



AGENDA OF THE PROTECTION AND POLICY COMMITTEE

**MONDAY, FEBRUARY 4, 2019, 5:30 PM
CITY HALL, ROOM 207**

A. Roll Call.

B. Approval of the Agenda.

1. Approval of the agenda for the February 4, 2019 Protection & Policy Meeting.

C. Approval of Minutes.

1. Approval of the minutes of the January 7, 2019 Protection & Policy meeting.

D. Regular Business.

1. Discussion with possible action on a resolution amending the procedure for accepting Class "B" Liquor licenses.
2. Consideration with possible action on an application by Tapatio Jalisco, LLC at 1638 University Ave. for a Class "A" Beverage and a "Class A" Liquor License with a licensed premises as "store" (previously licensed as an individual Ruben Rodriguez).
3. Consideration with possible action on an application by Tapatio Jalisco, LLC at 1638 University Ave. for a "Class B" Combination License with a licensed premises as "restaurant, wait staff area, kitchen, "previously licensed as an individual Ruben Rodriguez).
4. Consideration with possible action on an appeal by Gary Wisneski regarding his reinspection fees.
5. Consideration with possible action on General Ordinance No. 3-19, an ordinance amending Section 2.06(9), Green Bay Municipal Code, relating to reference to committees.
6. Discussion on a request by Ald. Wery stating "review with possible action on ordinance 27.203 regulation of noise for the purpose of amending with weekend hours (New daytime :09:00-20:00)," previously discussed at the November 26, 2018 & Jan. 7, 2019 Protection & Policy meeting.

7. Consideration with possible action on a request by Overtime Grill & Pub at 1423 S. Broadway to temporarily extend their licensed premises to the parking lot for a private event June 29.
8. Consideration with possible action on an appeal by Rachel Anker regarding the denial of her operator's license.
9. Consideration with possible action on a request by Skogen's Foodliner, Inc. at 2430 University Ave. to amend their liquor license description from "One story cement building SEP W&S Storage and checkouts" to "one story cement building, approximately 80,110 sq. ft., with separate wine and spirits storage and checkout, including designated stalls in parking lot for online grocery pickup," previously held at the October 8, 2018 Protection & Policy meeting.
10. Consideration with possible action on a request by Ultimate Mart, LLC at 1819 Main St. to amend their liquor license to read "1 story retail grocery and liquor at 1819 Main St.: including the exterior parking stalls specifically designated for the online merchandise order & pickup service and the pathway utilized to access the parking stalls."
11. Consideration with possible action on an application for an "Class B" Combination License by V3, LLC at 2056 Main St. Suite 1 with a licensed premise description as bar, walk in cooler, storage. (Previously V3 Entertainment, LLC).
12. Consideration with possible action on an application for a "Class B" Combination license by Kavarna Café, LLC at 143 N. Broadway with a licensed premises as "kitchen, dining zones, storage cooler." (Currently licensed as Kavarna, LLC)
13. Consideration with possible action on an application by Skaliwags High Cotton Club Limited at 121 N. Adams St. for a reserve "Class B" Combination License with a licensed premises as "restaurant, bar."
14. Consideration with possible action on a request by Ald. Scannell to create an ordinance regarding vaping.
15. Consideration with possible action on a request by Ald. Scannell to create an ordinance regarding sober servers.
16. Discussion with possible action on General Ordinance No. 1-19, an ordinance creating section 29.513, Green Bay Municipal Code, relating to leaving keys in a vehicle, previously discussed at the January 7, 2019 Protection & Policy Meeting.

E. Informational.

1. Liquor Violation Report from the Police Department for January 28, 2019.

F. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov

- 2) **ACCESSIBILITY:** Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) **QUORUM:** Please take notice that a majority or quorum of the Common Council will attend this Protection and Policy committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) **REPRESENTATION:** The party requesting the communication, or their representative, should be present at this meeting.
- 5) **FOR ALL LICENSING ISSUES,** the Committee may potentially convene in closed session pursuant to §19.85 (1)(b) and/or §19.85 (1)(f) Wisconsin Statutes, for the purpose of considering information with respect to licensing for a person. The applicant has the right to demand that the meeting be held in open session. The applicant may also request that the meeting be held in closed session. The Committee may, thereafter, reconvene in open session pursuant to §19.85(2) Wisconsin Statutes to report any actions taken during the closed session and to consider all other matters on the agenda. If there are any questions regarding the agenda, please call Jaime, City Clerk's Office, at 448-3011.



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.I.

Discussion with possible action on a resolution amending the procedure for accepting Class "B" Liquor licenses.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Resolution - Class B Liquor Licenses

**RESOLUTION AMENDING THE PROCEDURE FOR
ACCEPTING AND APPROVING
“CLASS B” LIQUOR LICENSES**

FEBRUARY 5, 2019

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

WHEREAS, the State of Wisconsin has enacted legislation limiting the number of “Class B” Liquor Licenses which the City may issue; and

WHEREAS, the legislation is silent as to the process by which to review multiple applications when the City has a limited number of “Class B” Liquor Licenses available;

WHEREAS, the City desires to adopt a procedure for the acceptance and review of multiple applications when the City has a limited number of “Class B” Liquor Licenses available to ensure a fair and efficient process;

WHEREAS, the City desires to increase the tax base of the City through the development and growth of business.

NOW, THEREFORE, BE IT RESOLVED that the following procedure be observed in accepting and reviewing applications for “Class B” liquor licenses as defined in Section 33.01 Green Bay Municipal Code:

1. Consideration shall only be given to fully completed applications, which include all requirements established by state and local laws, rules and ordinances.
2. All applications shall include a business plan defining all aspects of the business to be operated in conjunction with the liquor license.
3. In reviewing the business plan, the Council shall give consideration to following criteria:
 - a. The applicant’s and manager’s experience and capabilities in operating a licensed establishment;
 - b. The design, type and size of the proposed establishment, including such operation details as security in and outside the establishment; noise, crowd and parking lot control methods;
 - c. Availability of parking;

- d. Proximity to other licensed establishments, residential areas, schools or other licensed activities within the City;
 - e. Ability or inability of the police to provide law enforcement services to the new establishment and the impact of the new establishment on the ability of the police to provide law enforcement services to the balance of the community at all times;
 - f. Impact on surrounding neighbors and businesses due to, among other things, increased traffic, noise and litter;
- 4. Each application for a "Class B" license shall be evaluated based upon the criteria listed above and where multiple applications are competing for available licenses, licenses may be granted to the applicant that most favorably meets the criteria listed. If multiple applicants are equally favorable then preference will be given to the license which applied first in time.
 - 5. This resolution shall supersede prior resolutions regarding the procedure for the acceptance and approval of liquor licenses.
 - 6. The above considerations shall not apply to transfer applications wherein the current licensee submits documents of the intent to surrender its licenses upon approval of the transfer applicant.

Adopted _____

Approved _____

Mayor

Clerk

JIB



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.2.

Consideration with possible action on an application by Tapatio Jalisco, LLC at 1638 University Ave. for a Class "A" Beverage and a "Class A" Liquor License with a licensed premises as "store" (previously licensed as an individual Ruben Rodriguez).

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. floor plan
2. El Tapatio Bakery



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.3.

Consideration with possible action on an application by Tapatio Jalisco, LLC at 1638 University Ave. for a "Class B" Combination License with a licensed premises as "restaurant, wait staff area, kitchen, "previously licensed as an individual Ruben Rodriguez).

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. restaurant floor plan
2. el tapatio restaurant



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.4.

Consideration with possible action on an appeal by Gary Wisneski regarding his reinspection fees.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. 1227 Stuart Street - Complaint 89077 Background- 1-28-2019
2. GaryWisneskiReinspectionfee



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.5.

Consideration with possible action on General Ordinance No. 3-19, an ordinance amending Section 2.06(9), Green Bay Municipal Code, relating to reference to committees.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. GO 3-19

GENERAL ORDINANCE NO. 3-19

AN ORDINANCE
AMENDING SECTION 2.06(9),
GREEN BAY MUNICIPAL CODE,
RELATING TO REFERENCE TO COMMITTEES

THE COMMON COUNCIL OF THE CITY OF GREEN BAY DO ORDAIN AS FOLLOWS:

SECTION 1. Section 2.06(9), Green Bay Municipal Code, is hereby amended to read:

(9) Reference to committees. All communications, petitions, requests, and complaints shall be in writing and shall be referred to a committee before action is taken thereon by the council. Referral to committee can be done by referral of the common council or by consent of the chairperson of the committee. Any matter referred to more than one committee shall be designated to a primary committee. Other committees considering the matter shall make recommendations to the primary committee for its consideration. Only the recommendation of the primary committee shall be presented to the common council for action.

SECTION 2. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

SECTION 3. This ordinance shall take effect on and after its passage and publication.

Dated at Green Bay, Wisconsin, this ____ day of _____ 2019.

APPROVED:

Mayor

ATTEST:

Clerk

KKJ

Date of first reading



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.6.

Discussion on a request by Ald. Wery stating "review with possible action on ordinance 27.203 regulation of noise for the purpose of amending with weekend hours (New daytime :09:00-20:00)," previously discussed at the November 26, 2018 & Jan. 7, 2019 Protection & Policy meeting.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.7.

Consideration with possible action on a request by Overtime Grill & Pub at 1423 S. Broadway to temporarily extend their licensed premises to the parking lot for a private event June 29.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. OVERTIME GRILL & PUB REQUEST



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.8.

Consideration with possible action on an appeal by Rachel Anker regarding the denial of her operator's license.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. RACHELANKER DENIAL



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.10.

Consideration with possible action on a request by Ultimate Mart, LLC at 1819 Main St. to amend their liquor license to read "1 story retail grocery and liquor at 1819 Main St.: including the exterior parking stalls specifically designated for the online merchandise order & pickup service and the pathway utilized to access the parking stalls."

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. PS186 CLICKLIST SITE PLANS 10.09
2. PS186 CLICKLIST SITE PLANS 10.09 pg 2
3. 10.129.193.47 SMTP_via_LDAP_10-31-2018_15-14-07



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.9.

Consideration with possible action on a request by Skogen's Foodliner, Inc. at 2430 University Ave. to amend their liquor license description from "One story cement building SEP W&S Storage and checkouts" to "one story cement building, approximately 80,110 sq. ft., with separate wine and spirits storage and checkout, including designated stalls in parking lot for online grocery pickup," previously held at the October 8, 2018 Protection & Policy meeting.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. Festival_Foods_2430 University Ave.



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.I I.

Consideration with possible action on an application for an "Class B" Combination License by V3, LLC at 2056 Main St. Suite I with a licensed premise description as bar, walk in cooler, storage. (Previously V3 Entertainment, LLC).

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. V3 application
2. v3 floor plan
3. MCLEOD STATEMENT



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.12.

Consideration with possible action on an application for a "Class B" Combination license by Kavarna Café, LLC at 143 N. Broadway with a licensed premises as "kitchen, dining zones, storage cooler." (Currently licensed as Kavarna, LLC)

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. cpt. florence recc. business plan
2. karvana applicaiton
3. karvana business plan
4. Broadway Moratoruim

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN THE BROADWAY AREA

Green Bay, Wisconsin
September 16, 1997

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

WHEREAS, the Common Council of the City of Green Bay is concerned with the redevelopment of the Broadway area and the present high concentration of licensed establishments in the Broadway area. The high concentration of these establishments in this area has impaired the public peace, safety, welfare, and order; and

WHEREAS, there are currently 34 establishments which hold a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License. The names and addresses of said establishments are:

Lenny's Tap	431 North Broadway
333 Bar	333 North Broadway
Blazing Saddles	331 North Broadway
The Cannery	319 North Broadway
King's X	313 North Broadway
Titletown Brewing	200 Dousman Street
Carol's Ritz Lounge	119 Dousman Street
Nom's Thai Orchid	240 North Broadway
Central Bar	231 North Broadway
Broadway Cafe	128 North Broadway
Rev's Brass Rail	109 North Broadway
West Pitcher Show	100 South Broadway
Maria's Mexican Family Restaurant	106 South Broadway
Ginny's Heart of Broadway	112 South Broadway
Connie's	128 South Broadway
Country Club Bar & Grill	201 South Broadway
Kar's Place	226 South Broadway
Alamo	301 South Broadway
Nepalese Lounge	515 South Broadway
Blue Side	709 South Broadway
Shnicker's	813 South Broadway
Bourbon Street	821 South Broadway
Sass	840 South Broadway
The Lion's Den	1100 South Broadway
Carol's 9 th Street Tap	316 Ninth Street
The Camelot	1301 South Broadway
Manci's Tuxedo Lounge	1313 South Broadway
Good Times	1332 South Broadway
The Packer Stadium Lounge	1342 South Broadway
Terminal Bar	1423 South Broadway

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN THE BROADWAY AREA
Page 2

Hammer Inn
Thirsty's
Loch's Bar
Cropsey's Bar

1208 State Street
1234 State Street
1238 State Street
1336 State Street

WHEREAS, pursuant to the powers reserved under Ch. 125, Wis. Stats., the Common Council wishes to decrease the number of Class "B" Fermented Malt Beverage and Class "B" Combination Liquor Licenses issued to establishments in the Broadway area; and

WHEREAS, it is the intent of this resolution to allow the present Class "B" Fermented Malt Beverage and Class "B" Combination Liquor Licenses to maintain and renew their establishments in accordance with Ch. 125, Wis. Stats.; and

WHEREAS, it is the intent of this Resolution to effectuate a decrease in the number of Class "B" Fermented Malt Beverage and Class "B" Combination Liquor licensed establishments in the limitation area whenever an establishment goes out of business and does not renew its license;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Limitation Area. The area to which the terms and conditions of this section apply is that area on Broadway or business fronting either side of Broadway and those areas east of Broadway to the Fox River, within the city of Green Bay, Brown County, Wisconsin.
2. Prohibition. The Common Council shall not authorize the issuance of any new or transfer of any existing Class "B" Fermented Malt Beverage or Class "B" Combination Liquor Licenses within the limitation area, except restaurants as defined in paragraph 4 hereof.
3. Exceptions.
 - a. This subsection shall not prohibit the renewal of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License for an existing premises in the limitation area.

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN THE BROADWAY AREA
Page 3

- b. This subsection shall not prohibit the issuance of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License for a previously licensed premises provided that such application is made within 60 days of any of the following:
 - i. Surrender by the prior licensee of the license issued for that premises; or
 - ii. Sale of the premises by the prior licensee; or
 - iii. Termination of the prior licensee's lease for the premises; or
 - iv. Revocation of the prior license, for cause.

If application under this subsection is sought after 60 days, the owner of the previously licensed premises may apply to the Protection and Welfare Committee for an extension of the application time on the basis that application of the moratorium would have a substantial adverse effect on the owner's ability to use or enjoy the property. The party requesting the extension must demonstrate this effect by clear, satisfactory and convincing evidence.

- c. All applications and renewals shall be subject to review as provided by Ch. 125, Wis. Stats.

4. Prohibition Not to Apply to Restaurants.

- a. This resolution shall not prohibit the issuance of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License to the operator of a restaurant, where the principal business conducted is that of a restaurant, as defined in Ch. 125, Wis. Stats. If the premises are operated under a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN THE BROADWAY AREA
Page 4

- b. A restaurant licensee operating within the limitation area which fails to maintain a principal business of operating a restaurant at any time later than 60 days after the granting of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License shall be in violation of this subsection and its Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License shall be subject to revocation.
- c. "Principal business" means the primary activity as determined by analyzing the amount of capital, labor, time, attention and floor space devoted to each business activity, and by analyzing the sources of net income and gross income. The name, appearance and advertisement of the entity may also be taken into consideration in determining "principal business."

Adopted 9/14/97

Approved 9/17/97

13/ David H. August
Mayor

13/ David H. August
Clerk

LMS:bc



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.13.

Consideration with possible action on an application by Skaliwags High Cotton Club Limited at 121 N. Adams St. for a reserve "Class B" Combination License with a licensed premises as "restaurant, bar."

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. skaliwags
2. Downtown Moratorium
3. skaliwags_floor plan
4. skaliwags_application

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN AND AROUND
THE 200 BLOCK OF NORTH WASHINGTON STREET

Green Bay, Wisconsin
February 16, 1998

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

WHEREAS, the Common Council of the City of Green Bay is concerned with the present high concentration of licensed establishments in and around the area of the 200 block of North Washington Street. The high concentration of these establishments in this area has impaired the public peace, safety, welfare, and order; and

WHEREAS, there are currently seven establishments which hold a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License. The names and addresses of said establishments are:

Candlestick Lounge	119 North Adams St.
C Street	312 Cherry St.
Confetti's Club	217 East Walnut St.
Oasis	201 North Washington St.
Brewbaker's Pub	209 North Washington St.
Sowerby's Public House	217 North Washington St.
Maloney's Pub	219-221-223-225 North Washington St.

WHEREAS, pursuant to the powers reserved under Ch. 125 Wis. Stats., the Common Council wishes to limit the number of Class "B" Fermented Malt Beverage and Class "B" Combination Liquor Licenses, issued to establishments in and around the area of the 200 block of North Washington Street; and

WHEREAS, it is the intent of this resolution to allow present Class "B" Fermented Malt Beverage and Class "B" Combination Liquor Licenses to sell, maintain, renew or transfer their licenses within such area.

NOW, THEREFORE, BE IT RESOLVED:

1. Limitation Area. Any property within the following-described area:
 - a. North Boundary: The center line of Pine Street;
 - b. East Boundary: The center line of Monroe Avenue;
 - c. South Boundary. The center line of East Walnut Street.
 - d. West Boundary: The east shore of the Fox River.

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN AND AROUND
THE 200 BLOCK OF NORTH WASHINGTON STREET

Page 2

2. Prohibition. The Common Council shall not authorize the issuance of any new or transfer Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License within the limitation area, except restaurants, as defined in paragraph 4 hereof.

3. Exceptions.

- a. This subsection shall not prohibit the renewal of a Class "B" Fermented Malt Beverage or Class "B" Combination License for an existing premises in the limitation area.
- b. This subsection shall not prohibit the issuance of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License for a previously licensed premises provided that such application is made within 60 days of any of the following:
 - i. Surrender by the prior licensee of the license issued for that premises; or
 - ii. Termination of the prior licensee's lease for the premises; or
 - iii. Revocation of the prior license, for cause.

If application under this subsection is sought after 60 days, the owner of the previously licensed premises may apply to the Protection and Welfare Committee for an extension of the application time on the basis that application of the moratorium would have a substantial adverse effect on the owner's ability to use or enjoy the property. The party requesting the extension must demonstrate this effect by clear, satisfactory and convincing evidence.

- c. All applications and renewals shall be subject to review as provided by Ch. 125, Wis. Stats.

19a

RESOLUTION LIMITING THE NUMBER OF
LICENSED ESTABLISHMENTS IN AND AROUND
THE 200 BLOCK OF NORTH WASHINGTON STREET
Page 3

4. Prohibition Not to Apply to Restaurants.

- a. This resolution shall not prohibit the issuance of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License to the operator of a restaurant, where the principal business conducted is that of a restaurant, as defined in Ch. 125, Wis. Stats. If the premises are operated under a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
- b. A restaurant licensee operating within the limitation area which fails to maintain a principal business of operating a restaurant at any time later than 60 days after the granting of a Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License shall be in violation of this subsection and its Class "B" Fermented Malt Beverage or Class "B" Combination Liquor License shall be subject to revocation.
- c. "Principal business" means the primary activity as determined by analyzing the amount of capital, labor, time, attention and floor space devoted to each business activity, and by analyzing the sources of net income and gross income. The name, appearance and advertisement of the entity may also be taken into consideration in determining "principal business."

Adopted _____

Approved _____

Mayor

Clerk

LMS:bc

196.
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Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.14.

Consideration with possible action on a request by Ald. Scannell to create an ordinance regarding vaping.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. ENDS Neenah Ord.-2018-12-Vaping-Ordinance



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE:

Re: Creating Neenah Code § 11-101 – Possession
of Tobacco and Vapor Products By Minors
Prohibited

ORDINANCE NO. 2018-12

Introduced: September 19, 2018

Committee/Commission Action:

RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Section 11-101 of the Code of Ordinances of the City of Neenah is created to read as follows:

Sec. 11-101: Possession of Tobacco and Vapor Products By Minors

(A) Statement of Purpose.

(1) The purpose of this ordinance is to protect the public health, safety and welfare of the property and persons in the city by prohibiting persons under eighteen (18) years of age from possessing tobacco products and vapor products, and prohibiting the sale of tobacco products and vapor products to persons under eighteen (18) years of age.

(2) Persons under age eighteen (18) are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. There are new tobacco-less products, however, commonly referred to as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” or “electronic nicotine delivery systems,” which allow the user to simulate cigarette smoking. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people.

(3) E-cigarettes, and similar devices, are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have a few basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) is heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer’s specifications, and many manufacturers make nicotine-free solutions.

(4) The production and distribution of e-cigarettes is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration has not completed

testing of these products. But, initial studies by the FDA have determined that e-cigarettes can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks.

(5) The use of e-cigarettes and similar devices has increased significantly in recent years.

(6) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:

- Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;
- PM_{2.5}, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke.

(7) Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.

(8) Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over four hundred (400) brands of electronic smoking devices that are on the market and for this reason, consumers have no way of knowing whether electronic smoking devices are safe, what types of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.

(9) Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

(10) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverses the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

(11) It is the intent of the city council, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.

(12) Therefore, the City of Neenah Common Council determines that prohibiting the sale, giving, or furnishing of e-cigarettes to minors and prohibiting the purchase, possession, or use of e-cigarettes by minors is in the City's best interest and will promote public health, safety, and welfare.

(B) Definitions

For the purpose of construction and application of this section, the following definitions shall apply:

Minor means an individual who is less than eighteen (18) years of age.

Person who sells tobacco products at retail means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to the state sales tax.

Person who sells vapor products at retail means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.

Possession of a tobacco product shall mean either actual physical control of the tobacco product without necessarily owning that product, or the right to control the tobacco product even though it is in a different room or place than where the person is physically located.

Public place means a public street, sidewalk, or park or any area open to the general public in a publically owned or operated building or premises, or in a public place of business or school.

Tobacco product means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, and cigars. Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.

Use a tobacco product or vapor product means to smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.

Vapor product means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

(C) Prohibited conduct

(1) Consistent with Wis. Stat. 254.92, a minor shall not do any of the following:

- (a) Purchase or attempt to purchase a tobacco product or vapor product.
- (b) Possess or attempt to possess a tobacco product or vapor product.
- (c) Use a tobacco product or vapor product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product or vapor product.

(2) No individual, regardless of age, who is enrolled in secondary school may possess or attempt to possess a tobacco product or vapor product while on school property.

(3) An individual who violates subsection (1) shall be subject to the penalties listed in the juvenile bond schedule.

(4) An individual who violates subsection (2) shall be subject to the following penalties:

(a) For the first violation, the person is responsible for a civil infraction punishable by a civil fine of fifty dollars (\$50.00).

(b) For a second and subsequent violation, the person is responsible for a civil infraction punishable by a civil fine of seventy-five dollars (\$75.00).

(5) Subsection (1) does not apply to a minor participating in any of the following:

(a) An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the state police or a local police agency as part of an

enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product or vapor product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(c) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted with the prior approval of the state police or a local police agency.

(6) Subsection (1) does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of that minor's employment.

(7) This section does not prohibit an individual from being charged with, convicted of or found responsible for, or sentenced for any other violation of law that arises out of the violation of subsection (1).

(D.) *Furnishing to minors.*

Consistent with Wis. Stat. 134.66;

(1) A person shall not sell, give or furnish any vapor product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or subsection (h) of this section is subject to a fine of not more than one hundred dollars (\$100.00) for each violation.

(2) Subsection (1) of this section does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of the minor's employment.

(3) Before selling, offering for sale, giving, or furnishing a vapor product to an individual, a person shall verify that the individual is at least eighteen (18) years of age by doing one (1) of the following:

(a) Examining a government-issued photographic identification that establishes that the individual is at least eighteen (18) years of age.

(b) For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.

Section 2. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 3. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: _____

Adopted: _____

Approved: _____

Published: _____

Approved:

Dean Kaufert, Mayor

Attest:

Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
Assistant City Attorney Adam James VandenHeuvel
211 Walnut Street
Neenah, WI 54956
State Bar No. 1098561



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.15.

Consideration with possible action on a request by Ald. Scannell to create an ordinance regarding sober servers.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. sober_server-UW Wisconsin alcohol policy project I

Sober Server and Impaired Server Ordinances in Wisconsin

What are “Sober Server” or “Impaired Server” ordinances?

Many states have statutes, rules or regulations prohibiting individuals selling or serving alcohol from drinking on the job or working while intoxicated. Many establishments, including chains and franchise operations have a blanket ban on servers drinking or working when intoxicated. In Wisconsin, there is no state law or rule limiting server alcohol consumption. Wisconsin places most of the responsibility for alcohol control on municipal government; accordingly local ordinances prohibiting intoxicated servers have been adopted by some communities to prevent and sanction alcohol impaired servers.

The states that ban intoxicated servers or drinking on duty include:

- Arkansas bans owners, licensees, and “crowd control employees” from consuming alcohol or being “under the influence” of alcohol on duty.ⁱ
- North Carolina does not allow consumption while on duty or in the premises if the employee will return to duty or wearing a work uniform.ⁱⁱ
- Oregon prohibits employees, including individuals checking identification, and agents from drinking or being “under the influence” of alcohol on duty.ⁱⁱⁱ
- Michigan prohibits a licensee or employee from being intoxicated on premises.^{iv}

Why are impaired and intoxicated servers a problem?

Impaired servers may be unable to perform the duties assigned them on behalf of the licensee, such as refusing to serve under age or intoxicated patrons. Server impairment contributes to a range of problems that occur when they are unable to meet their responsibilities to the licensee and the public.

When a municipality licenses a location to sell and serve alcohol the licensee assumes specific responsibilities. Two of the most important responsibilities fall primarily on servers and serving staff; 1) refusing alcohol to individuals who are intoxicated (cutting people off) and 2) determining that customers have reached the minimum legal drinking age (with narrow exceptions) before serving alcohol to them (checking ID).

According to the Centers for Disease Control (CDC), a person with a BAC between .02—.05 experiences impaired judgment, lowered alertness, and a decline in their ability to perform two tasks at the same time^v. Even when only mildly impaired, servers may be less likely to recognize intoxication in others, carefully review ID for age or respond appropriately in an emergency.

Impaired servers also present a risk for law enforcement. For example; Wausau Chief Jeff Hardel estimated that his officers find an impaired server approximately half the time police respond to a problem at a bar or tavern. He noted that impaired servers are often uncooperative and belligerent.^{vi}

Locations that sell or serve alcohol are licensed businesses. Before any new location serving alcohol opens, the municipality licenses the location, the manager and some servers. At least one individual, a “licensed operator” must be present during business hours. This isn’t unusual or punitive regulation, many professions and businesses are licensed in Wisconsin including hairdressers, pharmacists and auctioneers.

Limiting and prohibiting servers from being impaired or drinking on the job isn’t an uncommon business practice. Many establishments, including chains and franchise operations have a blanket ban on servers drinking or working when intoxicated for both legal and financial reasons. Individual businesses are able to set individual policies for server alcohol consumption as long as those policies are not inconsistent with local ordinance. For example, if a community establishes a ceiling on the acceptable blood alcohol level for servers the establishment may set a higher standard or prohibit alcohol consumption on duty.

What do the Sober Server or Impaired Server ordinances adopted in Wisconsin prohibit?

While the specific language varies, these ordinances either 1) prohibit drinking on duty or 2) limit acceptable levels of blood alcohol content or concentration (BAC) while on duty/working.

The primary distinction between communities setting limits on consumption is that some communities simply prohibit serving alcohol or working in an establishment while “under the influence” of alcohol, drugs or a combination of both substances while others set .08 BAC as the threshold for a violation.

What level of impairment is allowed?

Two municipalities, Madison and Kenosha have ordinances which prohibits serving while “under the influence” of alcohol, drugs or a combination of the two. Kenosha provides a more detailed standard; “Under the influence means that the person has consumed a sufficient amount of alcohol, controlled substance or combination of both to cause the person to be less able to exercise clear judgment and reasonable care in the exercise of services performed.”^{vii} Madison does not provide additional criteria or standard in its ordinance.

Using a .08 BAC standard for impairment for servers mirrors Wisconsin Operating While Intoxicated (OWI or drunk driving) standard for most drivers but it is not the only possible standard. The 2010, report *from the Wisconsin State Council on Alcohol and Other Drug Abuse, Changing Wisconsin’s Alcohol Environment to Promote Safe Healthy Lives* (the ACE report) recommended municipal ordinances limiting server BAC to .04.^{viii} The specific .04 level was selected because .04 BAC constitutes operating while intoxicated for those holding a Commercial Drivers’ License while driving a commercial motor vehicle.^{ix}

The City of Wausau's Impaired Server ordinance adopts the SCAODA standard making any server registering a .04 or higher BAC an impaired server and subject to sanctions.

Who does a Sober Server ordinance apply to?

Most sober server ordinances in Wisconsin apply to all serving staff, bartenders and wait staff. The Village of Jackson places a limit on alcohol consumption by the agent or licensee only.

As noted earlier, some state rules or statutes require security and crowd control staff to remain sober.

Who is sanctioned under a Sober Server Ordinance?

Each municipality has the authority to create a standard and penalty for impaired servers. Most communities chose to sanction the server, but several retain the option of sanctioning the licensee.

These are the individuals covered among ordinances in effect on January 1, 2014:

- City of La Crosse: Both the server and the licensee may be cited, but the server is most commonly cited.^x
- Village of Jackson: The ordinance is limited to licensee or agent, refusing to take a preliminary breath test upon request by law enforcement may be cause for suspension, revocation or non-renewal of the individual or establishment license
- City of Neenah: Sanctions are limited to the offending server.
- City of Madison: Sanctions apply to the server.
- City of Kenosha: Sanctions are limited to the offending server
- City of Wausau: Sanctions are limited to the server and supervisor, with the potential for demerit point assigned to the licensee.

How are these ordinances enforced?

Three communities, Kenosha, Wausau and the Village of Jackson allow law enforcement to request a preliminary breath test (PBT) upon belief the server is impaired or intoxicated. The initial determination is possible during a visit for any of the frequent reasons law enforcement may enter a licensee such as; responding to a call for service, conducting alcohol age compliance checks, conducting a bar "walk through" (a common law enforcement practice where uniformed officers simply walk through a licensed establishment looking for signs of underage drinking, over-serving and dangerous impaired customers) or checking compliance with license conditions.

Communities with this ordinance have not undertaken specific operations to identify violators.

Are Sober Server ordinances effective?

Defining the impact of a single specific alcohol policy is often difficult. Not all outcomes are evident, unintended consequences may occur and not all outcomes are equally valued by the community. A sober server ordinance *alone* will - at best - have minimal impact on drunk driving or binge drinking rates. However, the same ordinance may reduce violence in licensed establishments and improve the ability of law enforcement to sanction uncooperative or obstructionist licensees.

None of the sober or impaired server ordinances in Wisconsin have been evaluated by an independent evaluator or reviewer. However, it is known that a “complementary system of strategies” engaging a number of evidence-based policies and practices is more likely to be effective in the long term.^{xi}

Although similar, there are important differences between the six sober sever ordinances in effect on February 1, 2014. The six existing ordinances offer a range of restrictions listed below from the least restrictive to the most restrictive:

1. City of La Crosse: Servers banned from drinking on duty
2. Village of Jackson: Limits acceptable level of intoxication to .08 for licensee or agent on duty while on duty.
3. City of Neenah: Limits acceptable level of intoxication to .08 for servers on duty while on duty.
4. City of Madison: Prohibits employees from being under the influence of alcohol and other controlled substances or a combination of substances while performing services in a licensed establishment.
5. City of Kenosha: Prohibits any licensee or employee from being under the influence of an intoxicant or a controlled substance or a combination of the two in a “sufficient amount” to cause the person to be less able to exercise clear judgment and reasonable care in the exercise of services performed.”
6. City of Wausau: Limits acceptable level of impairment to .04BAC for the licensee, agent and all employees.

If licensed establishments are in fact supervised alternatives to non-commercial venues, it is reasonable for municipalities to take steps to require alcohol servers to remain unimpaired. Establishing a standard that allows for server drinking either as part of the job or simply expected hospitality is difficult but a task well suited to local decision making.

ⁱ Arkansas Administrative Code: AR ADC 006.02.1-1.79

ⁱⁱ North Carolina Administrative Code: 4NCAC 2S.0212

ⁱⁱⁱ Oregon Administrative Rules OR ADC 845-006-0345

^{iv} Michigan Liquor Control Code, Administrative Rule 436.1707(3)

^v Centers for Disease Control and Prevention, Effects of Blood Alcohol Concentration.

http://www.cdc.gov/Motorvehiclesafety/Impaired_Driving/bac.html, accessed January 21, 2014.

^{vi} Testimony of Chief Handel, Wausau City Council January 14, 2014.

^{vii} Kenosha General Ordinances 10.05 (C.) (2)

^{viii} Wisconsin State Council on Alcohol and Other Drug Abuse, Prevention Committee, Alcohol Culture and Environment Work Group, April 2010, page 9.

^{ix} It is illegal to operate, drive a commercial vehicle with any measurable BAC or within 4 hours of consuming an alcohol beverage, (§346.63(7)). A BAC of .04- .08 is defined as Operating While Intoxicated for commercial vehicles in §346.63(5).

^x Conversation with Lt. Patrick Hogan, January 10, 2014.

^{xi} Babor, T., Caetano, R., Casswell, S. et. al. Alcohol: Not Ordinary Commodity, research and policy. Second edition, Oxford University Press, 2010 Page 251



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # D.16.

Discussion with possible action on General Ordinance No. I-19, an ordinance creating section 29.513, Green Bay Municipal Code, relating to leaving keys in a vehicle, previously discussed at the January 7, 2019 Protection & Policy Meeting.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

- I. DRAFT - Ordinance Relating to Leaving Keys in Unlocked Vehicle

GENERAL ORDINANCE NO. 1-19

**AN ORDINANCE
CREATING SECTION 29.513,
GREEN BAY MUNICIPAL CODE,
RELATING TO LEAVING KEYS IN A VEHICLE**

THE COMMON COUNCIL OF THE CITY OF GREEN BAY DO ORDAIN AS FOLLOWS:

SECTION 1. Section 29.513, Green Bay Municipal Code, is hereby created to read:

29.513. **Leaving Keys in A Vehicle.** No person having custody of a motor vehicle shall permit the vehicle to stand or remain unattended upon any street, alley or public place in the city without first removing from the vehicle the key(s) used to lock, unlock, and operate the vehicle. This section shall not apply to emergency vehicles or City vehicles being used for City operations.

SECTION 2. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

SECTION 3. Effective date. This ordinance shall take effect on and after its passage and publication.

Dated at Green Bay, Wisconsin, this Day day of Month, 2018.

APPROVED:

Mayor

ATTEST:

Clerk

KKJ

Date of first reading



Report to the
Protection and Policy Committee
of the City of Green Bay

MEETING DATE

February 4, 2019

PREPARED BY

AGENDA ITEM # E.I.

Liquor Violation Report from the Police Department for January 28, 2019.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. I9LiqVioForm
2. Report January 28 2019
3. I8LiqVio