



AN ORDINANCE: By Public Services & Safety Comm.
Re: Amending Code §4-106(c) & (d) relating to
Beergarden & Sidewalk Café regulations

ORDINANCE NO. 2011-8

Introduced: May 4, 2011

Committee/Commission Action:

RECOMMENDED FOR PASSAGE

AN ORDINANCE

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

Section 1. Section 4-106(c) of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

(c) *Requirements.* Outdoor premises approved under this section are subject to the following requirements:

(1) Outdoor premises may be permitted only on properties located in C-1 General Commercial, C-2 Central Business; PDD Planned Development; and I-1 Planned Business Center zoning districts as those terms are defined in the Chapter 26, Zoning, subject to the conditional site plan review requirement of Chapter 26.

(2) Outdoor premises located within 150 feet of a property zoned R-1 or R-2 shall not be located in any actual or required yard area that directly abuts an adjoining property used for residential purposes, unless the following additional conditions are met:

a. Provide a 20-foot buffer between outdoor premises and the adjoining lot containing the residential use;

b. Provide a privacy fence six feet in height ~~completely surrounding the outdoor premises~~ separating the commercial property from the residential property;

c. ~~Notwithstanding Subsection (c)(6) of this section, service at the outdoor premises shall conclude at 9:30 p.m. with the entire area vacated by 10:00 p.m., except for the owner and necessary employees for clean-up.~~ Prohibit amplified sound from any source.

(3) Outdoor premises shall be completely surrounded by an attractive wall, fence, or barrier at least four feet in height. The outdoor premises

shall be attached to the main business premises ~~and access to the outdoor premises shall only be allowed through the main building. The outdoor premises and~~ shall be constructed with a hard surface, such as decking material or paver brick. Openings in the outdoor area shall not require installation of gates, but in any opening where persons may pass from the outdoor area to an unlicensed area shall contain signs indicating that open intoxicants are prohibited beyond the licensed premises. In addition, signs shall be posted towards the area outside of the licensed outdoor area indicating that persons under age 21 are not permitted without legal guardian at least 21 years of age.

a. Temporary Wind Break. Between December 1 and March 31, windbreaks consisting of a minimum 3/16 inch thick clear acrylic material meeting all local and state codes and referenced standards may be installed on the perimeter of the outdoor premises. The Temporary Wind Break shall comply with the requirements of Wis. Stat. §101.123 so that the outdoor premise does not become an enclosed place as defined in Wis. Stat. §101.123(1)(ak) when the Temporary Wind Break is installed. No obstructions of any kind may be posted on the clear acrylic material.

(4) If the outdoor premises are located in the front yard of the licensed premises, it shall be completely surrounded by an attractive wall or fence (~~not height restricted~~ minimum height of three (3) feet). ~~Entry to the outdoor premises shall only occur through the main building of the premises.~~

(5) Service in the outdoor premises shall be limited to persons seated at tables or at a bar.

~~(6) All service in the outdoor premises (beverage and food) shall stop no later than 10:30 p.m., with the outdoor premises promptly vacated by 11:00 p.m. except for the owner and regular employees of the licensed premises and then only for the purpose of cleaning up.~~

~~(7) The outdoor premises shall only be used for serving food and alcohol and no part of said area shall be used for recreational activities, including, but not limited to, volleyball, horseshoes, darts, and softball. No music shall be broadcast directly into the outdoor area by means of outdoor speakers or jukeboxes, nor shall live music be permitted.~~

~~(8) Lighting of the area must be shielded and not be of intensity or brilliance to create glare which is distracting to adjoining property owners or can become a hazard or danger to vehicular traffic.~~

~~(9) Noise-Sound~~ from any source that is emitted from the outdoor area and measured at any border of the real property on which the licensed premises is located shall not exceed ~~85~~ 75 db dB(A) from 7:00 a.m. to 9:00 p.m. and ~~75~~ 65 db dB(A) from 9:00 p.m. until closing.

~~(10) Three or more noise complaints filed against the owner of an outdoor premises during a license period (July 1 to June 30), and verified by the Police Department, shall constitute sufficient grounds to revoke the outdoor premises permit granted under this section, subject to the hearing requirement under Section 4-96.~~

Section 2. Section 4-106(d) of the Code of Ordinances of the City of Neenah is amended by deleting the stricken language and adding the highlighted language to read as follows:

(d) *Sidewalk cafes.* Outdoor premises may be located on public sidewalks, subject to approval by the Common Council. ~~In addition to the requirements listed in Subsection (c) of this section,~~ s Sidewalk cafes shall comply with the following requirements:

(1) Sidewalk cafes may be permitted only on properties located in C-2 Central Business zoning districts as that term is defined in Chapter 26, Zoning. ~~Notwithstanding the requirements of Subsection (c)(4) of this section, the barrier surrounding the sidewalk cafe shall be no lower than two feet nor higher than three feet and shall be removed when the premises are closed for business.~~

(2) ~~Sidewalk cafes shall be limited to those licensees who derive more than 50 percent of their gross business revenue from the sale of food.~~ Sidewalk cafes shall be permitted only in those areas where a minimum of six (6) feet of sidewalk width will remain for safe passage of pedestrians and changes of direction of travel along the sidewalk will not exceed more than 30 degrees. In no instance shall sidewalk café furniture be located in such a manner so as to block access for the pedestrians or in a manner that the street furniture would constitute a tripping hazard or other hazard to pedestrians.

(3) Sidewalk cafes shall be located within the extended limits of the property to which the sidewalk café license is granted provided all other requirements can be met.

(4) Service in the sidewalk cafes shall be limited to persons seated at tables or at a bar. Appropriate signage must be affixed to each table notifying customers that alcoholic beverages may only be in possession while seated within the approved sidewalk café.

(5) Each sidewalk cafe serving alcohol beverages shall be responsible for policing the area of the sidewalk cafe to be sure that customers are of the legal drinking age and that alcohol beverages are not removed from the premises, or left unattended.

(6) In order to reduce or eliminate unsightly items, sidewalk cafe furniture must be kept in a state of good repair and condition and free from the following conditions: rust, chipped or peeling paint or finishes, delaminating or peeling materials, missing hardware, rotting materials, poor craftsmanship or construction that would cause the item to be structurally unsound and thereby pose a health or safety hazard, or any other condition that the Department of Community Development deems to be contrary to the purposes of promoting visually appealing and structurally sound sidewalk furniture.

~~(7)~~ (3) Liability insurance naming the City as an unrestricted additional insured on the sidewalk cafe owner's insurance policy for the licensed

sidewalk cafe site will be required, including insurance to cover liquor liability, to the extent specified by and on forms approved by the City Attorney's office.

(8) No sidewalk cafe furniture shall be placed, installed, used or maintained as follows:

(a) Within ten feet of any marked or unmarked crosswalk or access ramp.

(b) Within five feet of any fire hydrant.

(c) Within ten feet of any driveway.

(d) Within five feet ahead of and 15 feet to the rear of any sign marking a designated bus stop, measured along the edge of pavement.

(e) On or within two feet of any water valve, manhole, or other similar structure.

(f) Within the vision-clearance triangle as defined in the Neenah Zoning Code (Municipal Code Chapter 26).

(g) At any location that is closer to the center of the street than a location at the widest point of the street, measured at the curb line (i.e. bump outs).

(h) Windblown devices such as balloon, banners, or other similar item shall not be attached or otherwise made part of the sidewalk cafe furniture and no advertising shall be permitted on sidewalk cafe furniture.

(i) Sidewalk cafe furniture shall be stored indoors overnight and/or when the business is closed..

(j) Umbrellas, flags, heaters and such tall equipment/furniture shall not interfere with pedestrians below a height of seven feet on a sidewalk.

(k) Advertising on sidewalk cafe furniture is prohibited, except for the placement of the permittee's business name in an unobtrusive or incidental manner, not to exceed 2 inches in height by 8 inches in width (3 inches in height by 8 inches in width on umbrellas), with a limit of one per piece of sidewalk café furniture; incidental logos that are affixed by the manufacturer and do not advertise the permittee's business.

~~(4) — Each sidewalk cafe serving alcohol beverages shall be responsible for policing the area of the sidewalk cafe to be sure that customers are of the legal drinking age and that alcohol beverages are not removed from the premises.~~

Section 3. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 4. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Piergrossi/Hillstrom

Adopted: June 1, 2011

Approved: June 1, 2011

Published: June 6, 2011

Approved:



George Scherck, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
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