

## Fermented Malt Beverages and Intoxicating Liquor

- (b) **Employment of Minors** No retail "Class B" or Class "B" licenses shall employ any underage person, as defined in the Wisconsin Statutes, but this shall not apply to hotels and restaurants. Family members may work on the licensed premises but are not permitted to sell or dispense alcoholic beverages.
- (c) **Disorderly Conduct Prohibited.** Each licensed premises shall, at all times, be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- (d) **Licensed Operator on Premises** There shall be upon premises operated under a "Class B", Class "B", or "Class C" license, at all times, the licensee, members of the licensee's immediate family who have attained the legal drinking age, and/or some person who shall have an operator's license and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a "Class B", Class "B", or "Class C" license unless he possesses an operator's license, or there is a person with an operator's license upon said premises at the time of such service.
- (e) **Health and Sanitation Regulations.** The rules and regulations of the State Board of Health governing sanitation in restaurants shall apply to all "Class B" liquor or "Class C" licenses issued under this Chapter. No "Class B" or "Class C" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) **Clubs.** No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- (g) **Gambling Prohibited.** Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this Chapter or the laws of the State of Wisconsin.
- (h) **Credit Prohibited.** No retail Class "A", Class "B", "Class A", "Class B", or "Class C" liquor, wine, or fermented malt beverage licensee shall sell or offer for sale any alcohol beverage to any person or persons by extending credit, except hotel credit extended to a resident guest or a club to a bona fide member. It shall be unlawful for such licensee or permittee to sell alcohol beverages to any person on a passbook or store order or to receive from any person any goods, ware, merchandise or other articles in exchange for alcohol beverages.
- (i) **Licensee or Permittee Responsible for Acts of Help.** A violation of this Chapter by a duly authorized agent or employee of a licensee or permittee under this Chapter shall constitute a violation by the licensee or permittee. Whenever any licensee or permittee under this Chapter shall violate any portion of this Chapter, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this Chapter.
- (j) **Improper Exhibitions.** It shall be unlawful for any person to perform, or for any licensee or manager or agent of the licensee to permit any employee, entertainer or patron to engage in any live act, demonstration, dance, exhibition, or video depiction on the licensed premises which:
  - (1) Exposes his or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
  - (2) Exposes any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
  - (3) Exposes any portion of the female breast at or below the areola thereof; or
  - 4) Engages in or simulates sexual intercourse and/or any sexual contact, including the touching of any portion of the female breast or the male and/or female genitals.

Annotation: See Colonnade Catering Corp. v. United States, 397 U.S. 72, 90 S. Ct. 774 (1970); and State v. Erickson, 101 Wis. 2d 224 (1981), for guidelines for warrantless searches of licensed premises.

### **SEC. 7-2-15 CLOSING HOURS.**

Closing hours shall be established in conformance with Sec. 125.32(3), Wis. Stats., and further restricted as follows:

(a) **Class "B" Licenses.**

- (1) No premises for which a retail "Class B" liquor, Class "B" fermented malt beverage, or "Class C" wine license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, and 2:30 a.m. and 6:00 a.m., Saturday and Sunday. There shall be no closing hours on January 1st.
- (2) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but shall not sell liquor or malt beverages during the closing hours of Subsection (a)(1) above.

- (b) **Carryout Hours.** Between 9:00 p.m. and 8:00 a.m., no person may sell, remove, carry out or permit to be removed or carried out from any premises having a "Class A" or Class "A" license, fermented malt beverages or intoxicating liquor in original unopened packages, containers or bottles or for consumption away from the premises.

### **SEC. 7-2-16 RESTRICTIONS ON TEMPORARY FERMENTED MALT BEVERAGE OR WINE LICENSES.**

It shall be unlawful for any person or organization on a temporary basis to sell or offer to sell any alcohol beverage upon any Village-owned property or privately-owned property within the Village of Nichols, except through the issuance of a Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License issued by the Village Board in accordance with Wisconsin Statutes and as set forth in this Section. A Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License authorizing the sale and consumption of beer and/or wine on Village-owned property or privately-owned property may be authorized by the Village Board provided the following requirements are met:

- (a) **Compliance with Eligibility Standards.** The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in Sec. 125.26(6), Wis. Stats., and shall fully comply with the requirements of this Section and Section 11-4-1. Members of an organization which is issued a temporary license and who are issued operator's licenses for the event shall attend a pre-event informational meeting to learn what rules and regulations apply and what the responsibilities of the bartenders and organization will be.
- (b) **Posting of Signs and Licenses.** All organizations issued a temporary license shall post in a conspicuous location at the main point of sale and at all remote points of sale a sufficient number of signs stating that no fermented malt beverage shall be served to any under-age person without proper identification.
- (c) **Fencing.** If necessary due to the physical characteristics of the site, the Village Board may require that organizations install a double fence around the main point of sale to control ingress and egress and continually station a licensed

operator, security guard or other competent person at the entrance for the purpose of checking age identification. Where possible, there shall be only one (1) point of ingress and egress. When required, the double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences.

- (d) **Underage Persons Prohibited.** No underage persons as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverages or wine at any point of sale, nor shall they be allowed to loiter or linger in the area of point of sale.
- (e) **Licensed Operators Requirement.** A licensed operator shall be stationed at all points of sales at all times.
- (f) **Waiver.** The Village Board may waive or modify the requirements of this Section due to the physical characteristics of the licensed site.
- (g) **Insurance.** The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the Village and its employees and agents harmless against all claims, death of any person or any damage to property cause by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the license, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the Village of Nichols. The applicant may be required to furnish a performance bond prior to being granted the license.

Cross Reference: Section 11-4-1.

**SEC. 7-2-17 REVOCATION AND SUSPENSION OF LICENSES; NON-RENEWAL.**

- (a) **PROCEDURE.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 9, Chapter 5 of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this Section.
- (b) **ABANDONMENT OF PREMISES.** Any licensee holding a license to sell alcohol beverages who abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be sufficient grounds for revocation of any alcohol beverage license. The closing of the licensed premises for at least six (6) months shall be prima facie evidence of an abandonment, unless extended by the Village Board.
- (c) **LICENSE REVOCATION OR SUSPENSION.**
  - (1) **Notice and Hearing.** Whenever a person holding a license to sell alcoholic beverages has failed to maintain the premises according to standards prescribed for sanitation or in whose premises persons are permitted to loiter for purposes of prostitution, or that the licensee has not observed and obeyed any lawful order of the Village Board or police officers of the Village, has violated Village ordinances, or for any other good reason, the Village Board shall issue a summons, to be signed by the Village Clerk commanding the licensee complained of to appear before the Fire and Police Committee or a special committee designated by the Village Board on a day and time and at a place named in the

summons to show cause why the license should not be revoked or suspended. Such summons shall be served not less than three (3) and not more than (10) days before the time at which the licensee is commanded to appear, and may be served personally upon the licensee or the agent of the licensee or upon the person in charge of the licensed premises. The complaint shall be served with the summons and shall set forth the offense allegedly committed, the date, and place of said offense, and the facts constituting the alleged offense. If such licensee shall not appear as required by the summons, the complaint shall be taken as true, and if the Committee deems its allegations sufficient, the Committee shall recommend revocation or suspension of the license as provided herein.

(2) Procedure on Hearing; Effect of Revocation.

- a. The Fire and Police Committee or a designated committee shall serve as a hearing agency for the Village Board.
- b. The Chairman of the Committee, or the Chair's designee, shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in Sec. 227.08, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges to a preponderance of the evidence. The licensee and the complainant may be represented by counsel, may call and examine witnesses and cross-examine witnesses of the other party. All proceedings and testimony shall be recorded on tape and transcribed. If either party requests a stenographic recording and transcription, the Village shall make the necessary arrangements, but the expenses shall be borne by the requesting party. The Village Clerk shall serve as secretary to the Committee and shall mark and receive all exhibits admitted into the record.
- c. Within ten (10) days of the completion of the hearing and filing of briefs, if any, the Committee, upon the testimony and evidence presented at the hearing, shall determine by simple majority vote of those present whether the charges are true and if so, submit a report to the Village Board including its findings of fact, conclusions of law and recommendation as to what action, if any, the Village Board should take with respect to the license. If the recommendation is to suspend the license, it shall be for a period of not less than (10) days or more than ninety (90) days, in like manner, the recommendation may be to revoke the license. If the Committee determines that the charges are not substantiated, it shall recommend to the Village Board that the complaint be dismissed without cost to either party. The Committee's recommendation shall be promptly filed with the Clerk. The Clerk shall prepare five (5) copies of the transcript of the proceedings, all exhibits and the recommendation of the Committee.
- d. At the regular meeting of the Village Board after the filing of the Committee's recommendation, the Village Board shall act on the recommendation and may reverse or modify any portion thereof by a simple majority vote. The recommendation of the Committee shall become the decision of the Village Board unless reversed or modified. No further testimony or evidence shall be allowed before the Village Board. Only those members of the Village Board who have certified to the Clerk in writing that they have read the transcript, exhibits and

recommendation made shall be permitted to vote on the matter. The Clerk shall make the said certifications a part of the record. The decision of the Village Board shall be a final determination for purposes of judicial review.

- e. If the complaint is found to be true, the licensee shall pay to the Village the actual cost of the proceedings. If the complaint is found by the Village Board to be malicious and without probable cause, the complainant shall pay the cost of the proceedings in the same amount.
  - f. When a license is revoked it shall be so entered of record by the Clerk, and no other license shall be granted to such licensee for such premises for a period of twelve (12) months from the date of the revocation, nor shall any part of the money paid as application fee for any license so revoked be refunded.
- (d) **NONRENEWAL OF LICENSE.** The Village Attorney may, after investigation, commence an action before the Fire and Police Committee to hear evidence and make a recommendation to the Village Board that a license issued pursuant to this Chapter not be renewed. The Chairman of the Committee shall, in writing, notify the licensee of the consideration of nonrenewal. Such notification shall be in the form of and shall serve as the summons and complaint and shall include a statement of the reasons for the consideration of the nonrenewal of the license in the same specificity required for a summons and complaint for revocation or suspension. If the license is recommended for nonrenewal, costs may be assessed against the licensee and any renewal application fee shall be forfeited. In all other respects, the provisions of Subsection (c) above shall apply. The commencement of this action shall stay action by the Village Board on the licensee's application until the Committee makes its recommendations.
- (e) **OTHER PROVISIONS.** Any license issued pursuant to this Chapter shall be subject to such further regulations and restrictions as may be imposed by the Village Board by amendment to this section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations his license may be revoked in accordance with this section. In case of revocation of any license or any violation of any provision of this Chapter in accordance with this section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.
- (f) **POINT VALUES FOR ALCOHOL BEVERAGES' VIOLATIONS, REVOCATIONS AND SUSPENSIONS.**
- (1) **Purpose and Definitions.** The purpose of this Subsection is to administratively interpret those portions of this Chapter and Title 9, Chapter 5 of this Code of Ordinances, relating to establishing an alcohol beverage demerit point system to assist in determining which license holders should be subject to suspension or revocation procedures.
  - (2) **Point Schedule.** The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders who have repeatedly violated state statutes and Village ordinances, for the purpose of recommending suspension or revocation of their alcohol beverage licenses.

<u>Type of Violation</u>	<u>Point Value</u>
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