

CHAPTER X
ALCOHOL BEVERAGES

10.01 ADOPTION OF STATUTES

The provisions of Chapter 125 of the Wisconsin Statutes and also all acts amendatory thereof and supplementary thereto are adopted as a portion of this Chapter so far as applicable, except as otherwise provided by this Chapter.

10.011 DEFINITIONS

A. All definitions found in Section 125.07, Wisconsin Statutes, are incorporated herein.

B. Unless otherwise indicated, the definitions of the terms below are as follows:

1. **City** - the City of Kenosha, Wisconsin;
2. **Class "A" License** - see Section 125.25(1), Wisconsin Statutes;
3. **"Class A" License** - see Section 125.51(2)(a), Wisconsin Statutes;
4. **Class "B" License** - see Section 125.26(1), Wisconsin Statutes; and,
5. **"Class B" License** - see Section 125.51(3)(a), Wisconsin Statutes.
6. **"Class C" License** - see Section 125.51(3m), Wisconsin Statutes.
7. **Clerk or City Clerk** - the City Clerk/Treasurer;
8. **Committee** - the License/Permit Committee;
9. **Conditional surrender** - whereby a license holder surrenders his/her license(s) to the City on the condition that the City grants a similar license(s) to a person designated by the license holder;
10. **Council** - the Common Council for the City of Kenosha, Wisconsin;
11. **Ordinances** - the Code of General Ordinances for the City of Kenosha, Wisconsin;
12. **Provisional Operator's License** - see Section 125.17(5), Wisconsin Statutes.
13. **Reserve "Class B" License** - see Section 125.51(4)(bm), Wisconsin Statutes.
14. **Temporary Class "B" License** - see Section 125.26(6), Wisconsin Statutes.
15. **Temporary "Class B" License** - see Section 125.51(10), Wisconsin Statutes.
16. **Transfer** - See Section 125.04(12), Wisconsin Statutes.

10.015 CITY PARKS

A. Sale of Fermented Malt Beverages Authorized. Pursuant to §125.06(6), Wisconsin Statutes, the sale of fermented malt beverages is authorized at the Washington Municipal Golf Course

Clubhouse by City employees, with the receipts from the sales thereof being deposited in the City Treasury.

B. Wholesalers. Fermented malt beverage wholesalers are authorized to sell fermented malt beverages to the Washington Municipal Golf Course which are authorized herein to sell fermented malt beverages.

C. Operator's Licenses. City employees who sell fermented malt beverages in any City Park are not required under State law to hold an Operator's License or be supervised by a licensed operator.

D. Responsible Beverage Server Course. City employees who sell fermented malt beverages in any City Park must have completed a responsible beverage server training course as described in Section 125.17(6), Wisconsin Statutes, or hold a valid Operator's License issued by the City of Kenosha.

10.02 LICENSE - FEES

The classes of licenses and fees therefor shall be as follows and it shall be unlawful for any person, party, firm or corporation to engage in said licensed activity without first having obtained the appropriate license therefor:

A. Intoxicating Liquor.

1. **"Class A" License.** The annual fee for a "Class A" License is Five Hundred (\$500.00) Dollars. Licenses may be granted which shall expire on the 30th day of June each year upon payment of such proportion of the annual license fee as the number of months, or fraction of a month, remaining until June 30th of each year bears to twelve. No application for such license shall be accepted unless accompanied by the appropriate fee in cash or certified check.

2. **"Class B" License.** The annual fee for a "Class B" License is Five Hundred (\$500.00) Dollars, and must be paid on or before the June 15th preceding the commencement of the license year. The holder may sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or containers, in multiples not to exceed four (4) liters at any one time, and to be consumed off the premises so licensed, except that wine may be sold in the original package or otherwise in any quantity to be consumed off the premises.

Licenses may be granted which shall expire on the 30th day of June of each year upon payment of such proportion of the annual license fee as the number of months, or fraction of a month, remaining

until June 30 of each year bears to twelve.

3. Reserve "Class B" License. In addition to any fees prescribed in **A.2.**, the Clerk shall charge an additional Ten Thousand (\$10,000.00) Dollars prior to the issuance of a reserve "Class B" License.

4. "Class C" License. The annual fee for a "Class C" License is One Hundred (\$100.00) Dollars.

B. Fermented Malt Beverages.

1. Wholesaler's License. The fee for a Wholesaler's License is Twenty-Five (\$25.00) Dollars.

2. Class "A" License. The annual fee for a Class "A" License is Five Hundred (\$500.00) Dollars.

3. Class "B" License. The annual fee for a Class "B" License is One Hundred (\$100.00) Dollars, which shall be payable on or before the 15th day of June of each license year.

C. Temporary Licenses.

1. Temporary Class "B" License. The fee for a Temporary Class "B" License is Ten (\$10.00) Dollars. This shall include the fee for a Temporary "Class B" License.

2. Temporary "Class B" License. The fee for a Temporary "Class B" License is Ten (\$10.00) Dollars.

D. Operator's [Bartender's] License.

1. Regular Licenses. The fee for an Operator's License shall be Twenty-five (\$25.00) Dollars. For the license term commencing July 1, 2003, the fee for an Operator's License shall be Seventy-five (\$75.00) Dollars. Licenses shall expire on June 30th of every second year, following issuance.

2. Provisional Operators' License.

a. Issuing Official. A Provisional Operators' License shall be issued by the City Clerk/Treasurer to any applicant satisfying the conditions herein.

b. Conditions of Issuance. A Provisional Operators' License shall be issued to applicants who meet the following requirements:

(1) Applicant must have applied for, been granted, and be eligible for issuance of an Operator's License, except for the requirement of the completion of a responsible beverage server training course.

(2) Applicant must show proof of enrollment in a responsible beverage server training course as required by §125.17(6), Wisconsin Statutes, and show course commencement and completion dates.

(3) Applicant must have paid the Provisional Operators' License fee.

c. Fee. The fee for a Provisional Operators'

License shall be Fifteen (\$15.00) Dollars.

d. Expiration. Provisional Operators' Licenses shall have the expiration date conspicuously placed thereon. The expiration date of the Provisional Operators' License shall be the date the beverage server training course is scheduled for completion, or sixty (60) days from the date of issuance, whichever is sooner.

e. Revocation. Provisional Operators' Licenses shall expire and be null and void on the date the Operators' License is revoked, should such event occur.

f. Renewal. One (1) Provisional Operators' License may be granted subject to one (1) renewal in the event the applicant, for good cause, is unable to timely complete the responsible beverage server training course in which he or she is enrolled.

E. Refunds. Refunds on "Class A", Class "A", "Class B", Class "B", and "Class C" Licenses shall be allowed and paid as follows:

a. If the license is surrendered prior to its effective date, the whole fee paid shall be refunded.

b. If the license is surrendered on or prior to three months after its first effective date, three-fourths (3/4) of the fee paid shall be refunded.

c. If the license is surrendered on or prior to six (6) months after its first effective date, one-half (1/2) of the fee shall be refunded.

d. No refund shall be allowed for the surrender of any license when such surrender occurs after six (6) months from the first effective date of such license.

e. No refund shall be allowed for any Class "B" License that is granted for a six (6) month period or less.

F. Closing Hours - Class "A" Premises. Pursuant to §125.32(3)(b), Wisconsin Statutes, Class "A" premises may remain open for the conduct of their regular business, but may not sell fermented malt beverages between 12 Midnight and 8:00 A.M.

10.03 LICENSE INVESTIGATION

A. Application. Application for any license provided for in this Chapter shall be made to the City Clerk in writing, accompanied by the required fee. Application shall be on City forms, shall be true, correct and complete in all respects, and shall define all areas and rooms to be licensed.

A separate application must be filed with the City Clerk for an Outdoor Extension of a Retail "Class B" and/or Class "B" License and no such Outdoor Extension shall be valid where reference thereto is made in a standard application form, even if said application is granted.

B. Operators and Agents Inspection and Recommendation. Applications for agent status or Operator's Licenses shall be referred by the City Clerk to the Police Department. The Police Department shall make a report, in writing, to the City Attorney as to any police record of the applicant which may reflect upon good moral character or business responsibility. The City Attorney shall examine said record and make a recommendation to the Committee on Licenses/Permits based thereon as to whether the license should be granted or agent status approved. In the event the application is determined to be untrue, incorrect or incomplete upon review by the City Attorney, the application shall be denied. Said Committee shall recommend to the Common Council either the granting or denial of the application.

C. Retail and Wholesale Establishments.

1. Upon receipt of an application for a new Retail Class "A", Class "B", "Class B" or "Class C" License or combination thereof or Wholesale License, or transfer of any such license under Section 125.04(12)(a), Wisconsin Statutes, the City Clerk/Treasurer shall send copies thereof to the Department of Neighborhood Services and Inspections, the Fire Department, the Health Department, and Police Department. The Department of Neighborhood Services and Inspections, the Fire Department, and Health Department, either jointly or severally, within ten (10) days of receiving such copies, shall make a report, in writing, to the Committee on Licenses/Permits, as to whether the premises meet the requirements of this Chapter and the Building, Zoning, Fire, and Health Codes. The Police Department shall report, in writing, to the City Attorney as to any police record of the applicant for a new license (not a statutory transfer of a license), which may reflect upon good moral character or business responsibility. The City Attorney shall examine said record and make a recommendation to the Committee on Licenses/Permits based thereon as to whether or not the license should be granted. In the event the application is determined to be untrue, incorrect or incomplete upon review by the City Attorney, the application shall be denied.

2. Along with any application for a Class "A", Class "B" or "Class B" License or combination thereof, or transfer of any such license under Section 125.04(12)(a), Wisconsin Statutes, the applicant shall file with the City Clerk/Treasurer an Economic Impact Statement estimating the impact of the license, if issued, upon the City economy. The Economic Impact Statement shall identify the ownership, value, and square footage of the premises to be licensed; estimate the number of persons to be employed full time and the number of persons to be employed on

a part time basis; estimate the gross monthly revenue by each of the following categories: "alcoholic beverages", "food", "other"; and the basis for all estimates given. The information submitted shall be true, correct and complete in all material respects. Should the license be granted, or transferred and issued, and the licensee fails to achieve a minimum of seventy (70%) percent of the gross revenue estimated by applicant during the first full license term from the date the license is granted or transferred, the license may be suspended, revoked or not renewed. This paragraph shall not apply to renewals of existing licenses, after the first full license year, or to conditional surrenders of existing licenses, coupled with a new application for a license at the same location.

3. The Committee on Licenses/Permits shall review the application, the reports of the departments, the recommendation of the City Attorney, the Economic Impact Statement, if one is required, and all other information before it and make a recommendation to the Common Council.

4. In determining whether a new Class "A", Class "B", or "Class B" License or combination thereof should be granted, or transfer of such license approved, the Common Council shall consider the following factors giving to each whatever weight is appropriate in the particular factual circumstances:

a. Whether the applicant meets statutory and City licensing requirements and the premises to be licensed being in compliance with all applicable City Zoning and General Ordinances.

b. Whether the proposed development will have a substantial negative impact upon the surrounding properties or the neighborhood within six (6) blocks of the licensed premises, in terms of lowering property values, increasing noise, as defined in **Chapter 23** of the General Ordinances, or traffic congestion, or otherwise have a negative effect on the existing or planned character of the neighborhood.

c. Whether there is an overconcentration of licensed establishments in the neighborhood within six (6) blocks of the licensed premises.

d. Whether the operation of licensed premises will have a significant, positive influence on the City economy. In determining significant, positive influence on the City economy, the Common Council may consider the number of licenses available and the advisability of holding a license for possible future development.

e. Any other facts which reasonably relate to the public safety and welfare, or the legitimate police power of the City.

5. Where a license is granted or transferred following review of an Economic Impact Statement,

the economic impact of the licensed premises shall be reviewed by the Committee on Licenses/Permits at the license application renewal review following the first full license year.

6. A "Class C" License may be issued to a person qualified under Section 125.04(5), Wisconsin Statutes, for a restaurant in which the sale of alcohol beverages accounts for less than fifty (50%) percent of gross receipts, and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than fifty (50%) percent of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. A "Class C" License may not be issued to a foreign corporation, a foreign liability company or a person acting as agent for or in the employ of another.

D. Retail "Class A" Liquor Licenses.

1. Upon receipt of an application for a new Retail "Class A" License, or transfer of any such license under Section 125.04(12)(a), Wisconsin Statutes, the City Clerk/Treasurer shall send copies thereof to the Department of Neighborhood Services and Inspections, the Fire Department, the Health Department, and Police Department. The Department of Neighborhood Services and Inspections, the Fire Department, and Health Department, either jointly or severally, within ten (10) days of receiving such copies, shall make a report, in writing, to the Committee on Licenses/Permits, as to whether the premises meet the requirements of this Chapter and the Building, Zoning, Fire, and Health Codes. The Police Department shall report, in writing, to the City Attorney as to any police record of the applicant for a new license (not a statutory transfer of a license), which may reflect upon good moral character or business responsibility. The City Attorney shall examine said record and make a recommendation to the Committee on Licenses/Permits based thereon as to whether or not the license should be granted. In the event the application is determined to be untrue, incorrect or incomplete upon review by the City Attorney, the application shall be denied.

2. Along with any application for a "Class A" License, or transfer of any such license under Section 125.04(12)(a), Wisconsin Statutes, the applicant shall file with the City Clerk/Treasurer an Economic Impact Statement estimating the impact of the license, if issued, upon the City economy. The Economic Impact Statement shall identify the ownership, value, and square footage of the premises to be licensed; estimate the number of persons to be employed full time and the number of persons to be employed on a part time basis; estimate the gross monthly revenue by each of the following categories: "alcoholic

beverages", "Class A beverages", "food", "other"; and the basis for all estimates given. The information submitted shall be true, correct and complete in all material respects. Should the license be granted, or transferred and issued, and the licensee fails to achieve a minimum of seventy (70%) percent of the gross revenue estimated by applicant during the first full license term from the date the license is granted or transferred, the license may be suspended, revoked or not renewed. This paragraph shall not apply to renewals of existing licenses, after the first full license year, or to conditional surrenders of existing licenses, coupled with a new application for a license at the same location.

3. The Committee on Licenses/Permits shall review the application, the reports of the departments, the recommendation of the City Attorney, the Economic Impact Statement, if one is required, and all other information before it and make a recommendation to the Common Council.

4. In determining whether a new "Class A" License should be granted, or transfer of such license approved, the Common Council shall consider the following factors giving to each whatever weight is appropriate in the particular factual circumstances:

a. Whether the applicant meets statutory and City licensing requirements and the premises to be licensed being in compliance with all applicable City Zoning and General Ordinances.

b. Whether the proposed development will have a substantial negative impact upon the surrounding properties or the neighborhood within 5,280 feet of the licensed premises, in terms of lowering property values, increasing noise, as defined in **Chapter 23** of the General Ordinances, or traffic congestion, or otherwise have a negative effect on the existing or planned character of the neighborhood. In determining substantial negative impact, the Common Council shall consider whether the licensed premises has parking pursuant to the parking and loading requirements contained within Section 6.0 of the Zoning Ordinance for the City of Kenosha, and whether the licensed premises is consistent with any applicable neighborhood and/or zoning plan on file with the Department of City Development.

c. Whether there is an overconcentration of licensed establishments in the neighborhood within 5,280 feet of the licensed premises. In determining whether there is an overconcentration of licensed establishments, "overconcentration" shall mean more than ten (10) "Class A" or "Class B" establishments within 5,280 feet of the licensed premises in a residential district and more than fifteen (15) "Class A" or "Class B" establishments in a business district. Residential district shall include zoning districts RR-1, RR-2, RR-3, Rs-1, Rs-2, Rs-3, Rd, Rg-1, Rg-2, Rm-1, Rm-2 and Rm-3 as defined by Section 3 of the

Zoning Ordinance for the City of Kenosha, Wisconsin. Business district shall include business districts B-1, B-2, B-3 and B-4 as defined by Section 3 of the Zoning Ordinance for the City of Kenosha, Wisconsin.

d. Whether the operation of licensed premises will have a significant, positive influence on the City economy. In determining significant, positive influence on the City economy, the Common Council may consider the number of licenses available and the advisability of holding a license for possible future development, whether shelf space dedicated to "Class A" liquor products exceeds 1,000 square feet, if the projected gross revenue from "Class A" products exceeds Ten Thousand (\$10,000.00) Dollars per month, and whether a business plan has been submitted by the applicant with their application.

e. Whether the area where "Class A" beverages are stored or displayed on "Class A" premises can be physically closed to customers on the premises during the hours that the sale of "Class A" beverages are not permitted.

f. Any other facts which reasonably relate to the public safety and welfare, or the legitimate police power of the City.

5. Each "Class A" licensed establishment shall employ a minimum of two (2) employees to be on premises during the hours in which the sale of "Class A" beverages are permitted.

6. Where a license is granted or transferred following review of an Economic Impact Statement, the economic impact of the licensed premises shall be reviewed by the Committee on Licenses/Permits at the license application renewal review following the first full license year.

10.04 RESTRICTIONS

The issuance of licenses shall be restricted as follows:

A. Location. See §125.68(3), Wisconsin Statutes.

1. No "Class B" and/or Class "B" License shall be granted for any premise not located on the street level, but this Section shall not apply to a bona fide club or hotel, or bowling alleys.

2. No "Class A" License shall be granted for any premise not located on the street level.

B. Persons.

1. No license shall be granted to any person who does not meet the minimum requirements imposed by the Wisconsin Statutes.

2. Applicants shall not be required to show proof of or offer of employment as a condition of receiving any said license.

C. Limitation as to Number.

1. Only one (1) Class "A" License shall be granted for every one thousand seven hundred fifty (1,750) inhabitants or fraction thereof in the City.

In computing the number of licenses which may be granted under the above limitation, the Council shall not consider or count those licenses or applicants for such a license that have a distributing agency of a recognized brewery. In the event such agency is discontinued, the Council shall revoke the Class "A" License obtained by virtue of the licensee being such an agent.

2. Only one (1) "Class A" License shall be granted for every five thousand (5,000) inhabitants, or fraction thereof, of the City.

3. No more than one hundred seventy (170) Class "B" Licenses shall be granted.

4.a No more than one hundred fifty-three (153) "Class B" Licenses shall be granted.

b. No more than twelve (12) Reserve "Class B" Licenses shall be granted. If the population of the City increases after December 1, 1997, one (1) license per every additional five hundred (500) persons, or fraction thereof, shall be added to this quota.

5. In the event of an annexation of a "Class A", Class "A", "Class B", Class "B", or any combination thereof, or any "Class C" Licensed premises, the business may continue under the license(s) issued by the previous municipality until the next renewal date. At that time, the licensee may be granted the appropriate license(s), if they qualify under State law and local ordinances, notwithstanding the above quotas. Applicable quotas shall be expanded at the time the annexed business(es) receive their license(s) from the City, if the particular appropriate license(s) is(are) of quota.

6. The Common Council may grant a license to an applicant who has procured the conditional surrender of another such license, provided the licensee who is surrendering the license is not indebted to any licensed wholesaler in violation of the credit restriction set forth in §§125.33 (7) and 125.69 (4), Wisconsin Statutes, and that said licensee is not indebted to the City of Kenosha for any delinquent Personal Property Tax.

a. Conditional License surrenders shall not be made contingent upon the payment of any liquor or

fermented malt beverage bills where credit therefor was extended beyond the respective thirty (30) and fifteen (15) day credit restrictions specified in §§125.33 (7) and 125.69 (4), Wisconsin Statutes.

b. A license(s) may be conditionally surrendered where the licensee who is surrendering the license(s) is indebted to a licensed wholesaler in violation of the credit restriction set forth in §§66.054 (8a) and §§125.33 (7) and 125.69(4) of the Wisconsin Statutes where the indebtedness has been discharged in bankruptcy.

c. Bills which need not be paid as a condition of acceptance of a conditional surrender are those owing by the surrendering licensee to a given liquor or fermented malt beverage wholesaler where that particular wholesaler extended credit to said surrendering licensee beyond the respective fifteen (15) and/or thirty (30) day periods of time provided for as credit restrictions in applicable State law.

d. Other bills which need not be paid as a condition of acceptance of a conditional surrender of a license are those for credit provided by a wholesaler who, before providing credit, was notified in writing, served by registered or certified mail, return receipt, or personal service verified by an Affidavit of Service, that credit for the purchase of liquor and/or fermented malt beverages was contrary to the terms of a "Class A", Class "A", "Class B", Class "B" or "Class C" License Holder's land contract, lease, mortgage, bank note or court order. It shall be the duty of the person or party disputing such bills to produce relevant documents supporting the disallowance of such bills to the City Clerk's Office in a timely fashion.

7. Regarding Wholesalers, the following shall apply:

a. Wholesalers doing business in the City of Kenosha; who are lawfully operating within the City, and who are not licensed by the City, are required to register the trade name, address and telephone number of their firm with the City Clerk as a condition of their unpaid bills being processed by the City Clerk under the provisions of this Ordinance. This condition, however, shall not be applicable to the extent that it conflicts with any State law to the contrary.

b. Wholesalers desiring to submit outstanding bills to the City Common Council for consideration under this Ordinance must file their request for such consideration on City approved forms, having attached thereto a copy of all relevant original invoices, prior to the Committee's review of the license application.

c. Should a dispute arise as to whether any invoice(s) must be paid as a condition of a conditional surrender of license, the City Clerk may accept a cash bond, submitted on a City form, in the amount thereof. The person or party who is

responsible for the payment of the disputed invoice(s), to be eligible to file a cash bond, must designate the City Clerk as his/her agent with full authority to make a binding and final determination as to whether or not said invoice(s) must be paid as a condition of a conditional license surrender, and to disburse or return the posted money. However, under no circumstances will the City Clerk be obligated to look behind the face of a submitted invoice.

d. The City Clerk shall notify the party posting such cash bond and any wholesaler having an interest in an unpaid, disputed invoice, of his/her intended disposition of said cash bond ten (10) days in advance of such disposition. Notice may be by first class mail. Should any interested party commence litigation to challenge such intended disposition within said ten (10) day period of time, the City Clerk shall hold the cash bond without disbursing such portion of said cash bond as is relative to said litigation until receipt of a court order directing such disbursement. The City Clerk may issue a Class "B", "Class B" and/or "Class C" License which has been granted by the Common Council where the only impediment to such issuance is an outstanding invoice herein relevant, where a cash bond has been posted.

8. If an alcohol beverage licensee or applicant dies during a license term or the pendency of an application, the rules and procedures of Section 125.04(12), Wisconsin Statutes, shall apply.

D. Separation of Intoxicating Liquor and Fermented Malt Beverage Business From Other Business.

1. Except in case of hotels as defined in §125.02 (7) of the Wisconsin Statutes, a "Class A" License and a Class "B" and/or "Class B" License shall not both be issued for the same or connecting premises.

2. No business under a "Class A" License, or under a combination of a "Class A" License and a Class "A" License, shall be conducted in conjunction with any other business on the same premises unless:

The area in which the liquor and/or beer is sold shall be arranged and constructed in a manner as to permit and facilitate its closing during the hours and days in which fermented malt beverages may not be sold as stipulated by the Wisconsin Statutes.

Notwithstanding the proceeding paragraph, a business may maintain "end cap" displays of fermented malt beverages and wine at room

temperature during the closing hours and days stipulated by the Wisconsin Statutes.

10.045 WITHHOLDING OF ISSUANCE OF LICENSES

See Section 1.045 of the Code of General Ordinances.

10.048 TEMPORARY "CLASS B" AND CLASS "B" LICENSES - APPLICATIONS

A. Temporary "Class B" and/or Class "B" Licenses may be granted for no more than nine (9) days, which may or may not be consecutive, in any calendar year to an eligible license applicant.

B. City application forms for Temporary "Class B" and/or Class "B" Licenses must be filed with the Office of the City Clerk no later than one (1) day prior to the day upon which the Common Council will consider and act upon said application.

C. Review. Temporary "Class B" and Class "B" Licenses will not be reviewed by the Committee, but will be reviewed by the City Attorney, or his/her designee, prior to Council action thereon. Council Agenda shall have a general heading of "Temporary "Class B" and Class "B" Licenses". Only license applications approved by the City Attorney, or his/her designee, as being in compliance with all applicable Federal, State and local laws will be submitted to the Council for approval as a matter of course. However, any applicant desiring to appeal the City Attorney's, or designee's ruling to the Council may do so by filing a written Notice of Appeal with the City Clerk. Appeals may be acted upon by the Council under the general heading on the Council agenda relative to Temporary "Class B" and Class "B" Licenses.

10.049 WITHDRAWAL OF LICENSE APPLICATION

A. Withdrawal of License Application. At any time prior to the final disposition by the Common Council of an application for a license under this Chapter, the applicant may withdraw the application. The withdrawal shall have the effect of removing the application from consideration by the Common Council. The administrative charge under Section 1.225 of the Code of General Ordinances shall be applicable.

B. Procedure for Withdrawal of License Application. The withdrawal of a license application shall be:

1. In writing.

2. Signed by the applicant. In the case of a general partnership, it shall be signed by all partners; in the case of a limited partnership, it shall be signed by the general partners; in the case of a corporation, it shall be signed by an officer of the corporation; in the case of a limited liability company, it shall be signed by the managing member.

3. Filed with the City Clerk.

C. Effective Date. Unless specifying a later effective date on its face, a withdrawal of a license application is effective upon receipt of the written document for filing by the City Clerk. Once filed, the withdrawal is irrevocable, regardless of whether it is intended to take immediate or future effect.

10.05 REGULATIONS

All licenses shall be granted subject to the following regulations.

A. Health Rules. All licensed premises shall be kept sanitary and shall be conducted in compliance with whatever health rules the Director of Health may prescribe.

B. Inspection and Search. Every licensee consents upon issuance of the license to the inspection and search by the Police Department of the licensed premises during business hours, and further consents to the removal of all articles found in violation of law or Ordinance and their subsequent introduction into evidence in any prosecution arising therefrom.

C. Employees. No proprietor of any premises operating under a "Class B" and/or Class "B" License shall employ any person not allowed by any Federal or State Statute, rule or regulation.

D. Conduct. It shall be unlawful for a licensee, his agent or employee, to permit the following conduct on licensed premises:

1. The performance of acts, or simulated acts, of "sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law";
2. The actual or simulated "touching, caressing or fondling on the breast, buttocks, anus, or genitals";
3. The actual or simulated "displaying of the pubic hair, anus, vulva or genitals";
4. The permitting by a licensee, his agent or employee, or "any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus";

5. The displaying of films or pictures depicting acts a live performance of which was prohibited by the regulations quoted above.

E. Liquor Delivery. No wholesaler shall deliver intoxicating liquor between 7 p.m. on Saturday and 6 a.m. the following Monday or between 7 p.m. and 6 a.m. on any other day.

F. No "Class B" and/or Class "B" Licensee shall display any liquor or beer except on wall shelving, the back bar, or floor.

G. Operational Requirements.

1. Within ninety (90) days from the granting of a "Class A", Class "A", "Class B", or Class "B" License, or any combination thereof, the licensee shall be open for business with stock and equipment. In the event of the licensee's failure to be open for business within such time, said license or licenses shall be subject to revocation by the Common Council after a public hearing. The Committee on Licenses/Permits may, for good cause shown, extend said ninety (90) day period.

a. The above requirement to be open for business within ninety (90) days may be extended to one hundred eighty (180) days by the Common Council at the time the license or licenses are granted if all of the following conditions have been met:

(1) at the time of application, the real property sought to be licensed does not have a permanent structure on it; and,

(2) at the time of application, the real property sought to be licensed is either owned by the applicant, or is under lease to the applicant for a period greater than one (1) year from the date of application, or is subject to an accepted offer to purchase, whether or not conditioned on a future event. The deed, lease, or offer to purchase must be presented to the Committee on Licenses/Permits for review at the time it is reviewing the application; and,

(3) at the time of application, the applicant submits a floorplan for the structure intended to be constructed on the real property, said floor plan specifying that portion of the structure which is to be licensed; and,

(4) the applicant agrees in writing, as part of the application, to submit to the Committee on Licenses/Permits within ninety (90) days of granting of the license or licenses, a copy of the Building Permit and, if the applicant is not the owner or lessee of the property at the time of the application, a copy of the deed showing present ownership of the real property by the applicant; and,

(5) the applicant agrees in writing, as part of the application, to be diligent in all efforts to get the

structure built and stocked within one hundred eighty (180) days of the granting of the license.

b. The Committee on Licenses/Permits may extend the one hundred eighty (180) day period by a period of time to be determined by the Committee in its sound discretion where the following conditions have been met:

(1) the licensee has complied with Subparagraphs a. (1) - (5); and,

(2) the applicant shows a need for the extension that did not arise out of a lack of diligence to satisfy any requirements contained in this Section.

c. If at any review hearing held before it, the Committee on Licenses/Permits is satisfied that any of the conditions in Paragraphs a. and b. of this Section have not been met, the Committee may commence a Revocation Hearing pursuant to the procedures contained within this Chapter.

2. Suspension or Cessation of Being Open for Business. If any licensee shall suspend or cease being open for business for a period of ninety (90) consecutive days or more, their "Class A", Class "A", "Class B", or Class "B" License, or any combination thereof, shall be subject to revocation by the Common Council after a public hearing.

3. "Open for Business" shall mean to operate as a licensed establishment for a minimum of forty-eight (48) hours per calendar month.

4. "Permanent Structure" shall mean a building, intended to be the licensed premise that would qualify for a Temporary Occupancy Permit pursuant to Section 8.0 of the City of Kenosha Zoning Ordinance.

H. Intoxicating liquor and fermented malt beverages may not be consumed by patrons or others outside of licensed Class "B" and/or "Class B" premises, as said premises are described in the relevant license application, and it shall be unlawful for a license holder to permit said consumption contrary to the terms of this Ordinance.

I. Regulation of Class "B"/"Class B" Premises. A Class "B" or a "Class B" licensed premises shall be operated in accordance with the following regulations:

1. Premises shall be equipped for retail sales of alcohol beverages for consumption on the premises with the following:

a. a serviceable bar or counter over which alcohol beverages in open containers may be served. This requirement shall not apply to restaurants, as defined in Section 254.61(5),

Wisconsin Statutes, licensed by the State of Wisconsin.

- b. glassware or other reusable utensils by means of which alcohol beverages may be served and consumed; and,
- c. ice dispenser; and,
- d. alcohol beverages to be offered for sale for consumption on the premises.

2. Licensees may not keep on premises any poisonous or toxic materials except where necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents.

J. Drive Through Window Regulation.

1. **Applicability.** This Subsection shall apply to all establishments licensed pursuant to, and all licensees subject to this Chapter that provide retail sales of alcohol beverages through any opening connecting the interior of a structure to the exterior of a structure.

2. **Still-Photo Camera Requirement.** All establishments subject to this Subsection shall have a camera or cameras in operation at all times that sales are made through an opening that connects the interior of the structure to the exterior of the structure, that photographs the driver of the motor vehicle in which the patron is situated at the time of sale and the license plate of the motor vehicle.

3. **Video/Audio Camera.** In addition to the requirement of Paragraph 2, all establishments subject to this Subsection shall have at least one (1) camera in operation at all times that sales are made through an opening that connects the interior of the structure to the exterior of the structure, capable of recording in video and audio format the interaction between the seller of the alcohol beverage and the purchaser of the alcohol beverage.

4. **Operation.** The licensed operator responsible for the sale of alcohol beverages made through an opening that connects the interior of the structure with the exterior of the structure shall assure cameras required under Paragraphs 2 and 3 herein are in operation at all times that sales are made.

5. **Maintain Records.** All image and audio recordings made pursuant to this Section shall be maintained by the licensee of the establishment licensed pursuant to this Chapter, for a period of no less than ninety (90) days, organized in a manner allowing for retrieval and copying at the request of

a law enforcement officer.

6. **Signage.** All establishments subject to this Section shall have signs informing patrons of the following:

a. They and their passengers are subject to being photographed.

b. It is illegal for the purchaser of alcohol beverages to consume alcohol beverages or maintain alcohol in opened packages, on public thoroughfares or in the parking lot of the licensed establishments.

10.062 CONDITIONAL SURRENDER WHERE REVOCATION OR SUSPENSION PROCEEDINGS THREATENED OR COMMENCED

A. **Voluntary Surrender.** A Class "A", "Class A", Class "B", "Class B" or "Class C" License may be surrendered when any proceeding has been commenced by any authorized person or party to revoke or suspend such License. If the complaint in any such proceeding is found to be true, the License shall either be suspended for not less than 10 days nor more than 90 days or revoked.

B. **Conditional Surrender.** A Class "A", "Class A", Class "B", "Class B" or "Class C" License may not be conditionally surrendered when any proceeding has been commenced by any authorized person or party to revoke or suspend such License or when any proceeding is authorized by the License/Permit Committee or Common Council to revoke or suspend such license.

A Class "A", "Class A", Class "B", "Class B" or "Class C" License which is in jeopardy due to an actual or threatened license revocation proceeding may be surrendered on the condition that the owner of the licensed premises be granted a similar license at the same location where the license holder leases the premises or holds the premises under a land contract, subject to the following terms and conditions:

1. The License has not been revoked following a lawful revocation hearing.

2. The Licensee surrenders the License and the owner of the premises applies for said License.

3. License fees will not be prorated.

4. A similar License at the same location has not been conditionally surrendered while under threat of revocation within the past ten (10) years.

5. The license holder does not profit from the License transfer.

6. The license holder agrees in writing to:
 - a. never again be involved, directly or indirectly, in or have any financial interest in the licensed premises.
 - b. not apply for any Class "B" and/or "Class B" License or Operator's License for a period of five (5) years.
 - c. reimburse the City any out-of-pocket costs, if any, incurred in its commencement of a revocation proceeding.

10.063 POLICY & PROCEDURE FOR DISCIPLINARY ACTION RELATIVE TO ALL CLASS "A"/"CLASS A", CLASS "B"/"CLASS B" LIQUOR AND/OR FERMENTED MALT BEVERAGE LICENSES, AND "CLASS C" WINE LICENSE, OPERATOR'S LICENSES, AGENTS AND OTHER LICENSES AND PERMITS AUTHORIZED IN CHAPTER X

A. Definitions.

1. **LICENSE** shall mean any Retail Class "A"/"Class A", Class "B"/"Class B", or "Class C" License, or Operator's License, or agent status, or any other License or Permit authorized in Chapter X (10) of the Code of General Ordinances.

2. **LICENSEE** shall mean the holder of a License.

B. License Investigations. The following may initiate requests for investigations before the Committee which may result in orders, suspensions, nonrenewals, delays in License issuance or revocation:

The Mayor;
The Common Council;
The Committee;
The State of Wisconsin;
An Alderman;
The Police Chief;
The City Attorney; and,
Any Resident Of The City of Kenosha.

Requests for investigations shall be in writing, sent to the City Clerk and shall contain a brief statement of the alleged misconduct. The request shall be forwarded by the requesting party to the City Clerk who shall place said request on the Common Council Agenda for referral to the Committee or directly on the Committee Agenda with the permission of the Committee Chairperson. The City Clerk or the Committee Secretary shall order the Licensee to attend the Committee meeting at which said matter will be reviewed. Documents which form a basis for a request for an

investigation shall be available for the inspection of the Licensee.

The Committee may reconsider any evidence or argument presented or made before it, whether or not obtained in or related to the written request for an investigation.

The Committee, upon requesting and receiving a recommendation from the City Attorney's Office, shall recommend to the Common Council:

1. That no action be taken where there is no factual or legal basis for action.

2. That the License be suspended, not renewed or revoked following Statutory notice and opportunity to be heard, where the criteria for such action in Subsection D. is met;

3. That an order be issued and served upon the Licensee requiring that certain action be taken as a condition of maintaining said License and providing notice that revocation may be the penalty for failure to strictly comply with the letter and spirit thereof; or,

C. License Review Upon Renewal Application. Any License which is the subject of renewal shall, prior to License expiration, be reviewed in accordance with the procedure for License investigation contained in Subsection B., and in accordance with such additional procedures as the Committee may require. License renewal applications which are granted, shall be granted subject to applicable demerit points, if any.

D. Criteria For License Revocation, NonRenewal Or Suspension.

1. Any Licensee who, holds a license subject to a one (1) year term, who within two (2) consecutive License terms, equals or exceeds a total of one hundred (100) demerit points for the below described conduct committed by Licensee, or employee or agent thereof, whether or not charged and/or convicted, shall have their License subject to revocation, nonrenewal or suspension, within the discretion of the Common Council.

2.a. The Common Council may, but is not obligated to, revoke a license, with a term of one (1) year, issued hereunder upon the accumulation of one hundred (100) demerit points within seven hundred thirty (730) consecutive days, subject to the following. With respect to the first accumulation of one hundred (100) demerit points within said seven hundred thirty (730) consecutive days, the disciplinary action shall consist of at a minimum of a license suspension of

ten (10) consecutive days, plus an assessment of seventy-five (75) demerit points. With respect to the second accumulation of one hundred (100) demerit points within said seven hundred thirty (730) consecutive days, the disciplinary action shall consist of at a minimum of a license suspension of thirty (30) consecutive days, plus an assessment of seventy-five (75) demerit points. With respect to a third accumulation of one hundred (100) demerit points within said seven hundred thirty (730) consecutive days, the disciplinary action shall consist of revocation.

b. The Common Council may, but is not obligated to, revoke a license, with a term of two (2) years, issued hereunder upon the accumulation of one hundred (100) demerit points within one thousand four hundred sixty (1,460) days, subject to the following. With respect to the first accumulation of one hundred (100) demerit points within said one thousand four hundred sixty (1,460) days, the disciplinary action shall consist of at a minimum of a license suspension of ten (10) consecutive days, plus an assessment of seventy-five (75) demerit points. With respect to the second accumulation of one hundred (100) demerit points within said one thousand four hundred sixty (1,460) days, the disciplinary action shall consist of at a minimum of a license suspension of thirty (30) consecutive days, plus an assessment of seventy-five (75) demerit points. With respect to a third accumulation of one hundred (100) demerit points within said one thousand four hundred sixty (1,460) days, the disciplinary action shall consist of revocation.

3. Where a license has been suspended, the license, during the period of suspension, shall not be conditionally surrendered or transferred to another party or place.

4. In the event of license revocation, nonrenewal or suspension hereunder, the City Clerk shall, within ten (10) days of the disciplinary action, mail a report to the State Department of Revenue giving the name of the licensee, the address of the licensed premises and a full description of the discipline imposed.

5. Where a license is revoked hereunder, the revocation shall be recorded by the City Clerk and no other license issued under Chapter 125, Wisconsin Statutes, may be granted within twelve (12) months of the date of revocation to the person/party whose license was revoked. No part of the fee paid for any license so revoked may be refunded.

6. Demerit Points. Demerit points are not deemed a penalty hereunder. Demerit points are a means of tracking the performance of licensees under

this Chapter. In determining the accumulated demerit points against a license, the City shall use the date each violation was committed as the basis for the determination.

a. Twenty (20) Demerit Points

1. Violation of Chapter 125, Wisconsin Statutes.

2. Violation of Chapter X (10) of the Code of General Ordinances.

3. Violation of any City or County Gambling Ordinances or knowingly permitting any person to commit such violation.

4. Operating without a Cabaret License when one is required or operating contrary to the conditions of a required Cabaret License, whether or not one is held.

5. Violation of Chapter XI (11) of the Code of General Ordinances.

6. Violation of any Federal, State or local law regarding licensure unless otherwise specified in this Ordinance.

7. A civil violation of Sections 346.63(1)(a) or (b), Wisconsin Statutes, or any local ordinance in conformity therewith.

8. Violation of a State or Federal misdemeanor criminal law or knowingly permitting any such violation.

9. Possession of marijuana off of a licensed premises, except where the violation is a felony.

10. Violation of any other State, County or Municipal offense, which are substantially similar to those violations listed above.

b. Forty (40) Demerit Points:

1. Obstructing or resisting any law enforcement officer or knowingly permitting any person to engage in such conduct.

2. Failing to appear before the Committee or Common Council when ordered to do so by either such body.

3. A conviction for a criminal violation of §346.63, Wisconsin Statutes, relating to operating a motor vehicle while under the influence of an intoxicant or controlled substance, or with a prohibited blood alcohol concentration.

c. One Hundred (100) Demerit Points:

1. Violation on a licensed premises of any municipal, State, or Federal law prohibiting the possession, attempted possession, trafficking in, delivery, attempted delivery, or possession with intent to deliver any controlled substance or marijuana, or knowingly permitting any person to commit such violation.

2. A conviction for a violation of State or Federal criminal law which is a felony, if the circumstances of the charge substantially relate to the circumstances of the licensed activity.

3. Noncompliance with a Court ordered alcohol and drug assessment and driver safety plan.

4. Violation of an Order of the Common Council.

d. Demerit Points Doubled. In determining the accumulated demerit points against a license, the demerit points for any violation occurring on a third date within 365 consecutive days of a prior violation shall be assigned double the point assessment listed above. Once assigned, points shall not be reduced.

7. Discretionary Demerit Points: Nonscheduled offenses shall be the subject of such number of demerit points as designated by the Common Council, within its discretion.

8. No Demerit Points. Violation of Section 125.68(9)(c), Wisconsin Statutes.

9. Offenses Not Considered. No offenses will be considered respecting new applications for demerit points if the date of the violation is more than five (5) years prior to the date of application, except a felony which is material to the licensed activity.

10. Demerit Point Appearance. During the course of a licensing term, if it is determined that a license has accumulated eighty (80) demerit points within three hundred sixty-five (365) consecutive days, the clerk shall issue licensee an order to appear before the Licensing/Permit Committee. Failure to appear as ordered shall result in the assessment of twenty (20) demerit points. The assessment dates shall be the date of the notice.

E. Discretion Upon Review. The Common Council is not mandated to revoke, not renew or suspend a License which is subject to revocation, nonrenewal or suspension based upon the criteria in Subsection **D.** therefor, but may take such action as the circumstances warrant with due consideration for mitigating factors. However, where a suspension is imposed, the minimum specified in Subsection **D.** is applicable.

A dismissal of a criminal charge or civil forfeiture case which is also the subject of demerit points, shall not, as a matter of law, nullify said charge for the purpose of review herein due to the differing burdens of proof and procedural requirements.

F. Delay in License Issuance. Any person or party who performs a licensed activity without first having obtained a proper License, or who, during a period of license suspension, or who, after License revocation or nonrenewal, unlawfully engages in a licensed activity, shall be barred from applying for the required License for a period of six (6) months from

the date of such offense.

G. New Licenses Granted Subject to Demerit Points. New Licenses may be granted subject to such number of demerit points as the Common Council, in its discretion, may deem appropriate, irrespective of the nature of the offense, where the Common Council has concern as to the moral character and business responsibility of the applicant, which is insufficient for License denial.

New Licenses, if granted, shall be subject to twenty-five (25) demerit points in the event the License application acted upon is filed in violation of **§1.22 A.** of the Code of General Ordinances respecting untrue, incorrect and/or incomplete application, or in the event any License application was filed under this Chapter in violation of Section **1.22 A.** of the Code of General Ordinances within six (6) months of the date of the license application acted upon.

H. Time for Action. Disciplinary action need not be commenced and completed in the same License year as the offense occurred. Where disciplinary actions are not commenced and completed within a License term, a License shall be granted subject to a "NonRenewal Revocation Hearing", to be held as soon as practicable.

I. Disciplinary Hearings. Disciplinary hearings, including nonrenewal, suspension and revocation hearings, shall be held before the Committee, which shall submit a report to the Common Council, including Findings of Fact, Conclusions of Law and a recommendation as to what action, if any, the Common Council should take with respect to the License. The Committee shall provide the Complainant and the Licensee with a copy of the report. Either the Complainant or Licensee may make an objection, orally or in writing, to the report and shall have the opportunity to present arguments supporting the objection to the Common Council. The Common Council shall determine whether the arguments shall be presented orally or in writing, or both. If the Common Council, after considering the Committee's report and any arguments presented by the Complainant and Licensee, finds the complaint to be true, or if there is no objection to a report recommending a suspension, revocation or nonrenewal, the Licensee shall be suspended, revoked or not renewed as provided by law. If the Common Council finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. The City Clerk shall give notice of each suspension, revocation or nonrenewal to the party whose License is affected.

J. Judgment Of Conviction, As Prima Facie

Proof of Violation. The judgment of conviction of any Licensee, or employee or agent thereof, in any Municipal, State or Federal Court, irrespective of whether obtained following trial, plea agreement, or bond forfeiture, shall be prima facie proof of said violation for purposes of this Ordinance. However, in the instance of any judgment of conviction entered pursuant to a no contest plea, or considered in law to be rendered pursuant to a no contest plea, said judgment of conviction as a prima facie case may be rebutted. Further, mitigating circumstances may be introduced with respect to any judgment of conviction.

K. Application For Determination of Demerit Points. Any Licensee or party entitled to initiate a request for an investigation under Subsection B. hereof, may, at any time, request the Common Council to determine whether or not conduct which has occurred constitutes a basis for demerit points, and, if so, how many demerit points. The Common Council, in making this determination, shall have before it the recommendation of the Committee and of the City Attorney's Office.

L. Commencement Of Penalties. Penalties shall commence the day after they have been imposed by the Common Council. Days of suspension shall run consecutively.

M. Periodic Reports By Police Chief. The Police Chief shall file periodic reports with the City Attorney advising said City Attorney of conduct by any Licensee, or employees thereof, which may constitute a basis for disciplinary action. The City Attorney, at License renewal time, or at any earlier time deemed appropriate, shall bring such matters to the attention of the Committee and make a recommendation on disciplinary action.

10.064 OFF LICENSED PREMISES CONDUCT OF PATRONS AND PERSONS AS A BASIS FOR DISCIPLINARY ACTIONS

A. Purpose. The purpose of this Ordinance is to protect the peace, tranquility and property values of the neighborhood in which a Class "A", "Class A", Class "B", "Class B", or "Class C" (if available) premise licensed under this Ordinance is located.

B. Responsibility of Licensee. Over and above the other provisions of this Chapter and Chapter 125, Wisconsin Statutes, every Class "A", "Class A", Class "B", "Class B", or "Class C" (if available) licensee licensed under this Chapter shall, during hours of operation of the licensed premises, be responsible for the conduct of patrons

and persons who are not on the licensed premises, but are present on the following described off-licensed premises' property:

- Parking lot owned or operated by licensee which serves the licensed premises;
- The lot upon which the building being the subject of the license or parking lot serving the licensed premises is situated;

Examples of conduct which could form the basis for an order hereunder include, but are not limited to:

- Loitering where accompanied by loud noise, threats, fighting, open intoxicants, consumption of intoxicants, weapons use or display, illegal drug use or sale, urination, or otherwise disturbing, disorderly, or illegal conduct;
- Loitering of persons under the influence of alcohol beverage or drugs;

hereinafter "loitering". The licensee shall be responsible to monitor off-licensed premises property for compliance with this Ordinance. The licensee shall have a duty to direct patrons or persons engaged in loitering to immediately leave property. The licensee is not to use physical force to remove any such person or patron. Should notified persons and patrons fail to comply, licensee shall have an obligation to call the City Police Department for assistance. The licensee may elect to first call the Police Department if the licensee has concern for their safety. "Licensee" shall mean and include any person having control of the operation of the licensed premises.

C. Complaints. Complaints may be made by:
The Mayor;
The Common Council;
The Committee;
The State of Wisconsin;
An Alderperson;
The Police Chief;
The City Attorney; and,
Any Resident of the City of Kenosha.

Complaints shall be made in writing and filed with the City Clerk. The City Clerk shall direct the complaint to the Chair of the Committee. With respect to complaints of illegal drug use or sale, the City Clerk shall not direct the complaint to the Committee until first consulting with the Police Department and receiving a determination that the review of the complaint by the Committee will not interfere with a law enforcement investigation. The Chair shall review the complaint and any other documentation available to the Chair, including, but

not limited to, police reports and statements of the complainant, licensee, or others, to determine whether the complaint has sufficient merit to be placed on the Committee agenda.

D. Committee Action on Complaint. The Committee shall order the licensee to appear before it to discuss the complaint and potential remedies. After hearing from the complainant, licensee and all interested parties, and reviewing all applicable reports, statements and documentation, the Committee shall have four (4) options:

1. No Action Taken. No action shall be taken on the complaint if it is unfounded, without merit, or if the alleged conduct is outside of the effective control of the licensee.

2. Oral Recommendations. Oral recommendations may be given from the Committee to the licensee on how the licensee could address the issues raised in the complaint.

3. Written Recommendations. If the Committee finds that the complaint has merit and that a reasonable remedy exists, the Committee may cause a written recommendation be sent to licensee through the U.S. mail, first class, postage prepaid. The written recommendation shall include the Committee's finding on the complaint, the remedies, the timetable and/or deadlines for compliance, and an order to appear back before the Committee on a specific date or dates to determine compliance with directives. The only portion of the written recommendation which would subject the licensee to discipline for noncompliance is that portion ordering the licensee to appear before the Committee.

4. Orders. If the Committee finds the complaint has merit, and that a reasonable remedy exists, and that written recommendations are inappropriate or ineffective, the Committee may recommend to the Common Council that formal orders be issued by the Common Council. Unless otherwise stated, orders are permanent, unless rescinded, as long as the licensee maintains the same type of license at the location being the subject of the complaint. Orders may include, but are not limited to, the following remedial actions.

- Reduction in hours of operation of licensed premises;
- Prohibition of the sale of carryout alcohol beverages;
- Establishment of specified security measures;
- Prohibition of loitering.

E. Common Council Action on Complaint. Upon recommendation by the Committee for written orders as provided herein, the Common Council shall order the licensee to appear before the Common

Council. After meaningful opportunity for the licensee to be heard, the Common Council shall issue the order that it deems appropriate. Orders from the Common Council will be sent to the licensee at the address of the licensed premises by first class mail, postage prepaid.

F. Committee Review. After orders issued by the Common Council, the Committee shall conduct such reviews as it deems necessary and sufficient in order to monitor compliance by licensee with the orders. If at any review it appears to the Committee that the licensee is materially noncompliant, it may require the City Attorney to commence formal disciplinary proceedings for violation of the orders.

G. Violations. Violations of a final order of the Common Council, regardless of subsequent remedial measures, shall constitute grounds for disciplinary action, including a ten (10) day suspension per violation per each day of noncompliance.

10.07 CABARET LICENSE

A. License Required. No holder of a "Class B", Class "B" and/or "Class C" License shall perform, engage in, or permit, the following activity by employees, patrons, or hired performers upon the licensed premises without first having obtained a Cabaret License from the City Clerk:

1. Live music performances;
2. Specifically advertise or feature dancing; and,
3. Live entertainment, including, but not limited to, the performance of any act, play or stunt, amateur talent contest, or disc jockey show.

B. Application. Upon application to the City Clerk and the payment of the fee therefor, a Cabaret License will be issued subject to the conditions and regulations set forth in this Section. An application for a license provided for in this Section shall be made to the City Clerk in writing, accompanied by the required fee. Applications shall be on City forms; shall be true, correct and complete in all respects. No application for such license shall be accepted unless accompanied by the appropriate fee. The Mayor shall cause an application for Cabaret License to be placed on a Common Council agenda such that it may be addressed by the Common Council within 28 days of receipt of the application. Within twenty-eight (28) days of receiving an application for a Cabaret License, the City Clerk shall notify the applicant whether the application is granted or denied. An application not reviewed by Common Council within twenty-eight (28) days shall be granted. In determining whether a Cabaret License should be granted, the Common Council shall consider the following factors, giving to each whatever weight is

appropriate in the particular factual circumstances:

1. Whether the proposed license will have a substantial negative impact upon the surrounding properties or the neighborhood within 5,280 feet of the licensed premises, in terms of increasing noise, as defined in Chapter 23 of the Code of General Ordinances, and/or traffic congestion.

2. The availability and type of parking on or off the proposed licensed premises.

3. The existing or planned character of the neighborhood.

4. Applicant's compliance and past performance with any/all licensing laws.

C. License Term. A Cabaret License shall terminate as a matter of due course on the date the holders thereof cease to hold a "Class B", Class "B" and/or "Class C" License, without refund of any portion of the License fee therefor.

1. **Annual License.** The License shall expire on June 30th following its issuance. The License is a one (1) term license which is nonrenewable. A new Annual License application shall be filed for review for each subsequent license term.

2. **One (1) Day License.** A One Day License may be issued for one (1) day only. The One (1) Day License application shall designate the date the License will be utilized.

D. License Fees.

1. **Annual Licenses.** The Annual License Fee shall be Three Hundred (\$300.00) Dollars.

2. **One (1) Day License.** The One (1) Day License fee shall be Fifty (\$50.00) Dollars.

E. License Review and Recommendation.

Applications shall be referred by the City Clerk to the Police Department. The Police Department shall make a report, in writing, to the City Attorney as to any police record of the applicant, which may reflect upon good moral character or business responsibility. The City Attorney shall examine said record and make a recommendation to the Committee on Licenses/Permits based thereon as to whether the license shall be granted. The Committee on Licenses/Permits shall review all applications, any reports, the recommendation of the City Attorney and all other information before it. Said Committee shall recommend to the Common Council either the granting or denial of each application.

F. Regulations.

1. While dancing is in progress, the dance area shall have a minimum average illumination level of no less than 2 foot candles, measured at the floor level.

2. Good order shall be maintained at all times.

3. The management shall obey all reasonable orders or directions of any police officer or official dance supervisor.

4. Adequate parking accommodations may be deemed necessary by the Police Department and/or Licensing/Permit Committee for safety reasons; lighted parking facilities may be maintained so as to accommodate anticipated capacities.

5. The performance of any act, stunt, or dance by performers under the auspices of the management shall be given only on a stage, platform or floor which is separated by a railing or other device from the patrons so as to deter patrons from participating in any act, stunt or dance. Patrons may not tip the entertainers or performers by placing money or other articles of value in their costumes, or otherwise engage in physical contact with the entertainers or performers.

6. No license holder personally or through his agent or employee shall permit any patron to participate in any act, stunt, or dance with performers who are under the auspices or furnished by the management.

7. No patron shall participate in any act, stunt or dance by performers who appear under the auspices of the management.

8. **Lewd and Indecent Performance.** No license holder personally, or through his agent or employee, shall advertise or produce lewd, obscene or indecent performances.

9. **Regulation of Costumes.** The top portion of the costume worn by female entertainers shall be of nontransparent material. It must encircle the body and the areola of the breast must be completely covered. The lower portion of the costume must completely cover the mons pubis and the cleavage of the buttocks. Male entertainers must wear a nontransparent costume covering the cleavage of the buttocks and the genitals.

10. No patron shall participate in any amateur striptease contest or wet T- shirt or similar contest.

11. Annual License Framed, Posted.

a. **Frame.** An annual license shall be

enclosed in a frame having a transparent front which allows the license to be clearly read.

b. Display. All annual licenses under **Paragraph a.** shall be conspicuously displayed for public inspection at all times in the room or place where the activity subject to licensure is carried on.

G. Administrative Suspension. Upon written request made and filed with the City Clerk/Treasurer of the City of Kenosha by the Chief of Police, the Mayor may immediately suspend any license issued under this Section. A written order of administrative suspension shall be served upon the Licensee. All licensed activities shall remain suspended until completion of an administrative review hearing. Upon administrative suspension, an administrative review hearing shall be scheduled for license review within ten (10) days pursuant to the terms of **Subsection 10.07 H.** of this Ordinance.

H. Revocation of License.

1. Upon written charges made and filed with the City Clerk/Treasurer of Kenosha by the Chief of Police or any citizen, the Council may after a public hearing thereof revoke any license issued under this Section.

2. Conviction for the violation of any provision of the Wisconsin liquor laws, City of Kenosha Code of General Ordinances, Zoning Ordinance or sanitary codes shall be sufficient for the Council to revoke or suspend such license. In the event the license is revoked, no other Cabaret License shall be granted to such person for said location within twelve (12) months of the date of its revocation. A suspension shall not be for less than ten (10) days, nor more than ninety (90) days from the date of suspension. Any part of the money paid for any license so revoked or suspended shall be forfeited and not be refunded.

3. The Common Council may, after the hearing described in Subsection A., revoke such Cabaret License upon sufficient proof that the holder has permitted or suffered the licensed premises to be conducted by himself, his employees, patrons or others in violation of health regulations or in a disorderly or improper manner, or in violation of the laws of the State, or rules and regulations of the Common Council, or for any reasons set forth in Subsection 2.

I. Severability. Should any section, paragraph, sentence, clause or phrase of this Section be declared unconstitutional or invalid, or be repealed, it shall not effect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid or repealed.

10.075 OUTDOOR EXTENSION OF A "CLASS B", CLASS "B" AND/OR "CLASS C" LICENSED PREMISES

A. Permission Required. No holder of a "Class B", Class "B" and/or "Class C" License may operate under said license(s) in any outdoor area, whether or not said outdoor area was included in a description of the licensed premises prior to the effective date of this Ordinance, without first having obtained the permission of the Common Council therefor in accordance with the terms and conditions of this Ordinance. Any "Class B", Class "B" and/or "Class C" License Holder whose license contained an outdoor area within the description of the licensed premises on the effective date of this Ordinance shall have ninety (90) days after the effective date of this Ordinance in which to obtain permission hereunder as a prerequisite to the continued utilization of said outdoor area. However, should such permission be applied for and denied during said ninety (90) day period of time, the utilization of said outdoor area as part of the licensed premises shall, upon denial, cease forthwith. The granting of permission hereunder shall result in the outdoor area becoming a part of the description of the licensed premises, with said outdoor area also being subject to all State and City laws, rules, regulations, and lawful orders governing "Class B", Class "B" and/or "Class C" licensed premises.

B. Application. Application for an outdoor extension of a "Class B", Class "B" and/or "Class C" License shall be made to the City Clerk on forms furnished by the City Clerk. The application shall include a map describing the outdoor area sought to be included within the description of the licensed premises. In the event that such map is omitted and the "Class B", Class "B" and/or "Class C" License is granted and issued, said license shall not be deemed to include an outdoor area within the description of the licensed premises.

C. Definition Of "Outdoor Area" As Used Herein. "Outdoor Area" shall mean an area, whether or not enclosed by a roof, which is open to the elements, and which is not constructed for year round use.

D. Requirements.

1. The outdoor area sought to be included within the description of the Retail Class "B", "Class B" and/or "Class C" licensed premises shall not:

a. Lie within a single family residentially zoned area of the City;

b. Have boundaries within twenty-five (25') feet of any single family dwelling, unless the single family dwelling is zoned B-1 Neighborhood Business

District, B-2 Community Business District, B-3 Central Business District or B-4 Mixed-Use District, or unless the only single family dwelling within twenty-five (25') feet of said boundary is occupied by the applicant and/or his or her immediate family and no others. Said boundary shall be measured from the nearest edge of the outdoor area boundary line to the nearest edge of the building foundation of the habitable area of the single family dwelling. The building foundation area shall not include porches, decks, gazebos or other accessory-like structures.

2. Any or all of the prohibitions set forth in **§10.075 D.1.** and **D.3.** of the Code of General Ordinances may be waived by the Common Council if the area sought to be included within the description of the Class "B", "Class B" and/or "Class C" licensed premises is located wholly within an area in the City zoned institutional, if the applicant is operating as a restaurant as defined by **Section 5.046 A.9.** of the Code of General Ordinances, or if it is an Outdoor Dining Area authorized and subject to a permit under **Section 5.046** of the Code of General Ordinances. Any applicant for a waiver pursuant to this paragraph must file with his or her application a list of names and addresses of all property owners residing within twenty-five (25') feet of the boundaries of the outdoor area sought to be included within the description of the Class "B", "Class B" or "Class C" licensed premises. The application, along with the list of names, shall be filed with the Office of the City Clerk/Treasurer no later than fourteen (14) days before final action of the Common Council. Upon receipt of the Outdoor Extension Application and list of property owners within prescribed twenty-five (25') foot radius of subject licensed premises, the City Clerk/Treasurer shall forward said information to the Building Inspector for verification. Upon verification, the Building Inspector shall return said information to the City Clerk/Treasurer who will notify all property owners named on subject list. Said notice shall inform the addressee of dates, times and locations of the License/Permit Committee meeting and Common Council meeting where the matter of the application shall be discussed.

3. There shall be a fence surrounding the outdoor area sought to be within the description of the Class "B", "Class B" and/or "Class C" licensed premises. The fence shall not be less than forty-eight (48") inches high and not more than six (6') feet high. Any fence installed more than forty-eight (48) inches high shall be non-obscuring to permit a view of the outdoor area from the exterior. The Common Council, upon request, may waive that requirement where the licensed premises is operated as a restaurant within the meaning of Section 5.046 A.10 of the Code of General Ordinances.

4. The Director of Neighborhood Services and Inspections, or his or her designee shall investigate each application under this Section for compliance of this Section.

E. Restrictions Governing the Use of the Outdoor Area Included within the Description of a "Class B", Class "B" and/or "Class C" Licensed Premises.

1. Cabaret Licenses shall not be extended thereto, and no activities specified in **Section 10.07 A.** shall be permitted therein, except music shall be permitted from 10:00 A.M. to 9:00 P.M. and where the outdoor area does not have boundaries within three hundred feet (300') of any residentially zoned property from 10:00 A.M. to 10:00 P.M.

2. There shall be no amplified music or sound.

3. Any lighting of the outdoor area must be shielded so as not to shine directly onto adjoining property or create glare which is distracting to adjoining property owners or occupiers.

4. There shall be strict compliance with **Chapter XXIII** of the Code of General Ordinances, Noise Control. The "Class B", Class "B" and/or "Class C" licensee shall be responsible for any violation of **Chapter XXIII**, whether or not present upon the premises at the time of violation.

5. The "Class B", Class "B" and/or "Class C" Licensee shall be responsible for cleaning litter from abutting properties which was deposited by patrons.

6. Any separate bar operating within the outdoor area shall be operated in conformity with Chapter 125, Wisconsin Statutes, and **Chapter 10** of the City of Kenosha Code of General Ordinances.

7. The accumulation of more than fifty (50) demerit tracking points pursuant to Section 10.063 shall be a basis for denial, revocation or suspension of the Outdoor Area.

F. Closing Hours. Any outdoor area included within the description of a Class "B", "Class B" and/or "Class C" licensed premises pursuant to this Section shall be closed for business during the hours of 10:00 P.M. to 8:00 A.M.

The Common Council may, upon written application by the Licensee, limit the closing hours to 12:00 Midnight to 8:00 A.M.

If the licensed premises in the previous licensing term had its outdoor hours extended pursuant to the preceding paragraph, the Common Council may,

upon written application by the Licensee, limit the closing hours to 1:30 A.M. to 8:00 A.M.

If the closing hours are so limited, amplified music or sound otherwise permitted under **Section 10.075 E.2.** shall not be allowed after 10:00 P.M.

G. Fees.

1. One Time Processing Fee. At the time of initial application for permission hereunder, applicant shall pay to the City Clerk a one (1) time Processing Fee of One Hundred Fifty (\$150.00) Dollars.

H. Scope of Use. The Common Council, upon notice and hearing and following review and recommendation by the Committee on Licenses/Permits, may limit the scope of the use of the outdoor area included or sought to be included within the description of the "Class B", Class "B" and/or "Class C" licensed premises, either in the process of the original approval or after the initial approval of the application for an extension of a "Class B", Class "B" and/or "Class C" License to an outdoor area. The limitation imposed may provide for a limitation on the activities permissible within the outdoor area during part or all of the time which the outdoor area is permitted to be or remain open. After the initial granting of permission for an outdoor area being included within the description of "Class B", Class "B" and/or "Class C" licensed premises under this Ordinance, the Common Council, in order to protect the rights of abutting owners and occupiers of land, may limit the Closing Hours of outdoor areas to any hour between 8:00 P.M. and 10:00 P.M.

I. Temporary Permits. The Common Council may temporarily extend a "Class B", Class "B" and/or "Class C" License to an outdoor area for up to three (3) days in any calendar year and waive the requirement of Subsection **D.3.** of this Ordinance. There shall be a Fifty (\$50.00) Dollar processing fee for each such application.

J. Restriction Waiver. Upon written application to the City Clerk/Treasurer, the restrictions of Subsections **E.1.** and **E.2.** shall be waived if the application is filed seventy-two (72) hours prior to the date for which the waiver is sought, not including weekends and holidays, commencing at 8:00 A.M. of the day following the date at which a properly completed application was filed with the City Clerk/Treasurer; if the proposed waiver is limited to the hours of 10:00 A.M. to 10:00 P.M.; if the application is co-sponsored by the Alderperson of the district in which the license is located, or in the event that the Alderperson of the district is unavailable, co-sponsored by a member of the Committee on Licenses/Permits; and, if the Licensee/Applicant has

not been issued a municipal citation for a violation of **Chapter 10** of the Code of General Ordinances and/or Wisconsin Statutes Section 125 within the three hundred sixty-five (365) days preceding the application date. Should the applicant not meet the preceding qualifications, the application shall be referred to the Committee on Licenses/Permits for review. Said Committee shall recommend to the Common Council either the granting or denial of the application. Upon review, the Common Council may grant or deny the waiver application. Each application shall be made on forms furnished by the City Clerk/Treasurer and requires payment of a nonrefundable processing fee of Fifty (\$50.00) Dollars per application at the time the application is filed with the City Clerk/Treasurer. Licensees shall be limited to no more than four (4) days of waiver per licensing term. Additionally, in support of a charity event, nonprofit organization or bona fide club, Licensees may co-sponsor a waiver application. Co-sponsored applications shall be made on forms furnished by the City Clerk/Treasurer. Licensees shall be limited to no more than four (4) co-sponsored days of waiver per licensing term.

K. Violations. Violations of this Ordinance shall subject the Licensee to any combination of the following:

1. A penalty pursuant to **Section 10.08.**
2. A limitation in the scope of use or time pursuant to **Section 10.07 H.**
3. Imposition of demerit tracking points pursuant to **Section 10.063.**
4. Upon notice and after hearing before the Committee on Licenses/Permits, the Common Council may revoke the outdoor extension granted herein.

10.076 OUTDOOR CAFÉ OF A "CLASS B", CLASS "B" AND/OR "CLASS C" LICENSED PREMISES IN A PUBLIC RIGHT-OF-WAY

A. Definitions. The following terms and phrases, for purposes of this Ordinance, shall have the meanings provided.

1. **"Alcohol Beverages"** shall mean intoxicating, liquor, wine and/or fermented malt beverages.
2. **"Applicant"** shall mean a licensed operation owner who is applying for a new or renewal permit to operate an Outdoor Cafe Area in a public right-of-way.
3. **"Cafe Appurtenance(s)"** shall mean tables, chairs, planters, barriers, railings, walls, signs, benches, waste receptacles, umbrellas and heaters.
4. **"Licensed business"** shall mean a

business which holds a "Class B", Class "B" and/or "Class C" License.

5. "Outdoor Cafe Area" shall mean a designated area where cafe appurtenance(s) are located on a sidewalk within a public right-of-way and operated as an integral part of an adjacent licensed business for the purpose of outdoor consumption of alcohol beverages.

6. "Pedestrian Path" shall mean a continuous, obstruction-free sidewalk area, between the outside boundary of the Outdoor Cafe Area and any obstruction. Obstructions include, but are not limited to, street trees, landscaping, street lights, benches, fire hydrants, utility boxes, utility poles, bus stops, public art and waste receptacles.

7. "Permanent Improvements" shall mean privately owned improvements and/or personal property attached to the ground by cement footings, bolts or similar attachment device.

8. "Tavern" shall mean any building or room where, as the establishment's primary business, Alcohol Beverages are served or sold to transients or the general public, and where the sale of Alcohol Beverages account for more than fifty (50%) percent of the establishment's gross receipts in the B-1, B-2, B-3 or B-4 Zoning Districts.

B. Permission Required. No holder of a Class "B", Class "B" and/or "Class C" License may operate under said license(s) in any outdoor area located within a public right-of-way without first having obtained the permission of the Common Council in accordance with the terms and conditions of this Ordinance. Any expansion or change in ownership of the business adjacent to the Outdoor Cafe Area shall require a new application, fee, review and approval.

C. Application. Application for an Outdoor Cafe Area located within a public right-of-way for Cafe of a "Class B", Class "B" and/or "Class C" License shall be made to the City Clerk on forms furnished by the City Clerk

1. The application form shall include:

- a. Name, address and phone number of Applicant(s).
- b. Name, address and phone number of adjacent business.
- c. Whether the Outdoor Dining Area is the subject of Permanent Improvements.
- d. Nature of business.
- e. Maximum number of tables and chairs.
- f. Zoning District.
- g. Indemnity and Hold Harmless Agreement indicating the Applicant(s), in consideration of having received an Outdoor Cafe Area Permit, agrees to indemnify and hold harmless the City of

Kenosha, Wisconsin, and its officers, employees and agents against any and all losses, claims, damages, costs, expenses, judgments, awards, attorney fees, or settlements which they may incur as a result of the use of the public right-of-way for an Outdoor Cafe Area.

2. Additionally, the following items shall also be required to be submitted with the application:

a. An Operational Plan, including: hours, days and months of operation; planned capacity of Outdoor Cafe Area; and, a lighting and signage plan.

b. A scaled Site Plan indicating: the location and boundary of the proposed Outdoor Cafe Area; the dimension of the remaining width of the sidewalk outside the Outdoor Cafe Area; the dimension from the Outdoor Cafe Area to the curb or property line and all buildings; and, the location of awnings, and Cafe Appurtenances within the Outdoor Cafe Area. The plans shall also indicate: existing property lines; associated building(s) and entrance(s); adjacent building(s) and entrance(s); extent of sidewalk adjacent to business(es), face of curb, location of fire hydrants, bus shelters and/or stops, trees, planters, utility poles, signs, benches, light poles, waste receptacles, driveways, alleys, vaults and any other obstructions within the public right-of-way at proposed location of Outdoor Cafe Area and for an additional twenty (20') feet extending therefrom.

c. Photograph(s), a minimum of four (4") by six (6") inches, showing the entire sidewalk, with building facade proposed for the Outdoor Cafe Area.

d. Certificate of Liability Insurance, with Contractual Liability Endorsement, showing insurance in force and effect in the minimum amount of One Million (\$1,000,000.00) Dollar single limits, providing coverage for claims involving death, personal injury and property damage. The City of Kenosha shall be a named additional insured under the terms of this policy.

e. Where an Outdoor Cafe Area extends beyond the frontage of the Applicant's business, a written statement signed by the owner(s) and tenant(s) of an adjacent business fronting the street approving the placement of the Outdoor Cafe Area in front of their business.

f. Where permanent improvements are proposed, their specifications shall be attached.

g. A detailed description of all cafe appurtenance(s) to be located within the Outdoor Cafe Area, identifying the materials with which they are constructed together with photographs. They shall be of such construction and quality such that they are consistent with the business/neighborhood district.

D. Review and Approval. The City Clerk/Treasurer shall send the application to the Department of City Development, who shall forward a copy of the application to appropriate departments for review and written comment. Following the review period, the Department of City Development shall send a copy of the application and comments from City departments to the City Clerk/Treasurer to be forwarded to the Committee on Licenses/Permits for a recommendation to the Common Council. The Common Council shall grant or deny the application. The permit may be subject to reasonable terms and conditions.

Upon initial application and renewal of an Outdoor Cafe Area Permit, an Applicant shall not have their application approved when the Applicant's business has accumulated fifty (50) or more demerit points under Section 10.063 D. of the Code of General Ordinances.

E. Fee. The fee for an Outdoor Cafe Area Permit shall be paid to the City Clerk/Treasurer at the time of application submission. There shall be an initial review fee for an Outdoor Cafe of a "Class B", Class "B" or "Class C" License of One Hundred Fifty (\$150.00) Dollars. The initial review fee shall not be prorated. In addition, there shall be an annual renewal permit fee of One Hundred Fifty (\$150.00) Dollars for the permit term. Requests for renewals shall be made before the expiration of the existing permit. Expired Outdoor Cafe Area Permits are not subject to renewal.

F. Term. The permit term shall be from July 1 through June 30.

G. Transfer/Assignment. Permits shall not be transferable or assignable.

H. Renewal Application. The Applicant shall, on an annual basis, file a City authorized renewal application with the City Clerk/Treasurer prior to the term expiration. The following items shall be filed with the renewal form:

1. The annual renewal fee.
2. A valid Certificate of Liability Insurance.
3. Where an Outdoor Cafe Area extends

beyond the frontage of the Applicant's business, an updated written statement signed by the owner(s) and tenant(s) of an adjacent business fronting the street approving the continued placement of the Outdoor Cafe Area in front of their business.

Permits recommended for renewal shall be renewed by the City Clerk/Treasurer, upon satisfactory submittal of all required items.

I. Renewal, Nonrenewal, Revocation or Suspension. The City Clerk/Treasurer shall verify the number of demerit points the Applicant's business has accumulated under Section 10.063 D. of the Code of General Ordinances at the time of renewal. Businesses that have accumulated fifty (50) or more demerit points at the time of renewal shall be subject to suspension or revocation of an Outdoor Cafe Area Permit. Recommendation for nonrenewal, revocation or suspension shall be forwarded to the Committee on Licenses/Permits for action, at any time, following a hearing. The determination of the Committee may be appealed to the Common Council by filing a notice of appeal with the City Clerk/Treasurer within ten (10) days of the date of the hearing determination.

J. Conditions of Issuance of Permit.

1. Design Regulations.

a. A clear, continuous Pedestrian Path, parallel to the curb or adjacent property line, and not less than four (4') feet in width, shall be required for pedestrian circulation outside of the Outdoor Cafe Area, except where a reduction is permitted under Section M. In areas of heavy pedestrian traffic, a width greater than four (4') feet may be required.

b. All Cafe Appurtenances located in an Outdoor Cafe Area shall not be permanently attached to any sidewalk, curb, building, tree, post, public bench, waste receptacle or any other fixture within the public right-of-way. Cafe Appurtenances may be permanently attached when approved as a Permanent Improvement in the Outdoor Cafe Area.

c. Fixed or retractable awnings in compliance with Section 15.06 F. of the Zoning Ordinance are permitted over Outdoor Cafe Areas.

d. All cafe appurtenances located in an Outdoor Cafe Area must be approved by the Committee on Licenses/Permits prior to use.

2. Location Regulations.

a. Locations of Outdoor Cafe Areas shall be limited to areas where the sidewalk pavement width within the public right-of-way is at least ten (10') feet from the face of the curb to the building or property line, except where a reduction is permitted under Section M. A sidewalk partially located upon private property adjacent to the public right-of-way, may be counted toward the minimum ten (10') foot sidewalk width provided the required Pedestrian Path shall be entirely located within the public right-of-way.

b. An Outdoor Cafe Area may be located directly adjacent to and abutting the associated tavern, and/or located where it abuts the curb and is at least two (2') feet from the face of the curb. Outdoor Cafe Areas located adjacent to an

approved loading zone shall not be required to be located

two (2') feet from the face of the curb. In no case shall the Pedestrian Path be reduced to less than a minimum width of four (4') feet, except where a reduction is permitted under Section M.

c. The Outdoor Cafe Area may not include within its boundaries bus stops, fire hydrants or other facilities deemed necessary for public safety.

d. An Outdoor Cafe Area shall be located at least five (5') feet from fire hydrants, driveways, alleys, bus shelters and/or stops. In no case shall Cafe Appurtenances greater than three (3') feet in height be located within the fifteen (15') foot vision clearance triangle required under Section 2.06 of the Zoning Ordinance for the City of Kenosha, Wisconsin.

3. Operational Regulations.

a. All persons occupying the Outdoor Cafe Area shall be required to be seated when consuming food and/or beverages.

b. An Outdoor Cafe Area shall be an accessory use located adjacent to a licensed business and may extend in front of an adjacent business as permitted under Section C.2.a.

c. All Cafe Appurtenances shall be movable, unless approved as a Permanent Improvement, and arranged to adequately accommodate persons with disabilities. Cafe Appurtenances shall not impede building ingress and egress or encroach into the Pedestrian Path at any time. A clear area shall be maintained from all building entrances located adjacent to an Outdoor Cafe Area to the Pedestrian Path. The clear area shall have a minimum width of three (3') feet or a width equal to the width of the entrance, whichever is greater. Cafe Appurtenances shall be permitted to remain within the Outdoor Cafe Area at the close of business each day, unless determined to be a public safety hazard.

d. Umbrellas shall have a vertical clearance of at least seven (7') feet, and be adequately secured and anchored with a heavy ballast holder to prevent displacement by the wind.

e. Outdoor Cafe Areas shall provide adequate lighting in and around the designated area(s) at all times. Lighting fixtures shall be limited to fixtures attached to the building facade or upon private property. Battery operated lamps or candles placed on tables are permitted. Lighting shall not be a public or private nuisance.

f. Portable propane heaters are permitted within the Outdoor Cafe Area provided they are a minimum of eighty (80') inches in height and located at least five (5') feet from a building.

g. Electrical and propane infrared heaters, or similar heating devices approved for outdoor use, are permitted to be attached to building facades

and shall be installed according to the manufacturer's specifications and appropriate Building, Electrical and Mechanical Codes.

h. All food and drink preparation shall be performed in the affiliated business. No food or drink preparation or storage shall be permitted within the Outdoor Cafe Area.

i. Any Outdoor Cafe Area permitted pursuant to this Section shall be closed for business during the hours of 10:00 P.M. To 8:00 A.M. If the property on which a licensed premises is situated is zoned B-2, B-3 or B-4 and does not abut a property zoned RR-1, RR-2, RS-1, RS-2, RS-3, RD, RG-1, RG-2, RM-1, RM-2, or IP, the Common Council may, upon written application by the Licensee, limit the closing hours to 12:00 Midnight to 8:00 A.M. If the property on which a licensed premises is situated is zoned B-2, B-3 or B-4 and does not abut a property zoned RR-1, RR-2, RS-1, RS-2, RS-3, RD, AG-1, RG-2, RM-1, RM-2, or IP, and the Licensee in the previous licensing term had its outdoor hours extended pursuant to the preceding paragraph, the Common Council may, upon written application by the Licensee, limit the closing hours to 1:30 A.M. To 8:00 A.M.

j. Outdoor Consumption in Outdoor Cafe Areas shall be limited to the designated area(s) identified on the approved application.

k. The sidewalk area within and immediately surrounding the designated Outdoor Cafe Area shall be maintained in a clean, sanitary, neat and orderly appearance at all times. Litter shall be removed by the permit holder on a periodic basis during the day and at the close of business each day.

l. Outdoor Cafe Areas and Cafe Appurtenances shall be permitted to occupy sidewalks within the public right-of-way throughout the year; provided, however, snow and ice removal shall be the obligation and at the expense of the permit holder.

m. The approval of an Outdoor Cafe Area shall not be construed or deemed to create a vested interest in the public right-of-way. The permit holder shall remove or modify an Outdoor Cafe Area at their own expense whenever the City determines it necessary or desirable to modify the width of the street and/or public sidewalk.

n. Outdoor Cafe Areas shall be equipped with receptacles for cigarette waste. Cigarette waste shall be removed by the permit holder on a periodic basis during the day and at the close of business each day.

o. Server shall be within sight and sound of licensed operator.

K. Violations. Violations of this Ordinance shall subject the Licensee to any combination of the following:

1. A penalty pursuant to Section 10.076 O.
2. Written orders related to the scope and use of the Outdoor Cafe Area. Unless otherwise stated, orders are permanent, unless rescinded.
3. Imposition of demerit tracking points pursuant to Section 10.063.
4. Upon notice and after hearing before the Committee on Licenses/Permits, the Common Council may revoke the outdoor Cafe granted herein pursuant to Section 10.063 I. However, all Outdoor Appurtenances may be removed without prior notice or opportunity to be heard where it constitutes an immediate danger to the public health, safety or welfare, where it is not in conformance with representations made in the application, where the Certificate of Insurance was not provided or has expired, or where placed within any public right-of-way without a permit, contrary to the provisions of this Ordinance. In such cases, an opportunity for a post-removal hearing shall be provided following the foregoing provisions for an appeal.

L. Enforcement. The enforcement of this Ordinance shall be under the jurisdiction of the Department of Neighborhood Services and Inspections and Kenosha Police Department, who shall have the power to inspect Outdoor Dining Areas to determine compliance with this Ordinance. The Department of Neighborhood Services and Inspections shall be primarily responsible for enforcement during regular City Hall working hours. The Kenosha Police Department shall be primarily responsible for enforcement of this Ordinance during all other hours. Violations that are enforced by the Police Department shall be communicated to the Department of Neighborhood Services and Inspections.

Compliance with this Ordinance shall be obtained through written orders to the applicant, issued by the Department of Neighborhood Services and Inspections. Except in emergency situations, a minimum of ten (10) days shall be provided for compliance. Orders which are not timely complied with shall be subject to a suspension or revocation of an Outdoor Cafe Area Permit and/or a financial penalty, as specified in this Ordinance.

M. Special Exceptions. With respect to the following items, the Department of City Development shall have the discretion to recommend approval of alternative standards to the Committee on Licenses/Permits. The exceptions shall not present any hazard or danger to the public safety, health or welfare, and shall also meet the standards listed under each item.

1. Pedestrian Paths. The Pedestrian Path, as referenced in Section J.1.a., may be reduced in width, provided the reduction meets the following standards:

- a. The Pedestrian Path shall not be reduced to less than three (3') feet in width.
- b. The location of the Outdoor Cafe Area is not located adjacent to a major street.
- c. Pedestrian traffic is minimal in the location of the proposed Outdoor Cafe Area.
- d. The Outdoor Cafe Area is enclosed by a barrier, as specified in Section J.1.e., to separate the cafe area from the required Pedestrian Path.

2. Sidewalk Width Requirement. The required sidewalk width, as referenced in Section J.2.a., maybe reduced to less than ten (10') feet, provided the reduction meets the following standards:

- a. The sidewalk shall not be reduced to less than eight (8') feet in width.
- b. The location of the Outdoor Cafe Area is not located adjacent to a major street.
- c. The strict application of the required sidewalk width would result in denial of the application.

3. Paving of Lawn Park Areas. Paving of the lawn park area may be permitted when it meets the following standards:

- a. The paving has been approved by the Committee on Public Works.
- b. The paved lawn park area is conditioned upon removal and restoration of the lawn park area to prior conditions upon discontinuance of the Outdoor Cafe Area.

N. Other Codes. Permits issued hereunder are conditioned upon compliance with the Building, Health, Fire and Zoning Codes, and inspections, licenses, approvals and permits thereunder, which may be applicable.

O. Penalty. Any person, party, firm or corporation who violates any provision of this Ordinance shall, upon conviction, forfeit not more than Five Hundred (\$500.00) Dollars, plus the cost of prosecution. Each day of violation shall be deemed a separate offense. A person may be incarcerated in the County Jail for not more than ninety (90) days for the nonpayment of their forfeiture.

10.077 UNOBSTRUCTED VIEW OF INTERIOR PREMISES

"Class B" and/or Class "B" License Holders shall, during closing hours, keep glass windows and

doors clean and unobstructed so as to permit a view of the interior of the licensed premises from outside of the licensed premises. License Holders whose premises are without a glass window or door shall install one (1) glass window of at least one (1) square foot in size prior to May 1, 1985.

10.08 PENALTIES

A. Penalties for violating any provision in conformity with the Wisconsin Statutes shall be the same as provided for by said Statutes.

B. Persons violating any provision of this Chapter, authorized by Section 125.10, Wisconsin Statutes, shall not forfeit more than Five Hundred (\$500.00) Dollars per count, plus all applicable costs.

C. Each day a person is in violation may constitute a separate count.

D. A person may be incarcerated in the County Jail for not more than ninety (90) days for the nonpayment of their forfeiture.