



**TWO
RIVERS**
WISCONSIN

CITY COUNCIL WORK SESSION

Monday, October 30, 2023 at 6:00 PM

Council Chambers - City Hall, 3rd Floor
1717 E. Park Street, Two Rivers, WI 54241

AGENDA

NOTICE: Arrangements for Addressing the City Council by Telephone, During Public Hearings or Input from the Public can be made by Contacting the City Manager's Office at 920-793-5532 or City Clerk's Office at 920-793-5526 by 4:00 p.m. on the day of the meeting

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Councilmembers: Jeff Dahlke, Bill LeClair, Darla LeClair, Tracey Koach, Tim Petri, Bonnie Shimulunas, Scott Stechmesser, Adam Wachowski

4. DISCUSSION ITEMS

A. Discussion of Local Business' Concerns about City Noise Ordinance Provisions and Possible Changes to Noise Ordinance and Beer Garden Regulations -- Sections 9-2-5 and 6-1-19 of the City's Code of Ordinances

B. Update on 2024 Budget Review

5. ADJOURNMENT

Motion to dispense with the reading of the minutes of this meeting and adjourn

Please note, upon reasonable notice, efforts will be made to accommodate the needs to disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the Office of the City Manager by calling 793-5532.

It is possible that members of and possibly a quorum of governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no other action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

Sec. 9-2-5. Loud and unnecessary noises.

- A. *Loud and unnecessary noise prohibited.* It shall be unlawful for any person to make, continue or cause to be made or continued any loud and unnecessary noise.
- B. *Types of loud and unnecessary noises.* The following acts are declared to be loud, disturbing and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive:
 - (1) *Horns, signaling devices.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place in the city for longer than three seconds in any period of one minute or less, except as a danger warning; the creation of any unreasonable loud or harsh sound by means of any signaling device and the sounding of any plainly audible device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any signaling device when traffic is for any reason held up.
 - (2) *Radios, phonographs, similar devices.*
 - (a) The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in a manner exceeding the maximum permissible sound levels set forth in section 9-2-5.C.(1)(a).
 - (b) The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound between the hours of 10:00 p.m. and 7:00 a.m. in a manner as to be plainly audible within an enclosed structure used for residential purposes and located on a residentially zoned parcel shall be prima facie evidence of a violation of this section. Violations of this subsection shall require the verification by an officer and an identified complainant.
 - (3) *Loudspeakers, amplifiers for advertising.* The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting attention of the public to any building or structure. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.
 - (4) *Animals, birds.* The keeping of any animal or bird which by causing frequent or long continued unnecessary noise shall disturb the comfort or repose of any persons in the vicinity.
 - (5) *Steam whistles.* The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper city authorities.
 - (6) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motorboat except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
 - (7) *Construction or repair of buildings.* The erection (including excavation), demolition, alteration or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or any other similar equipment attended by loud or unusual noise, other than between the hours of 7:00 a.m. and 10:00 p.m. on weekdays; provided, however, the city manager shall have the authority, upon determining that the loss or inconvenience which would result to any party in interest would be extraordinary and of such nature as to warrant special consideration, to grant a permit for a period necessary within which time such work and operation may take place within the hours of 10:00 p.m. to 7:00 a.m.

- (8) *Schools, courts, churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while in use, or adjacent to any hospital, which unreasonably interferes with the normal operation of that institution or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in those streets indicating a school, hospital, church or court street.
- (9) *The provisions of this section shall not apply to:*
 - (a) Any vehicle of the city while engaged in necessary public business.
 - (b) Excavations or repairs of streets or other public construction by or on behalf of the city, county, or state at night when public welfare and convenience renders it impossible to perform such work during the day.
 - (c) The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

C. *Noise limits.*

- (1) *Maximum permissible sound levels.*
 - (a) Noise from a stationary source shall not exceed the following standards for maximum sound pressure levels as measured on an A-weighted scale (dbA) and measured as outlined in subsection G.(2) below. "Business to residential" readings are sound pressure levels emanating from a parcel zoned business as measured on a parcel zoned as residential. "All other zones to residential" are sound pressure levels emanating from a parcel zoned other than residential or business as measured on a parcel zoned as residential.

Times	Zone				
	Residential [db(A)]	Business [db(A)]	All Other Zones [db(A)]	Business to Residential [db(A)]	All Other Zones to Residential [db(A)]
Daytime—7:00 a.m. to 10:00 p.m.	60	70	75	65	75
Nighttime— 10:00 p.m. to 7:00 a.m.	50	70	75	60	75

- (b) "Ambient noise" is the all-encompassing noise associated with a given source, usually being a composite of sounds with many sources near and far, but excluding the noise source being measured. Ambient noise is a factor, and the subject noise shall exceed the ambient noise by five decibels (db) in any octave band to be designated excessive.
- (c) Pure tones and impulsive noises are factors. Five noise rating numbers shall be taken from the table in subsection C.(1)(a), above, if the subject noise consists primarily of a pure tone or if it is impulsive in character.
- (2) *Construction noise.* Construction equipment in any zone may be operated between the hours of 7:00 a.m. to 7:00 p.m., provided that said equipment does not exceed a maximum sound pressure level of 80 db(A) measured at the property line of the location at which said equipment is in use.
- (3) *Noise in residential districts.* In residential zones, the person in violation of this section shall be ordered to reduce the sound pressure to acceptable levels immediately by the monitoring officer.

- D. *The causing of vibrations from excessive sound generation.* The creation of sound waves by any operation or activity of such frequency and/or decibel levels that the sound causes vibrations to structural components, walls, glass, windows, or doors of a residence and/or vibrations to personal property contents of a residence beyond the lot line of its source which would unreasonably disturb or unduly annoy occupants, detectable by either visual observation, touch or by secondary audible noise emanating from the personal property resulting from the vibration of such objects by sound waves originating from outside of the residence, shall constitute a violation of this section, regardless of whether the maximum permissible sound levels set forth in section 9-2-5.C.(1)(a) are met or exceeded.
- E. *Operation of certain equipment.* Lawn mowers, chain saws, powered garden equipment, electric insect-killing/insect-repelling devices, and other nonconstruction maintenance equipment shall be operated only during the hours between 7:00 a.m. and 9:00 p.m. unless within the specified noise levels measured at the property line of the location at which said equipment is in use.
- F. *Exemptions.* Operation of emergency equipment shall be exempt from this chapter. Emergency equipment shall include government-owned or government-contracted vehicles, machinery and equipment used to provide emergency medical (ambulance), police, fire and snow and ice control services. Privately owned vehicles, machinery and equipment used for snow and ice control and removal on private property shall also be exempt from the provisions of this chapter, provided such vehicle, machinery or equipment is not determined to be emitting excessive noise due to lack of repair or maintenance. The city manager or his/her designee may also grant temporary exemptions to the provisions of this chapter when such exemptions are deemed to be in the public interest.
- G. *Methods of measuring noise.*
 - (1) *Equipment.* Noise measurement shall be made with a sound level meter.
 - (2) *Location of noise meter.* Noise measurement shall be made at the nearest lot line of the premises from which a noise complaint is received. Absent an identified location of the complainant, measurements shall be taken at the lot line of the property generating the noise. The noise meter shall be placed at a height of at least three feet above the ground and at least three feet away from the walls, barriers, obstructions, and all other sound reflective surfaces.
- H. *Control of nighttime noise emitted from residential air conditioners.*
 - (1) No person shall install, operate, or use any residential air conditioner which creates a noise level in a sleeping room in any dwelling unit located on any adjacent premises in the excess of five decibels above the ambient noise level at the location being measured.
 - (2) Upon receiving a complaint, the police department will conduct a noise survey through the use of a sound level meter. The sound pressure level should be measured in a sleeping room in the complainant's premises with the sound level measuring microphone placed three feet from an open window nearest to the source of the noise and not less than three feet above the floor of the room in which the measurement is made.
- I. *Appeals.* The city manager may grant an exemption to individuals proving evidence of substantial hardship. Evidence that reasonable technological attempts have been made to correct the problem shall be considered grounds for granting an exemption to this chapter for existing industries.

(Amended 1-20-2020; 10-5-2020; 11-30-2020)

Sec. 6-1-19. Beer gardens regulated.

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

- (1) That there exists the need for outdoor facilities in certain areas of the city to provide a unique environment for relaxation, social interaction, and the consumption of food and alcohol beverages.
- (2) That the establishment of conditions and safety standards for beer gardens is necessary to protect and promote public health, safety, welfare, and the general peace among adjacent property owners.

B. *Definitions.* For purposes of this section, the following terms have the following meanings:

Alcohol beverages. Fermented malt beverages and intoxicating liquor as defined in Wis. Stats. § 125.02(1), (6) and (8), or any successor to that statute.

Barrier. Any permanent physical structure designed to restrict ingress and egress from the beer garden to designated openings and that is not less than four feet in height.

Beer garden. An expansion of the licensed premises to an outdoor area for the purpose of conducting outdoor sales and consumption of food and alcohol beverages, said outdoor area being directly attached to the licensed building, and used daily or on a seasonal basis as part of the normal operations of the licensed premises.

Licensed premises. The enclosed building premises as designated on the establishment's operator's license. A beer garden is an expansion of the licensed premises.

C. *Location.*

- (1) No permit shall be issued for a beer garden located in a nonresidential district if any part of the beer garden is within 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.
- (2) No permit shall be issued to an establishment if it is located in a district zoned R-1 through R-4.
- (3) The beer garden shall be on the same parcel as the main licensed premises; provided, however, that a beer garden may extend onto an adjacent and contiguous parcel owned or leased by the permittee.

D. *Application.* Application for a permit to operate a beer garden shall be submitted to the city clerk's office.

- (1) Each applicant for a beer garden permit shall provide a plan diagram that accurately depicts the area intended for use as a beer garden and shall indicate the nature of the barriers or other measures intended to provide control over the operation of the beer garden; and
- (2) Approval of any beer garden is subject to review and recommendation of the police department; and
- (3) The permittee shall be responsible for complying with the approved beer garden plan as submitted in the initial permit application; and
- (4) Notice of pending applications for new or modified beer gardens shall be published as a Class 1 notice in the official city newspaper prior to the city council meeting at which such application may be acted upon.

E. *Appeals.* Any person denied a beer garden permit may appeal the denial. An appeal shall be made, in writing, to the city clerk, who shall forward the request to the city manager 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 shall act on the appeal. A written copy of the decision shall be provided to the affected business.

F. *Permit and fees.*

- (1) License fees. The fee for a beer garden permit shall be as set forth on the schedule of fees in section 1-2-1.
- (2) Each permit shall be effective for one year from July 1 to June 30.
- (3) The permit issued hereunder is not transferable by the owner to any other establishment or any subsequent owner of the premises.

G. *Suspension or revocation of permit.* 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. The city manager or the chief of police, upon obtaining reasonable information that any permittee has violated any provision of this chapter or any state or federal law, may suspend or temporarily revoke a permit granted under this chapter pending review by the city council.

H. *Standards and conditions.*

- (1) A minimum of 80 percent of any beer garden perimeter shall consist of a barrier as defined herein. The barrier shall be substantial in nature in that it is not constructed of easily removable or temporary materials such as snow fencing. At a minimum, one designated opening shall be created of sufficient width to accommodate ease of ingress or egress, other than through the licensed establishment, for emergency purposes.
- (2) No permit shall be issued for a beer garden if the beer garden area is greater than the gross floor area of the adjoining licensed premises; provided, however, the size of any beer garden may exceed the gross floor area upon review and recommendation of the police chief and approval of the city council. Such recommendation shall take into consideration the property size, location, occupancy limitations (based on square footage), or other conditions directly related to public safety.
- (3) When a portion of the beer garden's perimeter lies along the shoreline of the East or West Twin River, there shall be no requirement for a barrier along such river frontage; provided, however, that the fence or wall enclosing the balance of the beer garden's perimeter shall extend to points as close to the water as practicable, subject to the review and recommendation of the police department. The city reserves the right to require such fence to extend toward the water to the maximum extent allowed by law (i.e., to the ordinary high-water mark or the bulkhead line, if a bulkhead exists).
- (4) Lighting. All beer gardens shall be sufficiently lighted to ensure the safety of patrons at all times when any patrons shall be therein and at all times when the beer garden is open to the public. Lighting of the area must be shielded and not be of intensity or brilliance to create glare which is distracting to adjoining property owners or can become a hazard or danger to vehicular or marine traffic.
- (5) Amplified sound or music is not permitted after 9:00 p.m., except that such sound or music is permitted until 10:00 p.m. from the Friday before Memorial Day to Labor Day and on Fridays and Saturdays only from May 1 to the Friday before Memorial Day and after Labor Day to October 31. Noise from any source that is emitted from the outdoor area shall not exceed the standards contained in section 9-2-5, loud and unnecessary noises.
- (6) There shall be a licensed operator within the beer garden when alcohol beverages are dispensed in the beer garden.

I. *Hours of operation.* The beer garden shall remain closed to the public between the hours of 11:00 p.m. and 6:00 a.m.

J. *State statutes enforced.* Every permittee under this section shall comply with and enforce all provisions of Wis. Stats. Ch. 125, applicable to Class B licensed premises, except insofar as such provisions are clearly

inapplicable. Violation of the provisions of Wis. Stats. Ch. 125, may be grounds for immediate revocation of the beer garden permit as described in subsection G. above.

- (1) The permittee shall not allow patrons of the beer garden to bring alcohol beverages nor to carry open containers of alcohol beverages outside of the licensed premises or beer garden.
- (2) The permittee shall be 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. Stats. Ch. 125, by a patron, agent or employee of the permittee shall constitute a violation by the permittee.

K. *Penalty.* Any person who shall violate any provisions of this chapter or any order, rule or regulation made or adopted hereunder shall be subject to the general provisions penalty of this Code.

(Amended 10-5-2020; 11-30-2020; 7-6-2021)