

ORDINANCE NO. 609

An Ordinance of the Municipal Code of the City of Kiel Amending Chapter 11 (Alcohol Beverages)

The Common Council for the City of Kiel do ordain as follows:

SECTION 1: Chapter 11 is hereby amended to read as follows:

CHAPTER 11

ALCOHOL BEVERAGES

GENERAL LICENSING PROVISIONS

		Page
11.01	License Fees	2
11.02	Definitions	2
11.03	State Statutes Adopted	5
11.04	Licenses Required	5
11.05	License Application	6
11.06	Form and Expiration of Licenses	6
11.07	Transfer of Licenses	6
11.08	Posting and Care of Licenses	7
11.09	Revocation and Suspension of Licenses	7
11.10	Nonissuance or Nonrenewal of Licenses	7
11.11	Commercial Quadricycle Licensing	7

RESTRICTIONS TO LICENSES

11.15	License Restrictions Generally	13
11.16	Regulation of Licensed Premises and Licensees	14
11.17	Closing Hours	15
11.18	Outdoor Premises	15
11.19	Sidewalk Café Permits	17

RESTRICTIONS AS TO UNDERAGE PERSONS

11.25	Sales of Alcohol Beverages To	22
11.26	Presence of Underage Persons in Places of Sale	22
11.27	Misrepresentation of Age	23
11.28	Possession or Consumption in Public Places	23
11.29	Possession on School Grounds	24

OTHER RESTRICTIONS

11.35	Sales to Intoxicated Persons	24
11.36	Free Alcohol Beverages in Restaurants	24
11.37	Public Place	24
11.38	Place-to-Place Deliveries	25
11.39	Public Consumption of Alcohol Beverages	25
	Prohibited	25
PENALTIES		
11.40	Penalty	25

GENERAL LICENSING PROVISIONS

11.01 LICENSE FEES. Unless otherwise indicated, fees for licenses issued under this chapter shall be as follows:

(1) CLASS A FERMENTED MALT BEVERAGE RETAILER'S LICENSE. ~~-\$100~~ \$150 per year.

(2) CLASS B FERMENTED MALT BEVERAGE RETAILER'S LICENSE. ~~\$125~~ \$100 per year.

(a) Temporary Class B (Picnic) license, \$10.

(3) WHOLESALER'S FERMENTED MALT BEVERAGE LICENSE. \$50 per year.

(4) RETAIL CLASS A INTOXICATING LIQUOR LICENSE. ~~\$150~~ per year. \$200

(5) RETAIL CLASS B INTOXICATING LIQUOR LICENSE. ~~\$125~~ per year. \$250

(6) TRANSFER FROM ONE PREMISES TO ANOTHER. \$10 per transfer.

(7) OPERATOR'S LICENSE. ~~\$30~~ \$45 for a two year period: \$15 for any period of less than one year. **Application fee is non-refundable.**

(8) TEMPORARY OPERATOR'S LICENSE. \$5 FOR 1-14 days for persons employed by or donating their services to non-profit corporations. **Application fee is non-refundable.**

(9) PROVISIONAL LICENSE. \$35 for a two year period; \$20 for any period of less than one year – Person must be enrolled in State Beverage Server Training course. **Application fee is non-refundable.**

(10) RESERVE CLASS B LIQUOR LICENSE. Said license shall have the meaning established by Wis. Stats., Section 125.51(4)(a)4. The initial fee for said license shall be \$10,000. ~~After issuance of an original Reserve Class B liquor license, and upon application, the Common Council may provide an economic development grant to the licensee in the amount of \$10,000. Prior to awarding any grant hereunder, the Common Council shall make such findings and establish such conditions as will insure that any funds awarded hereunder further the important public purpose of economic development.~~ The annual fee for obtaining the initial license and for renewal of a license granted under this section shall be the fee established by Section 11.01(5)."

11.02 DEFINITIONS. As used in this chapter, the following terms have the meanings indicated:

(1) ALCOHOL BEVERAGES. Fermented malt beverages and intoxicating liquor.

(2) BREWER. Any person who manufactures fermented malt beverages for sale

or transportation.

(3) CLUB. An organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation.

(4) DEPARTMENT. The State Department of Revenue.

(5) FERMENTED MALT BEVERAGES. Any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

(6) HOTEL. All places where accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith provided with a restaurant. See Section 125.02(7), Wis. Stats.

(7) INTOXICATING LIQUOR. All ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages."

(8) LICENSE. An authorization to sell alcohol beverages issued by the City Council, or for sub (g) by the City Clerk-Treasurer under this chapter. Licenses issued under this chapter are described as follows:

(a) Class A Fermented Malt Beverage License. Authorizes retail sales of fermented malt beverages in original packages, containers and bottles for consumption off the premises where sold.

(b) Class B Fermented Malt Beverage License. Authorizes retail sales of fermented malt beverages to be consumed whether on the premises where sold or off the premises.

(c) Temporary Class B License. A fermented malt beverage license issued to bona fide clubs, county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for not less than 6 months before the date of application, and to posts of veterans' organizations authorizing them to sell fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society.

(d) Wholesaler's Fermented Malt Beverage License. Authorizes sales of fermented malt beverages, only in original packages or containers, to retailers or wholesalers, not to be consumed in or about the premises where sold.

(e) Retail Class A Intoxicating Liquor License. Authorizes the retail sale of intoxicating liquor in original packages, containers and bottles for

consumption off the premises where sold.

(f) Retail Class B Intoxicating Liquor License. Authorizes retail sales of intoxicating liquor for consumption on the premises where sold by the glass and in the original package or container, in multiples not to exceed 4 liters at any one time, and to be consumed off the premises where sold. Wine may be sold for consumption off the premises in the original package or otherwise in any quantity.

(g) Operator's License. A license which authorizes a person who has attained the legal drinking age, who is neither the licensee nor the agent of the licensee, to serve or sell alcohol beverages in any place operated under a Class A or B license or permit without the immediate supervision of the licensee or agent or a person holding an operator's license on the premises at the time. All operator's licenses shall be for 2 years and expire on June 30th of odd-numbered years. The Clerk-Treasurer may issue a license for less than 2 years, and that term shall end June 30th.

(h) Provisional Operator's License. [#372 10/8/91] The City Clerk-Treasurer may issue a provisional operator's license to a person qualified under Chapter 125, Wis. Stats. for an operator's license, provided such person has applied for a regular operator's license and is enrolled in a training course under Section 125.17(6), Wis. Stats. The fee for a provisional operator's license shall be \$25.00 and such license shall expire 60 days after its issuance. A provisional license may not be issued to any person who has been denied an operator's license by the Common Council, and the City Clerk-Treasurer may revoke the provisional operator's license if he or she discovers that the holder of the license made a false statement on the application.

(i) Waiting Period. An application under 11.02(8) that is denied by the City Council for any reason will be required to wait 6 months from the date of denial before re-applying.

(9) MANUFACTURER. A person, other than a rectifier, who ferments, manufactures or distills intoxicating liquor.

(10) PEACE OFFICER. A sheriff, under sheriff, deputy sheriff, police officer, constable, marshal, deputy marshal or any employee of the Department of Revenue or the Department of Justice authorized to act under Chapter 125, Wis. Stats.

(11) PERMIT. Any permit issued by the Department of Revenue under Chapter 125, Wis. Stats.

(12) PERSON. A natural person, sole proprietorship, partnership, limited liability company, corporation or association.

(13) PREMISES. The area described in a license or permit.

(14) REGULATION. Any rule or ordinance adopted by the City Council.

(15) RESTAURANT. Any building, room or place where meals or lunches are prepared, served or sold to transients or the general public, and all places used in connection therewith. See Section 254.61(5), Wis. Stats.

(16) RETAILER. Any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding a permit or license under this chapter.

(17) SELL, SOLD, SALE OR SELLING. Any transfer of alcohol beverages for a consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for or the sale for future delivery of, alcohol beverages.

(18) WHOLESALER. A person, other than a brewer, manufacturer or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

(19) WINE. Products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain .5% or more of alcohol by volume.

11.03 STATE STATUTES ADOPTED. The provisions of Chapter 125, Wis. Stats., relating to the sale, procurement and consumption of intoxicating liquor and fermented malt beverages, including provisions relating to the penalty to be imposed for violation of such statutes, except where such penalty is a fine or term of imprisonment, are adopted and made a part of this chapter by reference. A violation of any of such provisions shall constitute a violation of this chapter.

11.04 LICENSES REQUIRED.

(1) WHEN REQUIRED. No person, except as provided by Section 125.06, Wis. Stats., shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in or, for the purpose of evading any law or ordinance, give away any beverages, or cause the same to be done, without having procured a license as provided in this chapter, nor without complying with all the provisions of this chapter and all statutes, ordinances and regulations of the State and City applicable thereto. See Section 125.04(1), Wis. Stats.

(2) SEPARATE LICENSE REQUIRED FOR EACH PLACE OF SALE. A license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are in direct connection or communication to each other

where alcohol beverages are kept, sold or offered for sale.

11.05 LICENSE APPLICATION.

(1) FORM. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the State Department of Revenue and filed with the Clerk-Treasurer. The fee prescribed for such license in Section 11.01 shall be paid at the time the license is issued. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances or not separated by a solid wall.

~~(2) APPLICATION TO BE NOTARIZED. Applications shall be signed and sworn to by the applicant as provided by Section 887.01, Wis. Stats. Remove-No longer applicable~~

~~(3)~~ (2) DUPLICATE. Upon approval, a duplicate copy of each application shall be forwarded by the Clerk-Treasurer to the State Department of Revenue.

~~(4)~~ (3) SUBSEQUENT CHANGES. If any fact given in an application subsequently changes, the licensee shall file a notice in writing of such change with the Clerk-Treasurer within 10 days.

~~(5)~~ (4) [#414 5/6/88] Prior to the issuance of an operator's license pursuant to Section 11.04, the Police Department shall be required to conduct a background check on each applicant. The background check system used may be the State of Wisconsin TIME system or a similar system.

11.06 FORM AND EXPIRATION OF LICENSES. All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee and, unless sooner revoked, shall expire on June 30 thereafter except as otherwise provided. The Clerk-Treasurer shall affix his or her affidavit.

11.07 TRANSFER OF LICENSES.

(1) AS TO PERSON. No license shall be transferable as to licensee except as provided by Section 125.04(12), Wis. Stats.

(2) AS TO PLACE. Licenses issued pursuant to this chapter may be transferred as provided in Section 125.04(12), Wis. Stats. Application for such transfer shall be made on blanks furnished by the State Department of Revenue. Proceedings for transfer shall be had in the same manner and form as the original application.

11.08 POSTING AND CARE OF LICENSES. Every license issued under this chapter shall be posted and at all times displayed as provided in Section 125.04(10), Wis. Stats. No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application or knowingly deface or destroy such license.

11.09 REVOCAION AND SUSPENSION OF LICENSES.

(1) PROCEDURE. Whenever the holder of any license under this chapter violates any portion of this chapter, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Section 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.

(2) EFFECT OF REVOCATION. See SECTION 11.15(7) of this chapter.

11.10 NONISSUANCE OR NONRENEWAL OF LICENSES. Whenever the applicant or holder of any license under this chapter is refused, the licensee shall be given written notice of any charges or violations against them and the reasons proposed for nonissuance or nonrenewal, and the proceedings of such license may be instituted in the manner and under the procedure established by Section 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.

11.11 COMMERCIAL QUADRICYCLE LICENSING.

(1) DEFINITIONS.

- (a) "Applicant" means the individual applying for a license under this section or any person who is an officer of a corporation that is applying for a license under this section.
- (b) "Commercial Quadricycle" means a vehicle with fully operative pedals for propulsion entirely by human power that:
 - 1. has 4 wheels and is operated in a manner similar to a bicycle,
 - 2. is equipped with at least 12 seats for passengers,
 - 3. is designed to be occupied by a driver and by passengers providing pedal power to the drive train of the vehicle,
 - 4. is used for commercial purposes, and
 - 5. is operated by the vehicle owner or an employee of the owner.

- (c) “Commercial Quadricycle Business” means any enterprise that owns a commercial quadricycle or manages the operation of a commercial quadricycle.
- (d) “Commercial Quadricycle Operator’s License” means a public vehicle operator’s license as described in Kiel Municipal Code Section 11.11 (2).
- (e) “Public Commercial Quadricycle Operator” means any person who operates a commercial quadricycle or commercial quadricycle which transport passengers for hire or compensation.

(2) LICENSES REQUIRED.

- (a) Commercial Quadricycle Business License. No person may engage in a Commercial Quadricycle Business unless each Commercial Quadricycle used in the business is licensed. A Commercial Quadricycle Business license shall expire on December 31 of each year.
- (b) Operator’s License. No person may operate a Commercial Quadricycle for purposes upon a highway or public road unless the person is licensed as a Public Commercial Quadricycle Operator. The Public Commercial Quadricycle Operator’s License shall expire on December 31 of each year.

(3) COMMERCIAL QUADRICYCLE BUSINESS APPLICATION PROCESS.

- (a) Application. A person wishing to operate a Commercial Quadricycle Business shall apply to the City Clerk for a business license in 11.11 (2) (a) using an approved form and pay the Clerk a \$25 license fee for each Commercial Quadricycle managed by the person. The Clerk shall forward the application to the police department for review. The police department shall deny the application if any of the following applies:
 - 1. The circumstances of a pending criminal charge against the Applicant substantially relate to the licensed activity.
 - 2. The Applicant has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the particular job or licensed activity.
 - 3. The Applicant made a false statement on the application.
 - 4. The Applicant is under 18 years old.
- (b) Route approval. If the police department approves the application for a Commercial Quadricycle Business License, the police department shall forward the application to the Common Council to approve, deny, or amend the proposed route.
- (c) Appeal. If the police department denies an application for a Commercial

Quadricycle Business license, the Applicant may appeal within 15 days after the police department mails a notice of denial to the Applicant. If the Applicant files a timely appeal with the Clerk, the Clerk shall schedule an appeal hearing before the Common Council.

(d) Hearing Before Council. The Common Council may approve any application placed on its agenda only if the Applicant is qualified under this section and may place conditions upon approval.

(e) Issuance. The Clerk shall issue the Commercial Quadricycle Business license if the applicant has been approved by the Common Council and has satisfied all other provisions of this section.

(f) Vehicle Inspection. Before a Commercial Quadricycle Business may operate a Commercial Quadricycle on a highway, the Applicant shall obtain a license sticker from the police department by passing an inspection. The police department shall collect \$25 for each Commercial Quadricycle inspection. This paragraph does not apply to a Commercial Quadricycle owned or operated by:

1. A nonprofit corporation that provides to the police department proof that the vehicle passed a state vehicle inspection.
2. An organization which is exempt from federal income tax under IRC § 501(c)(3) that provides to the police department proof that the vehicle passed a state vehicle inspection.

(g) Maintain liability insurance coverage for the Commercial Quadricycle containing the limits of not less than \$500,000 per occurrence combined single limit bodily injury and property damage, issued by a company authorized to do business in the State of Wisconsin. A certificate of insurance coverage specific to each Commercial Quadricycle shall be filed with the Risk Management Division.

(h) Police Department Review. The police department shall affix a license sticker to the rear of each inspected Commercial Quadricycle if the department determines that the Commercial Quadricycle is:

1. Licensed with the City Clerk.
2. In a safe operating condition.
3. Insured as required by this section.
4. Conspicuously displaying on the exterior driver and passenger side of the vehicle:
 - a. The name or trade name of the public vehicle business.

- b. The phone number of the public vehicle business.
 - c. A unique number assigned by the Commercial Quadricycle Business that identifies the particular vehicle.
5. Conspicuously displaying within the front passenger compartment:
- a. A display holder within which Commercial Quadricycle Operators can show their licenses while operating the Commercial Quadricycle.

(4) COMMERCIAL QUADRICYCLE OPERATOR'S LICENSE APPLICATION PROCESS.

- (a) Application. A person wishing to obtain a Commercial Quadricycle Operator's License shall apply to the City Clerk using a Common Council approved form and pay to the Clerk the proper license fee and submit an acceptable passport-sized photo. The Clerk shall forward the application to the police department for review. If the police department approves the application, it shall forward its recommendation to the Common Council. The police department shall deny the application if any of the following applies:
 - 1. The circumstances of a pending criminal charge against the Applicant substantially relate to the licensed activity.
 - 2. The Applicant has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the particular job or licensed activity.
 - 3. The Applicant made a false statement on the application.
 - 4. The Applicant is under 18 years old.
- (b) Appeal. If the police department denies an application for a Commercial Quadricycle Operator's License, the Applicant may appeal within 15 days after the police department mails a notice of denial to the Applicant. If the Applicant files a timely appeal with the Clerk, the Clerk shall schedule an appeal hearing before the Common Council. The Council shall approve the application only if the Applicant is qualified under this section and may place conditions upon approval.
- (c) Issuance. The Clerk shall issue a Commercial Quadricycle Operator's License if the Applicant has been approved by the the Common Council and has satisfied all other provisions of this section.

(5) COMMERCIAL QUADRICYCLE REGULATIONS. The owner and operator of a Commercial Quadricycle are both responsible for ensuring

compliance with this subsection.

- (a) Licensees must adhere to the routes specified in their submitted application. New routes must be applied for and approved by the Common Council before a licensee may use the new routes. Temporary routes must be applied for and approved by the Common Council. A temporary route application must be submitted in writing and include a proposed map no later than fifteen (15) days prior to the applicant's proposed first date of operation of the temporary route. No Licensee shall operate a Commercial Quadricycle on a street closed off to public traffic regardless of whether the street is included in an approved route. Any deviation from a route without approval shall be a violation of this section.
- (b) Commercial Quadricycle operation is permitted between the hours of 10:00 a.m. and 10:30 p.m. Commercial Quadricycle operation does not include the use of a Commercial Quadricycle for maintenance, inspection, or without passengers.
- (c) It is unlawful for any person to operate or to permit another to operate a Commercial Quadricycle at other times or in other locations than those approved by the Common Council.
- (d) No Public Commercial Quadricycle Operator shall drive, or be permitted by a Public Commercial Quadricycle Operator to drive, a Commercial Quadricycle without a valid Wisconsin driver's license, or a valid driver's license issued by any other state in the United States.
- (e) Passengers on a Commercial Quadricycle may possess on or carry onto the Commercial Quadricycle no more than 36 ounces of fermented malt beverages as defined in Wis. Stat. § 125.02(6). No other alcohol beverages, as defined in Ch. 125, Wis. Stats., may be possessed on, carried upon, or consumed upon a Commercial Quadricycle.
- (f) No glass containers may be carried on a Commercial Quadricycle.
- (g) Restrictions on possession, transportation and consumption of alcohol beverages in the operation of Commercial Quadricycles upon city highways and public places shall apply to operation of Commercial Quadricycles when used for non-revenue producing events or transportation in addition to regular commercial activities.
- (h) No driver of a Commercial Quadricycle may consume alcohol while the Commercial Quadricycle is occupied by passengers.
- (i) No person may drive a Commercial Quadricycle with an alcohol concentration of more than 0.02.
- (j) No person may drive a Commercial Quadricycle on which any alcohol

beverages are carried or consumed other than fermented malt beverages under this section.

- (k) No person may drive a Commercial Quadricycle on which alcohol beverages are sold and may not transport alcohol beverages on a Commercial Quadricycle for the purposes of sale or delivery upon sale.
- (l) Passengers shall be advised by the operator, driver or other person responsible for the operation of the Commercial Quadricycle that no alcohol beverages shall be possessed on, carried upon, or consumed on a Commercial Quadricycle in violation of city ordinance or state statute, and shall conspicuously post a notice of these restrictions upon the Commercial Quadricycle in a form and manner approved by the city.
- (m) The operator of the Commercial Quadricycle shall hold a valid operator's license pursuant to Section 11.11 (4), Kiel Municipal Code.
- (n) The operator of the Commercial Quadricycle shall operate the vehicle at all times in compliance with applicable local and state traffic and parking laws.
- (o) Failure of a person to comply with the regulations of this section or to operate in accordance with the approved plan of operation shall constitute grounds for revocation or suspension as provided in Section 11.09, Kiel Municipal Code.
- (p) The Common Council may adopt and from time to time amend the regulations relating to Commercial Quadricycles and their operations, including, but not limited to, hours of operations, routes, vehicle markings and safety equipment.

RESTRICTIONS AS TO LICENSES

11.15 LICENSE RESTRICTIONS GENERALLY.

(1) **STATUTORY REQUIREMENTS.** Class A and B licenses shall be issued only to persons eligible therefor under Section 125.04(5), Wis. Stats.

(2) **LOCATION.**

(a) No retail Class A or B license shall be issued for premises the main entrance of which is less than 300' from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises.

(b) This paragraph shall not apply to premises licensed as such on June 30, 1974, nor shall it apply to any premises licensed as such prior to the occupying of real property within 300' thereof by any school building, hospital building or church building.

(3) HEALTH AND SANITARY REQUIREMENTS. No retail Class B license shall be issued for any premises which do not conform to the sanitary, safety and health requirements of the State Department of Commerce pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Family Services applicable to restaurants and to all such ordinances and regulations adopted by the City.

(4) LICENSE QUOTA. The number of persons and places that may be granted a retail Class B liquor license under this chapter is limited as provided in Section 125.51(4), Wis. Stats.

(5) CORPORATIONS. No license shall be granted to any corporation when more than 50% of the voting stock interest, legal interest or beneficial interest is held by any person or persons not eligible for a license under this chapter.

(6) AGE REQUIREMENT. No license hereunder shall be granted to any person under the legal drinking age.

(7) EFFECT OF REVOCATION OF LICENSE. Whenever any license has been revoked, at least 12 months shall elapse before another license shall be granted to the person whose license was revoked.

(8) DELINQUENT TAXES, ASSESSMENTS AND CLAIMS. No license shall be granted for any premises for which taxes, assessments or other claims of the City are delinquent and unpaid, or to any person or agent delinquent in payment of such claims to the City.

(9) ISSUANCE FOR SALES IN DWELLINGS PROHIBITED. No license shall be issued to any person for the purpose of possessing, selling or offering for sale any alcohol beverages in any dwelling house, flat or residential apartment.

11.16 REGULATION OF LICENSED PREMISES AND LICENSEES.

(1) GAMBLING AND DISORDERLY CONDUCT PROHIBITED. Each licensed premises shall at all times be conducted in an orderly manner; and no disorderly, riotous or indecent conduct or gambling shall be allowed at any time on any licensed premises.

(2) SALES BY CLUBS. No club shall sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.

(3) SAFETY AND SANITATION REQUIREMENTS. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

(4) SALES TO INTOXICATED PERSONS. No licensee or permittee shall sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.

(5) SOLICITATION OF DRINKS PROHIBITED. No person shall solicit or be allowed to solicit drinks on licensed premises.

(6) SALES TO UNDERAGE PERSONS. No licensee or permittee may sell, vend, deal or traffic in fermented malt beverages to or with any person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age or sell, vend, deal or traffic in intoxicating liquor to or with any person under the legal drinking age.

(7) NUDE AND NEARLY NUDE DANCE PROHIBITED. [#356 9/26/89]

(a) It shall be unlawful for a person to perform nude or nearly nude when that person appears on the premises of an establishment licensed to sell liquor for consumption on the premises, in such a manner or utilizing such attire as to expose to view any portion of the pubic area, anus, vulva or genitals, or any simulation thereof, or when any female appears on such an establishment's premises in such a manner of attire as to expose to view that portion of the breast referred to as the areola, nipple, or simulation thereof.

(b) The proprietor or owner of a licensed establishment who knowingly permits the nude or nearly nude activity proscribed by subsection (a) on his or her premises shall have his or her liquor license for said premises revoked for not less than twelve (12) months. Each performance in violation of subsection (a) shall be a separate offense.

(c) Any person who performs nude or nearly nude in violation of subsection (a) shall be subject to a forfeiture as stated in Section 25.04 of the Municipal Code.

11.17 CLOSING HOURS. No premises for which a wholesale or retail liquor or fermented malt beverage license has been issued shall remain open for the sale of alcohol beverages:

(1) If a wholesale license, between 5 p.m. and 8 a.m., except on Saturday when the closing hour shall be 9 p.m.

(2) If a retail Class A license, between 9 p.m. and 6 a.m.

(3) [#369 12/11/90] If a retail Class B license, between 2 a.m. and 6 a.m. on week days, Monday through Friday, and between 2:30 a.m. and 6:00 a.m. on Saturdays and Sundays; except on January 1, when premises operating under a Class B license or permit are not required to close. As a further exception, on that day of each year when the standard of time is advanced under Section 175.095, Wis. Stats., the closing hours shall be between 3:30 a.m. and 6:00 a.m.

(4) Hotels and restaurants whose principal business is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, may remain open for

the conduct of their regular business but no intoxicating liquors or fermented malt beverages shall be sold during prohibited hours.

11.18 OUTDOOR PREMISES

(1) Purpose. The City Council finds that restrictions are necessary for Outdoor Premises (also referred to as “Beer Gardens”) at premises holding "Class B" and Class "B" liquor and fermented malt beverages licenses due to concerns arising from noise, density and related problems. This Section enacted pursuant to police power provides a framework for regulatory controls on such Outdoor Premises.

(2) Approval Required.

(a) No Licensee shall conduct or sponsor any outdoor Outdoor Premises on property forming any part of the real property on which the licensed premises exist without the prior approval of the City Council.

(b) Permit Required for Outdoor Premises / Outdoor Consumption. No licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under an Outdoor Premises permit granted by the City Council. The permits are a privilege in which no rights vest and, therefore, may be revoked by the City Council at its pleasure at any time or shall otherwise expire on June 30 of each year. No person shall consume or have in his or her possession alcohol beverages on any unenclosed part of a licensed premise which is not described in a valid Outdoor Premises permit.

(3) Application. If a Licensee desires to maintain an Outdoor Premises on the Licensee's property, the Licensee shall file an application with the Clerk-Treasurer setting forth the following information: The application shall accurately describe the area intended for use as an Outdoor Premises and shall indicate the nature of fencing or other measures intended to provide control over the operation of the Outdoor Premises. Every Outdoor Premises shall be enclosed with a fence or wall of a style and design subject to approval by the City of Kiel City Council upon recommendation of the City Building Inspector and Plan Commission. Except for emergency exits, customer access to the Outdoor Premises must be made through the main licensed premise. Application must also include a detailed drawing with measurements describing the outdoor area to be included within the description of the licensed premise as an “Outdoor Premises”. The Licensee's application must also include a plan for maintaining the cleanliness of the Outdoor Premise to prevent the accumulation of litter and/or other refuse.

(4) Filing Fee. The application shall be accompanied by payment of a non-refundable fee of Thirty Dollars (\$30.00) for review and processing of the application.

(5) Review. The City Council shall review the applications in light of the

standards of this Section. If the nature of the property requires the imposition of additional regulations, the City Council may impose these regulations upon an express finding detailing the reasons for additional regulation. All property owners within one hundred fifty (150) feet of the proposed Outdoor Premises shall be notified of the pendency of an application for a permit by first class mail and be provided with an opportunity in a public forum to voice their opinion to the City Council to approve or disapprove of an Outdoor Premises Permit.

(6) Limitations on Issuance of Outdoor Premises Permits. Outdoor premises approved under this section are subject to the following requirements;

(a) Outdoor Premises may be permitted only on properties located in areas zoned commercial.

(b) Outdoor Premises shall not be located in any actual or required yard area that directly abuts an adjoining property specifically used for residential purposes unless there is at least a 3 foot buffer zone between the Outdoor Premises and the adjoining property and an approved privacy fence is installed (See building code for fence reference)

(c) Lighting in the Outdoor Premises must be shielded and not be of intensity or brilliance to create glaring which is distracting or nuisance to adjoining property owners or which is a hazard or danger to vehicular traffic.

(d) Noise from any source that is emitted from the outdoor area is to cease as of 10:00pm unless specifically modified (increased or decreased) by the City Council as part of the permit application review process.

Factors to consider when modification is necessary include the physical location of the licensed premise and its proximity to adjoining residential properties that may be affected by noise from the Outdoor Premise.

(e) No permit shall be issued for an Outdoor Premises if the Outdoor Premises area is greater than fifty percent (50%) of the gross area of the adjoining licensed premises.

(f) Maximum capacity for an Outdoor Premise is subject to the State of Wisconsin Building Codes as part of the licensed premise.

(g) The sale of alcoholic beverages upon an area licensed as an outdoor premise shall be prohibited. Consumption of alcoholic beverages shall be permitted but the sale or service of alcoholic beverages upon said licensed area licensed as an outdoor premise is prohibited.

(7) State Statutes Enforced Within Outdoor Premises. Every permittee under this Section shall comply with and enforce all provisions of Chapter 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Chapter 125, Wis. Stats., shall be grounds for immediate revocation of the Outdoor Premises permit by the Common Council.

(8) Violations. Failure of the Licensee to comply with any of the provisions of this Section shall be grounds for suspension, non-renewal or revocation of the

Licensee's alcohol beverage license or licenses.

11.19 SIDEWALK CAFÉ PERMITS

(1) Purpose. To enliven downtown and other areas of the city and provide opportunities for social and economic activities, the city council finds and determines:

- (a) That there exists the need for outdoor eating facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and food consumption.
- (b) That sidewalk cafés will permit enhanced use of the available public rights-of-way, will complement business operations operating from fixed premises, and will promote economic activity in the area.
- (c) That the existence of sidewalk cafés encourages additional pedestrian traffic but may impede the free and safe flow of pedestrians such that a need exists for regulations and standards to ensure safety.
- (d) That the establishment of permit conditions and safety standards for sidewalk cafés is necessary to protect and promote public health, safety and welfare.

(2) DEFINITIONS. For purposes of this Ordinance, the following terms have the following meanings:

- (a) "Alcohol Beverages" means fermented malt beverages and intoxicating liquor as defined in Wis. Stat. Sec. 125.02(1), (6) and (8) or any successor to that statute.
- (b) "Restaurant" as defined in Wis. Stat. Sec. 97.01(14g) and if serving alcohol, operating within the guidelines set forth in Kiel Municipal Code Sec. 11.26(6).
- (c) "Sidewalk Café" means an expansion of a restaurant, bistro, coffee shop or other establishment offering beverages or food that provides seating for more than 3 people in the form of a group of tables, chairs, benches, trash containers and suitable decorative devices maintained upon any part of the sidewalk for use on part of the public property that immediately adjoins the licensed premises for the purpose of consuming food or beverages of the patrons of the establishment.

(3) LOCATION.

- (a) No permit will be issued for a sidewalk café located in a nonresidential district if any part of the sidewalk café is within fifty (50) feet of a structure used for residential purposes and located on a residentially zoned parcel except residential uses located in the same structure as the licensed premises or a residence which is

owned by the same person who owns the licensed premises. Upon appeal to the City Council, a full or partial waiver of the distance requirements in this provision may be granted.

(b) No permit will be issued to an establishment if it is located in a district zoned R-1 through R-3.

(4) APPLICATION. Application for a permit to operate a sidewalk café is submitted to the City Clerk's Office and will include at least the following:

(a) A site sketch accurately depicting the dimensions of the existing sidewalk area or other public property and adjacent private property for the proposed location of the sidewalk café including the layout of any furnishings; and

(b) The size and number of tables, chairs, steps, planters, location of doorways, trees, sign posts, hydrants, sidewalk benches, trash receptacles, heaters, traffic signal poles, light poles and any other obstructions, either existing or proposed.

(c) If the applicant intends to sell or serve alcoholic beverages to patrons of the sidewalk café, the applicant must obtain the appropriate alcohol beverage license describing and including the outdoor area where alcoholic beverages will be sold, served or consumed.

(d) The permittee is responsible for complying with the approved sidewalk café plan as submitted in the initial permit application.

(5) APPEALS. Any person denied a sidewalk café permit may appeal the denial. An appeal may be made in writing to City Clerk, who will forward the request to the City Administrator and City Council. The City Council will convene within 30 days of the appeal being filed with the Clerk to hear from the Chief of Police and the affected business. After deliberation, the City Council will act on the appeal. A written copy of the decision will be provided to the affected business.

(6) PERMIT AND FEES.

(a) Fee for a sidewalk café permit is fifty (\$50.00) dollars per year.

(b) The permit issued hereunder is not transferable by the owner to any other restaurant or any subsequent owner of the premises.

(7) DAYS AND HOURS OF OPERATION. Each sidewalk café permit is effective from March 15 to November 15, with hours of operation from 11:00 A.M. to 10:00 P.M. Operation of a sidewalk café outside of those days and hours is prohibited.

(8) SUSPENSION OR REVOCATION OF PERMIT. The City Administrator or the Chief of Police, upon obtaining reasonable information that any permittee has violated any provision of this Section or any state or federal law may

immediately suspend or revoke a permit granted under this Chapter pending hearing by the City Council.

(9) **LIABILITY & INSURANCE.** No person may obtain a sidewalk café permit unless the applicant procures commercial liability insurance.

(a) The permittee agrees to maintain insurance in the amount of \$1,000,000 per occurrence and name the City of Kiel as additional insured showing how the coverage extends to the area used for the sidewalk café, insured. The permittee must provide the City with a certificate of insurance and must execute an indemnification agreement.

(b) As a condition of the permit, the permittee must indemnify and hold the City harmless from any claims arising from the use of the permit.

(10) **STANDARDS & CONDITIONS.**

(a) No portion of any sidewalk café may encroach on the sidewalk adjacent to any other property other than the property that is licensed in this section.

(b) The permittee must maintain approximately a four-foot-wide unencumbered, open and accessible portion of the sidewalk for pedestrian traffic safety at all times. The permittee must comply with all applicable requirements of the Americans with Disabilities Act, 42 USC 12101 to 12213, and all applicable Federal, State and local laws.

(c) The permittee will provide for the removal of garbage and be responsible for the cleanliness of the outdoor area.

(d) The use of a portion of the public property as a sidewalk café is not an exclusive use and will not have any vested rights. All public improvements, including but not limited to, trees, light poles, traffic signals, manholes or any public initiated maintenance procedures will take precedence over said use at all times.

(e) The City Administrator, Chief of Police, or their designees may temporarily order the termination of sidewalk cafes for the following reasons, but not limited to, special events, including but not limited to, construction, parades, sponsored runs or walks, or for any reason to maintain the health, safety, and welfare of the public. The permittee is responsible for removing any furniture, furnishings, and equipment upon termination, and if the permittee fails to do so, the City may remove the furniture and other items and store them if necessary, at the permittee's expense.

(11) **FURNISHINGS:** All furniture, furnishings, and equipment must be of safe, sturdy construction and maintained in good repair. Any heaters or other equipment/furnishings must be portable and approved for outdoor use. All umbrellas must be anchored in such a way that a sudden burst of wind will not lift them out of their holders or blow them over. No public property, including, but not limited to, light poles, utility poles, flower

planters, trees or other amenities, may be used as a point of attachment for anything, including, but not limited to, ropes, posters or signs.

- (12) **LIGHTING:** The permittee must keep the sidewalk café area sufficiently illuminated so as to prevent injury to persons using the same. Any lighting of the outdoor area must be shielded so as not to shine directly onto adjoining property or create a glare which is distracting to adjoining property or vehicles traveling in the public right-of-way.
- (13) **MUSIC/NOISE:** Noise from any source that is emitted from the outdoor area must not exceed the standards contained in Kiel Municipal Code Sec. 9.06 Loud, Disturbing, or Unnecessary Noises Prohibited.
- (14) **SERVING OF ALCOHOL BEVERAGES.** The City of Kiel allows permittees to serve alcoholic beverages in outdoor cafes, provided the permittee complies with all requirements for obtaining an alcoholic beverage license, and the sidewalk café is listed on the alcohol beverage license application as being an extension of the licensed premises. Alcohol may be served at sidewalk café if:
 - (a) The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
 - (b) No alcoholic beverages may be served at any time if the restaurant has not received Council approval for the enlargement of the premises under its liquor license that includes the area of the public sidewalk where the sidewalk café is located. Further, the liquor license will be automatically conditioned at the time of the enlargement of premises to allow for the consumption of alcoholic beverages within the sidewalk café area only. Approval of the enlargement of premise area (sidewalk café) does not grant any permittee or licensed premise any vested rights and such approval may be suspended or revoked or non-renewed without cause being shown.
 - (c) The outdoor area utilized for service and consumption of food and alcohol beverages must be visible from the restaurant establishment.
 - (d) Alcoholic beverages must be sold and served by the permittee or permittee's employees who have operator's licenses and sold, served, and consumed by patrons seated at tables in the sidewalk café. (Reference Wisconsin Statutes sections 125.32(2) and 125.68(2)).
 - (e) Alcoholic beverages may only be served at the sidewalk café when food service is available through the licensed establishment.
 - (f) The permittee will not allow patrons of the sidewalk café to bring alcohol beverages which were not purchased at the establishment into the sidewalk café, nor to carry open containers of alcohol beverages about in the sidewalk café area, nor to carry open containers of alcohol beverages served in the sidewalk café outside of the sidewalk café area.

- (g) The permittee must display signage indicating alcohol may only be consumed by patrons seated at tables in the sidewalk café.
- (h) Alcohol beverages must be dispensed inside the establishment. No food preparation or beverage dispensing equipment is permitted in the sidewalk café area except when permitted by a city issued special event permit.
- (i) Permittee is responsible for the acts of all employees, patrons and agents of the business. A violation of any provision of this section, any City ordinance or Wis. Stat. Ch. 125, by a patron, agent or employee of the permittee, will constitute a violation by the permittee.
- (j) If any person violates this ordinance on three or more occasions in any twelve-month period, and such violations do not involve the same incident, the City may order the revocation of the sidewalk café permit and the permittee is liable for all court costs incurred in pursuing the order.

(15) PENALTY. Any person who commits a violation of this chapter is subject to a forfeiture as provided in Section 25.04 of this municipal code.

RESTRICTIONS AS TO UNDERAGE PERSONS

11.25 SALES OF ALCOHOL BEVERAGES TO. No person shall procure for, sell, dispense or give away any fermented malt beverages to any person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age or procure for, sell, dispense or give away any intoxicating liquor to any person under the legal drinking age.

11.26 PRESENCE OF UNDERAGE PERSONS IN PLACES OF SALE. No person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may enter or be on the premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This section does not apply to:

- (1) A person under the legal drinking age who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consist or are a part.
- (2) A person under the legal drinking age who enters or is on Class A retail intoxicating liquor premises for the purpose of purchasing edibles or beverages other than alcohol beverages. Any person under the legal drinking age so entering the premises may not remain on the premises after the purchase.

(3) Hotels, drug stores, grocery stores, bowling alleys, cars operated by any railroad, regularly established athletic fields, stadiums or public facilities as defined in Section 125.51(5)(b)1.d., Wis. Stats., which are owned by a county or municipality.

(4) Concessions authorized on State-owned premises in the State parks and State forests and defined or designated in Chapters 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.

(5) Ski chalets and golf clubhouses.

(6) Premises operated under both a Class B fermented malt beverage or a Class B intoxicating liquor license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class B fermented malt beverage or Class B intoxicating liquor license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.

(7) A person under the legal drinking age who enters or remains on Class B premises for the purpose of transacting business at an auction or market as defined in Section 125.07(3)(a)(7), Wis. Stats., if the person does not enter or remain in a room where alcohol beverages are sold, furnished or possessed.

11.27 MISREPRESENTATION OF AGE.

(1) No person shall misrepresent that he or she is at least of legal drinking age for the purpose of receiving alcohol beverages from a licensee or permittee.

(2) Proof of the following facts by a seller of alcohol beverages to a person under the legal drinking age is a defense to any prosecution for a violation of this section:

(a) That the purchaser falsely represented in writing and supported with other documentary proof that he or she was of legal drinking age.

(b) That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal drinking age.

(c) That the sale was made in good faith and in reliance on the written representation and appearance of the purchaser in the belief that the purchaser was of legal drinking age.

(3) Every retail alcohol beverage licensee or permittee shall cause a book to be kept for the purposes of this section. The licensee or permittee or his or her employee shall require any person who has shown documentary proof which substantiates that the person is of legal drinking age to sign the book if the person's age is in question. The book shall show the date of the purchase of alcohol beverages, the identification used in making the purchase, the address of the purchaser and the purchaser's signature.

11.28 POSSESSION OR CONSUMPTION IN PUBLIC PLACES. No person under the legal drinking age not accompanied by his or her parent, guardian or spouse who has attained legal drinking age shall knowingly possess or consume in public any intoxicating liquor or fermented malt beverage. This section shall not prevent a person under the legal drinking age in the employ of a licensee or permittee from possessing fermented malt beverage for sale or delivery to customers.

11.29 POSSESSION ON SCHOOL GROUNDS.

(1) **DEFINITIONS.** In this section, terms shall have the meanings prescribed below:

- (a) **Motor Vehicle.** A motor vehicle owned, rented or consigned to a school.
- (b) **School.** A public, parochial or private school which provides an educational program for one or more grades between grades K and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.
- (c) **School Administrator.** The person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.
- (d) **School Premises.** Premises owned, rented or under the control of a school.

(2) **PROHIBITED.** Except as provided by sub. (3), no person shall possess or consume alcohol beverages:

- (a) On school premises.
- (b) In a motor vehicle, if a pupil attending the school is in the motor vehicle.
- (c) While participating in school-sponsored activities.

(3) **EXCEPTIONS.** Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.

OTHER RESTRICTIONS

11.35 SALES TO INTOXICATED PERSONS. No person shall procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.

11.36 FREE ALCOHOL BEVERAGES IN RESTAURANTS. No person holding a permit to operate a restaurant may give away or permit to be given away any alcohol beverages on the restaurant premises.

11.37 PUBLIC PLACE. No owner, lessee or person in charge of a public

place shall permit the consumption of alcohol beverages on the premises of the public place unless the person has an appropriate retail license or permit. This section 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.

11.38 PLACE-TO-PLACE DELIVERIES. No person shall peddle any alcohol beverage from house-to-house where the sale and delivery are made concurrently.

11.39 PUBLIC CONSUMPTION OF ALCOHOL BEVERAGES PROHIBITED. No person shall drink any alcohol beverage or have in his possession open containers of alcohol beverages on any public sidewalk, street or alley within the City. The only exception shall be where the City Council gives its approval for drinking alcohol beverages or possessing open containers of alcohol beverages for a particular event.

PENALTIES

11.40 PENALTY.

- (1) Any person who commits a violation of this chapter shall be subject to a forfeiture as provided in Section 25.04 of this Municipal Code.
- (2) Any person under 18 years of age who commits a violation of this chapter shall be subject to a forfeiture which shall be consistent with the provisions of Section 938.344, Wis. Stats., and disposition and proceedings against a person under 18 years of age on the date of disposition shall be as provided by Section 938.344, Wis. Stats., all as incorporated into the Kiel Municipal Code by Section 9.01.
- (3) Any license or permit issued to a person who commits a violation of this chapter may be revoked by the municipal court.
- (4) A violation of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee.

SECTION 2: This ordinance takes effect upon passage and publication in accordance with the law.

Ordinance No. 609 introduced on October 10, 2023 by Alderperson _____,
seconded by Alderperson _____.

Upon a call of votes thereof, the result was as follows:

_____ Votes Cast
_____ Votes Aye
_____ Votes Nay

The Mayor declared Ordinance No. 609 introduced and approved this 10th day of
October, 2023

MICHAEL STEINHARDT, Mayor

COUNTERSIGNED:

CASEY WITTERHOLT, City Administrator