



To: Members of the Common Council

From: Chief Tim Styka 

Date: July 27, 2016

RE: Expanded Premises Complaint

This past week I received a complaint from a citizen about a request from a bar to exercise their ability under City Code to temporarily expand their premises under Ordinance 7-2-17 (h)(2).

*(2) Permit Issued. Whenever a licensee under this Subsection desires to expand the selling, dispensation of fermented malt beverages or intoxicating liquors on an area adjacent to said building, such as a parking lot, for a special event, it may do so by applying to the Chief of Police. Such permission shall not be unreasonably withheld. Should the Chief of Police withhold such permit, he shall immediately notify the City Clerk. It is the intention of this Subsection to permit scheduled special events and to prohibit extended use of off-premises sales, dispensation or consumption.*

The language is a bit confusing as it refers to a “permit” being issued. However, I do not issue any permits. This provision grants me the authority to allow for the consumption/sale of alcohol outside of the business based upon the existing alcohol license/permit issued by the City Clerk. In addition by Code I may not unreasonably withhold permission for these requests. Withholding permission has been limited to situations when I can articulate health/safety issues or there is a history with the establishment which would indicate a high probability of issues with the event, such as previous similar events which had issues. In the case of this request, there was no history which provided me the basis for a denial, so the permission was granted.

Citywide this was the 16<sup>th</sup> request I have received in the past 5 years. None of the events resulted in documented founded complaints or citations being issued. For the specific event this past weekend officers stopped by on 5 separate occasions to check on the event. Only one check, the complaint of a person singing into a microphone who was yelling was called in and officers did not find a violation of City Code.

While I can respect the concerns of the complainant, I have not seen where the current process has been ineffective in allowing for these types of events. However, as we follow the direction of the Common Council and City Code I did feel it my responsibility to bring this to your attention should you wish to make changes to the City Code.

**Tim Styka**

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**Subject:** FW: 5 O'clock Somewhere - Pig Roast / Raffle

**From:** Dabill Taylor [mailto:sdabilltaylor3@gmail.com]

**Sent:** Friday, July 22, 2016 11:39 AM

**To:** Tim Styka

**Cc:** Joe Polzien; Todd Drew; Alex Zelinski; James Taylor; Pamela Captain; Debbie Galeazzi; Don Merkes

**Subject:** Re: 5 O'clock Somewhere - Pig Roast / Raffle

Chief Styka:

Obviously, you have no intention of correcting this situation.

Just for clarification - I am simply a member of the public and do not have access to any information other than what is provided directly to me, and that which is made available to the public.

Therefore, my reference to 'Permitting' comes directly from a copy of the letter from *5 O'Clock Somewhere* where it clearly states... 'After working with the **Chief Of Police, city officials and council members**, we have obtained all of the proper permits to hold this event.'

**They** stated permits were issued.

**They** also stated they worked with City Officials and Council Members - If so, why would it be necessary, considering you have sole authority? I would like to know what City Officials and what Council Members were involved - especially considering neither of the Alderpersons who represent this area were ever notified or consulted. Alderman Arnie Collier, perhaps? I hear he is a frequent patron.

In reference to illegal gambling - you now state ...'*steps are already in place to ensure this does not take place*'. So, are you implying that there will be no illegal gambling - or - that there will be gambling, but a non-profit has been located to join them to ensure compliance with City Code and State Statutes? *Habitat for Humanity* perhaps? If so, I bet the Mayor even helped out - he's a big supporter.

In reference to 'complaints' - It is not my responsibility to uphold City Codes and Ordinances; neither is it my job to act as Police Officer, Code Enforcement Officer or Health Inspector to track each complaint or violation of noise, profanity, overnight parking, 2-hour parking, animal control, salvage yards, junk vehicles, blocking of driveways and sidewalks, infringement of public and private property, loitering, graffiti or open intoxicants. Therefore, I do NOT make it a habit to call in complaints, especially when history has shown the majority get intercepted by Community Development or another City Official.

Perhaps, I am just overly-tired due to lack of sleep caused by the endless noise generated from across the street - but this is beginning to sound like a conspiracy.

In closing, I hope you enjoy your weekend. And - Hey, if you're not doing anything - there is a party at 600 Broad Street. Maybe the Mayor or Arnie Collier will buy you a beer?

S. Dabill Taylor

On Fri, Jul 22, 2016 at 8:35 AM, Tim Styka <[tstyka@ci.menasha.wi.us](mailto:tstyka@ci.menasha.wi.us)> wrote:

Ms. Taylor,

Again, I am sorry you feel that I am derelict in my responsibilities. However, I am fulfilling my duties per City Code. I have placed some comments in your email below to clarify some inaccuracies and provide some additional information.

Chief Timothy J. Styka

Menasha Police Department

430 First St.

Menasha, WI 54952

[920.967.3500](tel:920.967.3500)



**From:** Dabill Taylor [<mailto:sdabilltaylor3@gmail.com>]

**Sent:** Friday, July 22, 2016 1:16 AM

**To:** Tim Styka

**Cc:** Joe Polzien; Todd Drew; Alex Zelinski; James Taylor; Pamela Captain; Debbie Galeazzi; Don Merkes

**Subject:** Re: 5 O'clock Somewhere - Pig Roast / Raffle

Chief Styka -

I think for the 'first time' we agree on something... *we should have met in person.* That was my original request to you; but due to work schedules and the speed by which this occurred, I assumed it would have been difficult to arrange a time that would work for all involved. *Your assumption was not correct. I have always made time to meet with people to listen to their concerns.*

I also agree that the number of Code and licensing references can be confusing - but, as a whole, language has been put in place to prohibit activities that would negatively impact neighboring residential properties, while still being fair to business. Your actions not only open the door to abuse - but blow the hinges off! *My authority in this matter is based upon City Code passed by the Common Council.*

By authorizing this permit, you have removed all opportunity for review/approval by methods set in place per State Statutes and City Code - including deliberation via Common Council / Committee for outdoor food and alcoholic beverages, beer gardens/patios, street closures, special events, etc., and eliminated public comment. *As I have said before there is NO permit to issue. I am NOT issuing a permit. I am allowing the licensed premises to expand beyond the brick and mortar for this event.*

This approval is basically done behind closed doors, and allows one business to trump the rights of an entire neighborhood - with no notification. *This is correct... and is being done in accordance with City Code.*

This action also creates precedent, in that any for-profit food/drinking establishment that cannot legally obtain an outdoor permit to serve food/alcoholic beverages due to proximity in a residential neighborhood - can bypass Code and simply come to you - with no oversight. Not even the Alderpersons (Zelinski / Taylor) who represent this area were notified. *This is correct... and is being done in accordance with City Code.*

There is nothing to prevent any number of other establishments (once word gets out) to bypass the standard permitting process, and simply apply to you - including, but not limited to, Olde Grog, Tony's Bar, Fish Fry Tavern, Tonic, City Limits, Luigi's, former Germania, etc. Furthermore, there is no limit as to the number of times such an event can occur. And you would have sole discretion. *I agree. In fact in my 5 years in this position this request has been made 14 times by various establishments... and none of the events have necessitated a police response. In fact, the location you are concerned about has done this 3 previous times, twice under the new owner and once under the previous owner. None of those events generate a single complaint. Therefore, I most certainly lack the ability to deny this request.*

Furthermore, this approval does not review parking/traffic control, noise, amplified music, obstruction of public terraces/sidewalks, loitering, or any other issue that would put a residential neighborhood in distress. *This is correct... and is being done in accordance with City Code.*

Your original comment was that you could not 'refuse' to allow them a permit because 'no complaints were received last year'. Ironically - last year, I personally went to the Police Department to 'complain' that tables/chairs were set up in the parking lot and outdoor drinking was taking place at 5 O'Clock Somewhere. The Desk Clerk was 'oblivious' as to *why this would be a problem*, and probably never took note of my complaint. Obviously, I was also 'oblivious' to the fact that this event was permitted - because I was never notified. *You would not have been notified as there is no provision for notification by City Code. As for the Communications Technician, I do not think it is fair or respectful to be calling her "oblivious". She would not have had a concern about the event as permission was granted for the event. Therefore, no violation was taking place and we don't*

*document violations which are not in existence. Drinking and having tables and chairs in the parking lot are not a violation when permission was granted for an expanded premises for the day.*

While I understand that such issues are not a high priority to the Police Department. I also am aware that standard practice, unfortunately, is on a 'complaint' basis; however, that does not remove the fact that the Police Department is to protect and serve. *I am not sure what are the "such issues" you are referring to. We take and investigate all complaints. Prioritization only come into play when there are competing calls for service. Furthermore, due to the nature of businesses which sell alcohol we do NOT only check for issues and compliance on a complaint basis. This is 100% incorrect. In fact, I have been scrutinized by bar owners as are officers do complete bar checks. Officers will be stopping by this event (call volume permitting), as we try and do for all expanded premises requests.*

Therefore, when the Police Department is made aware 'ahead of time' that illegal gambling will be taking place, and the likelihood that undue volumes of noise and traffic will be generated, it should not warrant having to wait for a 'complaint' before patrols and enforcement occur. *The issue of illegal gambling was never allowed or given permission by the Police Department. Furthermore, steps are already in place to ensure this does not take place at the event.*

I, again, disagree with your interpretation of City Code. I, again, believe you are issuing this permit in violation of State Statutes / City Code, and - by your actions - have aggravated an already fragile neighborhood. *Again, I am NOT issuing a permit. I do NOT have the authority to issue any permits. All alcohol permits are issued by the City Clerk. I am following City Code by allowing the existing permit to be expanded to include the parking lot for this event.*

While I greatly respect the Police Department and the individual officers who serve, I have lost a great deal of respect for you, as an individual, due to the fact that you have such little respect for this neighborhood and residents who have so heavily invested in their homes and this community. *Despite your lack of respect for me (as you have stated), I will continue to show respect to you and serve you and your neighbors in a professional manner based upon State Law and City Code. I do apologize that my abilities to meet your needs were unable to be fulfilled. However, as I have said several times my authority in this matter comes from City Code and feel that your frustrations directed at me are misplaced. The Common Council has the authority to amend City Code and would suggest contacting your Alderman to discuss possible changes to the City Code.*

Perhaps if you lived here, you'd understand.

S. Dabill Taylor

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On Thu, Jul 21, 2016 at 1:26 PM, Tim Styka <[tstyka@ci.menasha.wi.us](mailto:tstyka@ci.menasha.wi.us)> wrote:

Ms. Taylor,

I apologize. Perhaps a meeting would have been a better way to discuss this situation as we continue to have miscommunication. The section that you refer to does indeed state:

**(2) Permit Issued. Whenever a licensee under this Subsection desires to expand the selling, dispensation of fermented malt beverages or intoxicating liquors on an area adjacent to said building, such as a parking lot, for a special event, it may do so by applying to the Chief of Police.** Such permission shall not be unreasonably withheld. Should the Chief of Police withhold such permit, he shall immediately notify the City Clerk. It is the intention of this Subsection to permit scheduled special events and to prohibit extended use of off-premises sales, dispensation or consumption.

The important part of that section is **“a licensee under this Subsection”**. A licensee under this section is a Class “B” premises license holder, not a Special “B” Fermented Malt Beverage Picnic License.

I can try to explain this kind of like a driver’s license. There are obviously different classes a of driver’s licenses. Each licenses allows a person to drive a specific type or type(s) of vehicles. 5 O’ Clock Somewhere, Elk’s Club and other bars have applied for and received a Class “B” premises license. They went through a specific process to obtain that license. The license is generally specific to the building itself as listed on the permit issued by the City Clerk. If a business wanted to have an outdoor permit year round they would have to go through the process as listed in 7-2-17 (a) – (g). However, also as part of having the Class “B” premises license they can also request to Temporary Expanded the Premises under 7-2-17(h). I have to grant the permission for these requests unless I have documentation that there were issues at similar events in the past.

If a group, which does not have a Class “B” premises license would like to sell fermented malt beverages, either be inside or outside, this is a different license. Kind of like a having a different type of driver’s license. This is where a **special Class "B" picnic license** come in. I guess kind of like an instructional permit as these are temporary in nature and are more restrictive than a regular license. I do not have permission to issue these permits. By Code these come from the City Clerk and I agree these groups need to meet the specific criteria, such as being a non-profit.

The reference listed at the end of 7-2-17 is simply that, a reference guide. This is points a person to more information on a topic. It does not indicate that the provisions in one section apply to the other and vice versa. In this case, another way where alcohol can be sold outside, under a completely different kind of license.

I would encourage you to contact the City Clerk, who is responsible for and has the ultimate authority on issuance of alcohol licenses or the City Attorney for further clarification if you believe my interpretation, and the past practices of both the City and Police Department, are incorrect.

Thank you for your time,

Chief Timothy J. Styka

Menasha Police Department

430 First St.

Menasha, WI 54952

[920.967.3500](tel:920.967.3500)



**From:** Dabill Taylor [mailto:[sdabilltaylor3@gmail.com](mailto:sdabilltaylor3@gmail.com)]

**Sent:** Wednesday, July 20, 2016 10:26 PM

**To:** Tim Styka

**Cc:** Joe Polzien; Todd Drew; Alex Zelinski; James Taylor; Pamela Captain

**Subject:** Re: 5 O'clock Somewhere - Pig Roast / Raffle

Chief Styka -

As stated under **Sec 7-2-17**,<sup>\*</sup> an Applicant may apply to the Chief of Police for 'Temporary Expanded Premises'; however, that same section references **Section 7-2-4(3)** - which clearly states... *Such license may be issued only to bona fide clubs, state, county or local fairs, associations or agricultural societies, lodges or societies that have been in existence for not less than six (6) months prior to the date of application for such license or to posts of ex-servicemen's organizations now or hereafter established.* None of which apply to 5 O'Clock Somewhere.

Otherwise, such action would be in direct conflict with both State Statutes and City Code.

Again, I respectfully request the permit be revoked.

S. Dabill Taylor

## **SEC. 7-2-17 OUTDOOR FOOD AND ALCOHOLIC BEVERAGE PERMITS REQUIRED AT CLASS "B" PREMISES**

### **(h) TEMPORARY EXPANDED PREMISES.**

**(1) Premises Defined.** Consumption means dispensation or sale of fermented malt beverages and intoxicating liquors on licensed premises shall be restricted to the building itself and no fermented malt beverages or intoxicating liquors may be consumed, dispensed or sold outside the building.

**(2) Permit Issued.** Whenever a licensee under this Subsection desires to expand the selling, dispensation of fermented malt beverages or intoxicating liquors on an area adjacent to said building, such as a parking lot, for a special event, it may do so by applying to the Chief of Police. Such permission shall not be unreasonably withheld. Should the Chief of Police withhold such permit, he shall immediately notify the City

Clerk. It is the intention of this Subsection to permit scheduled special events and to prohibit extended use of off-premises sales, dispensation or consumption.

**Cross Reference: Section 7-2-4(e)**

#### **SEC. 7.2.4 - CLASSES OF LICENSES**

##### **(e) SPECIAL CLASS "B" FERMENTED MALT BEVERAGE PICNIC LICENSE.**

(1) License. A special Class "B" picnic license, when issued by the City Clerk under authority of the Common Council, as provided for in Sec. 125.26(6), Wis. Stats., shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages or wine containing not more than six percent (6%) alcohol by volume in an original package, container or bottle or by glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic, post meeting, fair or similar gathering. **Such license may be issued only to bona fide clubs, state, county or local fairs, associations or agricultural societies, lodges or societies that have been in existence for not less than six (6) months prior to the date of application for such license or to posts of ex-servicemen's organizations now or hereafter established.** Such license is valid for dates as approved by the City Clerk. Irrespective of other Sections of this Chapter, the City Clerk is hereby authorized to issue a fermented malt beverage license to any local civic, or any local religious or any local not-for-profit organization pursuant to this Section.

On Wed, Jul 20, 2016 at 5:29 PM, Tim Styka <[tstyka@ci.menasha.wi.us](mailto:tstyka@ci.menasha.wi.us)> wrote:

Ms. Taylor,

Please review my original email again. The Elk's Club was NOT given a Picnic License, nor did they ever apply for one. The fact that they are a 501 (c)(3) is irrelevant as they hold a regular liquor license. They applied for and received their liquor license through the same process as any for profit business. In addition, they use this at their place of business, just a bar does. The permission which I granted them was the exact same as granted other license holders who wish to temporarily expand their premises.

I am very unclear as to how I am superseding State Law. I am following the City Code, which in the case of an expanded premises is within State Law.

The advertisement of gambling is not a reason I have to deny an expanded premises request by City Code. Should there be a violation which takes place it will be addressed as would any violation we receive a complaint on.

Chief Timothy J. Styka  
Menasha Police Department  
[920.967-3500](tel:920.967-3500)

**From:** Dabill Taylor [[sdabilltaylor3@gmail.com](mailto:sdabilltaylor3@gmail.com)]

**Sent:** Wednesday, July 20, 2016 2:45 PM

**To:** Tim Styka

**Cc:** Joe Polzien; Todd Drew; Alex Zelinski; James Taylor; Pamela Captain

**Subject:** Re: 5 O'clock Somewhere - Pig Roast / Raffle

Chief Styka:

In response to your email.

The *Elks Club* is a non-profit fraternal organization, with 501(c)(3) Status; *5 O'Clock Somewhere* is not.

A 'Temporary' Class B (Picnic) License can only be issued to bona fide non-profit organizations (*Wis. Stats. 125.26*), and is clearly noted on the City of Menasha's *Application For Temporary Class B License (attached)*.

Furthermore, per Wisconsin Department Of Administration - Gaming Division, '*Wisconsin law provides that only charitable organizations can obtain a raffle license in Wisconsin. Individuals and businesses do not qualify for a raffle license*'. This would include 50/50 raffles, paddle wheel, shake-of-the-day, etc.

A City (including the Chief of Police) does not have the authority to supersede Wisconsin State Statutes when those Statutes are applied Statewide [(*Wis. Stats. 66.0101(4)*)].

Therefore, I - again - request you revoke the permit that was issued to *5 O'Clock Somewhere* due to the fact that it would place the City in violation of State Statutes and Wisconsin Law, and would subject *5 O'Clock Somewhere* to possible criminal gaming charges.

And, in doing so, make explicitly clear to the proprietor/manager of *5 O'Clock Somewhere* that any blame for such revocation lies solely with the City of Menasha for failure to comply with State of Wisconsin Statutes and governing laws (particularly those 'Officials' directly involved in issuing the permit) - and should not be placed on neighboring residences who only seek to be treated with equal respect and consideration.

S. Dabill Taylor

On Tue, Jul 19, 2016 at 12:31 AM, Tim Styka <[tstyka@ci.menasha.wi.us](mailto:tstyka@ci.menasha.wi.us)> wrote:

Ms. Taylor,

Thank you for your email. Unfortunately I respectfully disagree with your analysis of ordinance 7-2-17. By the rules set forth by the Council a license holder need only apply to me and then as for granting permission, "Such permission shall not be unreasonably withheld." To enact a denial I have to demonstrate there were issues at previous special events. The last time a special event was held there, there were no complaints. Therefore, I had no choice but to approve the request.

Section (h) of this section stands alone and is not inclusive of (a)-(g), as otherwise the section would not be logical. (a) through (g) outline the process to obtain an Outdoor Food and Alcoholic Beverage Permit, which allows a license holder to sell outside year round. This is evident as a full time permit requires Council approval, a fee paid, notification to neighbors, a revocation process and yes a 100 foot distance from the property line of a residence. In fact section (b)

which provides for the 100' rule specifically indicates this is for the Outdoor Alcoholic Beverage Permit, not a temporary expanded premises.

If I would deny this permit based upon the 100' rule then I also would have to deny the annual Elk's Club request as well, as their property is within 100' of a residence. Their event has been going on for years, is within 100' and has never been called into question. This is further evidence that (a) - (g) are not applicable to (h).

While I can respect your frustrations, I am simply caught in the middle of a neighborhood issue enforcing the City Code. To state that I have taken this action with no regard for the neighborhood is completely without merit. I, along with my officers, work tirelessly to try and make the community a better place.

If there is a need to amend the City Code I would suggest you work with your Alderman on that issue.

Chief Timothy J. Styka  
Menasha Police Department  
[920.967-3500](tel:920.967-3500)

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**From:** Dabill Taylor [[sdabilltaylor3@gmail.com](mailto:sdabilltaylor3@gmail.com)]  
**Sent:** Monday, July 18, 2016 11:40 PM  
**To:** Tim Styka; Joe Polzien; Todd Drew  
**Cc:** Alex Zelinski; James Taylor  
**Subject:** 5 O'clock Somewhere - Pig Roast / Raffle

Chief Styka -

Tonight, I requested a meeting, at your convenience, along with Joe Polzien (Code Enforcement Officer) and Todd Drew (Health Inspector) to discuss 5 O'Clock Somewhere. Due to time constraints and (what I am assuming) would be scheduling conflicts, I am - instead - sending you an email to express my concerns and dissatisfaction.

As you may well be aware, on numerous occasions, I have appeared before the City Council to express the frequent public nuisance problems and Code violations associated with *5 O'Clock Somewhere* (600 Broad Street), along with *The Olde Grog* and *DeBruin AutoBody*. Each meeting, I have tried to be respectful to both the Council and Police Department - while still attempting to convey the frustrations felt by neighboring residential property owners to the actions taking place at these establishments. I have been more than patient.

With that being said - over the weekend, I received a 'Flyer' on my front door (attached) advertising a PIG ROAST, LIVE BANDS, BEER BONG TOURNAMENTS and RAFFLES / SHAKE OF THE DAY - all to be held in the parking lot of *5 O'Clock Somewhere* on Saturday, July 23.

While this event is portrayed to be a Fundraiser for charity - all of these 'events' are violations of City Code, as it pertains to Sec. 7-2-17 - *Outdoor Food And Alcoholic Beverage Permits*, specifically when within 100-feet of a residential property. The advertised Raffles, Paddle Wheel and 'never ending' Shake-Of-The-Day are also violations of State of Wisconsin Statutes with regarding to Gambling.

My original intention in seeking a meeting was to discuss this flyer, and to request that you explain to the proprietor/manager that this event would be a violation of City Code and would put them in jeopardy of receiving a citation and/or demerit points - in essence, explaining that their 'event' would not be permitted.

To my shock, I was handed a letter tonight (apparently distributed to others in the neighborhood) - which proclaimed ... *'After working with the **Chief of Police**, city officials and council members, we have obtained all of the proper permits to hold this event.'*

To put it 'lightly', I am extremely disappointed that you, as our both our Police Chief and a representative of the community, have so little regard to residential home owners and renters to personally issue such a permit - with no consultation or notice provided to the neighborhood. As Police Chief, your prime responsibility is to ensure that the *laws and ordinances of the City of Menasha are enforced*. Personally, I take this as a slap in the face. Furthermore, neither of the Alderman who represent this area (Alex Jelinski - District 6) and James Taylor (District 2) were consulted or notified in advance of issuing this permit. These actions illustrate a complete lack of respect and responsibility on your part and whomever else was privy to this decision.

While Code does permit the Chief of Police to issue a 'temporary' permit - I request you review the attached Sec 7-2-17 and note the many restrictions on outdoor food and alcohol beverage permits within 100-feet of a residential property (and associated Code pertaining to notification, gambling, food preparation, amplified music, etc.), which far outweigh the wishes of this establishment to hold such an event - and, thereby, revoke this permit.

Perhaps, *5 O'clock Somewhere* can coordinate with another establishment, which does not lie within a residential district, has applied through the proper channels, and followed proper procedure to be issued an Outdoor Permit. Thereby, benefiting both establishments and the charities they are seeking to help - and does not create a precedence.

S. Dabill Taylor  
600 Broad Street