



Office of the City Attorney

201 Delafield Street, Suite 330
Waukesha, Wisconsin 53188-3639

Telephone (262) 524-3520
Email attorneys@waukesha-wi.gov

Brian E. Running
City Attorney
Miles W.B. Eastman
Assistant City Attorney
Michael C. Radavich
Assistant City Attorney
Karen J. Krueger
Legal Assistant

January 10, 2025

Memorandum

To: Ordinance and License Committee
From: Brian Running
Re: Requirements for Issuance of “Class C” and Class “B” Retail Alcohol-Beverage Licenses

This Memo contains the Municipal Code and statutory references cited in the cover sheet:

“Class C” Licenses

State Law, §125.51:

(3m) RETAIL “CLASS C” LICENSE.

...

(c) Except as provided under s. 125.69, a “Class C” license may be issued to a person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another.

Current Municipal Code §9.09(4):

(4) Restrictions on the Issuance of Class C Licenses.

- (a) “Class C” Retail Wine licenses may be issued only to retail businesses that prepare food for their customers, serve food to their customers, or sell food to their customers. For purposes of this subsection, “food” means any product intended for consumption by humans, but does not include soft drinks, ice cream, milk, milk drinks, ices, candy, or confections, and cannot consist solely of snack foods such as potato chips, tortilla chips, corn chips, nuts, pretzels, popcorn, cheese, crackers, or any items that are served solely through vending machines.
- (b) Regardless of subsection (a), “Class C” Retail Wine licenses may not be issued to the following entities:
 - 1. Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish, or bread and butter.

2. Churches, religious, fraternal, youth or patriotic organizations, service clubs, and civic organizations that occasionally prepare, serve, or sell meals to transients or the general public.
3. Any public or private school lunchroom at which food service is directly provided by the school, or a private individual selling food from a movable or temporary stand at a public farm sale.
4. Any bed and breakfast establishment, as defined in Wis. Stats. §97.01(1g), that serves breakfasts only to its lodgers.
5. Any college campus as defined in Wis. Stats. §36.05(6m), institution as defined in Wis. Stats. §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 Wis. Stats. §36.51 or §38.36.
6. A concession stand at a locally-sponsored sporting event, such as a little league game.
7. A potluck event, as defined in Wis. Stats. §97.01(13g).

Class “B” Licenses:

State Law, §125.26(2)(a)

(a) Class “B” licenses may be issued to any person qualified under s. 125.04 (5). Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least 6 months before the date of application. A Class “B” license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this chapter.

Current Municipal Code §9.11(9):

(9) **Beer in Restaurants.** A Class “B” fermented malt beverage license only (not in combination with a “Class B” intoxicating liquor license) may be issued to a person that operates a properly licensed, bona fide restaurant as defined in §125.02(18), Wis. Stats., provided the sale of food and nonintoxicating beverages at retail shall constitute at least 65% of the gross sales of the establishment, based upon an annual computation, or as hereinafter provided:

- (a) The applicant, if a City license has not been previously issued shall, at the time of application, furnish to the Ordinance and License Committee such information as is required by that committee to establish that in the prior year's operation, or such period of time as determined by the Ordinance and License

Committee, the sale of food and nonintoxicating beverage constitute 65% or more of the gross sales, or

- (b) The licensee seeking renewal of the license shall furnish to the Ordinance and License Committee of the Council between March 1 and April 15 of each year a report, compilation or records satisfactory to the Committee as to form and clarity supplying the information required for the purpose of establishing the gross sales of the licensee for the prior year,
- (c) If the Ordinance and License Committee establishes that less than 65% of the gross sales for the past calendar year (or part thereof) comprised sale of food and nonintoxicating beverage, the Committee shall recommend to the Council that the Class "B" fermented malt beverage license be not issued or renewed for the next ensuing year commencing the following July 1.
- (d) If the applicant or licensee refuses or neglects to furnish the information relative to the gross sales as required to the Ordinance and License Committee within the time indicated, the Committee shall recommend to the Council that the Class "B" fermented malt beverage license be not issued or renewed for the next ensuing year commencing the following July 1.