

**ORDINANCE # 20 -06**

AN ORDINANCE TO AMEND CHAPTER ELEVEN OF THE MUNICIPAL CODE OF THE CITY OF WAUPUN ENTITLED "LICENCES AND PERMITS."

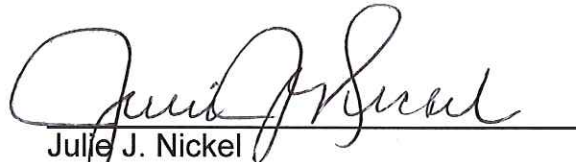
THE COMMON COUNCIL OF THE CITY OF WAUPUN ORDAINS:

SECTION 1: Section 11.12 of the Municipal Code of the City of Waupun is created to provide as stated in the attached Addendum A.

SECTION 2: All ordinances or portions of ordinances inconsistent with the provisions of this ordinance are repealed.

SECTION 3: This Ordinance shall be in full force and effect on its passage and publication as provided by law.

Enacted this 14<sup>th</sup> day of July, 2020.

  
Julie J. Nickel  
Mayor

ATTEST:

  
Angela J. Hull  
City Clerk



## **ORDINANCE ADDENDUM "A"**

### **11.12. OUTDOOR SERVICE, SIDEWALK CAFÉS AND BEER GARDENS.**

#### **(1) INTRODUCTION.**

(a) No holder of a "Class B," Class "B" and/or "Class C" license may permit the possession, sale or consumption of alcohol beverages on any part of the licensed premises not enclosed with a building, except under the terms of this Code Section 11.12 and in accordance with Wis. Stat. ch. 125, and as may be modified in the future. Approval by the Common Council shall result in the outdoor area becoming a part of the licensed premises for the term of the license only, and subject to all state and city laws, rules, regulations, and lawful orders governing "Class B," Class "B" and/or "Class C" premises.

(b) No person shall consume or have in his or her possession, alcohol beverages on any unenclosed part of a licensed premises which is not expressly permitted on a valid license approved by the Common Council pursuant to this Code Section 11.12 which license includes the outdoor area in a description of the premises.

(c) This Code Section 11.12 shall not apply to Picnic licenses issued as provided in Code Section 11.01(3)(b) 2. and § 125.26(6), Wis. Stats.

#### **(2) DEFINITIONS. As used in this subsection:**

(a) "Alcohol beverage" has the same meaning as used in Wis. Stat. ch. 125 and includes, without limitation, beer, wine and other liquor products.

(b) "Outdoor area" means an area, whether or not enclosed by a roof or other structure, which is open to the elements, and which is not constructed for year-round use.

(c) "Outdoor premises" means licensed premises located in an outdoor area as defined here, whether a sidewalk café, a beer garden or otherwise.

(3) APPLICATION. Application for an outdoor extension of a "Class B," Class "B" and/or "Class C" license shall be made to the City Clerk in an application format provided by the Clerk, either at the time initial or renewal application is made for the licensed premises, or at any time during the license period. The application shall include a detailed map describing the outdoor area sought to be included within the description of the licensed premises. In the case of sidewalk cafés, the map shall also identify the number and location of tables, chairs and other furniture, fixtures and equipment to be installed or used, and their location and dimensions in relation to the pedestrian walkway identified in subsection (5)(a) below. In the event that this map is omitted and the "Class B," Class "B" and/or "Class C" license is granted and issued, the license shall not be deemed to include an outdoor area within the description of the licensed premises.

(4) REQUIREMENTS. Outdoor premises approved under this section shall be subject to the following requirements:

(a) Outdoor premises may be permitted only on properties located in B-1 Business/Professional Office District; B-2 Central Business District; B-3 Shopping Center Business District; B-4 Interchange Business District; and PD Planned Development District; as those terms are defined in Code Chapter 16, Zoning Code, and shall be subject to the conditional use permit application and approval by the Plan Commission as required in Code Section 16.12. Review by the Plan Commission may include, without limitation, the following requirements for

issuance and maintenance of the conditional use permit: installation of a locking gate or gates for fenced areas; approval of specific planned recreational activities as limited under subsection (4)(f) below; minimum signage specifications for the outdoor premises; and any requirements considered necessary or appropriate to ensure that use of the outdoor premises does not encroach on neighboring properties or create unreasonable congestion or obstruction of traffic in adjoining alleys, sidewalks or walkways. A conditional use permit granted by the Plan Commission need not be resubmitted for review when the license holder submits a renewal application for the license premises, unless the Police Chief, Building Inspector or City Clerk requests Plan Commission review of the conditional use permit for reasons stated in the request, in which case the Plan Commission may review and revoke the permit or revise the permit conditions as it considers appropriate.

(b) Outdoor premises shall not be located in any actual or required yard area that directly abuts an adjoining property used for residential purposes, unless the license holder establishes a twenty-foot buffer between the outdoor premises and the adjoining lot containing the residential use, and the license holder provides a privacy fence four (4) feet in height completely surrounding the outdoor premises, where the privacy fence meets all other requirements of the Waupun municipal code, and has been constructed and installed in accordance with an approved building permit.

(c) Outdoor premises shall be completely surrounded by an attractive wall, fence, or barrier at least four feet in height, except as otherwise required in

subsection (b) above, or as may be waived by the Common Council on recommendation of the police department. The outdoor premises shall have flooring constructed of hard surface material, such as decking material, concrete or paver brick.

(d) If license holder does not derive more than fifty percent (50%) of its gross business revenue from the sale of food on the premises, then any access or entry to the outdoor premises shall only occur through the main building located on the premises.

(f) The outdoor premises shall only be used for serving food and alcohol and related activities. No part of the outdoor premises shall be used for recreational activities involving flying objects, including without limitation, volleyball, horseshoes, darts, or softball. This subsection shall not prohibit live music performance from the outdoor premises as otherwise permitted in this Code Section 11.12.

(g) Lighting of the outdoor premises shall be shielded and shall not be of intensity or brilliance so as to create glare which may be distracting to adjoining property owners or as might create a hazard or danger to vehicular traffic.

(h) Noise from any source that is emitted from the outdoor premises shall not be in violation of the noise restrictions contained in § 8.02(2) or § 8.06 of this Code. For the purpose of this restriction, noise when measured from any border of the real property on which the licensed premises is located that is greater than seventy-five decibels (75 dB) from 7 o'clock a.m. to 9 o'clock p.m., or greater

than sixty decibels (60 dB) from 9 o'clock p.m. until closing, shall be presumed to be in violation of this restriction.

Ⓢ The license holder shall ensure that the outdoor premises is maintained in a clean condition, and that adjoining property is cleared of all refuse and debris that originates from the outdoor premises on a daily basis. In addition, the license holder shall ensure that no glass or tableware that may shatter and cause injury when broken is used in the outdoor premises.

(5) SIDEWALK CAFÉS. Outdoor premises may be located on public sidewalks, subject to approval by the common council. In addition to the requirements specified in this Code section 11.12, sidewalk cafés shall comply with the following requirements:

(a) Sidewalk cafés may be permitted only from May 1<sup>st</sup> through October 15<sup>th</sup> in any year, and on properties located in B-1 Business/Professional Offices and B-2 Central Business zoning districts as those terms are defined in the Code Chapter 16, Zoning Code. Notwithstanding the requirements of outdoor premises specified in this Code Section 11.12, the barrier surrounding the sidewalk café shall be no lower than two feet (2') nor higher than three feet (3'), and shall maintain an unobstructed pedestrian walkway adjacent to the street or public right of way that is not less than four feet (4') in width, to permit the public to maintain unrestricted access to the sidewalk for travel.

(b) Sidewalk cafés shall be limited to those license holders who derive more than fifty percent (50%) of gross business revenue from the sale of food on the premises.

(c) Liability insurance naming the City as an unrestricted additional insured on the sidewalk café owner's insurance policy for the licensed sidewalk café site will be required, including insurance to cover liquor liability, to the extent specified on the license application approved by the Common Council.

(d) Each sidewalk café serving alcohol beverages shall be responsible for policing the area of the sidewalk café to be sure that customers are of the legal drinking age and that alcohol beverages are not removed from the premises. All service in the sidewalk café (beverage and food) shall stop no later than 10:00 o'clock p.m.

**(6) ENFORCEMENT.**

(a) Any person who shall violate any provision of this Code Section 11.12, or any order, rule or regulation made or otherwise adopted under this subsection shall be subject to the general enforcement and penalty provisions of this Code, including without limitation, the provisions identified in Code Section 11.01(9).

(b) In addition to any other penalties specified in this Code Section 11.12, three or more noise complaints filed against the holder of an outdoor premises license during any license period (July 1 to June 30), and verified by the police department, shall constitute sufficient grounds to revoke the outdoor premises permit granted under this Section, subject to hearing before the Review Committee established in Code Section 11.01(9)(a).