

**CITY OF WAUKESHA
ORDINANCE 2023-1**

**AN ORDINANCE AMENDING SECTIONS 9.09(2) AND 9.115(B)(5) OF THE
WAUKESHA MUNICIPAL CODE, REGARDING THE ISSUANCE OF CLASS B
ALCOHOL BEVERAGE LICENSES ON NON-CITY-OWNED PUBLIC
PROPERTY**

The Common Council of the City of Waukesha do ordain as follows:

SECTION 1: **AMENDMENT** “9.09 Restrictions On Granting Licenses” of the City of Waukesha Municipal Code is hereby *amended* as follows:

A M E N D M E N T

9.09 Restrictions On Granting Licenses

1. RESIDENCY RESTRICTIONS. No alcohol beverage license shall be issued by the City to a person or agent for a corporation unless that person or agent resides within Waukesha County.
2. LICENSE FOR SALES ON PUBLIC PROPERTY PROHIBITED; EXCEPTIONS. No license shall be issued for the sale of intoxicating liquor or fermented malt beverages in ~~public~~City parks or any other City-owned property, except:
 - a. A "Class B" fermented malt beverage license may be issued for the concession in Saratoga Park. The licensed premises in Saratoga Park shall be limited to the seating areas and the walkways immediately adjacent to the seating areas and concession stand. No intoxicating liquor or fermented malt beverage shall be brought or carried into Saratoga Park after having purchased it outside of Saratoga Park. Rules and regulations concerning the sale of fermented malt beverages in Saratoga Park shall be established by resolution of the Parks, Recreation and Forestry Board.
 - b. "Class B" fermented malt beverage licenses may be issued for Frame Park and Lowell Park for the duration of the Waukesha Winter Janboree. The licensed premises in those parks shall be limited only to those areas in which Janboree events take place, as specified in the license. No intoxicating liquors or fermented malt beverages shall be brought or carried into Lowell or Frame Parks during the Waukesha Winter Janboree, except by the holders of licenses issued under this subsection.
 - c. Temporary "Class B" licenses for the sale of fermented malt beverages under Wis. Stat. § 125.26(6) and temporary "Class B" licenses for the sale of wine only under Wis. Stat. §125.51(10) may be issued for public special events for Frame Park and Cutler Park upon application and approval by the Parks, Recreation & Forestry Board, Ordinance and License Committee, and

Common Council. No intoxicating liquor or fermented malt beverage shall be brought or carried into Frame Park or Cutler Park after having purchased it outside of Frame Park or Cutler Park, except by the holders of licenses issued under this subsection.

- d. Hours for sales by holders of licenses issued under this subsection shall be as prescribed by rules issued by, or as otherwise approved by, the Parks, Recreation and Forestry Board.

3. LIMITED INTERESTS. Holders of retail alcohol beverage licenses issued by the City may hold a maximum of four such licenses. For purposes of this subsection, "holder" includes individuals or entities that have an indirect interest in a retail alcohol beverage license as a member, partner, shareholder, or beneficial interest owner in any limited-liability company, partnership, corporation or other entity holding a retail alcohol beverage license issued by the City.

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).

(1) (Am. #57-86) (Am. #12-09) (2) Amended #23-76, #63-02, repealed 2022-2 (3) Amended #51-86, moved to 9.07(2), 9.08(3) (4) Repealed #19-92, recreated #57-94, amended #14-05, repealed 2022-2 (5) Repealed 2022-2 (6) Amended #11-88, #37-93, #17-90, #31-96, #18-01, #39-02, renumbered to (2) 2022-2 (7) Created #15-71, amended and renumbered to (3) 2022-2 (8) Created #4-18, renumbered to (4) 2022-2

SECTION 2: **AMENDMENT** “9.115 Licensed Premises, Amendment Of Licensed Premises, And Temporary Extension Of Licensed Premises” of the City of Waukesha Municipal Code is hereby *amended* as follows:

AMENDMENT

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.

(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, 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)(5) 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 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.
- 5. Licensed Premises may not be on ~~public~~City-owned property, except for temporary Licensed Premises in City parks in connection with licenses issued pursuant to Municipal Code §9.09~~(6)(b)~~(2), temporary extensions onto Municipal Lot 3 pursuant to subsection (f)(4)(a), or if the portion on ~~public~~City property is within a Sidewalk Café licensed under Municipal Code §8.116.
- (c) SIDEWALK CAFÉ LICENSED PREMISES. Any portion of a Licensed Premises that is, or is proposed to be, on public property in conjunction with a Sidewalk Café license issued under Municipal Code §8.116 is a temporary extension subject to subsection (f) and 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.

- (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:

1. Temporary extensions of Licensed Premises shall only 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. This limitation shall not apply to temporary extensions of Licensed Premises encompassing a Sidewalk Café, which shall run concurrently with the Sidewalk Café permit.
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 as follows:
 - a. 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;
 - b. Licensed Premises may be extended temporarily to include Sidewalk Cafés licensed under Municipal Code §8.116; and
 - c. Licensed Premises encompassing Sidewalk Cafés may be further extended beyond the terrace and onto public streets or parking lots if the streets and parking lots are closed pursuant to permits issued under Municipal Code §6.17 and the written permission of the street-closure permit holder has been obtained, in the discretion of the Committee.

- d. Temporary extensions of Licensed Premises onto public property under this subsection (f)(4) are exempt from the provisions of Municipal Code §11.27.
- 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. Regardless of the foregoing, enclosures surrounding Licensed Premises within Sidewalk Cafés shall meet the requirements of Municipal Code §8.116 rather than the enclosure requirements of this subsection.
- 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.

Created 2020-11 (4) Amended 2021-3, 2021-4

SECTION 3: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be effective the day after its publication.

PASSED AND ADOPTED BY THE CITY OF WAUKESHA COMMON COUNCIL
JANUARY 03, 2023.

Presiding Officer

Shawn N. Reilly, Mayor, City of
Waukesha

Attest

Gina L. Kozlik, City Clerk, City of
Waukesha