

* * * NOTE CHANGE IN DATE * * *
AGENDA
PUBLIC SAFETY & WELFARE COMMITTEE MEETING
Wednesday, April 27, 2011
Kenosha Municipal Building Room 202
5:00 pm

Chairman: Jesse L. Downing
Vice Chair: Anthony Kennedy
Aldermen: Michael J. Orth
Lawrence Green
Rocco J. LaMacchia, Sr.

Call to Order
Roll Call

A. APPROVAL OF MINUTES

A-1. Approval of minutes of regular meeting held on April 11, 2011.

C. REFERRED TO COMMISSION

C-1. Proposed Ordinance To Repeal and Recreate Section 10.076 in its Entirety as Section 10.077 Regarding Unobstructed View of Interior Premises and to Create Section 10.076 Entitled Outdoor Cafe of a "Class B", Class "B" and/or "Class C" Licensed Premises in a Public Right-of-Way. *(Licensing/Permit-Ayes 4: Noes 0)*

C-2. Reschedule May 30, 2011 meeting *(Memorial Day)*.

C-3. Proposed Ordinance To Renumber Section 4.08 Regarding Penalties as Section 4.09 and To Create Section 4.08 Regarding Disclosure of Health Care Costs. *(No recommendations at the April 11, 2011 meeting)*

C-4. Election of Committee Chairman 2011/2012.

C-5. Election of Committee Vice Chair 2011/2012.

CITIZEN COMMENTS/ALDERMAN COMMENTS/OTHER BUSINESS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE PLEASE CALL 653-4052 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

PUBLIC SAFETY & WELFARE COMMITTEE
- MINUTES -
Monday, April 11, 2011

The regular meeting of the Public Safety & Welfare Committee was held on Monday, April 11, 2011 in Room 202 of the Kenosha Municipal Building. The meeting was called to order at 5:30 pm. The following members were present: Chairman Downing, Alderman Kennedy, Orth, and LaMacchia. Alderman Green arrived during discussion of item C-2. Staff members in attendance were Chief Thomsen.

It was moved by Alderman motion, seconded by Alderman seconded, to approve the minutes of the meeting held on Monday, March 28, 2011. Motion passed 5-0.

- C-1. Proposed Ordinance To Repeal and Recreate Subsection 3.05.A. *(of the Code of General Ordinances)* Entitled "Duties". *(Also referred to Finance Committee)*
Public Hearing: Alderman Nudo, 11th District, was present to answer any questions. Alderman Nudo told the committee that he has spoken to City Administration and the City Attorney on the legality of inspection fees.
Staff/Alderman: Chief Thomsen was present to answer any questions. Alderman Kennedy asked about other departments inspections and if there is a loss of productivity. Alderman LaMacchia asked how the fees can be illegal if other cities do it. Alderman Orth asked Chief Thomsen if he could give the cost to provide the inspection service as he knows it is done on down time.
It was moved by Alderman Kennedy, seconded by Alderman Orth, to defer for 120 days to request Chief Thomsen to give the cost of inspections based on categories discussed during budget and have a Fee Schedule resolution. Motion passed 4-0.
- C-2. Proposed Ordinance To Renumber Section 4.08 Regarding Penalties as Section 4.09 and To Create Section 4.08 *(of the Code of General Ordinances)* Regarding Disclosure of Health Care Costs.
Public Hearing: Alderman Nudo, 11th District, was present to answer any questions.
Staff/Alderman: Chief Thomsen asked for an exemption for ambulance service. Alderman Orth said it would be impossible to list all fees, but thought routine costs could be provided. Alderman LaMacchia thinks that there are too many variables to list fees. Chairman Downing said that this is a start.
It was moved by Alderman Kennedy to defer for 90 days. Motion failed for lack of a second. It was moved by Alderman Orth, seconded by Alderman Kennedy, to send ordinance on it's way with no recommendation and to have the item on the next meeting agenda to vote on a recommendation. Motion passed 3-0, with Alderman LaMacchia abstaining.
- C-3. Proposed Ordinance To Repeal and Recreate Subsection 11.023 *(of the Code of General Ordinances)* Regarding Electronic Communication.
Public Hearing: Alderman Nudo, 11th District, was present to answer any questions. Alderman Ruffalo, 2nd District, asked to have his name added as a sponsor.
Staff/Alderman: Alderman Orth also asked to be a co-sponsor, as a teacher he has seen apps that allow this to happen.
It was moved by Alderman Orth, seconded by Alderman Green, to approve. Motion passed 4-1.

ALDERMAN COMMENTS: Alderman Green commented that with the nicer weather kids are out and to be aware.

ADJOURNMENT - *There being no further business to come before the Public Safety & Welfare Committee, it was moved, seconded and unanimously carried to adjourn at 6:55 pm.*

DRAFT 08.12.10

03.15.11

03.21.11

BY: ALDERPERSON THEODORE RUFFALO

TO REPEAL AND RECREATE SECTION 10.076 IN ITS ENTIRETY AS SECTION 10.077 REGARDING UNOBSTRUCTED VIEW OF INTERIOR PREMISES AND TO CREATE SECTION 10.076 OF THE CODE OF GENERAL ORDINANCES ENTITLED OUTDOOR CAFE OF A "CLASS B", CLASS "B" AND/OR "CLASS C" LICENSED PREMISES IN A PUBLIC RIGHT-OF-WAY

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

Section One: To repeal and recreate Section 10.076 in its entirety as Section

10.077 of the Code of General Ordinances for the City of Kenosha, Wisconsin, as follows:

~~10.076~~ 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.

Section Two: To create Section 10.076 of the Code of General Ordinances for the

City of Kenosha, Wisconsin, entitled Outdoor Cafe of a "Class B", Class "B" and/or "Class C" Licensed

Premises in a Public Right-Of-Way, as follows:

10.076 OUTDOOR CAFE 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. ~~An affidavit verifying the percentage of gross receipts from the sale of Alcohol Beverages during the past City license year (July 1 to June 30). The affidavit shall be verified under oath in a statement provided by an accountant or bookkeeper.~~ 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. ~~An affidavit verifying percentage of gross receipts from Alcohol Beverage sales during the past City license year (July 1 to June 30). The affidavit shall be verified under oath in a statement provided by an accountant or bookkeeper.~~ 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 ~~tavern~~ **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.

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

1. A penalty pursuant to Section 10.08. .076 O.

2. ~~A limitation in the scope of use or time pursuant to Section 10.07 H.~~ 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.

Section Three: This Ordinance shall become effective upon passage and publication.

ATTEST: _____ City Clerk

APPROVED: _____ Mayor

Passed:

Published:

Drafted By:
MATTHEW A. KNIGHT
Deputy City Attorney

ORDINANCE NO. _____

BY: ALDERPERSON THEODORE RUFFALO

TO REPEAL AND RECREATE SECTION 10.076 IN ITS ENTIRETY AS SECTION 10.077 REGARDING UNOBSTRUCTED VIEW OF INTERIOR PREMISES AND TO CREATE SECTION 10.076 OF THE CODE OF GENERAL ORDINANCES ENTITLED OUTDOOR CAFE OF A "CLASS B", CLASS "B" AND/OR "CLASS C" LICENSED PREMISES IN A PUBLIC RIGHT-OF-WAY

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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.

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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.

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.

Section Three:

This Ordinance shall become effective upon passage and

publication.

ATTEST: _____ City Clerk

APPROVED: _____ Mayor

Passed:

Published:

Drafted By:
MATTHEW A. KNIGHT
Deputy City Attorney

ORDINANCE NO. _____

BY: ALDERMAN ANTHONY NUDO

TO RENUMBER SECTION 4.08 REGARDING PENALTIES AS SECTION 4.09 AND TO CREATE SECTION 4.08 OF THE CODE OF GENERAL ORDINANCES REGARDING DISCLOSURE OF HEALTH CARE COSTS

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

Section One: Section 4.08 of the Code of General Ordinances for the City of Kenosha,

Wisconsin, is hereby renumbered as Section 4.09.

4.084.09 PENALTIES

Section Two: Section 4.08 of the Code of General Ordinances for the City of Kenosha,

Wisconsin is hereby created as follows:

4.08 DISCLOSURE OF HEALTH CARE COSTS

The purpose of this section is to reduce the cost of Health Care by encouraging Consumer choice and business competition through the requirement of disclosing the cost of services and products offered by Health Care Providers to Consumers.

A. Definitions. Except as otherwise provided, the definitions of the terms in this section are as follows:

- 1. **City** means the City of Kenosha, Wisconsin.
- 2. **Consumer** means a person that receives Health Care from a Health Care Provider.
- 3. **Health Care** means the activity of identifying, preventing, and/or treating illness or disability,

whether mental or physical.

4. **Health Care Provider** means a person, organization, company, party, firm, corporation, or other entity which engages in providing Health Care to Consumers for a fee.

5. **Medical Emergency** means a sudden, urgent, unexpected occurrence requiring immediate medical attention including, but not limited to severe bleeding, severe pain, temporary incapacitation, or any instance where severe bodily harm or death could result in the absence of immediate medical attention.

B. Disclosure of cost required. Health Care Providers shall disclose, in writing, the cost of services or products offered to Consumers prior to administering Health Care, and shall disclose any variations of cost to different Consumers or others that pay on behalf of Consumers without request or demand whatsoever from the Consumer. A posted menu of the various Health Care services or products offered shall be sufficient for compliance with this provision provided that said menu is conspicuously posted at the point of sale and a copy of such can be provided to the Consumer on demand.

C. Exemption. Medical Emergencies are exempt from the regulations of this section.

D. Inspection and Enforcement. The City Police Department and City Fire Department shall have the authority to enforce the provisions of this section, including the power to enter locations to ensure compliance with this ordinance. Consumers may deliver written or verbal complaints of violations of this section to the City Police Department.

E. Penalties. Any person, organization, company, party, firm, corporation, or other entity violating any provision of this section shall, upon conviction thereof, be punished by payment of a forfeiture not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000) per occurrence, and in default of such payment of forfeiture and costs, shall be committed to the County Jail for a period of not more than one hundred eighty (180) days.

Section Three: This Ordinance shall become effective on November 1, 2011 after passage and publication.

ATTEST: _____ City Clerk

APPROVED: _____ Mayor

Passed:

Published:

Drafted By:
ANTHONY NUDO
11TH DISTRICT ALDERMAN
CITY OF KENOSHA, STATE OF WISCONSIN

ORDINANCE NO. _____

BY: ALDERMAN ANTHONY NUDO

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ATTEST: _____ City Clerk

APPROVED: _____ Mayor

Passed:

Published:

Drafted By:
ANTHONY NUDO
11TH DISTRICT ALDERMAN
CITY OF KENOSHA, STATE OF WISCONSIN