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To: Ordinance and License Committee  
From: Brian Running  
Re: Revisions to Chapter 9

You'll recall that in 2023 the Legislature passed Act 73, which was an overhaul of Chapter 125, the alcohol beverage chapter. It affected some provisions in our Mun. Code Chapter 9, so Assistant City Matt Rademacher did an exhaustive search through both chapters to find out what we need to revise to stay in compliance. In addition to changes required by Act 73, there are a number of things in Chapter 9 that we feel are due for revision since our last update in 2022, so we have drafted a redline of recommended Chapter 9 changes for your review.

Following is a point-by-point annotation of the changes in the redlines, followed by the redlines themselves. We propose that these changes be recommended by the Committee to the Council, so please review these materials and be prepared for discussion and recommendation at an upcoming meeting.

### **9.02 – License Fees**

Chapter 125 requires that license fees be prorated for partial years, so proration language is added. In subsection (6), the reference to Wis. Stat. §125.51(2)(d)2 is to exempt "Class A" cider-only licenses from the fee. That statute allows for the issuance of a "Class A" cider-only license to the holder of a Class "A" fermented-malt beverage license with no additional fee.

### **9.07 – Processing of Applications; Standards for Issuance of Retail Licenses**

References to "Clerk-Treasurer" are removed. Clarification that this section applies to retail licenses, and not operator licenses, is added.

More detailed language allowing conditional licenses to be issued for premises under construction or remodeling is added. Owners that are in the process of building out a space for a bar or restaurant like to know if they will be able to obtain a license before they invest lots of money into the build-out. Language is added to clarify that a license may be issued conditional on the premises being granted a certificate of occupancy.

Mun. Code §8.26 prohibits issuance of a license to anyone that is in default of payment of property taxes or special assessments, and this is added into §9.07 to eliminate the need to cross-refer to §8.26.

Subsection (6) is entirely new. State law does not allow retail licenses to be transferred from one person to another, but when a bar or restaurant is sold to a new owner, that buyer needs to know if a license will be available for continued operation of the business. This new subsection provides that a surrendered license will be held for a period exclusively for that buyer to apply and obtain the license. There is no guarantee that the buyer will qualify for the license or that it will be issued, the license is just held to give a chance for it to be issued. This has always been the unofficial practice in most jurisdictions, this subsection codifies it. The suggested period is 60 days, but this can be varied.

### **9.075 Full-Service Retail Outlets.**

This section is entirely new, and it provides local guidance for a new class of permit created by Act 73. Previously, when a brewery such as Raised Grain would set up in a park for a special event, they did so under their brewer's permit issued by the State Department of Revenue. It was entirely out of the hands of the City. Now, Act 73 has created a Full-Service Retail permit for breweries, wineries, and distilleries, that allows them to open "full-service" outlets, in other words, retail outlets that can sell products produced by the licensees as well as products made by other producers. The outlets can be permanent, brick-and-mortar stores, or they can be "unlimited transfer" outlets, which just means "mobile." Now, when Raised Grain sets up in Cutler Park, it will do so as an unlimited transfer FSR. The FSR requires City approval and allows cities to impose some limitations on the permit. This draft explains the process, and selects some of our available options:

- We have the option of restricting sales to only products produced by that licensee. For example, Raised Grain would not be able to sell any Miller products. This draft does not opt for this. We believe it's appropriate for the licensee to decide what they want to sell, particularly if it's non-alcoholic products.
- This draft prohibits the FSR from carry-out sales. We recommend limiting unlimited-transfer FSR outlets to serving only the event they're at, and not attracting to-go purchasers.
- Sales by FSRs of intoxicating beverages other than wine in parks is prohibited, to be consistent with Mun. Code §11.27(2)(b).

### **9.08 Operator's License.**

References to the Clerk-Treasurer are removed.

The provisions allowing the Clerk to issue renewal licenses without Committee or Council approval are clarified. The Clerk can issue renewal operator's licenses without further approval if the applicant has zero convictions since the last issuance, otherwise, the application has to go to O&L and Council. This simplifies the old language and removes any discretion by the Clerk as to what constitutes a substantially-related offense.

There is also clarification of the provisional license procedure.

### **9.09 Restrictions on Granting Licenses.**

Clarification is added that the 25-mile radius only applies to retail licenses and not to operator licenses.

Changes were made to this section to bring it in line with current practices at City parks. Specific references to Lowell, Frame, and Cutler Parks were removed and replaced with all City parks. PRF has beer gardens in a number of other City parks, and may expand them into additional parks in the future, so subsection (2) now applies to all City parks. It makes reference to the new FSR permits, and requires PRF Board approval for all temporary licenses or FSR permits.

### **9.10 License Quotas.**

The quota in subsection (2) for “Class A” licenses is not required by state law, that is Waukesha’s own regulation. There is a provision in state law that allows a “Class A” cider-only license to be issued to any holder of a Class “A” (beer only) license, so language is added that those cider-only licenses are not subject to our “Class A” quota. In other words, licensees selling only beer and cider are not subject to the “Class A” quota.

### **9.11 General Rules and Regulations.**

Subsections (5), (6), (11), and (12) are recommended for deletion because they are archaic, serve no useful purpose, and unnecessarily inhibit commerce. Subsection (11), prohibiting the issuance of a “Class A” license to a gas station, has been very controversial in the past, and there have been some strong opinions expressed in favor of it in years past. However, in spite of the strong opinions no one has ever been able to articulate a rational reason for it, and without a rational basis, we don’t think it should exist. We assume there will be additional discussion about this recommendation.

The other deletions should not be controversial, in our opinion.

Subsection (10)(b) deletes language that unnecessarily makes the provision more difficult to enforce. Any notice from the Police Department should be sufficient, regardless of its method of delivery.

### **9.115 Licensed Premises.**

Subsection (1)(b) adds clarification that it applies only to retail licenses, and adds a reference to the DORA ordinance so there’s no confusion over whether it conflicts with the DORA.

Subsection (2)(d)(ii) adds reference to FSR outlets.

Subsection (5), regarding amendment of licensed premises, deletes the reference to the Committee’s “sole discretion,” to make the determination one based on objective fact and not on subjective factors.

The structure of subsection (6) is changed to give it a general heading of “Temporary Licensed Premises,” and adding subsections for Temporary Extensions, Temporary Licensed Premises, and enclosure requirements.

The enclosure rules are changed to reflect actual experience and to reduce the burden on licensees to comply. We are recommending that enclosures need not be substantial enough to physically block passage, but that they must clearly show where the boundaries of the licensed premises are. Signs are added as a means of marking the boundary, so that a physical barrier is not required. The requirement of a 36-inch high physical barrier is sometimes a real burden for temporary organizers, and experience has shown that it’s probably not necessary. Entry and exit must still be monitored, which is the important part of maintaining the boundary.

### **9.13 License to Be Used.**

The exception for temporary licenses is removed, because a temporary license has a built-in expiration.

### **9.16 Underage Provisions.**

Subsection (5) is changed because there’s no need to recite in our ordinance that a repeat offense is a crime. A municipal penalty is added so the PD can issue a municipal instead of a state citation if it’s appropriate.

Please look over the redlines, too. Be sure to let me know if you have any questions. As always, do not discuss this among yourselves outside of a Committee meeting.

## 9.02 License Fees.

The following fees shall be charged for licenses issued by the City for the sale of intoxicating liquors and fermented malt beverages:

- (1) **“Class “A” Fermented Malt Beverage.** \$300 per year ~~or any part of a year, prorated for any license that will expire within 12 months.~~
- (2) **“Class “B” Fermented Malt Beverage.** \$100 per year ~~or any part of a year, prorated for any license that will expire within 12 months.~~
- (3) **Temporary “Class “B” Fermented Malt Beverage.** ~~(Wis. Stat. §125.26(6)).~~ \$10. ~~(Wis. Stat. §125.26(6))~~
- (4) **Retail Class C License.** \$100 per year or any part of a year.
- (5) **Operator.** \$82 for a ~~one- to~~ two-year license.
- (6) **“Class A” Intoxicating Liquor.** \$450 per year or any part of a year, ~~except that there is no fee for a “Class A” cider-only license issued under Wis. Stat. §125.51(2)(d)2.~~
- (7) **“Class B” Intoxicating Liquor.** \$500 per year ~~or any part of a year, prorated for any license that will expire within 12 months.~~
- (8) **Temporary “Class B” Intoxicating Liquor (Wine Only)** ~~(Wis. Stat. § 125.51(10)).~~ \$10. If an applicant applies for a license under this subsection and a Temporary Class “B” Fermented Malt Beverage License under subsection (3) for the same event, no fee shall be assessed under this subsection. ~~(Wis. Stat. §125.51(10))~~
- (9) **Reserve “Class B” Intoxicating Liquor License.** If a “Class B” license is issued as a reserve license, then ~~regardless of subsection (7),~~ the initial ~~issuance application~~ fee is \$10,000 ~~and thereafter the annual renewal fee is \$500 per year or any part of a year in~~ addition to any fees required by subsection (7).
- (10) **Provisional Operator.** \$15 for a maximum 60-day provisional operator license.

## 9.07 Processing of Applications; Standards for Issuance of Retail Licenses

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### (2) Standards for Issuance and Renewal of Retail Licenses.

- (a) **Determination by Clerk-~~Treasurer~~.** An application for a retail license shall be rejected by the Clerk-~~Treasurer~~ if any of the following occur, otherwise, the application and police report shall be forwarded to the Ordinance and License Committee for recommendation to the Common Council:
- (i) The application is incomplete or not accompanied by the required fee.
  - (ii) The Fire Prevention Bureau reports that the proposed licensed premises are not in compliance with Chapter 21 of the Municipal Code.
  - (iii) The Chief Building Inspector reports that the proposed licensed premises are not subject to a valid certificate of occupancy and are not currently undergoing construction or remodeling.
  - (iv) The Clerk-~~Treasurer~~ determines that the applicant has outstanding unpaid forfeitures resulting from violation of the Municipal Code, is delinquent in payment of any City taxes or assessments, or that City taxes or assessments with respect to the proposed licensed premises are delinquent and unpaid. Refer to Municipal Code §8.26 and Wis. Stat. §66.0115(1).
- (b) **Determination by Common Council.** The Common Council may approve an applications for a retail licenses if all of the following occur:
- (i) The Clerk-~~Treasurer~~ reports that the ~~applicant's~~ application is complete and accompanied by the required fee, the Fire Prevention Bureau has reported that the proposed licensed premises is in compliance with Municipal Code Chapter 21, the Chief Building Inspector has reported that the proposed licensed premises is subject to a valid certificate of occupancy, the applicant has no outstanding unpaid forfeitures resulting from violation of the Municipal Code, and the applicant is not delinquent in payment of any City taxes or assessments and that no City taxes or assessments with respect to the proposed licensed premises are delinquent and unpaid. If the proposed licensed premises is not yet subject to a valid certificate of occupancy but is under construction or remodeling expected to result in the issuance of a certificate of occupancy, the Common Council may approve the issuance of a conditional license under subsection (4).
  - (ii) The Ordinance and License Committee reports that the applicant for a Class A, B, or C retail license meets the applicable requirements of Wis. Stat. §§125.25, 125.26, 125.51 and Municipal Code Chapter 9.

- (iii) The Common Council determines that the applicant has satisfied all other relevant and lawful criteria for the issuance of a retail license under this Chapter 9 and Wisconsin Statutes Chapter 125.

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**(6) Transfer of Retail License.**

- (a) **Person to Person.** No retail license shall be transferable from person to person except as provided by Wis. Stat. §125.04(12)(b). Application for such transfer shall be made on the appropriate form provided by the state Department of Revenue. Proceedings for transfer shall be had in the same manner as the original application.
- (b) **Place to Place.** Retail licenses issued pursuant to this chapter may be transferred from one premises to another as provided in Wis. Stat. § 125.04(12)(a). Application for such transfer shall be made on the appropriate form provided by the state Department of Revenue, and shall be accompanied by a \$10 transfer fee.
- (c) **Sale of Business.** If a “Class B” retail license is surrendered due to the sale of the business associated with the license, then the City shall hold that license for 60 days from the date of surrender exclusively for the verified purchaser of that business to apply for the “Class B” license at those premises. The purchaser shall be subject to the same application, qualification, and approval process as any applicant, and if the application is denied, then that license shall be made available to other applicants upon expiration of the 60-day period.

## **9.075 Full-Service Retail Outlets.**

**(1) Definitions.** In this section, capitalized terms have the following meanings:

- (a)** Full-Service Retail Outlet means a retail location operated by a brewery, winery, or distillery as authorized by Wis. Stat. §125.52(4), and is referred to in this section as an FSR Outlet.
- (b)** Fixed-Location FSR Outlet means an FSR Outlet that is not mobile, and the location of which does not change more than once per calendar year.
- (c)** Producer means a brewery, winery, or distillery that operates an FSR Outlet.
- (d)** Unlimited-Transfer FSR Outlet means an FSR Outlet that is not fixed, is mobile, and may be relocated an unlimited number of times with City and Division of Alcohol Beverages approval. An Unlimited-Transfer FSR Outlet is appropriate for festivals, beer gardens, farmer markets, etc.

**(2) Application for City Approval.**

- (a)** FSR Outlets are subject to permitting by the Wisconsin Department of Revenue Division of Alcohol Beverages. However, FSR Outlets in the City that are off the Producer's production premises are also subject to City approval and the regulations in this section.
- (b)** No application for City approval need be filed for an FSR Outlet on the Producer's production premises.
- (c)** Producers need not apply for a Class A, B, or C retail license from the City for an FSR Outlet.
- (d)** Application for City approval of FSR Outlets off the Producer's production premises shall be submitted to the City Clerk on the appropriate Wisconsin Department of Revenue form and on all forms required by the City Clerk. Incomplete or improperly-completed applications will not be considered and will be returned to the applicant.
- (e)** Each application shall be accompanied by a \$10.00 fee. Applications not accompanied by the fee will not be considered.
- (f)** Approval of applications for fixed-location FSR Outlets shall be based on the standards and criteria in Mun. Code §9.07.
- (g)** Approval of applications for Unlimited-Transfer FSR Outlets shall be based upon appropriateness of the location within the immediate area, including but not limited to criteria such as parking availability, traffic, noise, light, available space, and other such matters related to health, safety, and general welfare. Reasonable conditions to address such matters may be imposed on approvals.

- (3) Fixed-Location FSR Outlets.** Separate applications for City approval must be filed for each Fixed-Location FSR Outlet located off the Producer's production premises. Fixed-Location FSR Outlets may be transferred to other locations no more than once per calendar year, with City and Division of Alcohol Beverages approval.
- (4) Unlimited-Transfer FSR Outlets.** Only one Unlimited-Transfer FSR Outlet is allowed per Producer. A separate application for City approval must be filed for each location.
- (5) Compliance with Laws.** Operation of FSR Outlets is subject to all provisions of this Municipal Code Chapter 9 and provisions of Wisconsin Statutes Chapter 125 that are applicable to retail licensees. Failure to comply may result in citations and the report of any violations to the Division of Alcohol Beverages.
- (6) Restrictions on Sales.**

  - (a)** Sales at FSR Outlets are not restricted only to products produced by the Producer.
  - (b)** Sales at Unlimited-Transfer FSR Outlets may not be for consumption outside of the licensed the premises.
  - (c)** Unlimited-Transfer FSR Outlets in City parks may not sell intoxicating liquor, except for wine.

## 9.08 Operator's License.

- (1) **Investigation by Police Department.** Upon receipt of an application for a new or renewal operator's license, the City Clerk ~~Treasurer~~ shall forward a copy of the application to the Chief of Police, who shall investigate the applicant and report to the Clerk ~~Treasurer~~ information sufficient to evaluate the applicant's fitness for a license under Wis. Stat. §125.04 and applicable provisions of this Municipal Code Chapter 9.
- (2) **~~Clerk-Treasurer Authorized to~~ Authority to Issue Renew Certain Operator's Licenses.** ~~As authorized by Wis. Stat. §125.17(1), the Clerk-Treasurer or designee may issue operator's licenses to applicants meeting the qualifications set forth in Wis. Stat. §125.04(5), if according to the information available to the Clerk the applicant has no Significant Violations, defined below. The Clerk-Treasurer or designee may issue renewal operator's licenses to applicants meeting the qualifications set forth under Wis. Stat. §125.04(5) if the renewal applicant has no new Significant Violations, defined below, since the previous operator's license was granted. All other applications for operator's licenses shall be reviewed for approval by the Ordinance and License Committee and Common Council. For purposes of this subsection, "Significant Violations" means pending charges or convictions for any felony; and pending charges or convictions for any misdemeanor or municipal forfeiture the circumstances of which substantially relate to the circumstances of the licensed activity, including, but not limited to, operating a motor vehicle under the influence of an intoxicant, theft, fraud or disorderly conduct. The City Clerk may issue renewal Operator's Licenses without approval of the Ordinance and License Committee or Common Council if the renewal applicant has no convictions or pending charges of any offenses since the issuance of the expiring license, is not delinquent in the payment of City taxes or assessments, and has no outstanding unpaid forfeitures resulting from violation of the Municipal Code. If the applicant has any such convictions, pending charges, delinquent payments of any City taxes or assessments, or outstanding unpaid forfeitures, then the application must be sent to the Ordinance and License Committee for review and recommendation to the Common Council.~~
- (3) **Applicants Delinquent in Payment of Taxes or Assessments.** Operator's licenses shall not be issued to applicants who are delinquent in the payment of City taxes or assessments, or have unpaid forfeitures resulting from violation of the Municipal Code.
- (4) **Provisional License.**
  - (a) The City Clerk ~~Treasurer~~ is authorized to issue provisional operator's licenses pursuant to Wis. Stat. § 125.17(5) to any applicant for an operator's license who has made proper application for an operator's license, has not been previously denied an operator's license by the City, has paid the fee required by Mun. Code §9.02, and has filed with the Clerk ~~Treasurer~~ a certified copy of a valid operator's license issued by another municipality in Wisconsin.
  - (b) A provisional license shall be valid for 60 days from its issuance, or until the issuance to the applicant of a regular operator's license, whichever occurs first.

- (c) A provisional license may be revoked by the Clerk-~~Treasurer~~ upon discovery of false statements by applicant on his or her application, if the operator's license issued by another municipality provided under subsection (4)(a) is not valid, or upon denial of the person's application for a regular operator's license.
- (d) Forms for the application for a provisional license and the provisional license shall be prescribed by the Clerk-~~Treasurer~~.

## 9.09 Restrictions on Granting Licenses.

- (1) **Residency Restrictions.** No Class A, B, or C retail alcohol beverage license shall be issued by the City to a natural person, corporation, or limited-liability company unless that natural person or the agent for the corporation or limited-liability company appointed pursuant to Wis. Stat. §125.04(6) resides within a 25-mile radius of Waukesha City Hall.
- (2) **License for Sales ~~on Public Property Prohibited; Exceptions in City Parks.~~** No license shall be issued for the sale of intoxicating liquor or fermented malt beverages in City parks ~~or any other City-owned property~~, except:
  - (a) A Class “B” fermented malt beverage license may be issued for the concession in Saratoga Park. The licensed premises in Saratoga Park shall be limited to the seating areas and the walkways immediately adjacent to the seating areas and concession stand. No intoxicating liquor or fermented malt beverage shall be brought or carried into Saratoga Park after having purchased it outside of Saratoga Park, except by the holders of licenses issued under this section. Rules and regulations concerning the sale of fermented malt beverages in Saratoga Park shall be established by resolution of the Parks, Recreation and Forestry Board.
  - ~~(b) Class “B” fermented malt beverage licenses may be issued for Frame Park and Lowell Park for the duration of the Waukesha Winter Janboree. The licensed premises in those parks shall be limited only to those areas in which Janboree events take place, as specified in the license. No intoxicating liquors or fermented malt beverages shall be brought or carried into Lowell or Frame Parks during the Waukesha Winter Janboree, except by the holders of licenses issued under this subsection.~~
  - ~~(e)(b)~~ (b) Temporary Class “B” licenses for the sale of fermented malt beverages under Wis. Stat. § 125.26(6), ~~and~~ temporary “Class B” licenses for the sale of wine only under Wis. Stat. §125.51(10), and unlimited-transfer FSR Outlet permits may be issued for public special events ~~for Frame Park and Cutler Park~~ City parks upon application and approval by the Parks, Recreation ~~& and~~ and Forestry Board, Ordinance and License Committee, and Common Council. ~~No intoxicating liquor or fermented malt beverage shall be brought or carried into Frame Park or Cutler Park after having purchased it outside of Frame Park or Cutler Park, except by the holders of licenses issued under this subsection.~~
  - ~~(d)(c)~~ (c) Hours for sales by holders of licenses and permits issued under this subsection shall be as prescribed by rules issued by, or as otherwise approved by, the Parks, Recreation and Forestry Board.
- (3) **Limited Interests.** Holders of retail alcohol beverage licenses issued by the City may hold a maximum of four such licenses. For purposes of this subsection, “holder” includes individuals or entities that have an indirect interest in a retail alcohol beverage license as a member, partner, shareholder, or beneficial interest owner in any limited-liability company,

partnership, corporation or other entity holding a retail alcohol beverage license issued by the City.

## 9.10 License Quotas.

- (1) **“Class B” Intoxicating Liquor Licenses.** The number of “Class B” intoxicating liquor licenses issued by the City shall be limited to the number determined according to Wis. Stat. §125.51(4). The number of “Class B” licenses in force on December 1, 1997 is 77.
- (2) **“Class A” Intoxicating Liquor Licenses.** No more than one “Class A” intoxicating liquor license shall be issued for each 2,200 of the City’s population or fraction thereof, except that there is no quota on “Class A” cider-only licenses issued under Wis. Stat. §125.51(2)(e). Population means the number of inhabitants as determined by the last decennial federal census.
- (3) **Annexations.** Annexations of territory containing licensed premises increases the quota if necessary for the re-licensing of all existing licensed premises in the City after the annexations.
- (4) **Surrender of License.** When a “Class A” or “Class B” license is surrendered, or when a “Class A” or “Class B” license is revoked by any authorized law enforcement official, no additional “Class A” or “Class B” licenses shall be issued unless the remaining number of licenses in force at that time is below the respective quotas.

## 9.11 General Rules and Regulations.

- (1) **Report of Changes Required.** Whenever anything occurs to change any fact set out in an application for a license under this Chapter, licensee or applicant shall file with the City Clerk a notice in writing of such change within 10 days of that occurrence.
- (2) **Posting of License.** No person shall post any license issued hereunder upon any premises other than those listed in the application and no person shall knowingly deface or destroy such license.
- (3) **Consent to Inspection.** Every applicant procuring a liquor license thereby consents to the entry of police or other duly authorized representatives of the City without warrant at all reasonable hours for the purposes of inspection and search, and consent to the removal from such premises of all things and articles there had in violation of City ordinances or State laws, and the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- (4) **Operator's License Holders to Have License in Possession.** The holder of an operator's license shall have his or her license in his or her immediate possession at all times when working as an operator in any Class A or B licensed premises and shall display the license on demand by any law enforcement officer.
- ~~(5) **Credit Sales Prohibited.** No retail Class A or B licensee shall sell or offer to sell any person on credit fermented malt beverages or intoxicating liquor or receive from any person any goods, wares, merchandise, or other articles in exchange therefor where such fermented malt beverages or intoxicating liquor is to be consumed on the premises so licensed, except the prohibition on extension of credit shall not apply to credit extended by a hotel to a resident guest or a club to a bona fide member.~~
- ~~(6) **Music.** All music in all licensed premises shall cease 1/2 hour before legal closing time except by special permit from the Chief of Police.~~
- ~~(7)~~(5) **Diluting of Liquor.** No person shall dilute or add to any fermented malt beverage or intoxicating liquor for the purpose of selling or offering the same for sale from or in an original container. Possession of any original container containing any fermented malt beverage or intoxicating liquor so diluted or added to shall be prima facie proof that the possessor thereof intended to violate the provisions of this section.
- ~~(8)~~(6) **Evasion of Requirements.** The giving away of fermented malt beverages or intoxicating liquors or other shift or device to evade the provisions of this chapter relating to the sale of such beverages or liquors shall be deemed to be unlawful selling.
- ~~(9)~~(7) **Orderly Operation Required.** Each licensed premises shall at all times be operated in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed at any time on or about any licensed premises.

~~(10)~~**(8) Gambling Prohibited.** Except as allowed by State law, no gambling of any sort shall be permitted in any form upon the licensed premises.

~~(11) Sales of Intoxicating Liquors at Motor Vehicle Fueling Stations Prohibited; Exception.~~ No “Class A” intoxicating liquor license shall be issued to any establishment at which gasoline, diesel fuel, E85, or any other fuel for motor vehicles is offered for sale to the public; except a “Class A” intoxicating liquor license for the sale of cider only.

~~(12) Package Sales in Restaurants.~~ The sale of fermented malt beverages in restaurants operating under a Class “B” fermented malt beverage license shall be for consumption on the licensed premises only. Sales for consumption off the licensed premises is prohibited.

~~(13)~~**(9) Retail “Class B” Carry-Out Sales.** The City elects to come under the provisions of Wis. Stat. §125.51(3)(b). A “Class B” intoxicating liquor license authorizes the sale of intoxicating liquor to be consumed either by the glass on the premises where sold or off the premises if the licensee seals the container of intoxicating liquor with a tamper-evident seal before the intoxicating liquor is removed from the premises. The “Class B” intoxicating liquor license also authorizes the sale of intoxicating liquor in the original package or container, in any quantity, to be consumed off the premises where sold. Carry-out sales shall cease at 9 p.m. each day.

~~(14)~~**(10) Presence of Controlled Substances.**

- (a) The manufacture, distribution or delivery of a controlled substance or a controlled substance analog under Wis. Stat. §961.41 (1), or the possession with intent to manufacture, distribute or deliver a controlled substance or controlled substance analog under Wis. Stat. §961.41, by a person on the premises for which an alcohol beverage license is issued by the City is prohibited.
- (b) No licensee, agent thereof, or employee thereof shall fail to take action to prevent the activities described in subsection ~~(10)(a)(a)~~ after receiving written notice from the Waukesha Police Department ~~that has been served pursuant to Wis. Stat. § 800.01~~ ~~(2)(a)~~ informing the licensee that such acts have taken place on the licensed premises.

~~(15)~~**(11) Unreasonable Noise.** Unreasonably loud noise or other conduct which tends to cause a public disturbance or unreasonably interferes with the quiet enjoyment of the surrounding neighborhood is prohibited on or about a licensed premises.

~~(16)~~**(12) Code Compliance.** Premises licensed for the sale of alcoholic beverages shall be in compliance at all times with all applicable provisions of the City’s Building and Fire Codes.

## 9.115 Licensed Premises, Amendment of Licensed Premises, and Temporary Extension of Licensed Premises.

### (1) Definitions.

- (a) “Committee” means the Ordinance and License Committee.
- (b) “Licensed Premises” means the area described in a retail license issued by the City for the sale of alcohol beverages, within which alcohol beverages are sold, served, or kept for sale. Licensed Premises may be inside or outside of a building, or a combination of both. The Licensed Premises shall be the area into which unaccompanied underaged persons may not enter, except as allowed by Wis. Stats. §125.07(3)(a); and from which persons may not carry open intoxicants, except as allowed by Mun. Code §11.27(5).

### (2) Regulations.

- (a) A Licensed Premises must be a single, continuous area, except that Licensed Premises within a Sidewalk Café may be separated from the rest of the Licensed Premises by a public sidewalk.
- (b) A Licensed Premises must be entirely within a single tax parcel, except as provided in subsection (6)(g), below.
- (c) A Licensed Premises that is inside a building must be bounded by walls.
- (d) Any portion of a Licensed Premises that is outside of a building must be surrounded by a substantial enclosure, not less than 36 inches in height, sufficient to delineate the boundary of the Licensed Premises and to prevent easy entry to or exit from the Licensed Premises except at designated entry and exit points, except as provided below. The number and location of entry and exit points shall be as required by the zoning code or building code, or as determined by the Chief Building Inspector or Fire Inspector. All enclosures surrounding Licensed Premises must comply with all applicable zoning and building codes, except as provided otherwise herein.
  - (i) Enclosures surrounding Licensed Premises within Sidewalk Cafés shall meet the requirements of Municipal Code §8.116 rather than the enclosure requirements of this subsection.
  - (ii) Enclosures surrounding temporary Licensed Premises in connection with a temporary Class B license issued under Wis. Stats. §125.26(6) or §125.51(10), an unlimited-transfer full-service retail outlet under Wis. Stat. §125.52(4) and Mun. Code §9.075; or a temporarily-extended Licensed Premises under subsection (6) shall meet the requirements of subsection (6)(e) rather than the requirements of this subsection.
  - (iii) Portions of Licensed Premises in connection with a Class A retail license that are outside of a building solely for the purpose of delivery to customers’ vehicles of pre-ordered alcohol beverages need not be surrounded by a substantial enclosure,

but the area in which such delivery is made must be clearly indicated by signage. Such delivery may be of only original, unopened packages; delivery may be made only to customers in their vehicles; and final payment for the goods must take place in a face-to-face transaction within the Licensed Premises.

(iv) Portions of Licensed Premises in connection with a “Class B” retail license that are outside of a building solely for the purpose of delivery to customers’ vehicles of intoxicating liquor by the glass in a container having a tamper-evident seal in compliance with Wis. Stat. §125.51(3)(b), or alcohol beverages in original, unopened packages or containers, need not be surrounded by a substantial enclosure, but the area in which such delivery is made must be clearly indicated by signage. Such delivery may be made only to customers in their vehicles; and final payment for the goods must take place in a face-to-face transaction within the Licensed Premises.

(e) Licensed Premises may not be on City-owned property, except for temporary Licensed Premises in City parks in connection with licenses issued pursuant to Municipal Code §9.09(2), temporary extensions onto Municipal Lot 3 pursuant to subsection (6)(d)(i), or if the portion on City property is within a Sidewalk Café licensed under Municipal Code §8.116.

(3) **Sidewalk Café Licensed Premises.** Any portion of a Licensed Premises that is, or is proposed to be, on public property in conjunction with a Sidewalk Café license issued under Municipal Code §8.116 is a temporary extension subject to subsection (f) and is conditional upon the issuance and existence of, and is subject to any conditions placed on, the Sidewalk Café license. If the Sidewalk Café license is not issued, is not renewed, or is revoked, then the portion of the Licensed Premises that is on public property shall automatically no longer be part of the Licensed Premises.

(4) **Applications Must Clearly ~~Indicate~~Describe Licensed Premises.** Applications to the City for licenses to sell alcohol beverages must contain a definite verbal or graphic description of the boundaries of the proposed Licensed Premises, sufficient for the City Clerk to determine a clear description to be placed in the license.

(5) **Amendment of Licensed Premises.** After a license is issued, the licensee may request an amendment of the Licensed Premises by filing an application with the City Clerk that contains a description of the amended Licensed Premises meeting the requirements of subsection (1)(b), above. The application shall be accompanied by the appropriate fee, which shall not be refunded if the application is denied. The amended Licensed Premises must comply with all of the requirements of this section 9.115. The application shall be forwarded to the Committee for review and action. The Committee shall grant the amendment if the proposed amended Licensed Premises complies in all respects with the requirements of this section 9.115 and Municipal Code Chapter 9, unless the Committee determines ~~in its sole discretion~~, on the basis of substantial, objective evidence, that granting the amendment would not be in the best interest of the public safety or welfare.

When granted, the amendment shall permanently amend the description of the Licensed Premises.

**(6) Temporary Extension Of Licensed Premises.**

**(6)(a) -Temporary Extension of Licensed Premises.** A licensee may request a temporary extension of ~~the a~~ Licensed Premises by filing an application with the City Clerk with the appropriate fee, which shall not be refunded if the application is denied. The application must state the dates and times of the proposed temporary extension, and contain a definite verbal or graphic description of the boundaries of the proposed temporary extension. The application shall be forwarded to the Committee for review and action. If the Committee approves the application, then the City Clerk shall issue a written approval to the licensee. The Committee shall grant the temporary extension if the proposed extended Licensed Premises complies in all respects with the requirements of this section 9.115 and Municipal Code Chapter 9, subject to the following additional provisions:

- (i) Temporary extensions of Licensed Premises shall only be for the period of duration and frequency determined by the Ordinance and License Committee, but for not more than 90 total days in any calendar year. This limitation shall not apply to temporary extensions of Licensed Premises encompassing a Sidewalk Café, which shall run concurrently with the Sidewalk Café permit.
- (ii) Upon the expiration of the temporary extension, the Licensed Premises shall revert automatically back to the Licensed Premises described in the license issued by the City.
- (iii) Temporary extensions of Licensed Premises shall not be granted to any applicant that has been convicted of violations of Municipal Code Chapter 9 or Wisconsin Statutes Chapter 125 in the five years preceding the date of the application.
- (iv) Licensed Premises may not be temporarily extended onto public property, except as follows:
  - (1) Licensed Premises may be extended onto Municipal Lot 3 if a closure permit under Municipal Code §6.17 and special event permit under Municipal Code §6.18 have been issued for Municipal Lot 3;
  - (2) Licensed Premises may be extended temporarily to include Sidewalk Cafés licensed under Municipal Code §8.116; and
  - (3) Licensed Premises encompassing Sidewalk Cafés may be further temporarily extended beyond the terrace and onto public streets or parking lots if the streets and parking lots are closed pursuant to permits issued under Municipal Code §6.17 and the written permission of the street-closure permit holder has been obtained, in the discretion of the Committee.

- (4) Temporary extensions of Licensed Premises onto public property under this subsection (6)(d) are exempt from the provisions of Municipal Code §11.27.

**(b) Temporary Licensed Premises.** The Licensed Premises in connection with a temporary Class B license issued under Wis. Stats. §125.26(6) or §125.51(10) or an unlimited-transfer full-service retail outlet under Wis. Stat. §125.52(4) and Mun. Code §9.075 shall be as determined by the Committee.

**(c) Enclosures around Temporary Licensed Premises.** The enclosure around temporarily-extended Licensed Premises, ~~and~~ Licensed Premises described in a temporary Class B license issued under Wis. Stats. §125.26(6) or §125.51(10), or the Licensed Premises in connection with an unlimited-transfer full-service retail outlet under Wis. Stat. §125.52(4) and Mun. Code §9.075 may be of a temporary nature and need not comply with zoning or building codes; however, at a minimum the enclosures ~~must be at least 36 inches high, must be substantial enough to prevent easy entry and exit except at designated entry and exit points, must not be able to be moved easily, and must~~ delineate the boundaries of the temporarily-extended Licensed Premises clearly enough that patrons have fair notice of the line beyond which they may not carry open alcohol beverages. Ropes, or chains, or signs posted at least every 10 feet along the boundary are sufficient for enclosures around temporary Licensed Premises. Regardless of the foregoing, enclosures surrounding Licensed Premises within Sidewalk Cafés shall meet the requirements of Mun. Code §8.116 rather than the enclosure requirements of this subsection.

**(d)** All laws, rules, and regulations that apply to Licensed Premises apply to temporarily-extended Licensed Premises, except enclosure requirements.

**(e)** Licensed Premises may be temporarily extended onto adjoining tax parcels with the written permission of the owner of the adjoining parcels.

**(f)** Applications for temporary extensions of Licensed Premises may be denied by the Committee if the Committee determines ~~in its sole discretion,~~ on the basis of substantial, objective evidence, that granting the temporary extension would not be in the best interest of the public safety or welfare.

- (7) Monitoring Entry and Exit.** All entry and exit points in a Licensed Premises, including a temporarily-extended Licensed Premises, must be monitored by a licensed operator or staff under the supervision of a licensed operator, sufficient to prevent the entry of unaccompanied underaged persons or to prevent persons from leaving the Licensed Premises with open alcohol beverages.

### 9.13 License to Be Used.

~~Except for temporary Class “B” licenses issued under Wis. Stat. §125.26(6) and temporary “Class B” licenses issued under Wis. Stat. § 125.51 (10), hH~~olders of retail alcohol beverage licenses issued by the City shall actively engage in the sale of the beverages for which the licenses were issued during the holders’ regular operating hours. If a holder does not actively engage in the sale of the beverages for which the license was issued for any 60-~~consecutive~~-day period, the license shall become void and be available for reissue ~~by the Common Council~~; unless the failure to engage actively is due to unforeseeable circumstances beyond the licensee’s control, provided the licensee takes prompt action in good faith to address the circumstances and resume active engagement. Periodic or sporadic use of the licenses during the 60-day period shall not be considered active engagement.

## 9.16 Alcohol Beverages; Restrictions Relating to Underage Persons.

- (1) No person may procure, force, sell, dispense or give away any alcohol beverages to any underage person who is not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
- (2) No licensee or permittee may sell, vend, deal or traffic in alcoholic beverages to or with any underage person who is not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
- (3) No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcoholic beverages by an underage person on premises owned by the adult or under the adult's control. This restriction does not apply to alcoholic beverages used exclusively as part of a religious service.
- (4) No adult may intentionally encourage or contribute to a violation of Wis. Stat. §125.07(4)(a) or (b).
- (5) Any person who commits a violation of this section is subject to a forfeiture of \$500 if the person has not committed a previous violation within 30 months of the violation. For purposes of determining whether or not a previous violation has occurred, if more than one violation occurs at the same time all those violations shall be counted as one violation.

~~Note: If a person commits a violation of this section and has committed a previous violation within 30 months, it is a crime and is subject to prosecution by the district attorney.~~ If a person has committed a previous violation within 30 months, then the forfeiture shall be \$1,000. If a person has committed two or more prior violations within 30 months, then the forfeiture shall be \$1,500.