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May 7, 2021

Memorandum

To: Ordinance & License Committee, Common Council
From: Brian Running
Re: Delivery of Mixed Drinks to Vehicles in Class B Licensed Premises

As you know, the Legislature recently amended Wis. Stat. §125.51(3) to allow bars to sell mixed drinks to-go, as long as they are in a covered container with a tamper-evident seal on them.

And as you also know, the City recently changed Mun. Code §9.115(b)(4) to allow Class A retail license holders to deliver alcohol beverages in their original, unopened packages to customers in their cars.

Put the two concepts together, and now we have a request for a Class B license holder to deliver mixed drinks to customers waiting for pick-up orders in their cars. This is not allowed under our current code, because we require licensed premises to be enclosed by a substantial enclosure, which prevents cars from entering the licensed premises area, and because carry-out sales of mixed drinks is prohibited.

Alderman Johnson is now sponsoring a proposal to do for Class B license holders what we've done for Class A license holders, and to amend our code to allow delivery of mixed drinks to customers in their cars. The means to do that is to make another exception to the substantial-enclosure requirement for that portion of a licensed premises that's designated for delivery to customers in their cars, and to allow intoxicating liquor to be sold in glasses for consumption off-premises.

If this proposal is passed, Class B license holders will be able to amend their licensed premises to include a parking area for pick-up of orders. All of the other rules controlling licensed premises will still apply, including the prohibition of licensed premises extending onto public property. This means that pick-up will only be allowed on private property, and not for cars on public streets.

In addition to creating another exception to the substantial-enclosure rule, we will also need to amend Mun. Code §9.11(18), which currently allows Class B intoxicating liquor license holders to sell intoxicating liquor only by the glass on the premises where it was sold, and not for carry-out. Note that this provision will have to be changed even if the amendment to §9.115(b)(4) is not passed, to bring our code into compliance with the new state law.

Section 9.11(18) currently allows to-go sales of intoxicating liquor in original, unopened packages, up to a limit of four liters. This puts it in conflict with the new state law, which allows to-go sales of liquor in original packages in any amount. This proposed draft removes the 4-liter limit, but keeps the 9:00 p.m. sales cut-off, which keeps it in line with Class A license holders.

- Note that allowing carry-out sales of intoxicating liquor by bars is optional under state law. We could opt to discontinue that and allow only carry-out sales of beer and wine. The draft ordinance opts to allow carry-out sales of all intoxicating liquors because that is the current law in Waukesha. We have assumed that the Council would not want to change the current rule.

If §9.115(b)(4) is not amended, it just means that customers who want to buy mixed drinks to-go will have to go into the bar to buy them and then carry it back to their cars. That's the way it will remain for bars that do not have their own parking lots on private property, as well. But the idea behind changing the rule for Class A retailers was to help those businesses during the pandemic, so it's logical to extend the same kind of help to bars, too.

Other minor changes were made to clarify that the purchases must be made in a face-to-face transaction within the licensed premises, to comply with state law.

A redlined draft of the proposed ordinance follows. Please let me know if you have any questions, and as always, do not discuss this among yourselves before the O&L meeting on Monday.

City of Waukesha, Wisconsin

Ordinance No. 2021 – _____

An Ordinance Amending Waukesha Municipal Code Sections 9.115(b)(4) and 9.11(18), Regarding Outdoor Delivery of Alcohol Beverages to Customers' Vehicles within Licensed Premises.

The Common Council of the City of Waukesha do ordain that:

Section 1. Subsection (b)(4) of section 9.115 of the Waukesha Municipal Code is amended to read in its entirety as follows:

- (4) 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.
 - (A) Enclosures surrounding Licensed Premises within Sidewalk Cafés shall meet the requirements of Municipal Code §8.116 rather than the enclosure requirements of this subsection.
 - (B) Enclosures surrounding temporary Licensed Premises in connection with a temporary Class B license issued under Wis. Stats. §125.26(6) or §125.51(10) or a temporarily-extended Licensed Premises under subsection (f) shall meet the requirements of subsection (f)(1) rather than the requirements of this subsection.
 - (C) 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 ~~goods~~ 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.
 - (D) 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.

Section 2. Subsection (18) of section 9.11 of the Waukesha Municipal Code is amended to read in its entirety as follows:

(18) Retail “Class B” Sales. The provisions of Wis. Stat. §125.51(3)(b), Wis. Stat., are adopted by the City. The holder of a retail “Class B” liquor license shall be permitted to sell, ~~deal and traffic in~~ intoxicating liquors to be consumed by the glass ~~only~~ on the premises where sold or for consumption off the premises in containers having a tamper-evident seal in compliance with Wis. Stat. §125.51(3)(b), or in original, unopened packages or containers in any quantity, and in the original packages or containers in multiples not to exceed 4 liters at any one time and to be consumed off the licensed premises. Off premises sales ~~Sales for consumption off-premises~~ shall cease at 9 p.m. ~~of~~ each day.

Section 3. All ordinances, or portions of ordinances, inconsistent with this ordinance are hereby repealed.

Section 4. This Ordinance shall be effective the day after its publication.

Passed the _____ day of June, 2021.

Shawn N. Reilly, Mayor

Attest: Gina L. Kozlik, City Clerk