



211 Walnut Street  
Neenah, WI 54956

AN ORDINANCE: By Public Services and Safety Committee

Re: Creating an Ordinance to Provide For Covid- 19 Temporary Outdoor Seating Areas and Authorize City Staff Review and Approval of Temporary Outdoor Seating Areas and Expansion of Licensed Premises for Taverns and Restaurants

ORDINANCE NO. 2020-07

Introduced: Mayor Kaufert

Committee/Commission Action:

**RECOMMENDED FOR PASSAGE**

## AN ORDINANCE

WHEREAS, a novel strain of the coronavirus, named COVID- 19 spread throughout numerous countries including the United States during the late winter and spring of 2020 resulting in Federal, State and Local Declarations of Emergency and Emergency Orders that limited in person business transactions, closed some businesses, required changes to business operations and had for many businesses a dramatic economic impact; and

WHEREAS, the Common Council for the City of Neenah recognizes the need to continue to prevent exposure to and spread of the COVID-19 coronavirus by increasing social distancing during the COVID-19 pandemic and recovery period; and

WHEREAS, the Common Council recognizes that restaurants, bars and taverns within the City of Neenah may have particular difficulty providing recommended social distancing and operating profitably within the confines of their buildings and may wish to provide additional or alternative seating outdoors; and

WHEREAS, the Common Council for the City of Neenah wishes to provide temporary relief to restaurants, bars and taverns by adjusting certain local code requirements related to such businesses during the COVID- 19 pandemic and recovery period to allow those businesses to utilize parking areas, open spaces and adjacent properties during this limited period to maximize their service area; and

WHEREAS, the Common Council wishes to provide a temporary use permit that may be issued by city staff upon the applicant meeting certain criteria and avoiding the delay of council, board or commission approvals for this temporary use; and

WHEREAS, the Common Council wishes to authorize the Director of Community Development and Assessment to temporarily expand the " licensed premises" for establishments holding an alcohol beverage license for areas and during the period of time subject to the temporary use permits authorized by this ordinance.

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

**Section 1.** Notwithstanding any provision contained within the City of Neenah Municipal Code, during the period of emergency and recovery period in response to COVID- 19 Coronavirus, and for the period ending no later than October 1, 2020, the appropriate city staff are hereby authorized and directed to implement a program for issuance of Temporary Use Permits as provided in the attachment to this ordinance. The Temporary Use Permits Ordinance is adopted as follows:

**COVID-19 TEMPORARY OUTDOOR SERVICE/BEER GARDENS  
City of Neenah, Wisconsin**

- I. *Introduction and definitions.* No holder of a "Class B", Class "B" and/or "Class C" license or any license or permit issued by the State of Wisconsin Wis. Stats. ch. 125 may operate under said license(s) in any outdoor area, whether or not said outdoor area was included in a description of the premises, without first having obtained the permission of the Department of Community Development subject to the conditions of this ordinance. Approval under this subsection by the Department of Community Development shall result in the outdoor area becoming a part of the description of the 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" premises, or any license or permit issued by the State of Wisconsin pursuant to Wis. Stats. ch. 125. As used in this subsection:
  - A. *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 yearround use.
  - B. *Outdoor premises* shall mean a licensed premises located in an outdoor area.
- II. *Application.* Application for a temporary outdoor extension of a "Class B", Class "B" and/or "Class C" license shall be made to the Department of Community Development on forms furnished by the Department. 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.

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

- A. 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.
- B. 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:
  - (1.) Provide a 20-foot buffer between outdoor premises and the adjoining lot containing the residential use;
  - (2.) Provide a privacy fence (or similar sight and sound barrier) six feet in height separating the commercial property from the residential property;
  - (3.) Prohibit amplified sound from any source.
- C. Outdoor premises shall be completely surrounded by vertical demarcation (fence, rope, chain, etc.) at least three feet in height. The outdoor premises 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.
- D. Street furniture located in the Outdoor Premises shall be arranged so as to encourage observance of social distancing guidelines.
- E. Service in the outdoor premises shall be limited to persons seated at tables or at a bar.
- F. 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.
- G. 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.

- H. 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 75 dB(A) from 7:00 a.m. to 9:00 p.m. and 65 dB(A) from 9:00 p.m. until closing.
  - I. Three or more noise complaints filed against the owner of an outdoor premises during a license period, and verified by objective measurement by decibel meter, shall constitute sufficient grounds to revoke the outdoor premises permit granted under this section, subject to the hearing requirement under Section 3.
- IV. *Sidewalk cafés*. Outdoor premises may be located on public sidewalks, subject to approval by the Community Development Department. Sidewalk cafés shall comply with the following requirements:
- A. Sidewalk cafés may be permitted only on properties located in C-2 Central Business zoning districts as that term is defined in Chapter 26, Zoning.
  - B. Sidewalk cafés shall be permitted only in those areas where a minimum of six 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.
  - C. Street furniture located in the Sidewalk Café shall be arranged so as to encourage observance of social distancing guidelines.
  - D. Sidewalk cafés 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. Sidewalk cafés can be located within the extended property limits of properties directly abutting the licensed business provided express written approval is provided from the adjacent property owner and/or owner.
  - E. Service in the sidewalk cafés 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.
  - F. Each sidewalk café serving alcohol beverages shall be responsible for policing the area of the sidewalk café to be sure that customers are of the legal drinking age and that alcohol beverages are not removed from the premises, or left unattended.
  - G. In order to reduce or eliminate unsightly items, sidewalk café 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.

- H. Liability insurance naming the City as an unrestricted additional insured on the sidewalk café owner's insurance policy for the licensed sidewalk café site will be required, including insurance to cover liquor liability, to the extent specified by and on forms approved by the City Attorney's Office.
- I. Sidewalk café furniture shall be placed, installed, used or maintained subject to the following conditions:
  - (1.) Not closer than ten feet of any marked or unmarked crosswalk or access ramp.
  - (2.) Not closer than five feet of any fire hydrant.
  - (3.) Not closer than ten feet of any driveway.
  - (4.) Not closer than five feet ahead of and 15 feet to the rear of any sign marking a designated bus stop, measured along the edge of pavement.
  - (5.) On or within two feet of any water valve, manhole, or other similar structure.
  - (6.) Within the vision-clearance triangle as defined in the Neenah Zoning Code (Municipal Code Chapter 26).
  - (7.) 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).
  - (8.) Windblown devices such as balloon, banners, or other similar item shall not be attached or otherwise made part of the sidewalk café furniture and no advertising shall be permitted on sidewalk café furniture.
  - (9.) Sidewalk café furniture shall be stored indoors overnight and/or when the business is closed.
  - (10.) Umbrellas, flags, heaters and such tall equipment/furniture shall not interfere with pedestrians below a height of seven feet on a sidewalk.

- (11.) Advertising on sidewalk café furniture is prohibited, except for the placement of the permittee's business name in an unobtrusive or incidental manner, not to exceed two inches in height by eight inches in width (three inches in height by eight 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.

V. Temporary Nature of Extension. The application for a temporary extension of premises authorized by this ordinance shall contain a statement that the applicant acknowledges the temporary nature of the permit and agrees to remove the extension granted herein on or before October 1, 2020.

**Section 2. Enforcement.** The Director of Community Development and Assessment or designee shall be empowered to enforce the terms of this ordinance through the issuance of citations, orders, cease and desist orders, or permit suspension and/or summary permit revocation in the event of a serious violation exposing the public to a threat of injury or illness. Suspension or permit revocation shall not be issued except following notice and an opportunity to cure, said notice period not to exceed 48 hours.

**Section 3. Appeals of Determinations under this Ordinance.** Any party aggrieved by the determination of the Director may appeal such determinations in accordance with the provisions of Wis. Stat. Ch. 68, except that due to the short term nature of the permits issued hereunder, the time periods specified in Wis. Stat. Ch. 68 shall be reduced by two-thirds (e.g., 30 days shall be reduced to 10 days, 15 days shall be reduced to five (5) days), but in no event, less than five (5) business days.

**Section 4. 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 5. Suspension of Conflicting Provisions of Municipal Code.** All ordinances or parts of ordinances and resolutions in conflict herewith are hereby suspended during the effective period of this Ordinance. All provisions of the City Ordinances, Council Rules and General Rules of Order not specifically altered by these temporary rules shall remain in effect.

**Section 6. No codification.** Due to the temporary nature of this Ordinance, it shall not be codified in the Neenah Code of Ordinances.

**Section 7. Effective and Sunset Dates.** This ordinance shall take effect immediately and shall automatically repeal on October 1, 2020.

Moved by: Steele/Kunz

Adopted: May 26, 2020

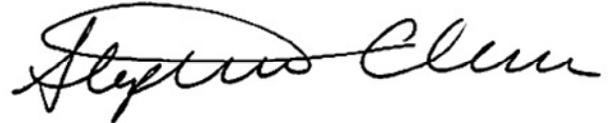
Published: June 3, 2020

Approved:



Dean R. Kaufert, Mayor

Attest:



Stephanie A. Cheslock, Deputy City Clerk

THIS INSTRUMENT WAS DRAFTED BY:  
City Attorney James G. Godlewski  
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Neenah, WI 54956  
State Bar No. 1005210