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Memorandum

May 12, 2015

To: Ordinance and License Committee
From: Brian Running
Re: Repeal of Municipal Code §9.11(5)

Shortly after I took office, Assistant City Attorney Miles Eastman brought to my attention a conflict between our Municipal Code §9.11(5) and Wis. Stats. §125.32(2), and that this conflict is a violation of Wis. Stats. §125.10(1). Clearing up this conflict has been on my to-do list, and it was recently pushed to the top of the list by a phone call I received from Dan Olson at the League of Wisconsin Municipalities. Mr. Olson called to give me a heads-up that the Wisconsin Restaurant Association had inquired of the League about Waukesha's conflicting ordinance.

Our Municipal Code §9.11(5) says that only Class B licensees or licensed bartenders can tend bar or serve fermented malt beverages. However, Wis. Stats. §125.32(2) says that any person over the age of 18 who is under the immediate supervision of a licensee or licensed bartender who is on the premises may serve fermented malt beverages.

In this conflict, the state statute wins. Stats. §125.10(1) says that municipalities can enact their own alcohol regulations, but only if they're not in conflict with Chapter 125. Our §9.11(5) conflicts with Chapter 125, and is not authorized by law.

Therefore, Municipal Code §9.11(5) – only subsection (5) – should be repealed in its entirety. Stats. §125.32(2) will then control persons who are authorized to serve fermented malt beverages in Class "B" premises.

Please let me know if you have any questions or concerns.

