

LEGISLATIVE COMMITTEE

City of Kaukauna
Council Chambers
Municipal Services Building
144 W. Second Street, Kaukauna



Monday, August 15, 2022 at 6:30 PM

AGENDA

In-Person

1. Correspondence.
2. Discussion Topics.
 - a. [Outdoor Alcohol Beverage Area Ordinance Review.](#)
3. General Matters.
4. Adjourn.

NOTICES

Notice is hereby given that a majority of the City Council will be present at the meeting of the Legislative Committee scheduled for Monday, August 15, 2022 at 6:30 P.M. to gather information about a subject over which they have decision making responsibility.

IF REQUESTED THREE (3) DAYS PRIOR TO THE MEETING, A SIGN LANGUAGE INTERPRETER WILL BE MADE AVAILABLE AT NO CHARGE.





MEMO

PLANNING AND COMMUNITY DEVELOPMENT

To: Common Council – Legislative Committee
 From: Joe Stephenson
 Date: 08-15-2022
 Re: Outdoor Alcohol Beverage Area – Discussion - Update

Presented to the Council are edits to our existing Outdoor Alcohol Beverage Area, recommended for approval by the Plan Commission June 23rd, 2022.

The Community Development Department has been approached by businesses that would like to see changes to our Outdoor Alcohol Beverage Area, to allow a more welcoming experience for patrons. In addition, alcohol can be served on public sidewalks and no large issues have arisen from this ordinance change. Community Development sought to craft an ordinance that would help foster a welcoming atmosphere, while still maintaining certain safeguards to the outdoor alcohol beverage area. The following is a summary of those changes reflected in the draft ordinance:

1. Reduction of the fence height from 6' to 4' to allow seated guests to see out of the beverage area. (With the exception of sides boarding institutional and residential uses)
2. Reduction of the 100% screened to 50% screen to allow for a variety of types of fencing. (With the exception of sides boarding institutional and residential uses)
3. Allow for vegetation as a barrier and not just a constructed fence. This change matches our existing fencing code, where we classify hedges as fences.
4. Removing language that limits the size of the Outdoor Alcohol Beverage Area and let the business and plan commission decide an appropriately sized outdoor area based on the market demand, shape of the lot, and surrounding uses.

A number of individuals have contacted me regarding a few other items in this ordinance and I would like council to discuss the merits of included or excluding this from an updated version of this ordinance. This includes:

1. How to handle live music: currently live music is not allowed at any time in the Beverage Area.
2. Ordering drinks in the Beverage Area: currently individuals must place all orders inside the restaurant/pub.

3. Supervision of the Beverage Area: currently our ordinance reads that a staff member must always be watching the area at all times.
4. How to handle the allocation of liquor licenses. (this one might be a bit outside the Beverage Area discussion but might be a pertinent topic as we discuss how we hand areas that serve alcohol as a whole)

Next steps for this ordinance would be either approval of the current ordinance and forwarding it to a regular Common Council session or give staff direction to edit portions of the ordinance based upon discussion and forwarded on to a regular Common Council meeting.



**CITY OF KAUKAUNA
ORDINANCE 1865-2022**

**ORDINANCE AMENDING SECTIONS 12.01(2)(D) RESERVE CLASS B AND
12.03(11) PERMIT FOR OUTDOOR ALCOHOLIC BEVERAGE AREA, OF THE
MUNICIPAL CODE**

WHEREAS, sections of the current municipal code do not adequately address circumstances related to licenses and fees therefore; and,

WHEREAS, in 2016 the State of Wisconsin Amended Wis. Stat. 125.51(3)(e)2 eliminating the economic development grant for Reserved Class B Licenses; and

WHEREAS, since the commencement of the Covid-19 Pandemic, bars and restaurants have shown an increase in need for the permit for Outdoor Alcoholic Beverage Area; and

WHEREAS, Section 12.03(11) Permit for Outdoor Alcoholic Beverage Area does not adequately allow establishments within the City of Kaukauna to utilize said permit in a manner to accommodate customer's outdoor seating requests;

NOW THEREFORE, be it ordained by the Common Council of the City of Kaukauna, in the State of Wisconsin, as follows:

SECTION 1: **AMENDMENT** “12.01 Licenses Required” of the City of Kaukauna Municipal Code is hereby *amended* as follows:

AMENDMENT

12.01 Licenses Required

A license or permit shall be required for the sale of each of the following or the conduct of the business or activity, and the indicated license or permit application fee shall be paid to the city clerk. The license or permit application fees shall be for one year unless otherwise specified in this chapter.

- 1. *Fermented malt beverages.*
 - a. Class A. \$150.00.
 - b. Class B. \$100.00.
 - c. Picnic. \$10.00.
 - d. Wholesalers. \$25.00.
 - e. Operators. \$50.00 every two years.
 - f. Outdoor beverage area permit. \$200.00.
- 2. *Intoxicating liquor.*

- a. *Class A.* \$300.00.
- b. *Class B.* \$350.00.
- c. *Class C. Wine* \$100.00.
- d. *Reserve class B.* The fee for a reserve class B liquor license shall be \$10,000.00 for initial issuance, except that the fee for the initial issuance of a reserve class B license to a bona fide club or lodge situated and incorporated in the state for at least six years is \$200.00. The fee established in this section is in addition to any other fee required under this chapter, including, but not limited to, the fees for class B liquor and class B fermented malt beverage licenses. The annual fee for renewal of a reserve class B license is as specified in subsection (2)(b) of this section.

~~(1) The city finds that the \$10,000.00 fee mandated by the laws of the state exceeds the actual cost of licensing the activity, thereby generating additional revenue for the city, and it is in the interest of the public welfare to use the additional revenue to increase the property tax base, provide employment opportunities, attract tourists and generally enhance the economic and cultural climate of the community by providing additional economic incentives for new businesses with liquor licenses.~~

~~(2) After the granting of any new reserve class B license and payment of the \$10,000.00 initial issuance fee, the applicant may file an application for an economic development grant of \$10,000.00 with the city clerk. The city clerk shall determine whether the licensee is operating in compliance with the approved license. If the city clerk determines that the licensee is so operating, the city clerk shall authorize the approval of a \$10,000.00 economic development grant. If the city clerk determines that the licensee is not in compliance with the approved license, no economic development grant may be authorized, and the city clerk shall make such finding in writing and cause to be delivered a copy of the findings to the licensee. If the licensee disagrees with the city clerk's determination, the licensee may file a written notice of appeal with the city clerk within ten calendar days of the delivery of the written notice of the city clerk's findings. Upon receiving such notice from the licensee, the city clerk shall relay the notice to the common council which shall hold a hearing through its health and recreation committee. The common council may affirm or reverse the city clerk's determination. If the city clerk's determination is upheld, appeal may be taken to circuit court pursuant to Wis. Stats. § 753.04. If the city clerk's determination is reversed, the city clerk shall authorize the payment of the economic development grant.~~

3. *Peddlers, canvassers, and transient merchants.* \$15.00 investigation fee.

4. *Carnivals and exhibitions.*

- a. Circus, caravan, menagerie, and carnival. \$20.00 per day.
- b. Other shows, exhibitions, entertainments. \$10.00 per day.

- 5. *Taxicabs*. \$25.00 for the first vehicle operated and \$25.00 for each additional vehicle operated by the same licensee.
- 6. *Dogs*. See section 12.10(2).
- 7. *Parades*. No fee.
- 8. *Blasting permit*. \$1.00.
- 9. *Junk dealers*. \$25.00.
- 10. *Mobile homes*.
 - a. Monthly parking fee. According to assessed value pursuant to Wis. Stats. § 66.0435.
 - b. Occupancy permit. Pursuant to Wis. Stats. § 66.0435.
- 11. *Mobile home parks*.
 - a. \$2.00 per space, but not less than \$25.00 nor more than \$100.00.
 - b. Developer's permit. \$50.00.
 - c. Transfer fee. \$10.00.
- 12. *Mechanical and electronic amusement devices*. \$10.00 for each mechanical and electronic amusement device.
- 13. *Cigarette license*. \$15.00.

(Ord. No. 1699, 9-2-2014)

SECTION 2:**AMENDMENT** “12.03 Intoxicating Liquor And Fermented Malt Beverages” of the City of Kaukauna Municipal Code is hereby *amended* as follows:

AMENDMENT

12.03 Intoxicating Liquor And Fermented Malt Beverages

- 1. *State statutes adopted*. The provisions of Wis. Stats. ch. 125, defining and regulating the sale, procurement, dispensing, and transfer of beverages, including provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made a part of this section by reference. A violation of any of such provisions shall constitute a violation of this section.
- 2. *Licenses, permits, authorization required*.
 - a. *When required*. No person, except as provided by Wis. Stats. § 125.06, shall, within the city, serve, sell, manufacture, rectify, brew, or engage in any other activity for which this chapter or Wis. Stats. ch. 125, requires a license, permit, or other authorization as provided in this chapter. See Wis. Stats. § 125.04(1).
 - b. *Separate license required for each place of sale*. Except for licensed public warehouses, a license shall be required for each location or premises, which is in direct connection or communication to each other where intoxicating liquor or fermented malt beverages are stored, sold or offered for sale. See Wis. Stats. § 125.04(9).
- 3. *Classes of licenses and fees*. The following classes and denominations of licenses may

be issued by the city clerk under the authority of the city council after payment of the application fee specified in section 12.01 of this chapter, which, when so issued, shall permit the holder to sell, deal, or traffic in alcohol beverages as provided in Wis. Stats. §§ 125.17, 125.25, 125.26, 125.28, and 125.51. Except as otherwise provided in this section, the full license fee shall be charged for the whole or fraction of any year.

- a. *Class A fermented malt beverage retailer's license.* See Wis. Stats. § 125.25.
- b. *Class B fermented malt beverage retailer's license.* See Wis. Stats. § 125.26.
 - (1) *Six months.* A license may be issued at any time for six months in any calendar year, for which three-fourths of the applicable license application fee shall be paid; but such license shall not be renewable during the calendar year in which issued.
- c. *Class C wine license.* A Class C license authorizes the retail sale of wine by the glass or in opened original container for consumption on the premises where sold.
- d. *Wholesalers fermented malt beverage license.* See Wis. Stats. § 125.28.
- e. *Retail Class A liquor license.* See Wis. Stats. § 125.51(2).
- f. *Retail Class B liquor license.* A retail Class B liquor license shall permit its holder to sell intoxicating liquor to be consumed by glass only on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container in multiples not to exceed four liters at any one time and to be consumed off the premises where sold. Wine may be sold for consumption off the premises in the original package or otherwise in any quantity. See Wis. Stats. § 125.51(3)(b).
 - (1) A license may be issued after July 1 in any license year. The license shall expire on the following June 30. The application fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30.
 - (2) Licenses valid for six months may be issued at any time. The fee for the license shall be 50 percent of the annual license application fee, as stated in section 12.01 of this chapter. The license may not be renewed during the calendar year in which issued.
- g. *Reserve retail Class B liquor license.* A reserve retail Class B liquor license means a license that is not granted or issued on or before December 1, 1997, and is counted under Wis. Stats. § 125.51(4)(br), which authorizes the retail sale of intoxicating liquor for consumption on the premises where sold by the glass to be consumed on the licensed premises or in the original package or container in multiples not to exceed four liters at any one time and to be consumed off the licensed premises, except that wine may be sold in the original container or otherwise in any quantity to be consumed off the premises.
- h. *Outdoor beverage area permit.* An outdoor beverage area permit shall permit its holder to sell intoxicating liquor beverages in outdoor areas as described in subsection (11) "Permit Required for Outdoor Alcoholic Beverage Area."
 - (1) A permit may be issued after July 1 in any license year. The permit shall expire on the following June 30. The application fee for the

permit shall be prorated according to the number of months or fractions thereof remaining until the following June 30.

- (2) Permits valid for six months may be issued at any time. The fee for the permit shall be 50 percent of the annual permit application fee, as stated in section 12.01 of this chapter. The permit may not be renewed during the calendar year in which issued.

i. *Operators.* See Wis. Stats. § 125.17.

- (1) Operator licenses may be granted to individuals by the city council for the purposes of complying with Wis. Stats. §§ 125.32(2) and 125.68(2).
- (2) Operator licenses may be issued only upon submission of a written application on forms provided by the city clerk. A color photograph of the applicant shall be submitted with the written application.
- (3) Operator licenses shall be valid for two years and shall expire on June 30 of the second year.

j. *Provisional operator's license.* The city clerk may issue a provisional operator's license to a person who has applied for an operator's license and provides proof of enrollment in a responsible beverage server training course required under Wis. Stats. § 125.17(6)(a), subject to the following:

- (1) A provisional license may not be issued to any person who has been denied an operator's license, or whose operator's license has been revoked or suspended within the preceding 12 months.
- (2) A provisional license may be issued only to persons eligible for operator's licenses under all of the provisions of this chapter, upon completion of a satisfactory background check by the Kaukauna Police Department, and under the requirements of Wis. Stats. § 125.04.
- (3) Any provisional license granted under this subparagraph shall expire 60 days after its issuance or when an operator's license is issued to the holder, whichever is sooner.
- (4) The city clerk shall revoke the provisional license if the holder makes any false or misleading statement or any material misleading omission on the application.
- (5) The city clerk shall revoke the provisional license if the applicant fails successfully to complete the responsible beverage server training course in which the applicant enrolls.
- (6) No more than one provisional license may be issued to an applicant during any 12-month period.
- (7) A \$15.00 non-refundable fee shall be charged by the city clerk for the issuance of a provisional operator's license.

k. *Provisional retail license.* The city clerk may issue a provisional retail license to a person who has applied for a Class A, Class B, Class A, Class B, or Class C retail license and who provides proof of enrollment in, or the appointed agent of the entity applying provides proof of enrollment in, a responsible beverage server training course required under Wis. Stats. § 125.04(5)(a)5., or

any future amendment, revision, or modification of such statute.

- (1) A provisional license shall not be issued to any person who has been denied a retail license by the common council, whose operator's license has been revoked or suspended within the preceding 12 months, or who already holds a provisional license of the type applied for.
- (2) A provisional license may be issued only to persons eligible for a retail license under all of the provisions of this chapter and under the requirements of Wis. Stats. §§ 125.04 and 125.185, and only for the activities that the retail license applied for would authorize.
- (3) Any provisional license granted under this section shall expire 60 days after its issuance, or when a retail license is issued to the holder, whichever is sooner.
- (4) The city clerk shall revoke the provisional license if the holder makes any false or misleading statement or any material or misleading omission on the application.
- (5) The city clerk shall revoke the provisional license if the applicant or its appointed agent fails successfully to complete the responsible beverage server training course in which he or she enrolls.
- (6) The city clerk shall not issue a provisional Class B license if doing so would exceed the municipal quota under Wis. Stats. § 125.51(4).
- (7) No more than one provisional license may be issued to an applicant during any 12-month period.
- (8) A \$15.00 non-refundable fee shall be charged by the city clerk for the issuance of a provisional retail license.

4. *License application.*

- a. *Form.* Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the state department of revenue, or governing body for operator licenses and filed with the city clerk. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances or not separated by a solid wall.
- b. *List of licenses.* By July 15 of each year, the city clerk shall forward to the state department of revenue, to the Kaukauna City Attorney's Office, to the Kaukauna Police Department, and to the finance department, a list containing the name, address, and trade name of each person holding a license issued under this section, except a picnic, manager's, or operator's license. An electronic record of all licenses issued shall be made available at all times to the city attorney's office, police department and finance department.
- c. *Recommendations.* Each application filed with the city clerk shall be forwarded to the chief of the police and the fire departments of the city, to the building inspection department and to the director of planning and community development for their, or their designees, recommendation to the common council for approval or disapproval. Their recommendation shall be entered on

or attached to the application and based upon their respective investigations and/or inspections of the applicant and/or the premises as to the suitability and character of any applicants, as to any issues relevant to the safety, security and well-being of the citizens and neighborhoods of the City of Kaukauna, and so as to determine whether the same are qualified and/or in compliance with those regulations, laws and ordinances, relative to their fields of enforcement, applicable and relevant to such licensing.

d. *Denied applications.* Any person denied a license or permit applied for under this section 12.03 shall be ineligible to apply for another license or permit under this section 12.03 for a period of 12 months from the date of such denial by the council.

5. *License restrictions.*

a. *Statutory requirements.* Licenses shall not be issued to any persons ineligible therefore under Wis. Stats. § 125.04. No license shall be issued under this section 12.03 less than 15 days from submission to the clerk of the application and required application fee.

b. *Location.*

(1) No retail Class A or Class B license shall be issued for premises the main entrance of which is less than 300 feet from the main entrance of any established public school, parochial school, hospital, or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church, or hospital to the main entrance to the premises covered by the license.

(2) This paragraph shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school, hospital, or church building.

c. *Violators of liquor or beer laws or ordinances.* No retail Class A or B license shall be issued to any person who has been convicted of a violation of any federal or state liquor or fermented malt beverage law or the provisions of this section during one year prior to such application. A conviction of a member of a partnership or the partnership itself shall make the partnership or any member thereof ineligible for such license for one year.

d. *Health and sanitation requirements.* No retail Class B license shall be issued for any premises which does not conform to the sanitary, safety, and health requirements of the state department of industry, labor, and human relations pertaining to buildings and plumbing, to the rules and regulations of the state department of health and social services applicable to restaurants, and to all such ordinances and regulations adopted by the city.

e. *License quota.* The number of persons and places that may be granted a retail Class B liquor license under this section is limited as provided in Wis. Stats. § 125.51(4).

f. *Corporations.* No corporation organized under the laws of this state or any other state or foreign country may be issued any alcohol beverage license or

- permit unless such corporation meets the requirements of Wis. Stats. § 125.04(6).
- g. *Age requirement.* No license hereunder, except an operator's license, shall be granted to any person who has not attained the legal drinking age. Operator licenses may be issued only to applicants who have attained the age of 18.
 - h. *Effect of revocation of license.* Whenever any license has been revoked, at least six months from the time of such revocation shall elapse before another license shall be granted for the same premises, and 12 months shall elapse before another license shall be granted to the person whose license was revoked.
 - i. *Delinquent taxes, assessments, and claims.* No license shall be granted for any premises for which taxes, assessments, or other claims of the city are delinquent and unpaid, or to any person delinquent in payment of such claims to the city.
 - j. *Issuance for sales in dwellings prohibited.* No license shall be issued to any person for the purpose of possessing, selling, or offering for sale and alcohol beverages in any dwelling house, flat, or residential apartment.
6. *Form and expiration of licenses.* All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid, and the name of the licensee and, unless sooner revoked, shall expire on June 30 thereafter except as otherwise provided. The city clerk shall affix his or her affidavit as required by Wis. Stats. § 125.04(4).
7. *Transfer of licenses.*
- a. *As to person.* No license shall be transferable as to licensee except as provided by Wis. Stats. § 125.04(2).
 - b. *As to place.* Licenses issued pursuant to this section may be transferred as provided in Wis. Stats. § 125.04(12). Application for such transfer shall be made on blanks furnished by the state department of revenue. Proceedings for transfer shall be had in the same manner and form as the original application.
8. *Posting and care of licenses.* Every license or permit required under this section shall be framed and posted and at all times displayed as provided in Wis. Stats. § 125.04(10). No person shall post such license or permit or have any other person post it upon premises other than those mentioned in the application, or knowingly deface or destroy such license.
9. *Regulation of licensed premises and licenses.*
- a. *Gambling and disorderly conduct prohibited.* Each licensed and permitted premises shall, at all times, be conducted in an orderly manner; and no disorderly, riotous, or indecent conduct or illegal gambling shall be allowed at any time on any such premises.
 - b. *Employment of underage persons.* No licensee shall employ any underage person who does not have a valid operator's license to serve, sell, dispense, or give away any alcohol beverage.
 - c. *Sales by clubs.* No club shall sell intoxicating liquor or fermented malt beverages except to members and guests invited by members.

- d. *Safety and sanitation requirements.* Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.
 - e. *Capacity limited.* All premises which have been issued a retail Class B license are subject to the capacity provisions of COMM 76.05(4), Wisconsin Administrative Code, which provisions are hereby adopted by reference and made a part hereof.
10. *Closing hours.*
- a. No premises for which a wholesale alcohol beverage license has been issued shall remain open for the sale thereof between 5:00 p.m. and 8:00 a.m., except on Saturday when the closing hour shall be 9:00 p.m.
 - b. No premises for which a retail Class A fermented malt beverage license or Class A liquor license has been issued shall remain open for the sale thereof between 9:00 p.m. and 6:00 a.m.
 - c. No premises for which a retail Class B fermented malt beverage or a retail Class B liquor license has been issued shall remain open for business for the sale thereof and shall be vacated, except as permitted under section 12.03(10) (d) and as expressly excepted pursuant to Wis. Stats. § 125.10(4), between 2:00 a.m. and 6:00 a.m. Mondays through Fridays and between 2:30 a.m. and 6:00 a.m. Saturdays and Sundays. However, an employee of such a license holder may be present during non-business hours for maintenance and clean up duties. On January 1, premises operating under retail Class B liquor license are not required to close. No package, container, or bottle sales may be made after midnight and no person may carry out alcoholic beverages in an original unopened package, container, or bottle for consumption away from the premises after midnight.
 - d. Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe pitching facilities, curling clubs, gym and fitness centers, golf courses and golf clubhouses may remain open for the conduct of their regular business but no alcoholic beverages shall be sold, dispensed, or permitted to be consumed during prohibited hours.
 - e. No premises for which a retail Class B fermented malt beverage license has been issued and which premises is upon city-owned property shall sell any such beverages from one hour prior to the scheduled commencement of until one hour after the completion of any athletic activity conducted upon such property and in which event any participants are under the age of 18 years. However, such a license holder shall be allowed to sell fermented malt beverages until the end of an athletic event at said property not involving participants under 18 years of age which event ends less than one hour before the start of an athletic event involving participants under 18 years of age; and, such a license holder shall be allowed to sell fermented malt beverages at the start of an athletic event at said property not involving participants under 18 years of age, which event starts less than one hour after the end of an athletic event at said property involving participants under 18 years of age.

11. *Permit required for outdoor alcoholic beverage area.*

a. *Definition.* An outdoor alcoholic beverage area is defined as an open air, roofed or unroofed area adjacent to or accessory to a Class B intoxicating liquor and/or Class B fermented malt beverage and/or Class C licensed premises, where beer and other alcoholic beverages are consumed, which is not included within the licensed premises.

b. *Required for outdoor consumption.* No licensee shall allow the consumption of alcoholic beverages on any part of the licensed premises property not enclosed within the licensed premises as described on the license, except under permit granted by the city council. The permits are a privilege in which no rights vest and, therefore, may be revoked by the city council at its pleasure at any time or shall otherwise expire on June 30 of each year. An initial permit request may be applied for any time throughout the year, by completing a city outdoor alcoholic beverage area permit application, but after the initial request is approved any renewals shall accompany the regular license renewal application. No person shall consume or have in his or her possession alcoholic beverages on any unenclosed part of premises property not within a licensed premises as described on the license and which is not described in a valid outdoor alcoholic beverage area permit.

c. *Limitations on issuance of permit.*

(1) ~~No outdoor alcoholic beverage area permit shall be issued if the total outdoor entertaining area associated with the licensed premises is greater than 50 percent of the gross floor area of the licensed premises enclosed within the building.~~ Each applicant for an outdoor alcoholic beverage permit shall accurately describe the area ~~intended for use as an outdoor entertaining area~~ and shall indicate the nature of fencing or other measures intended to provide control over the operation of the outdoor alcoholic beverage area. Applicants shall submit a site plan professionally drawn to scale and an application for review by the city's zoning administrator. The zoning administrator will review all proposed outdoor alcoholic beverage area permit design plans and applications to determine impacts upon the surrounding neighborhood and then recommend that the license be granted as requested, modified or denied.

(2) Every outdoor beverage area shall be completely enclosed with a ~~solid~~ permanent barrier ~~or screen~~; not less than ~~six~~four feet in height ~~for those establishments in which the sale of alcoholic beverages accounts for more than 50 percent of gross receipts. For those establishments where alcoholic beverage sales do not account for 50 percent of gross receipts a permanent barrier is still required, but its structure may be less opaque and less than six feet in height, and will achieve not less than 50% screening. The barrier may consist of a vegetative screen, permanent fencing, or a combination of the two. The barrier shall be well kept and maintained in an orderly fashion. if~~

any portion of the barrier is comprised, in disrepair, or otherwise not functioning, the outdoor alcoholic beverage area permit shall be suspended until such steps are taken to restore the barrier to working order.

(3) Barriers adjacent to residential and institutional properties shall provide a six-foot tall 100% screened barrier along all sides directly abutting a residential and institutional property.

d. *Grant of permit.* The city clerk shall forward any outdoor beverage area permit application to the chief of the police and the fire departments of the city, to the building inspection department and to the director of planning and community development for their, or their designees, recommendation to the common council for approval or disapproval of such permit. Their recommendation shall be based upon their respective investigations and/or inspections of the applicant and/or the premises and proposed outdoor alcoholic beverage area as to the suitability and character of any applicants, as to any issues relevant to the safety, traffic, security and well-being of the citizens and neighborhoods of the City of Kaukauna, and as to whether any additional special conditions, restrictions, or limitations should apply to said permit.

e. *Restrictions.* All premises receiving outdoor alcoholic beverage area permits approved after the adoption date of this section will be required to comply with all of the following restrictions. For those businesses for which the licensed premises includes an outdoor alcoholic beverage area that was established, licensed, and authorized by the city prior to the adoption of this section, the restrictions under this subsection (e) do not apply, except as specified.

(1) Access to the outdoor entertaining area shall only be through the main entrance to the Class B intoxicating liquor, Class B fermented malt beverage; and Class C premises. The outdoor entertaining area shall be equipped with a locking system on a fire exit that meets applicable fire codes. In cases where site configuration or parcel shape prevent a single entrance to the outdoor beverage area through the main entrance of the building, the Plan Commission may review the outdoor beverage area site plan and approve alternative entrances.

(2) No amplified sound or music is permitted outside the enclosed (building) premises. Amplified sound or music is not permitted in the outdoor alcoholic beverage area. Any premises licensed prior to the adoption of this ordinance for which such premises includes areas not enclosed within the building of the premises shall be required to obtain approval from the city council for amplified sound or music.

(3) All sales of alcoholic beverages shall be restricted to the enclosed licensed premise.

(4) The outdoor alcoholic beverage area may only be open for consumption of alcohol from 10:00 a.m. until 9:00 p.m., Sunday

through Thursday and from 10:00 a.m. until 10:00 p.m. Friday and Saturday.

- (5) No outdoor alcoholic beverage area which is less than 80 feet from any ~~public school property, parochial school property, hospital property, or church property~~ shall be open for operation during school hours as specified on the outdoor alcoholic beverage area permit. Such distance shall be measured by the shortest route from the closest point of such school, ~~church, or hospital property~~ to the closest point of the outdoor alcoholic beverage area.
 - (6) A licensed bartender shall be present and actively monitoring the outdoor alcoholic beverage area at all times it is open for operation.
 - (7) The outdoor alcoholic beverage area shall be monitored at all times. If any area is required by the permit specification to be monitored by surveillance cameras such surveillance cameras and security recording system shall be maintained in good operating condition at all times. Upon request by the Kaukauna Police Department surveillance video shall be made available for review to aid in the investigation of any incident, altercation or crime under investigation.
 - (8) The capacity for the licensed premises' building shall remain the same even with the addition of an outdoor alcoholic beverage area permit.
 - (9) A licensee shall not permit any activities within the outdoor alcoholic beverage area that constitute a nuisance.
 - (10) A licensee shall comply with all other applicable state statutes and city ordinances.
- f. *Adjoining property owners to be notified of pendency of applications.* All property owners within 150 feet of the proposed outdoor entertaining area measured from property line to property line shall be notified of the pendency of application for an outdoor alcoholic beverage area permit and notice of informational hearing to be held prior to city council approval. Such notice shall be made by the city clerk's office via first class mail.
- g. *Authority of police to suspend outdoor alcoholic beverage area permit.* The shift commander or designee of the police department has the authority to order any outdoor alcoholic beverage area to be closed down at any time the shift commander/designee believes its continued operation is in violation of this section, any other applicable city ordinance or provisions of Wis. Stats. ch. 125.
- h. *State statutes enforced within outdoor entertaining area.* Every licensee under this section shall comply with and enforce all provisions of Wis. Stats. ch. 125 applicable to Class B and/or Class C licensed premises, except insofar as such provisions are clearly renewal of the outdoor alcoholic beverage area permit by the city council.
- i. *Fee required.* The city council shall approve the fee for outdoor alcoholic beverage area permits.
12. *Revocation and suspension of licenses.*

- a. *Procedure.* Whenever the holder of any license under this section violates any portion of this section 12.03(12), or whenever any license has been issued in violation of any portion of section 12.03, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by Wis. Stats. § 125.12, and the provisions therein relating to granting a new license shall likewise be applicable.
- b. *Effect of revocation.* See subsection (5)(h) of this section.
- c. *Cease doing business.* If any holder of a Class A or Class B fermented malt beverage license or a retail Class A or Class B liquor license shall suspend or cease doing business for 90 consecutive days or more, his license shall be subject to revocation by the city council after a public hearing.
- d. *Alcohol beverage demerit point system.*
 - (1) *Purpose.* The purpose of this paragraph is to establish an alcohol beverage demerit point system to assist in determining which license holders should be subject to suspension, revocation, or nonrenewal procedures.
 - (2) *Schedule of demerit points.* The schedule of demerit points as listed below is to be used to identify habitually troublesome license holders who have repeatedly violated state statutes or city ordinances for the purpose of determining suspension, revocation, or nonrenewal of their alcoholic beverage licenses:

Type of Violation	Point Value
Sale of alcoholic beverages without proper license or permit	100
Unauthorized use or transfer of license or permit	75
Owner/licensee selling controlled substance/possession of controlled substance with intent to sell	150
Owner/licensee possession of controlled substance	75
Employee selling controlled substance/possession of controlled substance with intent to sell on premises property or outdoor alcoholic beverage area	100
Sale of controlled substances on licensed premises or outdoor alcoholic beverage area	75
Sale of alcoholic beverages to underage persons	50
Sale of alcoholic beverages to intoxicated person	50
Underage person on premises or outdoor alcoholic beverage	50

area	
Intoxicated bartender; disorderly conduct on premises property or outdoor alcoholic beverage area	50
Off hours consumption or sale of alcoholic beverages	50
Refusal to allow police to inspect premises or outdoor alcoholic beverage area or refusal to cooperate with lawful police investigation	50
Failure to post license	25
Employee possession of controlled substance on premises or outdoor alcoholic beverage area	50
Licensee, agent, or operator not on premises or outdoor alcoholic beverage area at all times	25
Non-employee(s) on premises or outdoor alcoholic beverage area after closing hours	25
Violation of carry out hours	25
Licensee permitting person to leave licensed premises or outdoor alcoholic beverage area with open alcohol beverage	25
Disorderly conduct upon premises property or arising from premises or outdoor alcoholic beverage area	25
All other violations of Wis. Stats. § 125, or of Kaukauna Municipal Code	25

Any points assessed for above violation shall double if the violation results in serious bodily injury to or the death of any person.

- (3) *Violations, how calculated.* In determining the accumulated demerit points against a licensee within a 12-month, 24-month, or 36-month period, the city shall use the date each violation was committed as the basis for the determination and shall further include only those instances where there has been a court imposed conviction for the violation.
- (4) *Suspension, revocation, or nonrenewal of license.* All licensees who accumulate 200 points in a 12-month period, 250 points in a 24-month period, or 300 points in a 36-month period shall be considered for suspension, revocation, or nonrenewal. In the event of suspension, the suspension shall be for not less than ten days nor more than 90 days.

In addition to the demerit points assessed as specified above, if an

owner or licensee is charged with selling controlled substance or charged with possession of controlled substance with intent to sell, the owner or licensee may be subject to revocation proceedings pursuant to Wis. Stats. § 125.12.

- 13. *Nonrenewal of licenses.* Before renewal of any license issued under this section is refused, the licensee shall be given written notice of any charges or violations or the reasons proposed for nonrenewal and a copy of any proposed motion for nonrenewal and shall have an opportunity to be heard before the city council.
- 14. *Violations by agents and employees.* A violation of this section by an authorized agent or employee of a licensee shall constitute a violation by the licensee.
- 15. *Transfer/sale of licensed business.* Upon the transfer or sale of a licensed business, all accumulated demerit points shall be canceled, unless any of the following apply:
 - a. The new licensee is related to the former licensee by blood, adoption, or marriage;
 - b. The new licensee held a business interest in the previous licensed business, real estate, or equipment;
 - c. The former licensee retains an interest in the business, real estate or equipment used by the business;
 - d. The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing, but not obligated to sell, and the buyer is willing, but not obligated to buy.

If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to the penalties set forth in the Code, unless the new licensee establishes, by sufficient evidence to the common council, that application of this inheritance rule in their specific circumstances would be unjust and is not necessary to fulfill the purpose of this rule, which is to prevent the avoidance of legitimate consequences for repeated violations of statutes and ordinances regulating the business of selling alcoholic beverages.

(Ord. No. 1785, 5-7-2019; Ord. No. 1804, 5-5-2020)

Editor's note(s)—Ord. No. 1804, adopted May 5, 2020, repealed the former section and enacted a new section as set out herein. The former section pertained to similar subject matter and derived from Ord. No. 1699, 9-2-2014; Ord. No. 1700, 10-21-2015. At the direction of the city, the amendment by Ord. No. 1785, adopted May 7, 2019, has been incorporated into the section.

PASSED AND ADOPTED BY THE CITY OF KAUKAUNA COMMON COUNCIL

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Presiding Officer

Attest

Anthony J. Penterman, Mayor, City of
Kaukauna

Sally Kenney, Clerk City of
Kaukauna