an ordinance modifying the appeal procedure for tobacco licenses if it would prefer the appeal process go through the Licensing Committee. However, City's current procedure outlined by ordinances and state statutes is legally sufficient as it exists.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS

(Dates, committees, action taken)

On July 15, 2025 the Common Council reviewed a request to appeal the denial of a license to sell tobacco products. The request was referred to licensing committee for additional review and considered at the common council meeting on August 5, 2025. Due to the applicant not appearing for either common council meeting or the licensing meeting, despite being noticed no action was taken on the appeal of the denial. This would result in the denial being affirmed automatically.

FINANCIAL IMPACT

(If none, state N/A)

N/A

STAFF RECOMMENDATION

Take no action, as future questions about future appeals will likely be routed through the City Attorney's office, which will notify staff of the correct appeal procedure or if raised to the common council can be referred to a committee as was previously done.

In the alternative Council could modify the appeal procedure to have the City manager provide the first round of appeal and then a committee such as licensing committee for licensing decisions review and approve the second level of appeals. If this is the desired method of handling the situation it may be that the Common Council wants to designate other types of potential administrative appeals to appropriate boards.

ATTACHMENT(S) INCLUDED

(If none, state N/A)

N/A