



Office of the City Attorney

City Hall, Suite 206
201 Delafield Street
Waukesha, Wisconsin 53188-3646
Telephone (262) 524-3520
Fax (262) 650-2569
Email attorneys@waukesha-wi.gov

Brian E. Running
City Attorney
Miles W.B. Eastman
Assistant City Attorney
Julie M. Gay
Assistant City Attorney
Anne Marie Iselin
Assistant City Attorney
Donna Hylarides Whalen
Assistant City Attorney
Rebecca L. Pipp
Legal Assistant

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Memorandum

To: Ordinance and License Committee
From: Brian Running
Re: Class C Wine Licenses – Artsy Bliss Application

This is a follow-up to the Artsy Bliss application for a Class C wine license that was brought before the committee June 11. This office requested that the application be held, because there are policy issues that have to be determined before a license can be granted.

The policy issue arises because Artsy Bliss is not a restaurant, and Class C wine licenses can only be issued to restaurants.

A “Class C” license may be issued to a person qualified under §125.04(5) for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. A “Class C” license may not be issued to a foreign corporation, a foreign limited liability company or a person acting as agent for or in the employ of another.

- Wis. Stats. §125.51(3m)(c).

Unfortunately, as with so many things in Chapter 125, things get complicated. The complication comes in the form of the definition of a “restaurant.”

“Restaurant” means any building, room, or place where meals are prepared or served or sold to transients or the general public, including all places used in connection with it and including any public or private school lunchroom for which food service is provided by contract. For purposes of this subsection, “meals” does not include soft drinks, ice cream, milk, milk drinks, ices, and confections. “Restaurant” does not include any of the following:

- (a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.
- (b) Churches, religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve, or sell meals to transients or the general public.
- (c) Any public or private school lunchroom for which food service is directly provided by the school, or a private individual selling foods from a movable or temporary stand at public farm sales.

(d) Any bed and breakfast establishment, as defined in s. 97.01 (1g), that serves breakfasts only to its lodgers.

(e) The serving of food or beverage through a licensed vending machine, as defined in s. 97.01 (15p).

(f) Any college campus, as defined in s. 36.05 (6m), institution as defined in s. 36.51 (1) (b), or technical college that serves meals only to the students enrolled in the college campus, institution, or technical college or to authorized elderly persons under s. 36.51 or 38.36.

(g) A concession stand at a locally sponsored sporting event, such as a little league game.

(h) A potluck event, as defined in s. 97.01 (13g).

- Wis. Stats. §125.02(18).

So, a “restaurant” is defined as a place where “meals” are served, with some specific exceptions. There is no definition of “meal,” except that it can’t consist of soft drinks, ice cream, milk, milk drinks, ices, or confections. We are free to define “meal” as we see fit, as long as it doesn’t include any of those items. Therefore, the definition of meal determines who is, and who isn’t, eligible for a Class C license. That definition should be codified so it can be applied consistently to all Class C applications.

This is where the policy part comes in – if we want to make it easy to get a Class C license, we define “meal” very liberally. If we want to make it harder to get a Class C license, we define “meal” more strictly. This is the basic question that the committee has to determine and about which to make a recommendation to the council.

For example, if we are not concerned about the number of businesses in the city that can serve wine, and we want to make it easy to qualify for a Class C license, then we could define a meal to be any food other than soft drinks, ice cream, milk, milk drinks, ices, or confections. Offering bowls of popcorn, cheese and crackers, sandwiches, bags of chips, etc., could make any business a “restaurant.”

On the other hand, if we don’t want a lot of businesses serving wine to their patrons, and we want to make it harder to get a Class C license, then we could define a meal more strictly, requiring it to resemble something that only a true restaurant, in the usual meaning of the word, would serve.

If you determine that it should be easy to get a Class C license, then defining a meal is simple. But if you determine that it should not be too easy to get a Class C license, then defining a meal is more difficult. In the usual sense, a “meal” implies something that provides complete nourishment and is not just a snack. So, “meal” could be defined this way:

“Meal” means food that could serve as regular sustenance, and does not include appetizers, snacks, hors d’oeuvres, antipasto, charcuterie, or other similar foods, including but not limited to nuts, chips, popcorn, crackers, soft drinks, ice cream, milk, milk drinks, ices, confections, candy, pretzels, and cheese.

In that way, we could avoid having any non-restaurant business become a “restaurant” simply by putting out snacks and calling it a meal.

In deciding whether it should be easy to get a Class C license or not, you should also try to think of possible unintended consequences. Allowing the patrons of an art studio to have a glass of wine while they paint seems reasonable and innocuous. However, there may be other businesses at which the service

of wine might be considered less appropriate. There are probably lots of possibilities, but for one, they might include businesses at which children will be present – for instance, a day-care center that offers snacks to parents when they pick up their children at the end of the day and thus qualifies as a restaurant that can also offer wine. I am not suggesting that this particular scenario presents a threat to the city, I am just advising that possible unintended consequences need to be considered.

Other factors you may consider:

- Allowing non-restaurant businesses to have Class C licenses may have an economic-development effect. Our Department of Community Development favors allowing easier issuance of Class C licenses for that reason.
- Non-restaurant businesses that want to serve wine could get a Class B intoxicating liquor license, without having to meet any kind of definition of “restaurant.” The only reason they are applying for a Class C is that we presently are into our reserve Class B intoxicating liquor licenses, and there’s a \$10,000 fee for those. So, the same business could serve wine without being a restaurant, except for an arbitrary quota-and-fee system.
- Allowing non-restaurant businesses to get Class C licenses more easily will make it unnecessary for those businesses to get Class B intoxicating liquor licenses, which will conserve our quota of valuable Class B licenses for true taverns.
- My own personal feeling is that we will not see a huge proliferation of non-restaurant businesses applying for Class C licenses if we adopt an easy standard, but we do get inquiries from non-restaurants about being able to serve wine, so there will probably be some increase in license holders.

Note also that a bartender’s license will also be required for service of wine in a premises to which a Class C license is issued, and that the premises will have to comply with all applicable restaurant sanitation regulations. It’s not as simple as just getting a Class C license.

Summary

The committee should:

1. Determine whether Class C licenses should be easy to obtain or not.
2. If easy, then adopt a definition of “meal” that’s loose.
3. If not easy, then adopt a definition of “meal” that’s stricter.
4. Make a decision on the Artsy Bliss application based on the newly-adopted criteria.
5. Eventually, create a new subsection to Municipal Code §9.09 codifying the criteria.

Please let me know if you have any questions.