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Memorandum

To: O&L Committee
From: Brian Running
Re: Amendments to Sidewalk Café Ordinance

The City has received requests from the wine bars in downtown to be able to have tables and chairs for their patrons on the terraces in front of their establishments. Under current law, they can't do that, because Sidewalk Cafés are limited only to establishments that see at least 30% of their revenue from the sale of food.

Coincidentally with the requests from the wine bars, we were working on other revisions to the sidewalk café ordinance. The changes are generally to revise the structure of the ordinance for clarity, to add some additional provisions for safety, and to coordinate it with a new licensed premises ordinance, which is being presented to O&L at the same time.

The revisions to the ordinance are so extensive that a redline serves no purpose other than to show that 90% of the ordinance is revised. An annotated copy of the proposed revision follows, along with a copy of the old ordinance so you can compare them. Completely new provisions are in blue, and explanatory annotations are in red.

Proposed Revised §8.116:

8.116 Sidewalk Cafés

(a) Definitions. As used in this Section, capitalized terms have the following meanings:

- (1)** Full Service Restaurant means an establishment holding a State of Wisconsin restaurant license and for which food prepared at the establishment accounts for at least 30% of its gross sales.
- (2)** Licensee means a Full-Service Restaurant or Wine Bar holding a Sidewalk Café license issued under this Section.
- (3)** Section means this Municipal Code §8.116.
- (4)** Sidewalk Café means a specific area delineated by the City on public Terrace adjoining a Full-Service Restaurant or Wine Bar, in which food and beverages may be served to and consumed by customers of the Full-Service Restaurant or Wine Bar.

- (5) Terrace means the area within a public right-of-way between the public sidewalk and the curb.
- (6) Wine Bar means an establishment holding a “Class B” intoxicating liquor license and for which wine accounts for at least 60% of the establishment’s gross sales.

The wine bars downtown report roughly 80 to 90 percent of their sales are attributable to wine.

(b) Requirement of License.

- (1) Sidewalk Cafés are prohibited unless licensed as provided in this Section.
- (2) A license to operate a Sidewalk Café may be issued only to a Full-Service Restaurant or a Wine Bar.
- (3) A Full-Service Restaurant or Wine Bar wishing to obtain a Sidewalk Café license shall complete an application provided by the City Clerk’s Office, attach all additional materials requested in the application, and submit the fee shown on the fee schedule maintained by the City Clerk-Treasurer with the application.
- (4) The license application fee is for the administrative cost of processing the application, and is not refundable if the application is denied. If the applicant is asked to complete an incomplete application or attach additional materials to an application, it will not be treated as a new application, and no additional application fee will be required. If an application is accepted as complete and is then denied, any subsequent application will be treated as a new application and the application fee will be payable again.
- (5) The application for a Sidewalk Café license shall be prepared and maintained by the City Clerk’s office, and shall require such information from the applicant as the City Clerk deems necessary. The application may be amended from time to time. In addition to all other information deemed necessary by the City Clerk, the application shall require the following:
 - (A) A scale drawing of the Sidewalk Café showing dimensions of the existing Terrace on which the Sidewalk Café is proposed to be located; the proposed location of the Sidewalk Café; the size and number of tables, chairs, umbrellas, planters, trash receptacles, heaters, and any other equipment proposed to be used, or obstructions to pedestrian or vehicle movement.
 - (B) Photographs of the entire area in which the Sidewalk Café is proposed to be located.
 - (C) Photographs or manufacturer’s brochures describing the appearance and dimensions of all proposed tables, chairs, umbrellas, planters, trash receptacles, heaters, enclosures, and any other equipment proposed to be located in the Sidewalk Café.

- (6) The application for a Sidewalk Café license shall include an indemnification of the City by the applicant from liabilities arising from the operation of the Sidewalk Café.
- (7) The application for a Sidewalk Café license shall require the attachment of a copy of the applicant's state or county restaurant license, if it is required to have one.
- (8) The City Clerk shall issue the Sidewalk Café license within 30 days of receipt of the application, if all of the following requirements are met:
 - (A) The application is complete and is accompanied by all attachments required by the application.
 - (B) The application is accompanied by the correct fee, as shown in the City Clerk's fee schedule as revised from time to time.
 - (C) The applicant is a Full-Service Restaurant or Wine Bar.
 - (D) If the applicant proposes to serve alcohol beverages in the Sidewalk Café, the applicant has obtained an amendment of licensed premises under Municipal Code §9.115 to extend its licensed premises to include the Sidewalk Café.

§9.115 is the proposed extension of premises ordinance. If that ordinance is not passed, then this subsection will have to be revised.

- (E) The application and attachments show that the proposed Sidewalk Café would be in compliance with all regulations in subsection (c).
 - (F) No City department or official has given its opinion, in writing, that the proposed Sidewalk Café would create an impermissible obstruction to pedestrian or vehicle traffic; would create an impermissible obstruction to emergency, utility, or public works workers or vehicles; or would create an unreasonable risk to the safety or health of customers of the Sidewalk Café or the general public.
- (9) Sidewalk Café licenses shall be valid for the period from March 1st through the last day of February, regardless of the date of issue. Re-application must be made each year.
 - (10) Sidewalk Café licenses may be issued subject to conditions of time and place, such as the Sidewalk Café being allowed only when a street is closed pursuant to a Street Closure permit issued under Municipal Code §6.17.
 - (11) Sidewalk Café licenses may be issued subject to conditions addressing matters of general health, welfare, and safety, such as maximum occupancy limits and limitations of equipment.
- (c) **Sidewalk Café Regulations.** Licensees shall comply at all times with the following regulations.

- (1) Sidewalk Cafés are only permitted in the B-2 Central Business District.
- (2) Sidewalk Cafés are allowed only in paved Terraces.
- (3) The boundaries of Sidewalk Cafés must be approved by the City, and may not be altered without the approval of the City.
- (4) Sidewalk Cafés may not be closer than 12 inches to the face of the curb.

“Face of the curb” means the vertical portion of the curb.

- (5) Public sidewalks must remain open and unimpeded to a minimum width of 4 feet. Public sidewalks are not part of any Sidewalk Café.
- (6) Sidewalk Cafés are not permitted in areas where the Terrace is less than 48 inches in width.

This would not affect any of the existing sidewalk cafes downtown. The terraces are generally a minimum of 53 inches, but there are places where they are narrower than that.

- (7) Sidewalk Cafés may not extend beyond the property boundaries of the Full-Service Restaurant or Wine Bar with which they are associated. Regardless of the foregoing, Sidewalk Cafés may extend beyond property lines if the adjoining property owner has given written permission to do so. This exception shall be effective only during 2020, and shall expire on December 31, 2020.

Because CDC guidelines concerning COVID-19 recommend outdoor dining as a safer alternative, it is desirable to increase outside seating capacity. This would sunset at the end of this year.

- (8) The entire Sidewalk Café must be visible from within the Full-Service Restaurant or Wine Bar with which it is associated; except that if an adjoining property owner has given permission for a Sidewalk Café to extend past the Licensee’s property boundary and that extension is not entirely visible from within the Full-Service Restaurant or Wine Bar with which it is associated, an employee of the Licensee shall observe the entire Sidewalk Café not less than every 10 minutes.
- (9) Sidewalk Cafés may not be closer than 5 feet to a fire hydrant.

Municipal Code §21.10(4) prohibits obstructions closer than five feet to a fire hydrant. This restriction will affect one existing sidewalk café by shortening it somewhat, but will not eliminate it.

- (10) Sidewalk Cafés shall be enclosed on the street side and ends. Enclosures shall be between 36 and 42 inches in height above the pavement, and the bottom rail shall be no more than 6 inches above ground. Enclosures shall be rigid, stable, self-supporting, able to resist movement by the wind, and able to contain all furniture and equipment within the Sidewalk Café from being moved by the wind. Enclosures may not be

affixed to the Terrace or otherwise be completely immovable. Chains or ropes are not acceptable enclosures. Sidewalk Café enclosures are exempted from requirements for fences in Municipal Code Chapter 22.

This serves a couple of purposes: One, it keeps tables and chairs contained, so they don't blow away; two, it serves to delineate the licensed premises where alcohol can be served and consumed.

- (11) Chairs in Sidewalk Cafes may not be placed with their backs towards the curb, and must either be placed so they face the curb or face parallel to the curb; except where the chair is at least 6 feet from the curb; and except where there is angle parking or parallel parking between the curb and traffic lanes.

Some sidewalk cafés are very close to traffic lanes, especially on Clinton Street. This is an attempt to mitigate safety concerns.

- (12) All customers must be seated at tables to be served or to consume food or beverages in the Sidewalk Café.
- (13) Customers must be served food and beverages at their tables by wait staff, and customers are not allowed to carry food or beverages in or out of the Sidewalk Café. Signage must be posted informing customers of this.
- (14) Licensees shall clear and clean tables immediately after they are vacated by customers.
- (15) Licensees shall immediately pick up trash and debris in the Sidewalk Café, and shall wash spills of food and beverages from pavement at least daily.
- (16) Licensees may limit access to their Sidewalk Café to their customers only, and may exclude persons from the Sidewalk Café, subject to the Wisconsin Public Accommodations Law and other applicable non-discrimination laws, and subject to the right of the City to enter into the Sidewalk Café at any time for emergency and non-emergency purposes, including but not limited to maintenance of public facilities.

Some restaurants downtown, particularly along the river, have had problems with vagrants and other non-customers sitting in their chairs and using their tables. This clarifies that even though they may be on public property, licensees have the right to reserve tables and chairs exclusively for their customers.

- (17) Licensees may prohibit smoking in Sidewalk Cafés.

Same issue as the previous subsection.

- (18) Umbrellas may not project beyond the boundaries of the Sidewalk Café.
- (19) Extension cords may not be run to Sidewalk Cafés.

- (20) Tables and chairs used in Sidewalk Cafés must be sturdy and heavy enough that they will not tip or blow away in reasonably-foreseeable strong winds.
- (21) Tables, chairs, and other equipment in the Sidewalk Café shall be removed or secured by Licensee nightly.
- (22) Food may not be prepared in Sidewalk Cafés.
- (23) Alcohol beverages may be served at a Sidewalk Café only under the following conditions:
 - (A) The Licensee has a valid Class B retail alcohol beverage license, and the licensed premises has been amended to include the Sidewalk Café pursuant to Municipal Code §9.115.

If proposed §9.115 is not passed, this will have to be modified.

- (B) Alcohol beverages may be consumed in Sidewalk Cafés only by customers that are seated at tables in the Sidewalk Café. Customers may not carry alcohol beverages to the Sidewalk Café themselves.
 - (C) Signage must be posted in the Sidewalk Café stating that alcohol beverages may only be consumed by customers seated at tables in the Sidewalk Café.
 - (D) The bar from which the alcohol beverages are dispensed shall not be in the Sidewalk Café area.
- (24) Sidewalk Café hours of operation must cease at 11 p.m. All customers must leave the Sidewalk Café by that time.

Downtown sidewalk café operators have asked that this be extended to 1 or 2 am instead of 11 pm. The original intent of the sidewalk café ordinance was to allow outdoor dining, not necessarily drinking. Very few people eat after 11. Allowing alcohol service to continue outdoors after 11 might be asking for trouble that can easily be avoided.

- (25) Licensees shall maintain in force a policy of commercial general liability insurance with limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, with an endorsement making the City of Waukesha an additional insured. A certificate of insurance showing such coverage shall be filed with the City Clerk within 5 days of issue of a Sidewalk Café license, or the license may be revoked.
- (26) The Sidewalk Café license is a privilege and not a right, and the Licensee gains no vested interest in the public right-of-way by its issuance. Sidewalk Café licenses may be conditioned, amended, suspended, or revoked at any time by the City for public purposes. Issuance of a Sidewalk Café license creates no right or option for renewal, and renewal applications may be denied by the City.
- (27) Sidewalk Café licenses must be displayed in public view in Licensees' premises.

- (28) The license issued hereunder is not transferable by Licensee to any other individual or entity, including any successor of the Licensee.
- (29) The City Clerk's finding under subsection (b)(8)(E) that the proposed Sidewalk Café would be in compliance with all the regulations in this subsection (c) does not excuse any non-compliance with the regulations after the license is issued.
- (d) **Penalty.** The penalty for violation of this section shall be a forfeiture of not less than \$50.00 or more than \$200.00 per day for each violation, together with the costs of prosecution. Any conviction of a licensee for violation of this Section shall be deemed a Nuisance Activity under Waukesha Municipal Code §12.10.

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Cr. #9-2010

(1) Purpose. To further encourage the revitalization of the downtown and other areas of the city, including the development of social and economic activity, the city council finds and determines:

- (a) That there exists the need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.
- (b) That sidewalk cafés will permit enhanced use of the available public rights-of-way, will complement restaurants operating from fixed premises, and will promote economic activity in the area.
- (c) That the existence of sidewalk cafés encourages additional pedestrian traffic but may impede the free and safe flow of pedestrians such that a need exists for regulations and standards to ensure safety.
- (d) That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety and welfare.

(2) Definitions. As used in this section, the following definitions shall apply:

- (a) “Sidewalk Café” shall mean an expansion of a full service restaurant creating an outdoor dining facility on part of the public property that immediately adjoins the licensed premises for the purpose of consuming food or beverages to the patrons of the restaurant.
- (b) “Full service restaurant” shall mean an establishment requiring a State of Wisconsin restaurant license and whose food sales are greater than thirty percent (30%) of its gross receipts.

(3) Permit Required.

- (a) A full service restaurant may apply to the City Clerk’s Office for a permit to allow a restaurant to operate a sidewalk café. The City Clerk or his/her designee may approve, approve with conditions or restrictions, or deny a permit where necessary to maintain the public health, safety or welfare, to prevent a nuisance from developing or continuing, or due to violation of this section, the city code of ordinances, or applicable state or federal law.

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- (b) Before a permit may be issued, the application and site plan shall be reviewed by the Community Development Department and reviewed and recommended by the Ordinance and License Committee and approved by Common Council.
 - (c) Each permit shall be effective for one year from March 1st to February 28/29.
 - (d) Once issued, permit must be conspicuously displayed in public view.
 - (e) The permit issued hereunder is not transferable by Owner to any other restaurant or any subsequent owner of the premises.
- (4) Permit Application. Application for a permit to operate a sidewalk café shall be submitted to the City Clerk's Office and shall include at least the following information:
- (a) Completed city application form.
 - (b) Copy of valid restaurant license issued by the State of Wisconsin.
 - (c) Copy of a current certificate of commercial liability insurance in the amount of at least \$1,000,000 per occurrence and naming the City of Waukesha as additional insured and documented that the coverage extends to the area used for the sidewalk café.
 - (d) The permittee shall execute an indemnification agreement approved by the City Attorney prior to operation of the sidewalk café.
 - (e) A layout which accurately depicts the dimensions of the existing sidewalk area or other public property and adjacent private property, the proposed location of the sidewalk café, the size and number of tables, chairs, steps, planters, location of doorways, trees, sign posts, hydrants, sidewalk benches, trash receptacles, heaters, traffic signal poles, light poles and any other obstructions, either existing or proposed.
 - (f) Photographs, drawings or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, barriers or other objects related to the sidewalk café.
 - (g) A non-refundable application fee.
- (5) Permit Fees. A non-refundable payment of \$100.00 must be made with initial application (\$50.00 for renewal) for a sidewalk café permit with an additional non-refundable payment of \$100.00 for applicants requesting to sell alcohol.
- (6) Sidewalk Café Standards.

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- (a) No portion of any sidewalk café may encroach on the sidewalk adjacent to any other property other than the property that is licensed in this chapter.
 - (b) The Licensee shall maintain a four foot wide unencumbered, open and accessible portion of the sidewalk for pedestrian traffic safety at all times.
 - (c) Sidewalk cafés may operate, serve food or beverages, until 11:00 PM Sunday through Thursday and until midnight Friday and Saturday, meaning all patrons must vacate the sidewalk café by those times.
 - (d) Licensee shall provide for the removal of garbage and is responsible for the cleanliness of the sidewalk café area.
 - (e) The use of a portion of the public property as a sidewalk café shall not be an exclusive use. All public improvements, including but not limited to, trees, light poles, traffic signals, manholes or any public initiated maintenance procedures shall take precedence over said use at all times. The City Administrator, Chief of Police, Community Development Director, Public Works Director or his/her designees may temporarily order the termination of sidewalk cafes for the following reasons, but not limited to, special events, including but not limited to, construction, parades, sponsored runs or walks, or for any reason to maintain the health, safety, and welfare of the public.
 - (f) Semi permanent markings will delineate the corners of the sidewalk café area, as illustrated in the approved site plan required for permit.
 - (g) Molded plastic tables and chairs will not be permitted.
 - (h) Applicant shall secure tables and chairs nightly.
- (7) Alcohol Licensing and Serving of Alcohol Beverages.
- (a) Alcohol may be served at a sidewalk café under the following conditions:
 - 1. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
 - 2. No alcoholic beverages may be served at any time if the restaurant has not received Council approval for the enlargement of the premises under its liquor license that includes the area of the public sidewalk where the sidewalk café is located. Further, the liquor license shall be automatically conditioned at the time of the enlargement of premises to allow for the consumption of alcoholic beverages within the sidewalk café area only. Approval of the enlargement of

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premise area (sidewalk café) shall not grant any licensee or licensed premise any vested rights and such approval may be suspended or revoked or non-renewed without cause being shown.

3. The entire outdoor area utilized for service and consumption of food and beverage shall be visible from the restaurant establishment.
 4. Alcoholic beverages must be sold and served by the licensee or licensee's employees who have operator's licenses and sold, served and consumed by patrons seated at tables in the sidewalk café. (Reference Wisconsin Statutes sections 125.32(2) and 125.68(2).
 5. Alcoholic beverages may only be served at the sidewalk café when food service is available through the licensed establishment.
 6. The permittee shall be responsible for complying with the approved sidewalk café plan.
 7. The permittee shall not allow patrons of the sidewalk café to bring alcohol beverages into the sidewalk café, nor to carry open containers of alcohol beverages about in the sidewalk café area, nor to carry open containers of alcohol beverages served in the sidewalk café outside the sidewalk café area.
 8. The permittee shall display signage indicating alcohol may only be consumed by patrons seated at tables in the sidewalk café.
 9. The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk café area.
- (8) Liability and insurance. By obtaining a sidewalk café permit, the permittee agrees to indemnify, defend, save and hold harmless the City, its officers and employees, from any and all claims, liability, lawsuits, damages, and causes of action, which may arise out of the permit or the permittee's activity at the sidewalk café. Permittee shall provide commercial liability insurance in the amount of at least \$1,000,000 per occurrence and name the City of Waukesha as additional insured and show how the coverage extends to the area used for the sidewalk cafe.
- (a) The permittee shall execute an indemnification agreement approved by the City Attorney prior to operation of the sidewalk café.
 - (b) The permittee shall provide the City with an original certificate of insurance as evidence that the requirements set forth in this section are met prior to commencing or renewing operations. If insurance coverage changes while

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this agreement is in effect, Owner shall notify the City of Waukesha and provide proof of insurance.

(9) Revocation or Suspension.

- (a) The approval of a sidewalk café permit is conditional at all times. The City Administrator, Chief of Police, Community Development Director, Public Works Director or his/her designees may temporarily order the termination of sidewalk cafes' at any time.
- (b) A sidewalk café permit may be formally revoked or suspended by the Ordinance and License Committee at any time without cause. Issuance of this permit under this ordinance is a privilege, not a right, to use the public right of way.

(10) Appeal. A revocation, suspension, or denial of a permit may be appealed by the permittee to the Common Council or designated Committee of the Council, which shall hold a hearing and either grant, grant with conditions, or deny the permit. The permit holder or applicant shall be notified and shall have the right to be heard prior to a decision.

(11) Penalty. The penalty for violation of this section shall be a forfeiture of not less than \$50.00 or more than \$200.00 per day for each violation, together with the costs of prosecution. Any enforcement action taken under this ordinance shall be deemed a violation under 12.10 Chronic Nuisance Premises of the Municipal Code.

WAUKESHA MUNICIPAL CODE 07/12/10