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Memorandum

To: Ordinance and License Committee
From: Brian Running
Re: Creation of Mun. Code §9.115, regulating licensed premises

The City has, for many years, allowed extensions of premises on a temporary basis, on an ad hoc basis. There has never been an ordinance regulating the procedure or placing any requirements on extensions of premises. This proposed ordinance fills that need. It also coordinates with the proposed amendments to the Sidewalk Café ordinance.

The draft deals with more than extensions of premises, it establishes requirements for all licensed premises, provides a procedure for amendments of licensed premises, and provides a procedure for temporarily extending licensed premises.

The proposed section is below, with explanatory annotations in red.

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

(a) Definitions.

- (1) Committee means the Ordinance and License Committee.
- (2) Licensed Premises means the area described in a 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.

This mirrors state law. The licensed premises is whatever we describe it as in the license. We need to be particular about describing the premises, otherwise it will extend across the entire property.

(b) Regulations.

- (1) 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.
- (2) A Licensed Premises must be entirely within a single tax parcel, except as provided in subsection (f)(7), below.
- (3) A Licensed Premises that is inside a building must be bounded by walls.
- (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. 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. Enclosures surrounding Licensed Premises within Sidewalk Cafés shall meet the requirements of Municipal Code §8.116 rather than the requirements of this subsection. 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)(5) rather than the requirements of this subsection. All enclosures surrounding Licensed Premises must comply with all applicable zoning and building codes.

Licensed premises need to be delineated, primarily because customers cannot leave a licensed premises with an open intoxicant and face fines if they do. This section provides for various levels of enclosure, according to the permanent or temporary nature of them. We do not believe it is sufficient for a licensed premises (not a temporarily-extended premises) to be delineated with only a flimsy rope or chain that can be stepped over easily.

- (5) Licensed Premises may not be on public property, except for Licensed Premises in City parks in connection with licenses issued pursuant to Municipal Code §9.09(6)(b), temporary extensions onto Municipal Lot 3 pursuant to subsection (f)(4), or if the portion on public property is within a Sidewalk Café licensed under Municipal Code §8.116.

This changes past practice, which did allow extensions of premises onto City property. We recommend this change to clarify that public property remains open to public entry and use, except for limited exceptions.

- (c) **Sidewalk Café Licensed Premises.** Any portion of a Licensed Premises that is, or is proposed to be, on public property pursuant to a Sidewalk Café license issued under Municipal Code §8.116 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.

- (d) **Applications Must Clearly Indicate 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.
- (e) **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 (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.

This is the amendment of the description of a licensed premises shown on the license, it is not for a temporary extension. For instance, if a bar or restaurant built an addition and needed to add it to the licensed premises.

- (f) **Temporary Extension of Licensed Premises.** A licensee may request a temporary extension of the 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:

This is what has traditionally been known as an “extension of premises.” This clarifies that it’s only temporary, and reverts back to the original description as soon as the temporary extension expires. This is critical to comply with case law concerning the rights of owners to their licensed premises.

- (1) Temporary extensions of Licensed Premises shall 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.
- (2) 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.

- (3) 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.
- (4) Licensed Premises may not be temporarily extended onto public property, except that 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. Temporary extensions of Licensed Premises onto Municipal Lot 3 under this subsection (f)(4) are exempt from the provisions of Municipal Code §11.27.

This exception is for the St. Patrick's Day event.

- (5) 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) may be of a temporary nature and need not comply with zoning or building codes; however, 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 are sufficient for enclosures around temporary Licensed Premises.

This clarifies that ropes and chains are okay to delineate a temporary licensed premises, whether it's under an extension of premises or a picnic license.

- (6) All laws, rules, and regulations that apply to Licensed Premises apply to temporarily-extended Licensed Premises, except enclosure requirements.
 - (7) Licensed Premises may be temporarily extended onto adjoining tax parcels with the written permission of the owner of the adjoining parcels.
 - (8) 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.
- (g) **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.