

CHAPTER 2

Fermented Malt Beverages and Intoxicating Liquor

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ARTICLE A

Fermented Malt Beverages and Intoxicating Liquor

SEC. 7-2-1 STATE STATUTES ADOPTED.

The provisions of Chapter 125 and Sections 48.344 and 778.25, of the Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Chapter. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Chapter.

SEC. 7-2-2 DEFINITIONS.

As used in this Chapter the terms "Alcoholic Beverages," "Intoxicating Liquors," "Sell," "Sold," "Sale," "Restaurant," "Club," "Retailer," "Person," "Fermented Malt Beverages," "Wholesalers," "Retailers," "Operators," and "Non-Intoxicating Beverages" shall have the meaning given them by Chapter 125, Wisconsin Statutes.

SEC. 7-2-3 LICENSE REQUIRED.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, 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 and regulations applicable thereto, except as provided by Sections 125.26, 125.27, 125.28 and 125.51 of the Wisconsin Statutes.

SEC. 7-2-4 CLASSES OF LICENSES.

- (a) **RETAIL CLASS "A" INTOXICATING LIQUOR LICENSE.** A retail Class "A" intoxicating liquor license, when issued by the Village Clerk-Treasurer under the authority of the Village Board, shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers, and to be consumed off the premises so licensed.
- (b) **RETAIL CLASS "B" INTOXICATING LIQUOR LICENSE.** A retail Class "B" intoxicating liquor license, when issued by the Village Clerk-Treasurer under authority of the Village Board shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or container, in multiples not to exceed four liters at any one time, and to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- (c) **CLASS "A" FERMENTED MALT BEVERAGE RETAILER'S LICENSE.** A Class "A" retailer's fermented malt beverage license, when issued by the Village Clerk-Treasurer under the authority of the Village Board, shall entitle the holder thereof

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to possess, sell or offer for sale fermented malt beverages only for consumption away from the premises where sold, and in the original packages, containers or bottles.

- (d) CLASS "B" FERMENTED MALT BEVERAGE RETAILER'S LICENSE. A Class "B" fermented malt beverage retailer's license, when issued by the Village Clerk-Treasurer under the authority of the Village Board, shall entitle the holder thereof to possess, sell or offer for sale, fermented malt beverages, either to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than one-half of a percentum of alcohol by volume, without obtaining a special license to sell such beverages.
- (e) SPECIAL CLASS "B" FERMENTED MALT BEVERAGE PICNIC LICENSE.
 - (1) A special Class "B" Picnic license, when issued by the Village Clerk-Treasurer under authority of the Village Board, 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 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 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 Village Board.
 - (2) Application. Application for such license shall be signed by the president or corresponding officer of the society making such application and shall be filed with the Village Clerk-Treasurer together with the appropriate license fee for each day for which the license is sought. The license shall specify the hours and dates of license validity. Such license shall be valid for no more than four (4) consecutive days. If the application is for a license to be used in a Village park, the applicant shall specify the main point of sale facility.
- (f) WHOLESALER'S LICENSE. A Wholesaler's fermented malt beverage license, when issued by the Village Clerk-Treasurer under authority of the Village Board, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only in original packages or containers to dealers, not to be consumed in or about the premises of said wholesaler.

SEC. 7-2-5 LICENSE FEES.

The following fees shall be chargeable for licenses issued by the Village Board:

- (a) Retail Class "A" Intoxicating Liquor License — \$75.00 annually.
- (b) Retail Class "B" Intoxicating Liquor License — \$75.00 annually.
- (c) Class "A" Fermented Malt Beverage Retailers License — \$ 75.00 annually.
- (d) Class "B" Fermented Malt Beverage Retailer's License — \$75.00 annually.
- (e) Special Class "B" Fermented Malt Beverage Picnic License — \$2.00 per day.
- (f) Wholesaler's License — \$25.00 annually or fractional part thereof.

SEC. 7-2-6 APPLICATION FOR LICENSE.

- (a) CONTENTS. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on the form prescribed by the Wisconsin Department of Revenue and shall be sworn to by the applicant as provided by Sections 887.01 to 887.04, Wis. Stats., and shall be filed with the Village Clerk-Treasurer not less than fifteen (15) days prior to the granting of such license. The premises shall be physically described to include every room and storage space to be covered by the license, including all rooms not separated by a solid wall or joined by connecting entrances.

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- (b) CORPORATIONS. Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, if a corporation.
- (c) PUBLICATION. The application shall be published at least three (3) times in the official Village newspaper, and the costs of publication shall be paid by the applicant.
- (d) AMENDING APPLICATION. Whenever anything occurs to change any fact set out in the application of any licensee, such licensee shall file with the issuing authority a notice in writing of such change within ten (10) days after the occurrence thereof.

SEC. 7-2-7 QUALIFICATIONS OF APPLICANTS AND PREMISES.

- (a) RESIDENCE REQUIREMENTS. A retail Class "A" or retail Class "B" fermented malt beverage or intoxicating liquor license shall be granted only to persons who are citizens of the United States and of Wisconsin.
- (b) APPLICANT TO HAVE MALT BEVERAGE LICENSE. No retail Class "B" intoxicating liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages.
- (c) RIGHT TO PREMISES. No applicant will be considered unless he has the right to possession of the premises described in the application for the license period, by lease or by deed.
- (d) AGE OF APPLICANT. No Class "A" or "B" licenses shall be granted to any person under nineteen (19) years of age.
- (e) CORPORATE RESTRICTIONS.
 - (1) No license shall be granted to any corporation which does not comply with the provisions of Sec. 125.04(6), Wis. Stats., which does not have an agent eligible for a license under this chapter or under state law, or which has more than fifty (50%) percent of the stock interest, legal or beneficial, in such corporation held by any person or persons not eligible for a license under this chapter or under the state law.
 - (2) Each corporate applicant shall file with its application for such license a statement by its officers showing the names and addresses of the persons who are stockholders together with the amount of stock held by such person or persons. It shall be the duty of each corporate applicant and licensee to file with the Village Clerk-Treasurer a statement of transfers of stock within 48 hours after such transfer of stock.
 - (3) Any license issued to a corporation may be revoked in the manner and under the procedure established in Section 125.12, Wis. Stats., when more than fifty (50%) percent of the stock interest, legal or beneficial, in such corporation is held by any person or persons not eligible for a license under this Chapter or under the state law.
- (f) SEPARATE LICENSES. A separate license shall be required for each business premises where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale.
- (g) LICENSE QUOTAS. License quotas for the Village shall be as provided in Chapter 125, Wis. Stats.

SEC. 7-2-8 INVESTIGATION.

The Village Clerk-Treasurer shall notify the Chief of Police and Building Inspector of each new application and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary

to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. These officials shall furnish to the Village Board in writing the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused. No license shall be renewed without a re-inspection of the premises and report as originally required.

SEC. 7-2-9 APPROVAL OF APPLICATION.

- (a) In determining the suitability of an applicant, consideration shall be given to the moral character and financial responsibility of the applicant, the appropriateness of the location and premises proposed, and generally the applicant's fitness for the trust to be reposed.
- (b) No license shall be granted for operation on any premises or with any equipment which taxes or assessments or other financial claims of the Village are delinquent and unpaid.
- (c) No license shall be issued unless the premises conform to the sanitary, safety, and health requirements of the State Building Code, and the regulations of the State Board of Health applicable to restaurants. The premises must be properly lighted and ventilated, must be equipped with separate sanitary toilet and lavatory facilities equipped with running water for each sex, and must conform to all ordinances of the Village.

SEC. 7-2-10 GRANTING OF LICENSE.

Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license. Upon the approval of the applicant by the Village Board, the Village Clerk-Treasurer shall issue to the applicant a license, upon payment by the applicant of the license fee to the Village.

SEC. 7-2-11 TRANSFER AND LAPSE OF LICENSE.

- (a) In accordance with the provisions of Section 125.04(12), Wis. Stats., a license shall be transferable from one premises to another if such transfer is first approved by the Village Board. An application for transfer shall be made on a form furnished by the Village Clerk-Treasurer. Proceedings for such transfer shall be had in the same form and manner as the original application. The fee for such transfer is Ten (\$10.00) Dollars. Whenever a license is transferred the Village Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such transfer.
- (b) Whenever the agent of a corporate holder of a license, for any reason, replaced, the licensee shall give the Village Clerk-Treasurer written notice of said replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Village Board, the successor agent shall have the authority to perform the functions and be charged with the duties of the original agent. However, said license shall cease to be in effect upon receipt by the Village Clerk-Treasurer of notice of disapproval of the successor agent by the Wisconsin Department of Revenue or other peace officer of the municipality in which the license was issued. The corporation's license shall not be in force after receipt of such notice or after a regular or special meeting of the Village Board until the successor agent or another qualified agent is appointed and approved by the Village and the Wisconsin Department of Revenue.

SEC. 7-2-12 NUMBERING OF LICENSE.

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. The Village Clerk-Treasurer shall affix to the license his affidavit as provided by Sec. 125.04(4) of the Wisconsin Statutes.

SEC. 7-2-13 POSTING LICENSES; DEFAACEMENT.

- (a) Every person licensed in accordance with the provisions of this Chapter shall immediately post such license and keep the same posted while in force in a conspicuous place in the room or place where said beverages are drawn or removed for service or sale.
- (b) It shall be unlawful for any person to post such license or to be permitted to post it upon premises other than those mentioned in the application or knowingly to deface or destroy such license.

SEC. 7-2-14 CONDITIONS OF LICENSE.

All retail Class "A" and "B" licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of this Section, and subject to all other ordinances and regulations of the Village applicable thereto:

- (a) CONSENT TO ENTRY. Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the Village at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of Village ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- (b) EMPLOYMENT OF MINORS. No retail Class "B" licensee shall employ any person under nineteen (19) years of age, 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" license, at all times, the licensee 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" license unless he possesses an operator's license, who is at the time of such service upon said premises.
- (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 licenses issued under this chapter. No Class "B" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) RESTRICTIONS NEAR SCHOOLS AND CHURCHES. No retail Class "A" or Class "B" license shall be issued for premises the main entrance of which is less than 300 feet 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

SEC. 7-2-15 CLOSING HOURS

(a) shall be changed to read as follows:

(a) No premises in the Village of St. Cloud for which a Class "B" intoxicating liquor or fermented malt beverage license(s) for the sale of intoxicating liquor or fermented malt beverages has been issued, shall be permitted to remain open between the hours of 2:00 a.m. and 6:00 a.m. Monday thru Friday; and between the hours of 2:30 a.m. and 6:00 a.m. on Saturday and Sunday. However, on New Years Eve, no closing is required.

(b) and (c) shall remain the same.

ADOPTED THIS 5th DAY OF October 2004

Tom Michels
Village President

Mary Steffes
Village Clerk

highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises. This subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school building, hospital building or church building.

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.

- (a) No premises in the Village of St. Cloud for which a Class "B" intoxicating liquor or fermented malt beverages license(s) for the sale of fermented malt beverages has been issued, shall be permitted to remain open between the hours of 1:00 a.m. and 8:00 a.m. However, the closing hours for January 1st shall be 3:00 a.m.
- (b)
 - (1) No premises holding a Class A intoxicating liquor or fermented malt beverages license(s) nor the holder of a license permitting such premises or holder to sell, deal and traffic in fermented malt beverages nor any person on such premises, whether or not such person holds an operator's license pursuant to Section 125.17 of the Wisconsin Statutes, as amended, shall sell, vend, barter, exchange, offer for sale, give away or otherwise furnish to any person any fermented malt beverages or intoxicating liquor in original packages, intending to mean aluminum/tin cans, bottles, barrels or any containers in which the beverages have been delivered to the premises, and to be removed from the premises between the hours of 9:00 p.m. and 8:00 a.m.
 - (2) No person shall remove from any premises licensed under this Chapter any fermented malt beverage or intoxicating liquor in original packages, intending to mean aluminum/tin cans, bottles, barrels or any containers in which the beverages are delivered to the premises, between the hours of 9:00 p.m. and 10:00 a.m.
- (c) Closing hours may be modified for specific events by majority vote of the Village Board.

SEC. 7-2-16 RESTRICTIONS ON SPECIAL CLASS "B" FERMENTED MALT BEVERAGE PICNIC OR SPECIAL EVENT LICENSE.

- (a) GENERAL CONDITIONS OF LICENSE. Groups that have been granted a special Class "B" fermented malt beverage license shall comply with the following conditions of license:
 - (1) Licensed Operators. There shall be at least one person properly licensed as an operator under the provisions of Article B of this Chapter on the premises at all times to supervise the service of beverages.
 - (2) Compliance With Laws. Holders of special Class "B" fermented malt beverage licenses shall fully comply with all provisions of this Code and the state statutes.
 - (3) Suitable Facilities. For indoor events, the structure used must have suitable exits and open spaces to accommodate anticipated attendance. It should contain adequate sanitary facilities to accommodate the size of the group.
 - (4) Posting of License. The special Class "B" fermented malt beverage license shall be posted in a conspicuous place and shall specify the date(s) and hours for which said license is issued.

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- (5) **Insurance.** The applicant for a Special Class "B" Fermented Malt Beverage 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 caused 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 permit, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the Village of St. Cloud. The applicant may be required to furnish a performance bond prior to being granted the permit.
- (b) **REGULATIONS CONCERNING THE SALE OR DRINKING OF FERMENTED MALT BEVERAGES IN PARKS.**
- (1) All organizations issued a license under 7-2-4(e) of the Code of Ordinances shall post in a conspicuous location at the main point of sale facility and at all remote sales facilities, a sufficient number of signs disclosing that no fermented malt beverage shall be served to any underage person or without proper age identification.
 - (2) All organizations shall install a single fence around the main point of sale facility to control ingress and egress and shall station a licensed operator or police officer at the entrance after 9:00 p.m. for the purpose of checking age identification.
 - (3) The sale of fermented malt beverages from remote sites, that is, other than the main point of sale facility, shall be prohibited after the hour of 9:00 p.m.
 - (4) No underage persons shall be allowed to assist in the sale of fermented malt beverages at any point of sale, nor shall they be allowed to loiter or linger in the area of any remote sale facility.
 - (5) A licensed operator shall be stationed at all points of sale at all times.
 - (6) No more than six (6) operators licenses shall be issued in conjunction with the issuance of the Special Class "B" License, unless the Village Board, for good cause shown, elects to issue additional operators licenses, not to exceed eight (8) in total.

SEC. 7-2-17 BEER GARDEN LICENSES REQUIRED FOR OUTDOOR CONSUMPTION AT CLASS "B" PREMISES.

- (a) **REQUIRED FOR 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 permit granted by the Village Board. The permits are a privilege in which no rights vest and therefore may be revoked by the Village Board 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 premises which is not described in a valid Beer Garden permit.
- (b) **LIMITATIONS ON ISSUANCE OF BEER GARDEN PERMITS.** No permit shall be issued for a Beer Garden if any part of the Beer Garden is within one hundred (100) feet of a structure used for residential purposes, except residential uses located in the same structure as the licensed premises. No permit shall be issued for a Beer Garden if the Beer Garden area is greater than fifty (50%) percent of the gross floor area of the adjoining licensed premises. Each applicant for a Beer Garden permit shall accurately describe the area intended for use as a Beer Garden and shall indicate the nature of fencing or other measures intended to provide control over the operation of the Beer Garden. Every Beer Garden shall be completely enclosed with a fence or wall not less than six (6) feet in height. No amplified sound or music

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is permitted outside the enclosed (building) premises. Amplified sound or music is not permitted in the Beer Garden. There shall be a licensed operator with the Beer Garden at all times the Beer Garden is in operation.

- (c) ADJOINING PROPERTY OWNERS TO BE NOTIFIED OF PENDENCY OF APPLICATIONS. All property owners within one hundred fifty (150) feet of the proposed beer garden shall be notified of the pendency of application for a beer garden permit by first class mail.
- (d) STATE STATUTES ENFORCED WITHIN BEER GARDEN. Every permittee under this Section shall comply with and enforce all provisions of Ch. 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Ch. 125, Wis. Stats. shall be grounds for immediate revocation of the Beer Garden permit by the Village Board.

SEC. 7-2-18 REVOCATION AND SUSPENSION OF LICENSES; NON-RENEWAL.

- (a) PROCEDURE. Whenever the holder of any license under this Section violates any portion of this Section, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Sec. 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.
- (b) AUTOMATIC REVOCATION. Any license issued under the provisions of this Section shall stand revoked without further proceedings upon the conviction of a licensee or employee, agent or representative thereof for a second offense under this Section or for a violation of Chs. 125 or 139, Wis. Stats., or any other State or Federal liquor or fermented malt beverage laws or of any felony.
- (c) NON-RENEWAL OF LICENSES. Before renewal of any license issued under this Section is refused, the licensee shall be given written notice of any charges or violations against him or the reasons proposed for non-renewal and a copy of any proposed motion for non-renewal and shall have an opportunity to be heard before the Village Board.
- (d) 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 an alcohol beverage license. The closing of the licensed premises for at least ninety (90) days shall be prima facie evidence of an abandonment.

SEC. 7-2-19 RESERVED FOR FUTURE USE.