



License Committee

Regular Meeting

335 South Broadway
De Pere, WI 54115
<http://www.de-pere.org>

Agenda

Tuesday, August 21, 2018

6:30 PM

De Pere City Hall Riverview Room

Pursuant to Wisconsin Statutes 19.84, Notice is hereby given to the public that a meeting of the **License Committee** of the City of De Pere will be held on **August 21, 2018** at **6:30 PM** in the **De Pere City Hall Riverview Room, 335 S. Broadway, De Pere, WI 54115**.

Call to Order

1. Roll Call
2. Approval of the Minutes of the August 7, 2018 License Committee Meeting.
3. Public Comment Period and other Announcements.
4. Operator License Applications.*
5. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for Ray Ray LLC (DBA Artless Bastard), 353 Main Av Suite A. Submitted by Ray Ray LLC, Agent: Timothy J. Jelinski, De Pere, WI.*
6. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for McLanes Bowl LLC (DBA The Fox y Moo), 132 S. Broadway. Submitted by McLanes Bowl LLC, Agent: Bryan J. Kaster, Green Bay, WI.*
7. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for McLanes Bowl LLC (DBA The Fox y Moo), 132 S. Broadway. Submitted by McLanes Bowl LLC, Agent: Bryan J. Kaster, Green Bay, WI.*
8. Consideration of Walmart's Request to Expand Licensed Premises for Curbside Pickup for Alcohol Sales and Consideration of Proposed Amendment to Chapter 7, De Pere Municipal Code.
9. Adjournment.

Respectfully Submitted,

Shana Ledvina, Clerk - Treasurer

Any person wishing to attend this meeting who, because of disability, requires special accommodations should contact the Clerk-Treasurer's office at 339-4050 by Noon, the previous day so that arrangements can be made.

***Items with an asterisk require City Council approval.**

Agenda Sent To:

Alderspersons
City Administrator
Mayor
Department Heads
TV, Newspapers & Radio Stations
Kress Family Library

De Pere Chamber of Commerce
Charles P. Kline
Morgan R. Martens
Kaitlyn O. Morris
Jabesh N. Patel
Christy L. Anderson
Danielle M. Beining
Tessa M. Christjohn
Thomas G. Ives
Robb C. Johnson
Kelly A. Lichon
Abigail E. Murphy
Nicholas G. Paustian
Ruth M. Weissgerber
Timothy J. Jelinski
Bryan J. Kaster

City of De Pere, Wisconsin



Request For License Committee Action

MEETING DATE: August 21, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Approval of the Minutes of the August 7, 2018 License Committee Meeting.

ATTACHMENTS:

- 8-07-18 License Committee Minutes (DOC)



License Committee

Regular Meeting

335 South Broadway
De Pere, WI 54115
<http://www.de-pere.org>

Draft Minutes

Tuesday, August 7, 2018

6:45 PM

De Pere City Hall Riverview Room

1. Call to Order: The meeting was called to order at 6:45 PM by Alderperson Boyd.

Attendee Name	Title	Status
James Boyd	Alderperson	Present
Dan Carpenter	Alderperson	Present
Jonathon Hansen	Alderperson	Present

2. Approval of the Minutes of the July 17, 2018 License Committee Meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Dan Carpenter, Alderperson
SECONDER:	Jonathon Hansen, Alderperson
AYES:	James Boyd, Dan Carpenter, Jonathon Hansen

3. Public Comment Period and other Announcements. None.

4. Operator License Applications.*

Previously Tabled Operator License Applications were presented. Alderperson Boyd moved, seconded by Alderperson Carpenter to open the meeting. Upon vote, motion carried unanimously.

Applicant #1, Elizabeth R. Doro, was present. The applicant answered the Committee's questions. Applicant #2, Angel M. Duval, was present. The applicant answered the Committee's questions.

Applicant #3, Richard L. Hendricks, was present. Ald. Boyd explained that his 2017 conviction for underage sale was not listed on the application. The applicant explained that he did not catch it the first time.

Application #4 for Andrew W. Kane was presented. The applicant answered the Committee's questions. Application #7 for Amy C. Pagenkopf was presented. The applicant answered the Committee's questions. Her Parole Officer sent an email to Chief Beiderwieden regarding her application and noted that since she didn't have a work location listed on her application, she could not receive the operator's license. He stated that if she lists a location and resubmits the application, he will evaluate it at that time.

Alderperson Boyd read the email from the Probation Officer to Chief Beiderwieden.

Application #8 for Amanda K. Wydeven was presented. The applicant answered the Committee's questions. Alderperson Boyd moved, seconded by Alderperson Carpenter to close the meeting. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Hansen to approve Previously Tabled Operator License Applications #1-3, 4 and 8. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Hansen to table Previously Tabled Operator License Application #6. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Boyd to approve Previously Tabled Operator License Application #5 if the applicant's arrest is still pending. Upon vote, motion carried unanimously. Alderperson Carpenter moved, seconded by Alderperson Boyd to table Previously Tabled Operator License Application #7 until a work location is identified by the applicant. Upon vote, motion carried unanimously.

Attachment: 8-07-18 License Committee Minutes (7277 : Approval of the Minutes of the August 7, 2018 License Committee Meeting.)

Alderson Carpenter moved, seconded by Alderson Hansen to approve Temporary Operator License Applications #1-5. Upon vote, motion carried unanimously.

Alderson Carpenter moved, seconded by Alderson Boyd to open the meeting. Upon vote, motion carried unanimously. Applicant Alec Fowler asked if he needed to come to the meetings each year for his Temporary Operator License Application. Alderson Boyd instructed him to come back only if he receives violations between this approval and the next. Alderson Carpenter moved, seconded by Alderson Boyd to close the meeting. Upon vote, motion carried unanimously.

Alderson Boyd moved, seconded by Alderson Hansen to approve Renewal Operator License Applications #1-6. Upon vote, motion carried unanimously.

Alderson Boyd moved, seconded by Alderson Carpenter to open the meeting. New Operator License Applicant #2, Nichole E. Culp, was present and answered the Committee's questions. Alderson Carpenter moved, seconded by Alderson Hansen to close the meeting. Upon vote, motion carried unanimously. Alderson Carpenter moved, seconded by Alderson Hansen to approve Operator License Applications #1-5, 7-8, and 10-17. Upon vote, motion carried unanimously. Alderson Carpenter moved, seconded by Alderson Hansen to table Operator License Applications #6 and 9. Upon vote, motion carried unanimously.

5. Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for Ray Ray LLC (DBA Artless Bastard), 353 Main Av Suite A. Submitted by Ray Ray LLC, Agent: Timothy J. Jelinski, De Pere, WI.

Alderson Carpenter moved, seconded by Alderson Hansen to consider the ordinance change. Upon vote, motion carried unanimously.

6. Application for a Special Permit Allowing Consumption of Alcohol Beverages on Public Ways. Submitted by Definitely De Pere for Art Walk on Friday, August 10 from 4:00 p.m. - 8:00 p.m.*

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jonathon Hansen, Alderson
SECONDER:	Dan Carpenter, Alderson
AYES:	James Boyd, Dan Carpenter, Jonathon Hansen

7. Review Changes to State Law Concerning Use of Arrest and Conviction Records in Licensing Decisions (tabled at the July 17, 2018 License Committee Meeting).

This item was considered after Agenda Item #2.

City Attorney Judy Schmidt-Lehman explained the changes to state law on August 1. Arrest records can no longer be used as the sole reason to deny a license unless the arrest is due to a crime that caused great bodily harm or crimes against children that are of a violent nature. Pending arrests for alcohol related offenses can no longer be used. Moving forward, reasons why a conviction record would affect the denial of a license should be noted in the minutes and in the letter to the applicant, and the applicant will have the opportunity after denial to prove that they have been substantially rehabilitated. Discussion followed.

8. Adjournment.

Alderson Boyd moved, seconded by Alderson Hansen to adjourn the meeting at 7:22 p.m. Upon vote, motion carried unanimously.

Respectfully submitted,

Shana Ledvina, Clerk-Treasurer

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 21, 2018
DEPARTMENT: City Clerk-Treasurer
FROM: Shana Ledvina
SUBJECT: Operator License Applications.*

ATTACHMENTS:

- 08-21-18 (PDF)

CITY OF DE PERE
License Committee - August 21, 2018

Previously Tabled Operator License Applications	
1	KLINE, CHARLES P.
2	MARTENS, MORGAN R.
3	MORRIS, KAITLYN O.
4	PATEL, JABESH N.

New Operator License Applications	
1	ANDERSON, CHRISTY L.
2	BEINING, DANIELLE M.
3	CHRISTJOHN, TESSA M.
4	IVES, THOMAS G.
5	JOHNSON, ROBB C.
6	LICHON, KELLY A.
7	MURPHY, ABIGAIL E.
8	PAUSTIAN, NICHOLAS G.
9	WEISSGERBER, RUTH M.

City of De Pere, Wisconsin

**Request For License Committee Action**

MEETING DATE: August 21, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for Ray Ray LLC (DBA Artless Bastard), 353 Main Av Suite A. Submitted by Ray Ray LLC, Agent: Timothy J. Jelinski, De Pere, WI.*

This item was tabled at the August 7, 2018 meeting.

ATTACHMENTS:

- Artless Bastard_7-3-18 (PDF)
- Artless Bastard_7-3-18_Correspondence (PDF)
- License Memo Recreation Premises (PDF)
- Ord18-XX Recreation Premises (DOCX)

Original Alcohol Beverage Retail License Application

Submit to municipal clerk.

For the license period beginning July 5 20 18 ;
ending June 30 20 19 ;TO THE GOVERNING BODY of the: ☐ Town of
☐ Village of } De Pere
☒ City ofCounty of BROWN Aldermanic Dist. No. _____ (if required by ordinance)

1. The named
- ☐
- INDIVIDUAL
- ☐
- PARTNERSHIP
- ☒
- LIMITED LIABILITY COMPANY
-
- ☐
- CORPORATION/NONPROFIT ORGANIZATION

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name):

RAY RAY LLC dba artlessbastard

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

Title	Name (Last, First, M.I.)	Home Address	Post Office & Zip Code
President/Member	<u>Sole member</u>	<u>JELINSKI, Timothy J.</u>	<u>[REDACTED]</u>
Vice President/Member			
Secretary/Member			
Treasurer/Member			
Agent	<u>Timothy J Jelinski</u>		
Directors/Managers			

3. Trade Name
- artlessbastard
- Business Phone Number
- 920-370-5221

4. Address of Premises
- 353 MAIN AVE, SUITE A, De Pere 54115
- Post Office & Zip Code
- De Pere 54115

5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period?
- Completed June 2018
- ☐
- Yes
- ☒
- No

6. Is the applicant an employee or agent of, or acting on behalf of anyone except the named applicant?
- ☐
- Yes
- ☒
- No

7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business?
- ☐
- Yes
- ☒
- No

8. (a) Corporate/limited liability company applicants only: Insert state
- WI
- and date
- 01-2018
- of registration.
- ☐
- Yes
- ☒
- No

- (b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company?
- ☐
- Yes
- ☒
- No

- (c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin?
- ☐
- Yes
- ☒
- No

(NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)

9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.)
- ART Gallery, one large open space, one floor, one big

10. Legal description (omit if street address is given above):
- STORAGE ROOM, BASEMENT

11. (a) Was this premises licensed for the sale of liquor or beer during the past license year?
- ☒
- Yes
- ☐
- No

- (b) If yes, under what name was license issued?
- GREEN ROOM THEATRE LLC

12. Does the applicant understand they must register as a Retail Beverage Alcohol Dealer with the federal government, Alcohol and Tobacco Tax and Trade Bureau (TTB) by filing (TTB form 5630.5d) before beginning business? [phone 1-800-937-8864]
- ☒
- Yes
- ☐
- No

13. Does the applicant understand they must hold a Wisconsin Seller's Permit? [phone (608) 266-2776]
- ☒
- Yes
- ☐
- No

14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs?
- ☒
- Yes
- ☐
- No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.) Any lack access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME

this 11th day of June, 20 18Carey [Signature]
(Clerk/Notary Public)My commission expires 4-30-21[Signature]
(Officer of Corporation/Member/Manager of Limited Liability Company/Partner/Individual)

(Officer of Corporation/Member/Manager of Limited Liability Company/Partner)

(Additional Partner(s)/Member/Manager of Limited Liability Company if Any)

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk	Date reported to council/board	Date provisional license issued	Signature of Clerk / Deputy Clerk
<u>6-11-18</u>			
Date license granted	Date license issued	License number issued	



www.artlessBastard.com
353 Main Ave, Suite A
DePere, WI 54115

June 20, 2018

Carey Danen
City of DePere
335 S Broadway
De Pere, WI 54115

Dear Carey,

Thank you for the information you've provided thus far in regards to obtaining a Class B license for our art gallery, artlessBastard, located at 353 Main Ave in DePere. Since I will be overseas during the July 3rd mtg date, I wanted to take a moment and share my background, why we are seeking the license, etc.

MY BACKGROUND:

My entire career before moving to DePere has been in the bar and restaurant industry. After many years of managing bars in the twin cities area, my family moved to McGregor, MN where I owned and operated my own bar & restaurant (Growlers on Lake Minnewawa) for a decade. Over the years, I've taken the responsibility and legality of serving alcohol seriously and have attended countless 'safe-serve' certification classes, including several by Bob Pomplun, a well-respected Alcohol-Awareness/Safety trainer who educates bar-owners and staff nationwide. Since my livelihood has always demanded I do things 'by the book' and use good judgment, I take all alcohol sales seriously and have earned the respect of past employers and my peers as someone who does not take unnecessary risks.

WHY WE ARE SEEKING THE CLASS B LICENSE AT OUR GALLERY:

1. Since opening, we've had to turn down several requests by local organizations to rent our space (and hire our team) for charitable fund-raisers, private corporate functions, etc because we were unable to offer them the chance to serve wine or beer. Being able to offer a licensed bartender and to legally serve beer/wine would greatly help our business succeed.
2. The public is accustomed to being able to have a class of wine or beer at artist-receptions. When we moved to Wisconsin, we quickly learned that many galleries are doing it, but NOT legally. So, everyone expects it since they are accustomed to it elsewhere, but no guests are concerned about the legality of it... and we refuse to break the rules and do this without the proper licensing. Also, we've had several customers say they are going down the street to find a drink somewhere while they think about their art purchase, and then they don't come back. We believe the ability to offer them a glass of wine while they review the art will greatly increase art-sales and help us stay in business.
3. We'd like to offer some evening classes similar to the 'Paint and Sip' events held in other communities. Our space is perfect for someone wanting to take an art class, but attendance will increase greatly if they can have an adult beverage along with their art-class.
4. This license will lead to immediate job-creation. If we secure this license, we will be increasing our business hours, our staff for special events, hiring local artists to teach the evening classes (while I serve the guests beverages, myself), hiring a local cleaner, and we'll need to hire waitresses for the private functions / fund-raisers that are held in our space when someone 'rents' it for the evening, etc.

Thank you for your consideration. I'll return from overseas by July 7 and can attend any future meetings if requested.

Timothy Jelinski
artlessBastard
920-370-5221
tim@artlessBastard.com

CITY OF DE PERE

MEMO

To: Alderperson James Boyd, License Committee Chair
License Committee Members
From: Kate Zuidmulder, Staff Attorney
Judy Schmidt-Lehman, City Attorney
RE: License Applicant for Art Gallery
Date: August 7, 2018 (meeting date)

The City has received an application for Class B Combination (includes a “Class B” Intoxicating Liquor and a Class “B” Fermented Malt Beverage) liquor license for what has been described as an “Art Gallery.” State law¹ limits the types of businesses that can be operated in conjunction with selling beer for on-premise consumption (a Class “B” (beer) license). A “Class B” Intoxicating Liquor license may only be issued in conjunction with a Class “B” Beer license.²

Exceptions in state law to the rule prohibiting certain businesses are:

- hotel;
- restaurant;
- combination grocery store and tavern;
- combination sporting goods store and tavern;
- combination novelty store and tavern;
- bowling alley or recreation premises;
- club, society or lodge;
- movie theater; and
- painting studio³

In order for an art gallery to fall within the above exceptions, it would have to fit within the category of a “recreation premise.” Unfortunately, state statute does not define “recreation premise.”

An interpretation of the language of Wis. Stats. §125.32(3m)(i) would likely conclude that, when written, an art gallery was not intended to be included under the “recreation premise” exception.⁴ However, this specific issue appears not to have not been decided by a Wisconsin court. As such, since state law specifically allows municipalities to adopt

¹ Wis. Stats. §125.32(3m)(i)

² Wis. Stats. §125.51(3)(f)

³ Wis. Stats. §125.02(11m) defines painting studio as “...an establishment that is primarily engaged in the business of providing to customers instruction in the art of painting and that offers customers the opportunity to purchase food and beverages for consumption while they paint.”

⁴ Under standard rules of statutory construction, one rule instructs that the inclusion of one definition of “painting studio” in the statute would preclude interpreting that statute to include other definitions of that phrase. Another rule provides that where two or more subjects are included in the same phrase (i.e., “bowling alley or recreation premise”), the generic subject (recreation premise) is to be interpreted to be similar to the specific subject (bowling alley). Under this rule, a “recreation premise” would be interpreted to include sporting activities similar to bowling. Finally, another rule avoids interpretations that would allow the “exception to swallow the rule.”

“... additional regulations...not in conflict with this chapter,”⁵ the City arguably could consider enacting an ordinance incorporating the provisions of Wis. Stats. §125.32(3m)(i), including a definition of “recreation premise” that would consider an “art gallery” such a premise. The Village of Menomonee Falls has taken that approach. See attached.

If the Committee is interested in recommending to the Council that an ordinance be drafted to define ‘recreational premises’ locally for purposes of an exception to Wis. Stats. §125.32(3m)(i), we would suggest the following definitions for consideration:

- (a) Recreational premises means a premise in which an organized and regularly conducted recreational activity takes place.
- (b) Recreational activity means an activity primarily offered and undertaken for the purpose of exercise, relaxation, culture or education; including practice or instruction in any such activity.

Please let us know if you have any questions or concerns in advance of the August 7, 2018 License Committee meeting.

Attachment

J:\Law\Memos\2018\License Committee-Class B License for Art Gallery.docx

⁵ Wis. Stats. §125.10(1)

Village of Menomonie Falls Code of Ordinances

Chapter 6 – Alcohol Beverages

Sec. 6-1. - Definitions.

The definitions in Wis. Stats. ch. 125 apply to this chapter. In addition, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Immediate supervisor means the person supervising must be able to see at all times the activities of those persons serving alcohol beverages. It is not enough for the person supervising merely to be on the premises.

Recreation premises means a premises in which an organized and regularly conducted recreational activity takes place.

Recreational activity means an activity offered and undertaken for the purpose of exercise, relaxation, culture, diversion or education; including practice or instruction in any such activity.

ORDINANCE #18-XX

AMENDING SECTION 7-2 DE PERE MUNICIPAL CODE BY PROVIDING
FOR A DEFINITION OF RECREATION PREMISES

THE COMMON COUNCIL OF THE CITY OF DE PERE, WISCONSIN, DO ORDAIN AS FOLLOWS:

Section 1: Sec. 7-2(h) *Recreation premises*, is hereby created to read:

(h) *Recreation premise*. For purposes of Wis. Stats. §125.32(3m)(i), incorporated by reference under Sec. 7-1 of this Chapter, “recreation premises” means:

- (1) a premises in which an organized and regularly conducted recreational activity takes place.
- (2) Recreational activity means an activity primarily offered and undertaken for the purpose of exercise, relaxation, culture or education, including practice or instruction in any such activity.

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3: This ordinance shall take effect upon passage and publication.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 21st day of August, 2018.

APPROVED:

Michael J. Walsh, Mayor

ATTEST:

Shana D. Ledvina, Clerk-Treasurer

Ayes: _____

Nays: _____

Committee Approval: August 21, 2018

Publication Date: _____

Effective Date: _____

Attachment: Ord18-XX Recreation Premises (7279 : Application for a Class "B"/"Class B" Artless Bastard*)

City of De Pere, Wisconsin

**Request For License Committee Action**

MEETING DATE: August 21, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for McLanes Bowl LLC (DBA The Foxy Moo), 132 S. Broadway. Submitted by McLanes Bowl LLC, Agent: Bryan J. Kaster, Green Bay, WI.*

This application is for the bowling alley and front bar space.

ATTACHMENTS:

- McLanes Bowl LLC_8-21-18 (PDF)

Original Alcohol Beverage Retail License Application

Submit to municipal clerk.

For the license period beginning July 1st 20 18 ;
ending June 30th 20 18

TO THE GOVERNING BODY of the: ☐ Town of }
☐ Village of } De Pere
☒ City of }

County of Brown Aldermanic Dist. No. _____ (if required by ordinance)

1. The named ☐ Individual ☐ Partnership ☒ Limited Liability Company
☐ Corporation / Nonprofit Organization

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name): Kaster, Bryan Joseph
McLanes Bowl LLC DBA the Fox y Moo

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of a partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

Title	Name (Last, First, M.I.)	Home Address	Post Office & Zip Code
President/Member	Manager	Kaster, Bryan J.	1234 Delray Drive, Green Bay WI
Vice President/Member			Green Bay, 54304
Secretary/Member			
Treasurer/Member			
Agent	Kaster, Bryan J		
Directors/Managers			

3. Trade Name the Fox y Moo Business Phone Number 920-406-0242
4. Address of Premises 132 South Broadway St. De Pere, WI 54115 Post Office & Zip Code De Pere, 54115
5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? ☐ Yes ☐ No
6. Is the applicant an employee or agent of, or acting on behalf of anyone except the named applicant? ☐ Yes ☒ No
7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business? ☐ Yes ☒ No
8. (a) Corporate/limited liability company applicants only: Insert state WI and date 07/23/2018 of registration.
- (b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company? ☐ Yes ☒ No
- (c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin? ☐ Yes ☒ No
- (NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)
9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) 6 Lane Bowling Alley, Front Bar, Lower Level Coolers, Storage, Office, -
10. Legal description (omit if street address is given above): - excludes single 2nd floor res. apt.
11. (a) Was this premises licensed for the sale of liquor or beer during the past license year? ☐ Yes ☒ No
- (b) If yes, under what name was license issued? Teekae Enterprises Inc. of WI, DBA Tim Karl's Century Lanes, and Safehouze
12. Does the applicant understand they must register as a Retail Beverage Alcohol Dealer with the federal government, Alcohol and Tobacco Tax and Trade Bureau (TTB) by filing (TTB form 5630.5d) before beginning business? [phone 1-877-882-3277]. ☒ Yes ☐ No
13. Does the applicant understand they must hold a Wisconsin Seller's Permit? [phone (608) 266-2776]. ☒ Yes ☐ No
14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs? ☒ Yes ☐ No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signer. Any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000. Signer agrees to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants, or one member of a partnership applicant must sign; one corporate officer, one member/manager of Limited Liability Companies must sign.) Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

(Officer, or Corporation / Member / Manager of Limited Liability Company / Partner / Individual)

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk <u>8-1-18</u>	Date reported to council / board	Date provisional license issued	Signature of Clerk / Deputy Clerk
Date license granted	Date license issued	License number issued	

SURRENDER OF LICENSE
Part I

Legal/Real Name of Current Licensee: TEEKAE ENTERPRISES INC OF WI

Premises Address: 132 SOUTH BROADWAY, DE PERE WI 54115

Trade Name: TIM KARL'S CENTURY LANES

This is to advise that the undersigned is surrendering the following license(s)

Combination "Class B" Beer & Liquor

Class "B" Beer

Class "A" Beer and/or "Class A" Liquor

(circle which apply)

Wholesale Beer

"Class C" Wine

to: KASTER, BRYAN ; MCLANES BOWL LLC DBA THE FOX Y MOO

Insert Legal/Real name of Proposed Licensee and Trade Name)

And understand that said license(s) will be cancelled upon the Common Council's granting of a license to the applicant named herein.

New Applicant

[Signature]
President, Member, Partner, Individual

Manager
Secretary, Member, Partner

Current Licensee

Lori Ann Karl
President, Member, Partner, Individual

Officer - VP-Secretary
Secretary, Member, Partner

State of Wisconsin)

) ss.

County of Brown

On the 27th day of July, 2018, personally came before me
Lori Ann Karl, Secretary - VP, known to me to be the person(s) who
executed the foregoing Surrender of License, and known to me to be the **Current Licensee** and
acknowledged that s/he executed the foregoing document.

[Signature]
Notary Public

Lamorne G. Vesely
Brown County, Wisconsin

My Commission expires: is permanent.

State of Wisconsin)

) ss.

County of Brown

On the 30th day of July, 2018, personally came before me
Bryan Kaster, known to me to be the person(s) who
executed the foregoing Surrender of License, and known to me to be the **Proposed New Applicant** and
acknowledged that s/he executed the foregoing document.

[Signature]
Notary Public

Lamorne G. Vesely
Brown County, Wisconsin

My Commission expires: is permanent.

Attachment: McLanes Bowl LLC 8-21-18 (7285 : Application for a Class "B"/"Class B" McLanes Bowl*)

SURRENDER OF LICENSE
Part II

JULY 27, 2018

Date

City of De Pere Clerk
335 S. Broadway St.
De Pere, WI 54115

This is to notify you that I am the owner of the building located at

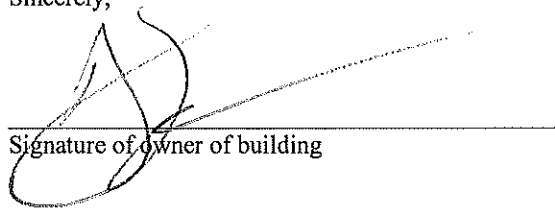
132 SOUTH BROADWAY, DE PERE WI 54115, De Pere, Wisconsin.

I have entered into a lease for the above property effective JULY 27, 2018 with

MCLANES BOWL LLC DBA THE FOX Y MOO, (Strike sentence if not applicable).

Further, this letter is to document that said owner or tenant has control of the premises, and may apply for the necessary beer and/or liquor licenses for said location.

Sincerely,



Signature of owner of building

Printed name of owner: GEORGE STREET STATION LLC, KASTER BRYAN MGR

Home address of owner: 745 ONTARIO ROAD, STE 1, GREEN BAY WI 54311

Daytime phone number of owner: 920-406-0242

Attachment: McLanes Bowl LLC_8-21-18 (7285 : Application for a Class "B"/"Class B" McLanes Bowl*)

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 21, 2018

DEPARTMENT: City Clerk-Treasurer

FROM: Shana Ledvina

SUBJECT: Application for a Class "B" Fermented Malt Beverage & "Class B" Intoxicating Liquor License for McLanes Bowl LLC (DBA The Foxy Moo), 132 S. Broadway. Submitted by McLanes Bowl LLC, Agent: Bryan J. Kaster, Green Bay, WI.*

This application is for the rear dance bar space.

ATTACHMENTS:

- McLanes Bowl LLC 2nd Application_8-21-18 (PDF)

Original Alcohol Beverage Retail License Application

Submit to municipal clerk.

For the license period beginning July 1st 20 18 ;
ending June 30th 20 18

TO THE GOVERNING BODY of the: ☐ Town of } De Pere
☐ Village of }
☒ City of }

County of Brown Aldermanic Dist. No. _____ (if required by ordinance)

1. The named ☐ Individual ☐ Partnership ☒ Limited Liability Company
☐ Corporation / Nonprofit Organization

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name): Kaster, Bryan Joseph
McLanes Bowl LLC DBA the Fox y Moo

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of a partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

Title	Name (Last, First, M.I.)	Home Address	Post Office & Zip Code
President/Member	Manager	Kaster, Bryan J.	1234 Delray Drive, Green Bay WI
Vice President/Member			Green Bay, 54304
Secretary/Member			
Treasurer/Member			
Agent	Kaster, Bryan J		
Directors/Managers			

3. Trade Name the Fox y Moo Business Phone Number 920-406-0242
4. Address of Premises 132 South Broadway St. De Pere, WI 54115 Post Office & Zip Code De Pere, 54115

5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? ☐ Yes ☐ No
6. Is the applicant an employee or agent of, or acting on behalf of anyone except the named applicant? ☐ Yes ☒ No
7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business? ☐ Yes ☒ No
8. (a) **Corporate/limited liability company applicants only:** Insert state WI and date 07/23/2018 of registration.
(b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company? ☐ Yes ☒ No
(c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin? ☐ Yes ☒ No
(NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)

9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) Rear Dance Bar, Lower Level Coolers, Storage, Office, -

10. Legal description (omit if street address is given above): - excludes single 2nd floor res. apt.

11. (a) Was this premises licensed for the sale of liquor or beer during the past license year? ☐ Yes ☒ No
(b) If yes, under what name was license issued? Teekae Enterprises Inc. of WI, DBA Tim Karl's Century Lanes, and Safehouze

12. Does the applicant understand they must register as a Retail Beverage Alcohol Dealer with the federal government, Alcohol and Tobacco Tax and Trade Bureau (TTB) by filing (TTB form 5630.5d) before beginning business? [phone 1-877-882-3277]. ☒ Yes ☐ No

13. Does the applicant understand they must hold a Wisconsin Seller's Permit? [phone (608) 266-2776]. ☒ Yes ☐ No

14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs? ☒ Yes ☐ No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signer. Any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000. Signer agrees to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants, or one member of a partnership applicant must sign; one corporate officer, one member/manager of Limited Liability Companies must sign.) Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

(Officer of Corporation / Member / Manager of Limited Liability Company / Partner / Individual)

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk <u>8-1-18</u>	Date reported to council / board	Date provisional license issued	Signature of Clerk / Deputy Clerk
Date license granted	Date license issued	License number issued	

SURRENDER OF LICENSE

Part I

Legal/Real Name of Current Licensee: TEEKAE ENTERPRISES INC OF WIPremises Address: 132 SOUTH BROADWAY, DE PERE WI 54115Trade Name: TIM KARL'S CENTURY LANES II (the back bar)

This is to advise that the undersigned is surrendering the following license(s)

Combination "Class B" Beer & Liquor

Class "B" Beer

Class "A" Beer and/or "Class A" Liquor

(circle which apply)

Wholesale Beer

"Class C" Wine

to: KASTER, BRYAN ; MCLANES BOWL LLC DBA THE FOX Y MOO

Insert Legal/Real name of Proposed Licensee and Trade Name)

And understand that said license(s) will be cancelled upon the Common Council's granting of a license to the applicant named herein.

New Applicant

[Signature]
President, Member, Partner, IndividualManager
Secretary, Member, Partner

Current Licensee

[Signature]
President, Member, Partner, IndividualOfficer - VP - Secretary
Secretary, Member, Partner

State of Wisconsin)

) ss.

County of Brown

On the 17th day of July, 2018, personally came before me
Lori Ann Karl, VP-Secretary, known to me to be the person(s) who
executed the foregoing Surrender of License, and known to me to be the **Current Licensee** and
acknowledged that s/he executed the foregoing document.[Signature]
Notary PublicLawrence E. Vesely
Brown County, WisconsinMy Commission expires: is permanent

State of Wisconsin)

) ss.

County of Brown

On the 30th day of July, 2018, personally came before me
Bryan Kaster, known to me to be the person(s) who
executed the foregoing Surrender of License, and known to me to be the **Proposed New Applicant** and
acknowledged that s/he executed the foregoing document.[Signature]
Notary PublicLawrence E. Vesely
Brown County, WisconsinMy Commission expires: is permanent

Attachment: McLanes Bowl LLC 2nd Application_8-21-18 (7286 : Application for Class "B"/"Class B" McLanes Bowl - 2nd*)

SURRENDER OF LICENSE
Part II

JULY 27, 2018

Date

City of De Pere Clerk
335 S. Broadway St.
De Pere, WI 54115

This is to notify you that I am the owner of the building located at

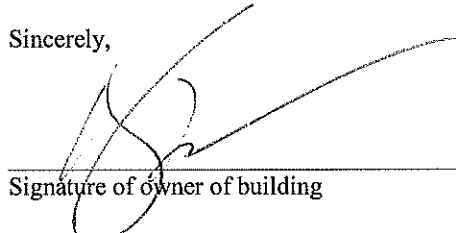
132 SOUTH BROADWAY, DE PERE WI 54115, De Pere, Wisconsin.

I have entered into a lease for the above property effective JULY 27, 2018 with

MCLANES BOWL LLC DBA THE FOX Y MOO, (Strike sentence if not applicable).

Further, this letter is to document that said owner or tenant has control of the premises, and may apply for the necessary beer and/or liquor licenses for said location.

Sincerely,



Signature of owner of building

Printed name of owner: GEORGE STREET STATION LLC, KASTER BRYAN MGR

Home address of owner: 745 ONTARIO ROAD, STE 1, GREEN BAY WI 54311

Daytime phone number of owner: 920-406-0242

Attachment: McLanes Bowl LLC 2nd Application_8-21-18 (7286 : Application for Class "B"/"Class B" McLanes Bowl - 2nd*)

City of De Pere, Wisconsin**Request For License Committee Action**

MEETING DATE: August 21, 2018

DEPARTMENT: City Attorney

FROM: Angela Zills

SUBJECT: Consideration of Walmart's Request to Expand Licensed Premises for Curbside Pickup for Alcohol Sales and Consideration of Proposed Amendment to Chapter 7, De Pere Municipal Code.

ATTACHMENTS:

- Memo License Comm. 8.21.18 (PDF)
- Proposed Amendment to De Pere Ordinance Section 7 (PDF)
- License Committee - Walmart Request to Expand Licensed Premises (PDF)
- Walmart license amend clarification 7-17-18 (PDF)

CITY OF DE PERE

MEMO

To: License Committee
 From: Kate Zuidmulder, Staff Attorney
 RE: Request of Walmart #5090 to Expand License Premises
 Date: August 17, 2018

The above matter came before the Committee on July 17, 2018 in order to hold discussions on the De Pere Walmart Store's request to expand their license premises to allow online purchases that are picked up at the store by the consumer ("Click and Collect"). Following discussion on this matter, the Committee requested further information regarding the De Pere Walmart's proposed design plan for pick-up area and a draft of a proposed amendment to De Pere Ordinance Sec. 7-10.

Attached to this Memo are the emails outlining requests for further information from Walmart and Walmart's responses.

Also attached to this Memo is a draft of the proposed amendment to De Pere Sec. 7-10 modeled after the City of Madison Municipal Code (MMC) 38.07(4) which had previously been included in the July 17, 2018 Committee Agenda Packet. Changes to MMC 38-07(4) have been redlined and indicate formatting consistent with the City of De Pere Municipal Code as well as suggested additions and deletions.

Please note that one of the deletions proposed is to remove MMC 38-07(4)(d). Walmart has indicated they do not have the capability or technology to comply with this provision. This provision would likely be prohibitive for other similarly situated stores in the City of De Pere as well.

Please also note that the proposed addition under (9) designates a certain distance from which the pick-up area must be from the pick-up door. This is meant to ensure compliance with the ordinance and limit the amount of space to be licensed.

Proposed Amendment to De Pere Ordinance Section 7 – Liquor Licensing

Sec. 7-10. Restrictions on sales of intoxicating beverages.

(d) Online Ordering and Curbside Pickup of Alcohol Beverages.

~~(1a)~~ No establishment shall allow online purchase of alcohol beverages and curbside delivery of such purchases ("Click and Collect"), without first obtaining an "Extension of Premises" from the De Pere Common Council, upon recommendation of the License Committee (LC) to license that portion of the establishment's parking lot that will allow vehicles to park for purposes of picking up their online order.

~~a.1.~~ The licensed establishment shall file a detailed operation plan with their "Extension of Premises" form that clearly details how their "Click and Collect" operation will function. The operation plan shall include the licensee's protocol for assuring that underage persons and intoxicated persons do not pick up alcohol via the "Click and Collect" program.

~~b.2.~~ Failure of licensee to provide a detailed operation plan with their "Extension of Premises" application shall result in the City of De Pere Clerk's Office not forwarding the "Extension of Premises" form to the LC for consideration.

~~(2b)~~ No establishment holding an alcohol beverage license shall allow online purchase and pick-up of alcohol beverages unless the sale is consummated on the licensed premises.

~~a.1.~~ Payment for the purchase must be completed on premises and may not be completed until the purchaser is at the licensed premises and has presented valid photo identification that has been verified by a licensed operator employed by the premises.

~~b.2.~~ The licensed operator must verify that the person placing the "Click and Collect" order is the same person picking up the order.

~~c.3.~~ The sale and delivery of "Click and Collect" purchases shall be made only by a licensed operator.

~~d.4.~~ No alcohol sales are permitted if the purchaser fails to present valid photo identification.

~~e.5.~~ The "Click and Collect" system must allow the purchase of alcohol to be denied without affecting the remainder of the purchase.

~~(3e)~~ Each "Click and Collect" transaction must capture and retain an image of the vehicle into which the order is being loaded for thirty (30) days.

~~(d) Each "Click and Collect" transaction must record and retain the following information for thirty (30) days:~~

~~1. The name of the purchaser.~~

~~2. The type of identification card presented and the number and expiration date of that identification card.~~

~~3. The purchaser's date of birth.~~

~~4. The license plate of the vehicle into which the order is being loaded.~~

(~~4e~~) Pick-up of "Click and Collect" orders shall be between the hours of 8:00 a.m. and 8:00 p.m.

(~~5f~~) There shall be a minimum four- (4) hour waiting period between order time and pick-up time.

(~~6g~~) Orders placed after 2:00 p.m. cannot be picked up until the following day.

(~~7h~~) If the "Click and Collect" purchaser is not the driver of the vehicle into which the order is being loaded, the licensed operator must verify that the driver is 21 years of age or older.

(~~8i~~) The licensed operator shall report to his or her manager any purchaser who shows signs of alcohol consumption, and in conjunction with the manager, shall assess sobriety for purposes of approving or denying the sale.

(~~9j~~) The pick- up area for "Click and Collect" purchases shall be clearly defined with visible markings, signs, and/or barriers and must be within 100 ft. from the pick-up door.

(~~10k~~) No events other than the delivery of "Click and Collect" orders shall be allowed on the expanded premises.

(~~11l~~) Penalty. Any licensee or person who violates any provision of this subsection shall be subject to a forfeiture as determined by resolution of the Common Council.

CITY OF DE PERE

MEMO

To: License Committee
 From: Kate R. Zuidmulder, City Staff Attorney
 RE: Request of Walmart #5090 to expand License premises
 Date: June 14, 2018

The purpose of this Memo and included attachments is to provide information to assist in discussion regarding the request by Walmart #5090 to expand license premises for the purpose of launching an online grocery pickup service that would include alcohol sales at the De Pere location. This matter has been placed on the July 17, 2018 Committee meeting Agenda for discussion of above request.

1. Walmart's current Class A Retail license for the sale of Fermented Malt Beverages and Intoxicating Liquors premise description is as follows:

1415 LAWRENCE DR., DE PERE, WI 54115, 1 ROOM, 1 STORY,
 APPROXIMATELY **2,900 SQ. FT.** SEPARATE FROM THE ATTACHED
 WALMART SUPERCENTER WHICH HAS A SEPARATE ENTRANCE.

Walmart is seeking to amend the premises description as follows:

1415 LAWRENCE DR., DE PERE, WI 54115, 1 ROOM, 1 STORY BUILDING,
 APPROXIMATELY **186,215 SQ. FT.**, INCLUDING STALLS IN PARKING LOT
 DESIGNATED FOR ONLINE GROCERY PICKUP.

2. Walmart's request is to expand the licensed premises from the enclosed area with separate door currently required under the code to the entirety of the Walmart store and parking stalls. This would require amendment to Section 7-11 of the City of De Pere Municipal Code, Limitations on class "A" licenses. More specifically, to the following:

- a. Sec. 7-11(a)(1): "Intoxicating Liquor is displayed in a separate area of the establishment which is constructed with four solid walls and is capable of being locked and inaccessible to customers during those hours in which sales of intoxicating liquor are not permitted by law".

If, following discussion, the Committee requests the City Attorney's office to prepare proposed Ordinance amendments, additional language specifically addressing online ordering and curbside pickup of alcohol would be recommended consistent with State Law and to ensure compliance.

The following materials are attached to this Memo in order to provide more information regarding this request:

- “Municipal Regulation of “Click and Collect” Alcohol Sales, Claire Silverman, Legal Counsel for the League of Wisconsin Municipalities, The Municipality, March 2018.

- Example of Wisconsin Municipal Code that has been amended to address online ordering and pickup of alcohol: The City of Madison Municipal Code 38.07(4), “Online Ordering and Curbside Pickup of Alcohol Beverages” (pg. 2).

- Letter from Attorney Gregory T. Everts, QUARLES & BRADY LLP, Counsel for Walmart, regarding Walmart’s request, proposed site map and floor plan for the De Pere Walmart and the Walmart Online Grocery Pickup Procedure Guide.



Municipal Regulation of "Click and Collect" Alcohol Sales¹

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

"Click and Collect" describes a practice where consumers order online from a retailer's website and then pick up their orders at a local store. The use of Click and Collect has become increasingly popular as retailers in competitive markets look for innovative ways to serve customers, and customers have become accustomed to the comfort and convenience of ordering online.

Notably, many grocery stores and other similar retailers have begun offering Click and Collect and, for a small fee or free with a minimum order, will assemble the grocery order and deliver it curbside when the customer arrives to pick it up. It's not hard to imagine the convenience factor as being off the charts for, among others, persons with busy work schedules, persons with small children in tow, and those with limited mobility.

While Click and Collect sales do not typically require municipal oversight or approval, oversight and/or approval may be desirable and/or necessary when the online sale includes alcohol beverages and, in particular, when the sale involves curbside delivery. Recently, some retailers with alcohol licenses have sought municipal approval to expand the description of their premises to include designated parking stalls used for the Click and Collect deliveries. This is

necessary since state law requires the licensed premises to be "particularly described" and include all areas where alcohol is stored or sold.²

To amend described premises during the license year, the licensee must file a written request with the municipality. The governing body has discretion to approve or disapprove the change.³ Municipalities can impose conditions in connection with allowing amendment of the premises but are limited in imposing conditions once the request to amend the premises description has been granted.⁴

This legal comment briefly summarizes state law requirements that come into play when Click and Collect involves the sale of alcohol beverages.

Wisconsin law requires the following for alcohol sales:

1. Face-to-face sales to consumers at the licensed premises.⁵
2. Purchaser must be of legal drinking age (21 or older).
3. Seller must be a licensed operator or under the immediate supervision of a licensed operator.
4. No sales can be made to intoxicated persons.

In order to satisfy the requirement that the sale be face-to-face and that it take place on the licensed premises, an online order for alcohol beverages should not be consummated when the order is placed but, rather, when the order is picked up by the customer with the customer signing the credit card or paying at the retailer's licensed premises. If the customer is picking up curbside, those parking spaces must be included in the licensee's described premises since that is where the sale is taking place.

The requirement that all persons selling alcohol possess an operator's license or be under the immediate supervision of someone with an operator's license effectively means that those delivering alcohol curbside should have an operator's license. "Immediate supervision" has been interpreted to mean that the person supervising must be able to see those being supervised at all times.⁶

Municipalities that receive requests to amend premise descriptions to allow Click and Collect with curbside delivery of alcohol must decide whether such sales should be allowed and, if so, what conditions are appropriately imposed to ensure that any such sales are done lawfully.

► p.16

1. This article was inspired by a Nov. 7, 2017 memo on Click and Collect Alcohol Sales written by Julia Sherman at the Wisconsin Alcohol Policy Project.

2. Wis. Stat. §§ 125.25(3), 125.26(3), 125.28(3), 125.51(2)(c) and 125.51(3)(d).

3. *Alberti v. City of Whitewater*, 109 Wis.2d 592, 327 N.W.2d 150 (1982). See also Wis. Stat. sec. 125.04(3)(h).

4. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76. The Wisconsin Alcohol Policy Project's Nov. 7, 2017 memo on Click and Collect Alcohol Sales mentioned a variety of conditions that municipalities were considering or had adopted.

5. Wis. Stat. §§ 125.272 and 125.51(6).

6. OAG 9-10-62 (informal opinion).

Legal

Municipalities should review a retailer's policies for the Click and Collect operation before granting an expansion of the licensed premises and may want to include those policies as license conditions. Municipalities that want to allow Click and Collect alcohol sales may want to also adopt an ordinance governing such sales. A Wisconsin Alcohol Policy Project memo on Click and Collect⁷ suggests that municipalities inquire about the following before granting an expansion of the licensed premises to allow Click and Collect alcohol sales:

- What hours will alcohol orders be allowed?
- How is an alcohol order assembled?
- Who assembles the entire order? Is an itemized tape prepared?
- When is the credit card charged for the order?
- Is the individual who delivers the order a licensed operator?
- What equipment is provided to staff (e.g., is ambient light sufficient or is a flashlight needed to read the ID, a scanner to record the credit card sale or ID)?

7. See footnote 1.

- Is the newly licensed area under video surveillance?
- When is the ID checked?
- Does the seller determine that the name on the order is the same name on the ID?

The memo notes that in addition to provisions relating to the above factors, some municipalities have adopted or considered the following provisions:

- A requirement that the system allow the purchase of alcohol to be denied without affecting the remainder of the purchase.
- Notification of police when an apparently underage person or intoxicated person attempts an alcohol purchase.
- Imposing a minimum waiting period between order time and pick-up time for alcohol and tobacco.
- Requiring that images of the transaction (purchaser, ID card, vehicle, license plate) be captured and retained for a minimum period of time.
- Prohibiting tasting events in the parking lot.

Although municipalities may differ regarding whether Click and Collect alcohol sales should be permitted, those municipalities that wish to allow it should take measures to ensure that such sales are in compliance with state law.

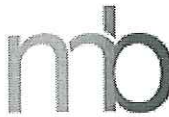
Intoxicating Liquors 955

About the author:

Claire Silverman is Legal Counsel for the League. Her responsibilities include supervising the legal services provided by the League, answering questions of a general nature for officials and employees of member municipalities, writing legal articles for the League's magazine and amicus briefs in appellate cases involving issues of statewide concern to municipalities, organizing an annual institute for municipal attorneys, and educating local officials on a variety of topics pertaining to their duties. In addition, she coordinates legal material for the League's web page. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org

Editor's Note:

If you are generally interested in municipal responsibility/authority for handling local health matters, please request the Legal Comment "Health 65," authored by Claire Silverman, League Legal Counsel, and published in the June 1999 *The Municipality*.



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Municipal Code – City of Madison
 Alcohol Beverages Regulated, Chapter 38
 Section 38.07

• **38.07 - GENERAL RESTRICTIONS.**

(1) Public Place. No owner, lessee or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, churches, premises in a state fair park or clubs.

(2) Possession of Alcohol Beverages on School Grounds Prohibited. Pursuant to the provisions of Wis. Stat. § 125.10, the City of Madison does hereby adopt and incorporate into this Subsection the provisions of Wis. Stat. § 125.09(2), inclusive of all future amendments to any provisions of this section of the Wisconsin Statutes. (Am. by Ord. 11,624, 6-28-96; Rep. & Rec. by ORD-07-00118, 9-22-07)

(3) Restrictions on Delivery of Beer, Wine and Intoxicating Liquor.

(a) No person may peddle any alcohol beverage from house to house where the sale and delivery are made concurrently.

(b) For delivery of beer, wine, and intoxicating liquor, payment or payment arrangements shall be made in person at the licensed establishment prior to delivery. (Am. by ORD-10-00073, 8-12-10)

(c) The person paying for the keg/beer/wine coolers/intoxicating liquor must be at least 21 years of age and shall provide the licensed establishment with two forms of identification. The types of identification and identifying factors (e.g. driver's license number, physical descriptors, address, etc.) shall be recorded by the licensed establishment. The identifying information shall be retained by the retailer for at least two years from the date of sale and must be made available at the request of law enforcement or the Alcohol License Review Committee, pursuant to an active investigation by the Madison Police Department, City Attorney, or ALRC regarding alleged Chapter 38 MGO/ Wis. Stat. ch. 125 violation(s). (Am. by ORD-10-00073, 8-12-10)

(d) When purchasing kegs of beer, the person paying for the keg(s) must sign a receipt indicating how many kegs are being purchased and where they will be delivered.

(e) Delivery of any alcoholic beverage shall not be made unless the person who provided the identification is at the point of delivery and signs for receipt of the alcohol. The licensed establishment shall retain the signed delivery receipt for at least two years from the date of sale and make it available at the request of law enforcement or the Alcohol License Review Committee, pursuant to an active investigation by the Madison Police Department, City Attorney, or ALRC regarding alleged Chapter 38 MGO/ Wis. Stat. ch. 125 violation(s).

(f) Any person who violates this subsection is subject to a forfeiture of not more than \$1,000.

(g) Transactions under this subsection shall comply with Sec. 38.07(16), MGO. (Cr. by ORD-10-00073, 8-12-10)

(Sec. 38.07(3) Am. by Ord. 12,942, 12-24-01)

Municipal Code – City of Madison
 Alcohol Beverages Regulated, Chapter 38
 Section 38.07

(4) Online Ordering and Curbside Pickup of Alcohol Beverages .

(a) No establishment shall allow online purchase of alcohol beverages and curbside delivery of such purchases ("Click and Collect"), without first obtaining a "Change of Premises" from the Madison Common Council, upon recommendation of the Alcohol License Review Committee (ALRC) to license that portion of the establishment's parking lot that will allow vehicles to park for purposes of picking up their online order.

1. The licensed establishment shall file a detailed operation plan with their "Change of Premises" form that clearly details how their "Click and Collect" operation will function. The operation plan shall include the licensee's protocol for assuring that underage persons and intoxicated persons do not pick up alcohol via the "Click and Collect" program.

2. Failure of licensee to provide a detailed operation plan with their "Change of Premises" application shall result in the City of Madison Clerk's Office not forwarding the "Change of Premises" form to the ALRC for consideration.

(b) No establishment holding an alcohol beverage license shall allow online purchase and pick-up of alcohol beverages unless the sale is consummated on the licensed premises.

1. Payment for the purchase must be completed on premises and may not be completed until the purchaser is at the licensed premises and has presented valid photo identification that has been verified by a licensed operator employed by the premises.

2. The licensed operator must verify that the person placing the "Click and Collect" order is the same person picking up the order.

3. The sale and delivery of "Click and Collect" purchases shall be made only by a licensed operator.

4. No alcohol sales are permitted if the purchaser fails to present valid photo identification.

5. The "Click and Collect" system must allow the purchase of alcohol to be denied without affecting the remainder of the purchase.

(c) Each "Click and Collect" transaction must capture and retain an image of the vehicle into which the order is being loaded for thirty (30) days.

(d) Each "Click and Collect" transaction must record and retain the following information for thirty (30) days:

1. The name of the purchaser.
2. The type of identification card presented and the number and expiration date of that identification card.
3. The purchaser's date of birth.
4. The license plate of the vehicle into which the order is being loaded.

Municipal Code – City of Madison
Alcohol Beverages Regulated, Chapter 38
Section 38.07

- (e) Pick-up of "Click and Collect" orders shall be between the hours of 8:00 a.m. and 8:00 p.m.
- (f) There shall be a minimum four- (4) hour waiting period between order time and pick-up time.
- (g) Orders placed after 2:00 p.m. cannot be picked up until the following day.
- (h) If the "Click and Collect" purchaser is not the driver of the vehicle into which the order is being loaded, the licensed operator must verify that the driver is 21 years of age or older.
- (i) The licensed operator shall report to his or her manager any purchaser who shows signs of alcohol consumption, and in conjunction with the manager, shall assess sobriety for purposes of approving or denying the sale.
- (j) The pick- up area for "Click and Collect" purchases shall be clearly defined with visible markings, signs, and/or barriers.
- (k) No events other than the delivery of "Click and Collect" orders shall be allowed on the expanded premises.
- (l) Penalty. Any licensee or person who violates any provision of this subsection shall be subject to a forfeiture of not less than \$250, nor more than \$1000 plus court costs and fees. Licensees are also subject to demerit point assessment for violations of this subsection.



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June 12, 2018

VIA UPS OVERNIGHT

Attorney Kate Zuidmulder
City of De Pere
335 South Broadway
De Pere, WI 54115

**RE: Walmart #5090 - 1415 Lawrence Drive
Change of Premises for Alcohol Beverage License**

Dear Ms. Zuidmulder:

Quarles & Brady serves as legal counsel for Walmart with respect to alcohol beverage licensing in Wisconsin. Walmart is launching an online grocery pickup service in select stores in Wisconsin. Customers using this service will be able to place an order online and provide a credit card to hold the order. The customer will then come to their local Walmart store to complete the payment and pick up the order at either a pickup canopy or a dedicated parking space.

Walmart would like to offer customers who shop at their De Pere store the opportunity to include alcohol beverages in an online order. We have contacted the Department of Revenue, which has confirmed that this is permitted under Wisconsin law. Per Tyler Quam, Special Agent with the Department, an online grocery order may include alcohol beverages if payment is made at the store and the customer's age is verified by an employee licensed to sell alcohol beverages in a face-to-face transaction that occurs within the licensed premises. Walmart, therefore, is seeking to amend the premises description on its current license to include the pickup location (canopy or dedicated parking space), as follows:

One room, one story building, approximately 186,215 sq. ft.,
including stalls in parking lot specifically designated for online
grocery pickup.

We have enclosed a site map and floor plan for the De Pere Walmart store showing the location of the dedicated parking spaces. We have also included a copy of Walmart's Online Grocery Pickup Procedure Guide.

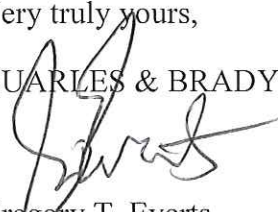
Shana Ledvina, City Clerk
June 12, 2018
Page 2

We are aware that this change will require approval of the License Committee and request that this proposed amendment be considered at their meeting on July 17th. Further, Store Manager, Frank Van Voderen, Jr., and eCommerce Assistant Manager, Jeff Bunnell, will be in attendance at such meeting and available to answer any questions regarding Walmart's online grocery pickup program.

Please let us know if you have questions or require additional information.

Very truly yours,

QUARLES & BRADY LLP

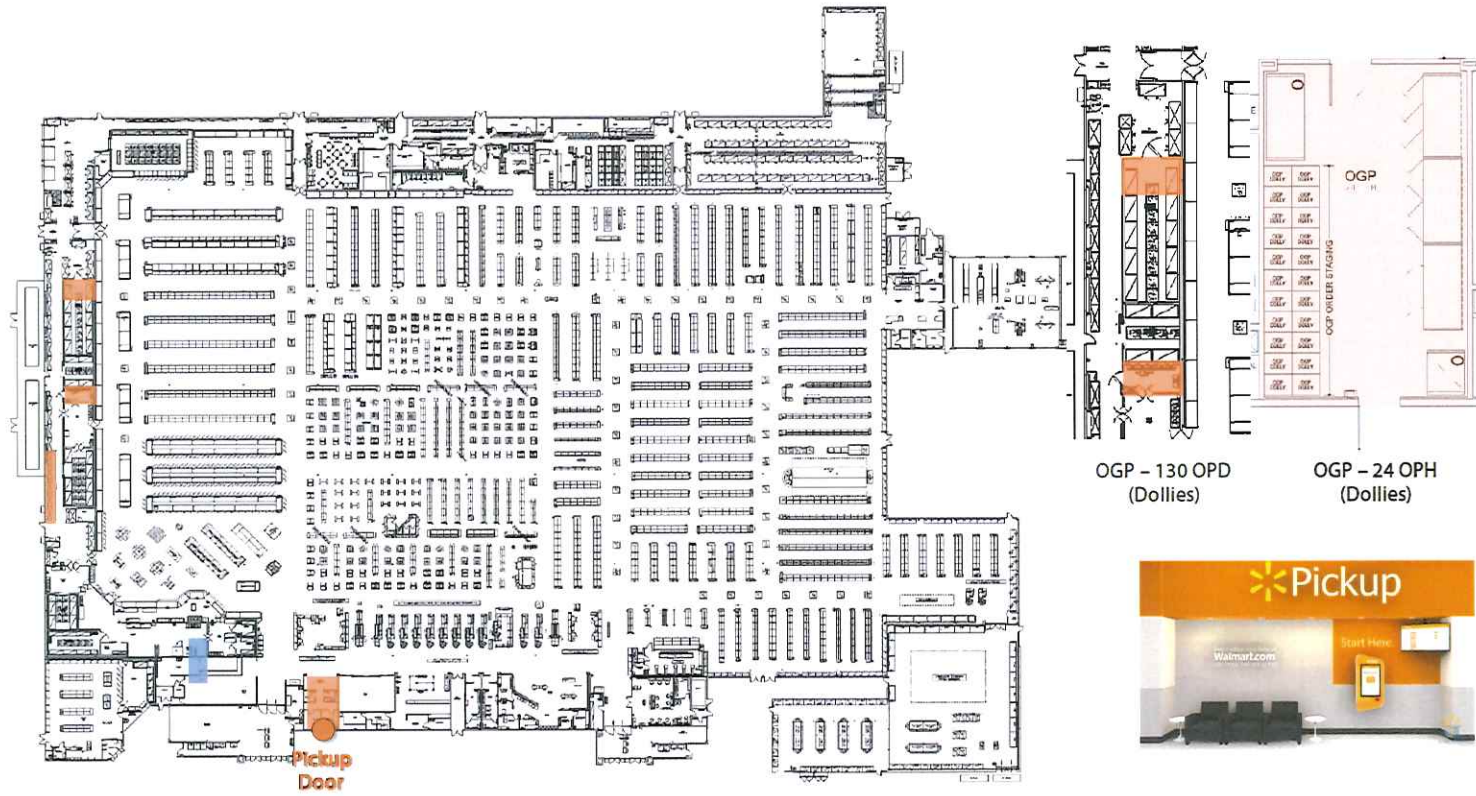


Gregory T. Everts

Enclosures
QB\52737988.1

Attachment: License Committee - Walmart Request to Expand Licensed Premises (7260 : Consideration of Walmart's Request to Expand

Walmart #5090 – De Pere, WI



Walmart #5090 – De Pere, WI



No Canopy



Compliance & Ethics

Online Grocery Pickup Procedure Guide

Placing Order

- Customer visits walmart.com/grocery and creates an account by providing applicable information such as phone #, zip code, email address, etc.
- Based on the customer's zip code, he or she will be provided with a list of the closest stores eligible for Walmart Online Grocery Pickup program
- Customer selects desired pickup store location and the pickup timeframe
- Customer completes the order by supplying Walmart with payment information
- Walmart authorizes and holds the card information but funds are not transferred from the card



- Where allowed by state and local law, customers can include alcoholic beverage product in their online grocery order through walmart.com/grocery.

- All alcoholic beverage product item pages are flagged with a notification explaining the restrictions around purchasing this product (pictured right)

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

The sale of alcohol to minors is prohibited.

At delivery or pickup, you must show a valid photo ID and provide a signature confirming that you are age 21 or over. Accepted forms of ID are: Driver's Licenses, State-issued Identification Cards, U.S. Passports, Military Identification Cards, U.S. Immigration Cards, or Tribal IDs in specific states, or other similar government issued IDs that are recognized within the state. Drivers will not deliver to anyone who appears to be intoxicated. No discounts, coupons or tax-exempt sales may be applied to alcohol. An order of alcohol totaling 20 gallons or more will not be allowed.

- If the customer checkouts with an alcoholic beverage product in their basket, another notification is displayed at checkout (pictured right) and an acknowledgement box must be checked by the customer (pictured below).

Alcohol Disclosure ⓘ

By checking this box, you confirm that you are at least 21 years old and will not resell any alcohol you purchase.

Alcohol Disclosure ⓘ

Your order contains alcohol. Please read our policy before purchase.

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

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*red text indicates a control related to alcohol
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Compliance & Ethics

Online Grocery Pickup Procedure Guide

Picking / Staging

- On the day a customer is scheduled to pickup an order, a Walmart associate, identified as a "Personal Shopper," will "shop" for the customer order in the store
- All shopping is completed on the pickup day to ensure customer receives the freshest products



- If a customer's order contains an alcohol beverage product, the product is assigned to a "Restricted" commodity group to ensure only personal shoppers that have taken the appropriate training and are of a legal age will pick the alcohol beverage product
- Only personal shoppers meeting the age requirements within the regulatory jurisdiction are allowed to handle and/or dispense orders with alcohol beverage products
- In Wisconsin**, Personal shoppers must hold an operator/bartender license issued by their local municipality
- The picking carts that our shoppers use to pick items, have a roll of stickers labeled with the word "alcohol"
- Orders containing alcohol beverage products are bagged and labeled with an alcohol sticker *(pictured right)*
- This sticker enables our personal shoppers to clearly identify items that are subject to additional regulatory restrictions
- All picked orders are kept in a secure backroom staging area, not open to the public, and only where Walmart employees are permitted to enter
- Online Grocery orders are staged separately than other online orders (Site to Store or Pickup Today programs)



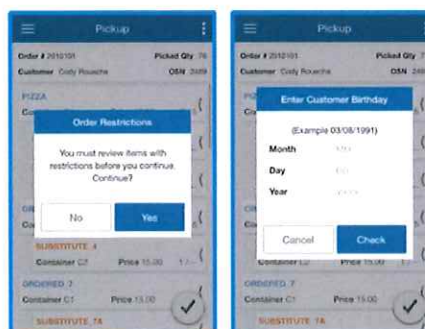
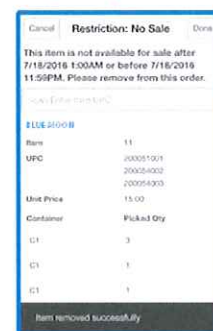
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Compliance & Ethics

Online Grocery Pickup Procedure Guide

Customer Pickup: Order Review

- Online Grocery Pickup is currently offered between 8am – 8pm, 7 days a week (except holidays or other store closures)
 - When the customer arrives, they notify our personal shoppers of their arrival by calling, using mobile check-in, or check-in via the pickup kiosk (options vary by location)
 - The personal shopper assigned to dispense the order uses the handheld device to identify the order number and pull the appropriate totes from the staging areas
 - Prior to putting the customer's order in their vehicle, the personal shopper uses their handheld device to review the order with the customer
 - The personal shopper will also review any substituted items, fragile items, out of stock items, and verify customer's identification if the customer purchased any age restricted items
 - This review allows the customer to ensure they are getting what they want and provides the customer an opportunity to return or reject any item
- Only personal shoppers meeting the age requirements within the regulatory jurisdiction are allowed to handle and/or dispense orders with alcohol beverage products
 - If a customer's order includes alcohol beverage product, the personal shopper is prompted by their handheld device that there are restricted items in their order
 - If alcohol is not allowed to be sold at the time of dispense, the associate is notified (via their handheld device) that sale of the product is currently restricted, the items are automatically removed from the customer's digital basket (the customer will not be charged), and the personal shopper will remove the physical product from the order (pictured right)
 - The personal shopper will request valid identification and enter the customer's date of birth from the identification into their handheld device (pictured below)



*red text indicates a control related to alcohol
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Compliance & Ethics Online Grocery Pickup Procedure Guide

- If over 21, the customer can sign for the order, and the personal shopper can place the final order into the customer's vehicle
- If the customer is under 21 and/or cannot provide a valid ID, the alcohol beverage products are removed from the customer's order and the customer is not charged for these products. *(pictured right)*



Customer Pickup: Dispensing

- Once the customer and personal shopper have:
 - Reviewed any substituted items, fragile items, and out of stock items
 - Removed any rejected products that the customer no longer wants
 - Verified the customer's age and identification if the order contained any age restricted items (and if necessary, removed age restricted items)
- The customer signs the order, the customer's account is charged with the final order amount (after removing the cost of any products removed from the customer's order)
- The personal shopper places the final order in the customer's vehicle, and the transaction is considered complete



*red text indicates a control related to alcohol
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Judy Schmidt-Lehman

From: Diller, Becky A. <Becky.Diller@quarles.com>
Sent: Monday, July 16, 2018 9:47 AM
To: Kate Zuidmulder; Judy Schmidt-Lehman
Cc: Shana Ledvina; Everts, Gregory T.
Subject: RE: Walmart #5090 [QBLLP-ACTIVE.FID39340272]
Attachments: License Committee Agenda - 7-17-2018.pdf
Importance: High

Hello Kate,

My apologies for the delayed response and not connecting with you by phone last week. You are correct that Walmart would like to include in the online order program for their De Pere store sales of Fermented Malt Beverages ONLY, not any other type of intoxicating beverages. The online order program will be limited so customers would be permitted to only order items currently available in the Supercenter (not their liquor store), which would include, as far as alcohol beverages are concerned, Fermented Malt Beverages ONLY. Walmart is not requesting any type of expansion on the Class A Fermented Malt Beverages and Intoxicating Liquors License for their liquor store.

This morning I pulled from the City's website a copy of the agenda for the July 17th License Committee meeting. Unfortunately, the memo regarding Walmart's request for expansion of the license premises (page 10) does not correctly reflect the facts. The memo implies that Walmart is requesting expansion of the Class A Fermented Malt Beverages and Intoxicating Liquors License for their liquor store (2,900 sq. ft.). The operation of the liquor store will not be affected; no change to its license, size of the premises, or the conditions of that license would be made. Rather, Walmart is requesting expansion of the Class A Fermented Malt Beverages License for their Supercenter. Further, the size of the licensed premises is not affected by this expansion. All Walmart would like to do is expand the description on the license to include the approximately 10 parking stalls, near the pickup door, that are being designated for online grocery pickup. The language Walmart seeks to add to its current Class A Fermented Malt Beverages License for the Supercenter is: "... including stalls in parking lot designated for online grocery pickup." We kindly request that this be made clear to the members of the License Committee prior to their meeting tomorrow evening.

With respect to your second comment, we have made Walmart aware that their request for including alcohol beverages in their online ordering program for their De Pere store may require an amendment to the city's ordinances similar to the recently-enacting Madison ordinance addressing this same issue. We will keep you advised if they have any comments or would not be able to comply with these provisions.

Please let us know if you have further questions.

Regards,
 Becky



Becky Diller / Paralegal/Office Administrative Coordinator
 Becky.Diller@quarles.com / [LinkedIn](#) [BIO](#) [vCard](#)
Quarles & Brady LLP
 101 East Kennedy Blvd., Suite 3400 / Tampa, FL 33602-5195
 Office 813-387-0279 / [quarles.com](#)

From: Kate Zuidmulder [mailto:kzuidmulder@mail.de-pere.org]
Sent: Tuesday, July 10, 2018 4:00 PM
To: Everts, Gregory T. (MAD x2460) <gregory.everts@quarles.com>; Diller, Becky A. (TPA x5279) <Becky.Diller@quarles.com>
Subject: Walmart #5090

Dear Greg and Becky,

Thank you for the additional information. It was very helpful.

First, to again clarify, Walmart is asking that their online order services in De Pere *only* include sales of Fermented Malt Beverages? Not any other type of intoxicating beverage? If that is the case, it certainly simplifies this request.

Second, because we have to treat all of the City stores equally, if the Committee wants to go forward with approval of Walmart's request, this will involve amending the ordinance to specifically address the online sales issue so that any store wanting to offer this service is under the same restrictions. In the Agenda packet regarding this issue I provided the Committee with Madison's ordinance addressing this issue. Below is what I included. Should the Committee wish to pursue amending the ordinance to include the below language, would Walmart be able to comply with all of these provision? I'll be honest, I'm not crazy about just designating 10 pre-existing parking stalls without direct proximity to the pick-up door or without a canopy. It doesn't seem to encourage compliance especially during Wisconsin winter weather. But, then again, the committee may not share this concern. I just want to be clear on what Walmart is willing to put into place to comply with any ordinance changes. I did review their Online Procedure Guide again so I know they are prepared to have the appropriate employees handling these sales.

MADISON 38-07(4)

(a) No establishment shall allow online purchase of alcohol beverages and curbside delivery of such purchases ("Click and Collect"), without first obtaining a "Change of Premises" from the Madison Common Council, upon recommendation of the Alcohol License Review Committee (ALRC) to license that portion of the establishment's parking lot that will allow vehicles to park for purposes of picking up their online order.

1. The licensed establishment shall file a detailed operation plan with their "Change of Premises" form that clearly details how their "Click and Collect" operation will function. The operation plan shall include the licensee's protocol for assuring that underage persons and intoxicated persons do not pick up alcohol via the "Click and Collect" program.

2. Failure of licensee to provide a detailed operation plan with their "Change of Premises" application shall result in the City of Madison Clerk's Office not forwarding the "Change of Premises" form to the ALRC for consideration.

(b) No establishment holding an alcohol beverage license shall allow online purchase and pick-up of alcohol beverages unless the sale is consummated on the licensed premises.

1. Payment for the purchase must be completed on premises and may not be completed until the purchaser is at the licensed premises and has presented valid photo identification that has been verified by a licensed operator employed by the premises.

2. The licensed operator must verify that the person placing the "Click and Collect" order is the same person picking up the order.

3. The sale and delivery of "Click and Collect" purchases shall be made only by a licensed operator.

4. No alcohol sales are permitted if the purchaser fails to present valid photo identification.

5. The "Click and Collect" system must allow the purchase of alcohol to be denied without affecting the remainder of the purchase.

(c) Each "Click and Collect" transaction must capture and retain an image of the vehicle into which the order is being loaded for thirty (30) days.

(d) Each "Click and Collect" transaction must record and retain the following information for thirty (30) days:

1. The name of the purchaser.

2. The type of identification card presented and the number and expiration date of that identification card.

3. The purchaser's date of birth.

4. The license plate of the vehicle into which the order is being loaded.

(e) Pick-up of "Click and Collect" orders shall be between the hours of 8:00 a.m. and 8:00 p.m.

(f) There shall be a minimum four- (4) hour waiting period between order time and pick-up time.

(g) Orders placed after 2:00 p.m. cannot be picked up until the following day.

(h) If the "Click and Collect" purchaser is not the driver of the vehicle into which the order is being loaded, the licensed operator must verify that the driver is 21 years of age or older.

(i) The licensed operator shall report to his or her manager any purchaser who shows signs of alcohol consumption, and in conjunction with the manager, shall assess sobriety for purposes of approving or denying the sale.

(j) The pick- up area for "Click and Collect" purchases shall be clearly defined with visible markings, signs, and/or barriers.

(k) No events other than the delivery of "Click and Collect" orders shall be allowed on the expanded premises.

(l) Penalty. Any licensee or person who violates any provision of this subsection shall be subject to a forfeiture of not less than \$250, nor more than \$1000 plus court costs and fees. Licensees are also subject to demerit point assessment for violations of this subsection.

I'm just leaving for a meeting but wanted to get this over to you. Thanks!

-Kate

Kate R. Zuidmulder
City Prosecutor/Staff Attorney
City of De Pere
335 S. Broadway
De Pere, WI 54115
(920) 339-4084 x 1246
kzuidmulder@mail.de-pere.org

OFFICE HOURS: TUESDAY 8-4:30 PM & THURSDAY 8-4:30 PM
WEDNESDAY PRE-TRIAL HOURS: 5-8:00 PM

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Attachment: Walmart license amend clarification 7-17-18 (7260 : Consideration of Walmart's Request to Expand Licensed Premises Allowing