

## Chapter 6 ALCOHOL AND NONALCOHOL BEVERAGES\*

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\*Cross references: Businesses, ch. 18.

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### ARTICLE I. IN GENERAL

#### Sec. 6-1. State statutes adopted.

The provisions of Wis. Stats. ch. 125, relating to alcohol beverages, except provisions therein relating to penalties to be imposed, are 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 in order to secure uniform statewide regulation of alcohol beverage control.

(Ord. No. OR02-03, § I, 4-22-2002)

**State law references:** Alcohol beverages generally, Wis. Stats. ch. 125.

## **Sec. 6-2. Definitions.**

As used in this chapter the terms "alcohol beverages," "intoxicating liquors," "principal business," "legal drinking age," "premises," "sell," "sold," "sale," "restaurant," "club," "retailer," "person," "fermented malt beverages," "wholesalers," "retailers," "operators," and "nonintoxicating beverages" shall have the meaning given them by Wis. Stats. § 125.02.

## **Sec. 6-3. Penalties.**

- (a) Forfeitures for violations of Wis. Stats. §§ 125.07(1)--(5) and 125.09(2), adopted by reference in section 6-1, shall conform to the forfeiture penalty permitted to be imposed for violations of the comparable state statute, including any variations or increases for subsequent offenses.
- (b) Any person who shall violate any provision of this chapter, except as otherwise provided in subsection (a) of this section, or who shall conduct any activity or make any sale for which a license is required without a license shall be subject to a forfeiture as provided in section 1-17.
- (c) Nothing in this section shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the state statutes.

Secs. 6-4--6-30. Reserved.

## **ARTICLE II. LICENSES**

### **DIVISION 1. GENERALLY**

#### **Sec. 6-31. Required.**

No person 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 Wis. Stats. §§ 125.16, 125.27, 125.28 and 125.51.

#### **Sec. 6-32. Age requirement.**

No license under this article shall be granted to any person who has not attained the legal drinking age.

(Code 1983, § 12.06(5)(h))

### **Sec. 6-33. Classes of licenses.**

- (a) *Retail "class A" intoxicating liquor license.* A retail "class A" intoxicating liquor license, when issued by the clerk/treasurer under the authority of the common council, 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 license.* A retail "class B" intoxicating liquor license, when issued by the clerk/treasurer under authority of the common council, 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, 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 city clerk/treasurer under the authority of the common council, shall entitle the holder thereof 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. Such license may be issued after July 1. The license shall expire on the following June 30.
- (d) *Class "B" fermented malt beverage retailer's license.*
  - (1) *License.* A class "B" fermented malt beverage retailer's license, when issued by the city clerk/treasurer under the authority of the common council, 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 a less than one-half of a percent of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1. The license shall expire on the following June 30.
  - (2) *Application.* Class "B" licenses may be issued to any person qualified under Wis. Stats. § 125.04(5). Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six months before the date of application. A class "B" license for a hotel, restaurant, club, society, or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this chapter. Except as provided in Wis. Stats. § 125.31, class "B" licenses may not be issued to brewers or fermented malt beverages wholesalers.
- (e) *Temporary class "B" fermented malt beverage license.*

- (1) *License.* As provided in Wis. Stats. §§ 125.26(1) and 125.26(6), temporary class "B" fermented malt beverage licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been existence for at least six months before the date of application and to posts of veterans' organization authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. Such license is valid for dates as approved by the common council.
- (2) *Application.* Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the city clerk/treasurer together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one being applied for shall, upon conviction thereof, be subject to a forfeiture of \$200.00 and will be ineligible to apply for a temporary class "B" license for one year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of 15 days prior to the meeting of the common council at which the application will be considered for events of more than three consecutive days. If the application is for a license to be used in a city park, the applicant shall specify the main point-of-sale facility.

(f) *Temporary "class B" license.*

- (1) *License.* Notwithstanding Wis. Stats. § 125.68(3), temporary "class B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six months before the date of application and to posts of veterans' organizations authorizing the sale of wine containing not more than six percent alcohol by volume in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. No fee may be charged to a person who, at the same time, applies for a temporary class "B" beer license under Wis. Stats. § 125.26(6) for the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine containing not more than six percent alcohol by volume from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of wine containing not more than six percent alcohol by volume from the stands while the fair is being held.
- (2) *Application.* Application for such license shall be signed by the president or

corresponding officer of the society or association making such application and shall be filed with the city clerk/treasurer together with appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one being applied for shall, upon conviction thereof, be subject to a forfeiture of \$200.00 and will be ineligible to apply for a temporary "class B" wine license for one year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of 15 days prior to the meeting of the common council at which the application will be considered for events of more than three consecutive days. If the application is for a license to be used in a city park, the applicant shall specify the main point of sale facility.

- (g) *Wholesaler's license.* A wholesaler's fermented malt beverage license, when issued by the city clerk/treasurer under the authority of the council, 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 the wholesaler.
- (h) *Retail "class C" licenses.*
  - (1) In this subsection, "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.
  - (2) A "class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
  - (3) A "class C" license may be issued to a person qualified under Wis. Stats. § 125.04(5) for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which does not have a barroom if the city's quota prohibits the city from issuing a "class B" license to that person. A "class C" license may not be issued to a foreign corporation or a person acting as agent for or in the employ or another.
  - (4) A "class C" license shall particularly describe the premises for which it is issued.

#### **Sec. 6-34. Fees.**

- (a) There shall be the following classes of licenses which, when issued by the city clerk/treasurer under the authority of the common council after payment of the license fee and publication costs specified in this section shall permit the holder to sell, deal or traffic in intoxicating liquors or fermented malt beverages as provided in section 6-33 and Wis. Stats. ch. 125:
  - (1) *Class "A" fermented malt beverages retailer's license.* The annual fee for this license shall be \$50.00.
  - (2) *Class "B" fermented malt beverage license.* The annual fee for this license shall be \$75.00. This license may be issued at any time for six months in any calendar year, for which 50 percent of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
  - (3) *Temporary class "B" fermented malt beverage license.* The fee for this license shall be \$10.00 per event.

- (4) *Temporary "class B" wine license.* The fee for this license shall be \$10.00 per event. However, there shall be no fee if the temporary wine license is obtained along with a temporary fermented malt beverage license.
  - (5) *Fermented malt beverage wholesalers' license.* The annual fee for this license shall be \$25.00.
  - (6) *"Class A" intoxicating liquor retailer's license.* The annual fee for this license shall be \$50.00.
  - (7) *"Class B" intoxicating liquor retailer's license.* The annual fee for this license shall be \$150.00. This license may be issued at any time for six months in any calendar year, for which 50 percent of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
  - (8) *"Class C" wine license.* The annual fee for this license shall be \$75.00.
- (b) A license may be issued after July 1 in any license year. The license shall expire on the following June 30. The fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30.
  - (c) Licenses valid for six months may be issued at anytime. The fee for the license shall be 50 percent of the annual license fee. The license may not be renewed during the calendar year in which it is issued.

(Ord. No. OR97-09, § I, 6-23-1997)

### **Sec. 6-35. Application.**

- (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 state department of revenue and shall be sworn to by the applicant as provided by Wis. Stats. §§ 887.01 to 887.04, and shall be filed with the city clerk/treasurer not less than 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.
- (b) *Corporations or individuals.* Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, of a corporation.
- (c) *Publication.* The city clerk/treasurer shall publish each application for a Class "A", class "B", "class A", "class B", or "class C" license. There is no publication requirement for temporary class "B" picnic beer licenses under Wis. Stats. § 125.26 or temporary "class B" picnic wine licenses under Wis. Stats. § 125.51(10). The application shall be published once in the official city newspaper, and the costs of publication shall be paid by the applicant at the time the application is filed, as determined under Wis. Stats. § 985.08.
- (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 days after the occurrence thereof.

- (e) *License quotas.* The limit for "class A" liquor licenses, for the sale of intoxicating liquor in original packages or containers for off-premises consumption, shall be no more than three and the limit for class "B" beer licenses, for the sale of beer in original packages or containers for the off-premises consumption, shall be no more than one.

### **Sec. 6-36. Qualifications of applicants and premises.**

- (a) *Residence requirements.* A retail class "A" or class "B" fermented malt beverage or "class A" or "class B" intoxicating liquor license shall be granted only to persons who are citizens of the United States and who have been residents of the state continuously for at least 90 days prior to the date of the application.
- (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) *Corporate restrictions.*
  - (1) No license or permit may be issued to any corporation unless the corporation meets the qualifications under Wis. Stats. § 125.04(a)1 and 4 and (b), unless the agent of the corporation appointed under Wis. Stats. § 125.04(6) and the officers and directors of the corporation meet the qualifications of Wis. Stats. § 125.04(a)1 and 3 and (b) and unless the agent of the corporation appointed under Wis. Stats. § 125.04(6) meets the qualification under Wis. Stats. § 125.04(a)2. The requirement that the corporation meet the qualifications under Wis. Stats. § 125.04(a)1 and (b) does not apply if the corporation has terminated its relationship with all of the individuals whose actions directly contributed to the conviction.
  - (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 city 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 Wis. Stats. § 125.12 when more than 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.
- (e) *Sales tax qualification.* All applicants for retail licenses shall provide proof, as required by Wis. Stats. § 77.61(11), that they are in good standing for sales tax purposes (i.e., hold a seller's permit) before they may be issued a license.
- (f) *Connecting premises.* Except in the case of hotels, no person may hold both a "class A" license and either a "class B" license or permit, a class "B" license or permit, or a

"class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.

- (g) *Limitations on other business; class "B" premises.* No class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the class "B" license or permit is issued is connected to the premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the class "B" premises. No other business may be conducted on premises operating under a class "B" license or permit. These restrictions do not apply to any of the following:
- (1) A hotel.
  - (2) A restaurant, whether or not it is a part of or located in any mercantile establishment.
  - (3) A combination grocery store and tavern.
  - (4) A combination sporting goods store and tavern in towns, villages, and fourth class cities.
  - (5) A combination novelty store and tavern.
  - (6) A bowling alley or recreation premises.
  - (7) A club, society or lodge that has been in existence for six months or more prior to the date of filing application for the class "B" license or permit.
- (h) *Gas stations.* The city will not issue retail "class A" intoxicating liquor licenses to gas station establishments.

### **Sec. 6-37. Investigation.**

The city clerk/treasurer shall notify the chief of police, health officer, fire inspector and building inspector of each new original application, or transfer, under this article and these officials shall inspect or cause to be inspected each application/transfer 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 city clerk/treasurer in writing, who shall forward to the common council, 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. 6-38. Approval of application.**

- (a) No license under this article shall be granted for operation on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the city

are delinquent and unpaid.

- (b) 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 and local 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 city.
- (c) Consideration for the granting or denial of a license will be based on:
  - (1) Arrest and conviction record of the applicant, subject to the limitations imposed by Wis. Stats. §§ 111.321, 111.322, and 111.335;
  - (2) The financial responsibility of the applicant;
  - (3) The appropriateness of the location and the premises where the licensed business is to be conducted; and
  - (4) Generally, the applicant's fitness for the trust to be reposed.
- (d) An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two offenses which are substantially related to the licensed activity within the five years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the common council, the common council reserves the right to consider the severity and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the council, at its discretion, may, based upon an arrest or conviction record of two or more offenses which are substantially related to the licensed activity within the five years immediately preceding, act to suspend such license for a period of one year or more.

#### **Sec. 6-39. Granting of license.**

- (a) Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license under this article. Upon the approval of the applicant by the common council, the city clerk/treasurer shall issue to the applicant a license, upon payment by the applicant of the license fee to the city.
- (b) If the common council denies the license, the applicant shall be notified in writing, by registered mail or personal service, of the reasons for the denial. The notice shall also inform the applicant of the opportunity to appear before the common council and to provide evidence as to why the denial should be reversed. In addition, the notice shall inform the applicant that the reconsideration of the application shall be held in closed session, pursuant to Wis. Stats. § 19.85(1)(b), unless the applicant requests such reconsideration be held in open session and the common council consents to the request. Such written notice shall be mailed or served upon the applicant at least ten days prior to the common council meeting at which the application is to be reconsidered.

- (c) Any license duly granted and not issued within 90 days shall be subject to review and possible revocation by the common council. These licenses may not be regranted during this 90-day period. In the case of revocation under this section no refund of the license fee is to be made.

#### **Sec. 6-40. Transfer and lapse.**

- (a) In accordance with the provisions of Wis. Stats. § 125.04(12), a license under this article shall be transferable from one premises to another if such transfer is first approved by the common council. An application for transfer shall be made on a form furnished by the city 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 \$10.00. Whenever a license is transferred, the city clerk/treasurer shall forthwith notify the state department of revenue of such transfer. In the event of the sale of a business or business premises of the licensee, the purchaser of such business or business premises must apply to the city for reissuance of the license and the city, as the licensing authority, shall in no way be bound to reissue the license to the subsequent purchaser.
- (b) Whenever the agent of a corporate holder of a license is for any reason replaced, the licensee shall give the city clerk/treasurer written notice of the replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the common council, the successor agent shall have the authority to perform the functions and be charged with the duties of the original agent. However, the license shall cease to be in effect upon receipt by the city clerk/treasurer of notice of disapproval of the successor agent by the state department of revenue or 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 common council until the successor agent or another qualified agent is appointed and approved by the city.

#### **Sec. 6-41. Numbering.**

All licenses under this article 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 city clerk/treasurer shall affix to the license his affidavit as provided by Wis. Stats. § 125.04(4).

#### **Sec. 6-42. Posting licenses; defacement.**

- (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 the 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. 6-43. Conditions.**

All retail class "A," class "B", "class A" and "class B" licenses granted under this chapter 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 city applicable thereto:

- (1) *Consent to entry.* Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the city at all reasonable hours for the purpose of inspection and search, and consents to the removal from the premises of all things and articles discovered there in violation of city 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.
- (2) *Employment of minors.* No retail "class B" or class "B" licenses shall employ any underage person, as defined in the state 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 alcohol beverages.
- (3) *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.
- (4) *Licensed operator or 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 the premises at the time of such service.
- (5) *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" or "class C" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (6) *Restrictions near schools and churches.* No retail class "A", class "B", "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 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 or church building.

- (7) *Clubs.* No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- (8) *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.
- (9) *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, wares, merchandise or other articles in exchange for alcohol beverages.
- (10) *Licensee or permittee responsible for acts of employees.* 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.
- (11) *Conduct prohibited on premises licensed to sell alcohol beverages.*
- a. It shall be unlawful for any person, or for any licensee, manager or agent of the licensee to engage in or permit any person, employee, entertainer, or patron to engage in, any of the following conduct on premises licensed to sell alcohol beverages:
1. The performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
  2. The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus, vulva or genitals.
  3. The actual or simulated displaying of the areola of the breast, pubic hair, anus, vulva or genitals.
  4. The wearing, displaying or use of any device or covering exposed to view, which simulates the breast, pubic hair, anus, vulva or genitals.
  5. The use of artificial devices or inanimate objects to depict any of the acts prohibited in this subsection.
  6. The showing of films, videos, slides or still pictures depicting any of the acts prohibited in this subsection.
- b. Any person or licensee violating any provision of this subsection shall be subject to the following penalties:
1. *First offense.* A forfeiture of not less than \$100.00 nor more than

\$500.00, and any permit or license for the sale of alcohol beverages issued by the city shall be suspended for not less than 30 days.

2. *Second offense.* If the total number of convictions under this section equals two in a three-year period, a forfeiture of not less than \$500.00 nor more than \$1,000.00, and any permit or license for the sale of alcohol beverages issued by the city shall be suspended for not less than 90 days.
3. *Third offense.* If the total number of convictions under this section equals three in a three-year period, a forfeiture of not less than \$1,000.00, and any permit or license for the sale of alcohol beverages issued by the city shall be revoked and not reissued.
4. *Separate offense.* Each act in violation of this subsection shall be punishable as a separate offense.

#### **Sec. 6-44. Revocation and suspension; nonrenewal.**

- (a) *Procedure.* Whenever the holder of any license under this chapter violates any portion of this chapter, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by 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 losing of the licensed premises for at least six months shall be prima facie evidence of the abandonment, unless extended by the common council. All persons issued a license to sell alcohol beverages in the city for which a quota exists limiting the number of such licenses that may be issued by the city shall cause such business described in such license to be operated on the premises described in such license for at least 150 days during the terms of such license, unless such license is issued for a term of less than 180 days, in which event this subsection shall not apply.
- (c) *License revocation or suspension.* License revocation or suspension procedures shall be as prescribed by Wis. Stats. ch. 125.

Secs. 6-45--6-60. Reserved.

## **DIVISION 2. OPERATOR'S LICENSES**

#### **Sec. 6-61. State statutes relating to operators' licenses adopted.**

The rules and regulations pertaining to operators licenses, specifically Wis. Stats. §§ 125.04, 125.17, 125.18, 125.32, and 125.68, together with any future additions, deletions or supplements thereto, are incorporated as part of this chapter and shall be enforced with the same force and effect as though set forth in full in this section. Providing, however, that where

such rules and regulations are less stringent than other provisions found in this Code, the provisions of this Code shall apply. The rules and regulations pertaining to licensing shall apply within the city.

(Ord. No. OR97-17, § I, 11-24-1997)

### **Sec. 6-62. Required.**

- (a) *Class "A", class "B", or "class C" premises.* Except as provided under Wis. Stats. §§ 125.32(3)(b) and 125.07(3)(a)10, no premises operated under a class "A", class "B", or "class C" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under Wis. Stats. § 125.27(2) is valid outside the municipality that issues it. For the purpose of this section, any person holding a manager's license under Wis. Stats. § 125.18, or any member of the licensee's or permittee's immediate family who has attained the age of 18, shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent, may serve fermented malt beverages in any place operated under a class "A", class "B", or "class C" license or permit unless he or she has an operator's license or is at least 18 years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.
- (b) *Immediate supervision.* Any person 18 or older who is serving alcohol beverages in an establishment with a licensee under this division must obtain an operator's license, unless the person is under the "immediate supervision" of one of the following:
- (1) The licensee.
  - (2) Someone with the privilege of an operator's license (Wis. Stats. §§ 125.32(2) and 125.68(2)).
  - (3) The approved agent of a corporation or limited liability company.
  - (4) A person with an operator's license.
  - (5) A person with a manager's licensee (Wis. Stats. § 125.18).
- (c) *Use by another prohibited.*
- (1) No person may allow another to use his or her class "A" or class "B" license or permit to sell alcohol beverages.
  - (2) The license or permit of a person who violates subsection (c)(1) of this section shall be revoked.

(Ord. No. OR97-17, § I, 11-24-1997)

**State law references:** Operator licenses generally, Wis. Stats. §§ 125.17 and 125.32.

### **Sec. 6-63. Qualifications.**

- (a) The applicant for a license under this division must be at least 18 years of age by the time of issuance.
- (b) Subject to Wisconsin's Fair Employment Law, Wis. Stats. ch. 111, the applicant may not have been convicted of a felony or be a "habitual law offender."
- (c) Applicants must complete a responsible beverage server training course.
- (d) Applicants who are renewing an existing operator's license shall have completed the training course within the last two years, or have held a retail license, manager's or operator's license anywhere in the state within the last two years (Wis. Stats. § 125.17(6)).

(Ord. No. OR97-17, § I, 11-24-1997)

### **Sec. 6-64. Application.**

- (a) An application for an operator's license must be in writing, on forms as prescribed by the city. All applications shall be investigated by the chief of police. No license shall be issued unless approved by the common council.
- (b) The common council may issue an operator's license, which license shall be granted only upon application in writing on forms to be obtained from the city clerk/treasurer only to persons 18 years of age or older. Operator's licenses shall be operative only within the limits of the city.
- (c) All applications are subject to an investigation by the chief of police and/or other appropriate authority to determine whether the applicant and/or premises to be licensed complies with all regulations, ordinances and laws applicable thereto. The police department shall conduct an investigation of the applicant including, but not limited to, requesting information from the state, surrounding municipalities, and/or any community where the applicant has previously resided concerning the applicant's arrest and conviction record.

(Ord. No. OR97-17, § I, 11-24-1997)

### **Sec. 6-65. Provisional operator's license.**

- (a) The city clerk/treasurer shall issue a provisional operator's license only to a person who has applied for an operator's license.
- (b) The fee for a provisional license shall be \$5.00.
- (c) A provisional license expires 60 days after its issuance or when a regular license is issued, whichever is sooner.
- (d) The city clerk/treasurer may revoke a provisional license if he discovers that the holder of the license made a false statement on the application or if the holder does not complete the course in which he enrolls.

(Ord. No. OR97-17, § I, 11-24-1997)

**Sec. 6-66. Temporary license.**

- (a) The city clerk/treasurer may issue a temporary operator's license, provided that:
  - (1) The license may be issued only to operators employed by, or donating their services to, nonprofit corporations.
  - (2) No person may hold more than one license of this kind per year.
  - (3) The license is valid for any period from one day to 14 days, and the period for which it is valid shall be stated on the license.
- (b) The fee for a temporary license shall be \$5.00.

**Sec. 6-67. Duration.**

Standard operator's licenses issued under the provisions of this chapter shall be valid for a period of two years and shall expire on June 30.

**Sec. 6-68. Fees.**

The fee for an operator's license is \$20.00 for a two-year period. The fee for a duplication of an operator's license is \$5.00 per copy.

(Ord. No. OR97-17, § II, 11-24-1997; Ord. No. OR03-05, § 1, 2-17-2003)

**Sec. 6-69. Issuance or denial.**

- (a) After the common council approves the granting of an operator's license, the city clerk/treasurer shall issue the license. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b) If the application is denied by the common council, the city clerk/treasurer shall, in writing, inform the applicant of the denial, the reasons therefor, and of the opportunity to request a reconsideration of the application by the common council in a closed session. Such notice must be sent by registered mail to, or served upon, the applicant at least ten days prior to the common council's reconsideration of the matter. At such consideration hearing, the applicant may present evidence and testimony as to why the license should be granted. If, upon reconsideration, the council again denies the application, the city clerk/treasurer shall notify the applicant in writing of the reasons therefor. An applicant who is denied any license upon reconsideration of the matter may apply to circuit court pursuant to Wis. Stats. § 125.12(2)(d) for review.
- (c) Consideration for the granting or denial of a license will be based on:
  - (1) Arrest and conviction record of the applicant, subject to the limitations imposed by Wis. Stats. §§ 111.321, 111.322, and 111.335;

- (2) The financial responsibility of the applicant;
- (3) The appropriateness of the location and the premises where the licensed business is to be conducted; and
- (4) Generally, the applicant's fitness for the trust to be reposed.

If a licensee is convicted of an offense substantially related to the licensed activity, the common council may act to revoke or suspend the license.

- (d) An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two offenses which are substantially related to the licensed activity within the three years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the common council, the common council reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the common council, at its discretion, may, based upon an arrest or conviction record of two or more offenses which are substantially related to the licensed activity within the three years immediately preceding, act to suspend such license for a period of one year or more.

(Ord. No. OR03-05, § 1, 2-17-2003)

### **Sec. 6-70. Training course.**

- (a) No operator's license may be issued unless the applicant has successfully completed a responsible beverage server training course at any location offered by a technical college district and that conforms to curriculum guidelines specified by the technical college system board or comparable training course that is approved by the department or the department of education, or unless the applicant fulfills one of the following requirements:
  - (1) The person is renewing an operator's license.
  - (2) The person held a class "A", "class A" or "class C" license or a class "B" or "class B" license or permit or a manager's or operator's license within the past two years.
  - (3) The person has completed such a training course within the past two years.
- (b) The common council may issue a provisional operator's license to a person who is enrolled in a training course under subsection (a) of this section and shall revoke that license if the application fails to successfully complete the course in which he or she enrolls.
- (c) The common council may not require that applicants for operator's licenses undergo training in addition to that under subsection (a) of this section, but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under subsection (a) of this section.

(Ord. No. OR97-17, § I, 11-24-1997)

**Sec. 6-71. Display.**

Whenever the operator dispenses beverages, each license issued under the provisions of this chapter shall be posted on the premises or be in the operator's possession, or the operator shall carry a license card.

**Sec. 6-72. Revocation.**

Violation of any of the terms or provisions of the state law or of this chapter relating to operator's licenses by any person holding such operator's license shall be cause for revocation of the license.

Secs. 6-73--6-90. Reserved.

**ARTICLE III. REGULATIONS**

**Sec. 6-91. Closing hours.**

Closing hours for premises licensed under this chapter shall be established in conformance with Wis. Stats. § 125.32(3) and further restricted as follows:

- (1) *Class "B" licenses.*
  - a. 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 1.
  - b. 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 (1)a of this section.
- (2) *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. 6-92. 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 city-owned property or privately owned property within the city except through the issuance of a temporary class "B" fermented malt beverage license or temporary "class B" wine license issued by the common council in accordance with state 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 city-owned property or privately owned property may be authorized by the common council provided the following requirements are met:

- (1) *Compliance with eligibility standards.* The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in Wis. Stats. § 125.26(6), and shall fully comply with the requirements of this section. 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.
- (2) *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 alcohol beverage shall be served to any underage person or a person without proper identification.
- (3) *Fencing.* If necessary due to the physical characteristics of the site, the common council 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 point of ingress and egress. When required, the double fence shall be a minimum of four feet high and a minimum of six feet between fences.
- (4) *Underage persons prohibited.* No underage persons as defined by the state 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 any point of sale.
- (5) *Licensed operators requirement.* A licensed operator shall be stationed at all points of sales at all times.
- (6) *Waiver.* The common council may waive or modify the requirements of this section due to the physical characteristics of the licensed site.
- (7) *Insurance.* The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the city 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 license, the applicant may be required to furnish a certificate of comprehensive general liability insurance with the city. The applicant may be required to furnish a performance bond prior to being granted the license.

**Sec. 6-93. Nonalcohol events for underage persons on licensed premises.**

The presence of underage persons on a licensed premises as provided under Wis. Stats. § 125.07(3)(a)10 shall be subject to the following:

- (1) The licensee or agent of a corporate licensee shall notify the police department at least 48 hours in advance of the date of any event at which underage persons will be present on the licensed premises. Each such nonalcohol event notice shall specify the date on which the event is to occur and the time of commencement. All notices shall be filed with the police department during normal working hours (8:00 a.m. to 5:00 p.m., Monday through Friday) and shall be given on forms prescribed by the department. After a nonalcohol event notice has been given, the licensee may cancel an event only by giving like notice to the police department in accordance with the provisions of this subsection. Regardless of the date given, all notices shall expire and be deemed canceled no later than the date of expiration or revocation of the applicable retail class "B" or "class B" license.
- (2) During the period of any nonalcohol event a notice card prescribed by the police department shall be posted at all public entrances to the licensed premises notifying the general public that no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises during the event. Such notice cards shall be made available by the department to a requesting licensee.
- (3) Once a nonalcohol event has commenced, no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises until the next day following the closing hours of the licensed premises.
- (4) During the period of any nonalcohol event all alcohol beverages shall be stored in a locked portion of the licensed premises in a secure place out of the sight and physical reach of any patron present and shall be under the direct and immediate control and supervision of the licensee or a licensed bartender in the employ of the licensee. All beer taps and automatic dispensers of alcohol beverages ("speed guns") shall be either disconnected, disabled or made inoperable.

**Sec. 6-94. Consumption or possession of intoxicants on streets.**

- (a) No person shall consume any intoxicating liquor or fermented malt beverage while in or upon any public street, alley, sidewalk or other public way.
- (b) All purchases of alcohol beverages by the glass or in open containers shall be consumed on the licensed premises where served and shall not be removed to a street, alley, sidewalk or public way.
- (c) No person shall be in possession of any glass or open container containing alcoholic or fermented malt beverages on any street, sidewalk, alley or other public way.
- (d) Where the council is satisfied that there is adequate supervision and police protection, upon application by any person, the council may, by special permit, allow persons to consume or possess intoxicating liquor or fermented malt beverages contrary to this

section in a specified area.

(Code 1983, § 12.06(10))

**Cross references:** Streets, sidewalks and other public places, ch. 82.