

## 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 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 in order to secure uniform statewide regulation of alcohol beverage control.

*State Law Reference:* Chapter 125, Wis. Stats.

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### **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," "Non-Intoxicating Beverages," and "Reserve Class B License" shall have the meaning given them by Chapter 125, Wisconsin Statutes.

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### **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 125.16, 125.27, 125.28 and 125.51 of the Wisconsin Statutes.

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### **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 City Clerk 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 Liquor License.** A retail Class "B" intoxicating liquor license, when issued by the City Clerk 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 (4) liters at any one (1) 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.

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- (c) **Class "A" Fermented Malt Beverage Retailer's License.** A Class "A" retailer's fermented malt beverage license, when issued by the City Clerk 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.
- (d) **Class "B" Fermented Malt Beverage Retailer's License.** A Class "B" fermented malt beverage retailer's license, when issued by the City Clerk 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 less than one-half (1/2) of a percentum of alcohol by volume, without obtaining a special license to sell such beverages.
- (e) **Class "B" Outdoor Venue License.** A Class "B" Outdoor Venue License, when issued by the City Clerk under authority of the Common Council, as provided for in Sec. 125.26, Wis. Stats., shall entitle the holder of a Class B Fermented Malt Beverage Retailer's License to keep, maintain, conduct or operate any outdoor venue. All requirements set forth in Sec. 7-2-18 must be satisfied prior to a Class "B" Outdoor Venue License being issued.
- (f) **Temporary Class "B" Fermented Malt Beverage or Wine License.**
  - (1) **License.** A temporary Class "B" fermented malt beverage or wine license, when issued by the City Clerk under authority of the Common Council, as provided for in Sec. 125.26(6) and Sec. 125.51(10), Wis. Stats., shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages, wine or both 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, chamber of commerce, associations or agricultural societies, lodges or societies that have been in existence for not less than six (6) months prior to the date of application for such license or to posts of ex-servicemen's organizations now or hereafter established. Such license is valid for dates as approved by the Common Council. Irrespective of other Sections of this Chapter, the Common Council is hereby authorized to issue a fermented malt beverage or wine license to any local civic, or any local religious or any local not-for-profit organization pursuant to this Section.
  - (2) **Application.** Application for such license shall be signed by the president or corresponding officer of the organization making such application and shall be filed with the City Clerk together with the appropriate license fee as set forth on the City of Onalaska Fee Schedule. Such application shall clearly specify whether the application is for fermented malt beverages, wine or both. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a special Class "B" license for one (1) year. The license shall specify the hours and dates of license validity. The application for an event lasting more than four (4) days shall be filed a minimum of fifteen (15) days prior to the meeting of the Common Council at which the application will be considered. The application for an event lasting four (4) days or less shall be filed a minimum of five (5) days prior to the meeting of the Common Council at which the application will be considered. If the application is for a license to be used in a City park, the applicant shall specify the main point of sale facility.

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- (3) **Issuance by City Clerk.** Any license under this Subsection may be issued directly by the City Clerk without approval of the Common Council in the event that the City Clerk determines that all criteria for the issuance of such license are met and the person or entity seeking such license has previously been issued a Temporary Class "B" Fermented Malt Beverage or Wine License by the City of Onalaska within three (3) years prior to the date of application for the current license. In the event such person or entity has not previously been issued a license as set forth hereunder, the application for the license currently being sought must be approved by the Common Council before issuance.
- (4) **Limitation on Number of Licenses.** An organization may not be issued more than two (2) licenses for a temporary class "B" license for Fermented Malt Beverages or Wine in any twelve (12)-month period except as provided in Section 7-2-16(d).
- (g) **Wholesaler's License.** A wholesaler's fermented malt beverage license, when issued by the City Clerk under authority of the Common 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 said wholesaler.
- (h) **Retail Class "C" Wine License.** A retail Class "C" wine license, when issued by the City Clerk under the authority of the Common council, shall permit its holder to sell, deal, and traffic in wine to be consumed by the glass or in an opened original container for consumption on the premises where sold.

*Cross Reference:* Section 7-2-17.

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### **Sec. 7-2-5 License Fees.**

There shall be the following classes and denominations of licenses which, when issued by the City Clerk under the authority of the Common Council after payment of the fee hereinafter specified shall permit the holder to sell, deal or traffic in intoxicating liquors or fermented malt beverages as provided in Sections 125.04(5), (6); 125.28(1)(a), (b), (d); 125.28(2); 125.31(2)(a); 125.22(1), (2), (4); 125.32(4)(a); 125.31(2)(b); 125.26(2); 125.04(6); 125.17; 125.68(2); 125.32(2); 125.51(2); 125.51(3); or 125.57, Wis. Stats.:

- (a) **Retail Class "A" Intoxicating Liquor License.** To be reviewed annually and accompanied by such fee as set forth on the City of Onalaska Fee Schedule;
- (b) **Retail Class "B" Intoxicating Liquor License.** To be reviewed annually and accompanied by such fee as set forth on the City of Onalaska Fee Schedule. New applications for Retail Class "B" Intoxicating Liquor Licenses shall first be reviewed to see if any "Non-Reserve Class "B" Intoxicating Liquor Licenses are available, if there are no "Non-Reserve Class "B" Intoxicating Liquor Licenses available, applicant will then be reviewed for a Reserve Class "B" Intoxicating Liquor License. Reserve Class "B" Intoxicating Liquor License-Initial/One Time Fee shall be as set forth on the City of Onalaska Fee Schedule. Club licenses as defined in Wisconsin Statutes shall be issued for as set forth on the City of Onalaska Fee Schedule.

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- (c) **Class “A” Fermented Malt Beverage Retailer’s License.** To be reviewed annually and accompanied by such fee as set forth on the City of Onalaska Fee Schedule;
- (d) **Class “B” Fermented Malt Beverage Retailer’s License.** A fee as set forth on the City of Onalaska fee schedule or three-fourths (3/4) of that amount for a six (6) month period to be reviewed annually. Class “B” fermented malt beverage retailer’s license for brewers shall be pursuant to Sections 125.31(1)(a) and 125.06(1), Wis. Stats;
- (e) **Special Class “B” Fermented Malt Beverage Retailer’s License.** To be reviewed per event and accompanied by such fee as set forth on the City of Onalaska Fee Schedule; Three (3) day fermented malt beverage licenses may be issued to bona fide clubs, chamber of commerce, lodges or societies which have been in existence for more than six (6) months or to organizations of ex-military service personnel authorizing them to sell fermented malt beverages at a particular picnic, gathering or meeting: To be reviewed per event and accompanied by such fee as set forth on the City of Onalaska Fee Schedule.
- (f) **Wholesaler’s License.** To be reviewed annually and accompanied by such fee as set forth on the City of Onalaska Fee Schedule;
- (g) **Retail Class “C” Wine License.** A fee as set forth on the City of Onalaska Fee Schedule or three-fourths (¾) of that amount for a period of six (6) months or less to be reviewed annually.

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### **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 City Clerk 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.
- (b) **Corporations.** 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 application for Class B licenses shall be published three (3) successive times in the official City 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.
- (e) **License Quotas.** The quota for licenses under this Chapter shall be pursuant to Ch. 125, Wis. Stats.

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### 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 underage person as defined by the Wisconsin Statutes.
- (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 percent (50%) 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 City Clerk a statement of transfers of stock within forty-eight (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 percent (50%) 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 License Required for Each Place of Sale.** A separate license shall be required for each stand or place which is in a direct connection or communication where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale; and no license shall be issued to any person, firm, partnership, corporation or association for the purpose of possession, selling or offering for sale any intoxicating liquors or fermented malt beverages in any dwelling house, flat or residential apartment.

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### **Sec. 7-2-8 Investigation.**

The City Clerk shall notify the Chief of Police, Chief of the Fire Department, Health Officer 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 City Clerk 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.

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### **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 for which taxes or assessments or other financial claims of the City 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 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.

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### **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 Common Council, the City Clerk shall issue to the applicant a license, upon payment by the applicant of the license fee to the City.

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### **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 Common Council. An application for transfer shall be made on a form furnished by the City Clerk. Proceedings for such transfer shall be had in the same form and manner as the original application. The fee for such transfer shall be set forth on the City of Onalaska Fee Schedule. Whenever a license is transferred, the City Clerk shall forthwith notify the Wisconsin 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 said license and the City, as the licensing authority, shall in no way be bound to reissue said license to said subsequent purchaser.
- (b) In accordance with the provisions of Section 125.04(6), Wis. Stats., a licensee may appoint a successor agent to act in the agent's place for the remainder of the license year or until another agent is appointed. The fee for appointing a successor agent shall be as set forth on the City of Onalaska Fee Schedule. Whenever the agent of a corporate holder of a license is for any reason replaced, the licensee shall give the City Clerk written notice of said replacement, the reasons therefor and the new appointment along with the fee as set forth on the City of Onalaska Fee Schedule. 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, said license shall cease to be in effect upon receipt by the City Clerk 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 Common Council until the successor agent or another qualified agent is appointed and approved by the City and the Wisconsin Department of Revenue.

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### **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 City Clerk shall affix to the license his affidavit as provided by Sec. 125.04(4) of the Wisconsin Statutes.

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### **Sec. 7-2-13 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 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.

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### 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 City 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 City 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 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.
- (b) **Employment of Minors.** No retail 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" 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" 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 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 three hundred (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 maintenance 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 three hundred (300) feet thereof by any school building, hospital building or church building.
- (g) **Clubs.** No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- (h) **Gambling Prohibited.** 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.

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- (i) **Credit Prohibited.** No retail Class "A" or Class "B" liquor 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.
- (j) **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.
- (k) **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 or exhibition 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.

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### Sec. 7-2-15 Closing Hours.

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

- (a) **Class "B" Licenses.**
  - (1) No premises for which a retail Class "B" liquor and fermented malt beverage 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, whose principal business is the furnishing of food or lodging to patrons shall be permitted to 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.

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- (3) The licensee or permittee and one (1) employee shall be permitted to check out receipts, check the licensed premises for security and do minor cleaning after closing hours. Under no circumstances shall the consumption of alcohol beverages be permitted after closing hours. Commercial janitorial service personnel shall be allowed to enter the licensed premises for the purpose of cleaning during closed hours. The premises shall be well lighted during cleanup. Prior approval must be requested and granted by the Chief of Police or his designee for any variance of the above exigent circumstances.
- (b) **Class "A" Licenses.** Class "A" licensed premises may remain open for the conduct of their regular business daily between the hours of 6:00 a.m. and 9:00 p.m.

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## **Sec. 7-2-16 Restrictions on Temporary Class "B" 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 of Onalaska, except through the issuance of temporary Class "B" license issued by the Common Council in accordance with Wisconsin State Statutes and as set forth in this Section. A temporary Class "B" license authorizing the sale and consumption of fermented malt beverages or wine on City-owned property or privately-owned property may be authorized by the Common Council provided the following requirements are met, except that the Council may waive or modify certain requirements due to the physical characteristics of the licensed site:

- (a) **Compliance with Eligibility Standards.** The organization shall meet the eligibility requirements of a bona fide club, association, chamber of commerce, lodge or society as set forth in Section 125.26(6) and Section 125.51(1) Wis. Stats. as applicable, and shall fully comply with the requirements of this Section and Section 11-4-1.
- (b) **Posting of Signs and Licenses.** All organizations issued a liquor 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.
- (c) **Fencing.** All organizations shall install a double fence around the main point of sale when the main point of sale is outside or in a temporary structure to control ingress and egress and shall continually station a licensed operator or security guard at the entrance of the main point of sale for the purpose of checking age identification. There shall be only one (1) point of ingress and egress whether the main point of sale is indoors or outdoors. The double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences. A single eight (8) foot chain link fence may be used to meet the fence requirements.
- (d) **Wine Walks and Events with Multiple Locations.** Up to twenty (20) licenses may be issued to the applying organization for the same event if all of the following apply:
  - (1) Each license is issued for the same date and times and the applying organization is the sponsor of an event held at multiple locations within the municipality on the date and times in which the temporary license is applied for.
  - (2) An admission fee is charged for participation in the event and no additional fee is charged for service of alcohol at the event.

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- (3) The duration of the event cannot exceed one (1) day.
  - (4) Within the immediate twelve (12) month period, the applying organization has been issued fewer than two (2) temporary class B licenses under this Ordinance.
  - (5) For purposes of the two (2) license limit, each event for which multiple licenses are issued shall count as one license toward the two (2) license limit, as set forth in Wis. Stat. 125.51 as may be amended.
  - (6) No person or organization may serve wine after 9 p.m. on premises coered by a temporary class “B” license issued under this Section.
- (d) **Underage Persons Prohibited.** No underage persons as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverage at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.
  - (e) **Licensed Operators Requirement.** A licensed operator shall be stationed at all points of sales at all times. The Council may require that police officers be employed to monitor the event.
  - (f) **Permitted Cups or Cans Only.** Intoxicants will be sold outside only in foam or plastic cups, or cans.
  - (g) **Additional Requirements.** In addition, requesting organizations shall comply with the following:
    - (1) When the event sponsored by the requesting organization is to take place on City park property, the organization shall work closely with the City officials in locating, setting up and identifying the size of the snow fence area. Such information shall be made part of the temporary Class "B" license application.
    - (2) When the event sponsored by the requesting organization is to take place on City owned property other than park property and/or privately owned property, the organization shall work closely with the Police Department in locating and setting up the snow fence area. The Chief of Police shall work closely with the requesting organization in identifying the size of the fenced-in area and the exact location. Such information shall be made part of the temporary Class "B" license application. For indoor events, the structure used must have suitable exits and open spaces to accommodate anticipated attendance. It shall contain adequate sanitary facilities to accommodate the size of the group.
  - (h) **Insurance.** The applicant for a temporary Class "B" 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 permit, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the City of Onalaska. The applicant may be required to furnish a performance bond prior to being granted the temporary Class “B” license.

*Cross Reference:* Section 11-4-1.

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**Sec. 7-2-17 Revocation and Suspension of License; Non-Renewal.**

- (a) **Procedure.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 4, 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 loss or non-use of the licensed premises for at least six (6) 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 one hundred fifty (150) days during the terms of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this Subsection shall not apply.
- (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 when the licensee has not observed and obeyed any lawful order of the Common Council or police officers of the City, has violated City Ordinances, or for any other good reason, the Common Council shall issue a summons, to be signed by the City Clerk commanding the licensee complained of to appear before the Administrative Committee or a special committee designated by the Common Council 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 ten (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 offence 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.

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**(2) Procedure on Hearing; Effect of Revocation.**

- a. The Administrative Committee or a designated committee shall serve as a hearing agency for the Common Council.
- 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. If either party requests a stenographic recording and transcription, the City shall make the necessary arrangements, but the expenses shall be borne by the requesting party. The City Clerk shall serve as secretary to the Committee and shall make 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 Common Council including its findings of fact, conclusions of law and a recommendation as to what action, if any, the Common Council 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 ten (10) days or more than ninety (90) days. Following the procedure above, the recommendation may be to revoke the license. If the Committee determines that the charges are not substantiated, it shall recommend to the Common Council that the complaint be dismissed without cost to either party. The Committee's recommendation shall be promptly filed with the Clerk.
- d. At the regular meeting of the Common Council after the filing of the Committee's recommendation, the Common Council 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 Common Council unless reversed or modified. No further testimony or evidence shall be allowed before the Common Council. Only those members of the Common Council who have certified to the City Clerk in writing that they have read the transcript, exhibit and recommendation made shall be permitted to vote on the matter. The City Clerk shall make the said certifications a part of the record. The decision of the Common Council 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 City the actual cost of the proceedings. If the complaint is found by the Common Council 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 City Clerk, and no other license shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the

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revocation, nor shall any part of the money paid as application fee for any license so revoked be refunded.

- (d) **Non-renewal of License.** The City Attorney may, after investigation, commence an action before the Administrative Committee to hear evidence and make a recommendation to the Common Council 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 non-renewal. 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 non-renewal, 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 Common Council on the licensee's application until the Committee makes its recommendation.
- (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 Common Council 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.

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### **Sec. 7-2-18 Requirements for Class "A" and Class "B" Outdoor Venue License.**

A Class "A" Outdoor Venue License shall entitle the holder of a Class "A" Fermented Malt Beverage Retailer's License to keep, maintain, conduct or operate any Outdoor Venue which shall be defined as an open air, roofed or unroofed area adjacent or accessory to a Class "A" Fermented Malt Beverage Retailer's License holders premises, where a Class "A" licensee may provide up to two (2) taste samples per day to any one person between the hours of 11 a.m. and 7 p.m. pursuant to Section 125.25(1) Wis. Stats. A Class "B" Outdoor Venue License shall entitle the holder of a Class B Fermented Malt Beverage Retailer's License to keep, maintain, conduct or operate any Outdoor Venue which shall be defined as an open air, roofed or unroofed area adjacent or accessory to a Class "B" Fermented Malt Beverage Retailer's License holders premises, where beer and other alcoholic beverages are served or consumed. Excluded from this definition if such are included within the licensed premises are Class "B" alcohol beverage licensed hotels as defined in Section 125.02(7) Wis. Stats., which have a restaurant and recreational facilities which include a golf course. The application process and conditions for a Class "A" and Class "B" Outdoor Venue Licenses shall be as follows:

- (a) **Application.** Application for such licenses shall be made in writing to the City Clerk not less than fifteen (15) days prior to the meeting of the Common Council at which the application will be considered and must include a plan or diagram that particularly describes the outdoor venue area. Each applicant shall pay the required license fee as set forth on the City of Onalaska Fee Schedule at the time of the filing of the original application, renewals thereafter shall be annually and shall require a fee as set forth on

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the City of Onalaska Fee Schedule. All property owners within one hundred fifty (150) feet of the proposed premises for an Outdoor Venue License shall receive notice of the pendency of the original application by first class mail.

- (b) **Investigation.** The City Clerk shall submit all applications for Outdoor Venue Licenses to the Chief of Police, Chief of the Fire Department, Health Officer 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 City Clerk in writing, who shall forward to the Common Council, the information derived from such investigation, accompanied by a recommendation as to whether the license should be granted as requested, modified or denied. No license shall be renewed without a re-inspection of the premises and report as originally required.
- (c) **Granting Licenses.** A license shall be granted to each applicant who shall be approved by a majority vote of the Common Council, except where otherwise provided in this code, and shall be issued by the City Clerk and contain with particularity a description of the premises licensed and the name and address of the licensee. The license shall be numbered and such license shall be posted conspicuously in the premises licensed at all times.
- (d) **Discretion.** The Common Council shall have discretion to refuse the granting of any license or transfer thereof if in its judgment the granting or transfer of such license shall be against the public interest, either because of unsuitability of the location, surrounding land use, lot and building size, availability of off-street parking, undesirability or unreliability of the applicant or manager, or because of the failure of such applicant or manager to observe the provisions of this Code in the prior conduct of a restaurant, tavern or other similar place.
- (e) **Conditions.** No Outdoor Venue shall be permitted, maintained or operated except in conformity with the following regulations:
  - (1) Except for open air, roofed or unroofed areas which are part of the Class “A” or “B” premises and not at ground level which comply with all applicable safety and building codes, the Outdoor Venue shall have a ground area of fire-resistant material and shall be surrounded by an attractive wall, fence or barrier at least four (4) foot high constructed of wood, brick, wrought iron, composite or vinyl and shall contain the required fire exits. The gate(s) or exit(s) shall be of the same height as that of the fence, wall or barrier and shall swing to egress, shall be equipped with proper hardware, and shall swing free and clear of public sidewalks. The fence, wall or barrier shall comply with all regulations regarding vision clearance and setback pursuant to the City Zoning Code.
  - (2) All electrical wiring shall comply with national, State and City electrical codes.
  - (3) All combustible rubbish shall be stored in non-combustible covered containers.
  - (4) Any noise emanating from the Outdoor Venue shall not violate the regulations of the City Code of Ordinances pertaining to noise.
  - (5) All Outdoor Venues shall comply with the City Code of Ordinances, State Industrial Code and 2006 International Building Code, relative to the required number of toilets, exit lights and other relevant regulations contained therein.

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- (6) The Class “A” or Class “B” Fermented Malt Beverage Retailer licensee shall be responsible for all violations of this Section and subject to compliance with any and all Health Department, Building Inspections Department, Fire Department and Police Department regulations pertaining to the Outdoor Venue, including any and all State and local regulations.
- (7) The Outdoor Venue shall be restricted to the hours of 10:00 a.m. to 10:00 p.m. for a Class “B” Fermented Malt Beverage Retailer licensee and to the hours of 11:00 a.m. to 7:00 p.m. for a Class “A” Fermented Malt Beverage Retailer licensee.
- (8) The Outdoor Venue shall have a capacity of one (1) person for each seven (7) net square feet or a predetermined number set by the Common Council. Capacity shall be posted within the outdoor premises and the adjoining premises of the Class “A” or Class “B” establishment. Additionally these areas must have tables in place to allow for seating of seventy-five percent (75%) of their capacity.
- (9) Lighting of the Outdoor Venue must be shielded and not be of intensity or brilliance to create glare which is distracting to adjoining property owners or can become a hazard or danger to vehicular traffic.
- (10) The Outdoor Venue shall only be used for serving food and alcohol and no part of the outdoor venue shall be used for recreational activities, including but not limited to: volleyball, horseshoes, darts, and softball. No live music shall be permitted.

Code in effect 2/12/19

### **Sec. 7-2-19 Reserved for Future Use.**

Code in effect 2/12/19

## **Article B: Operator's License**

### **Sec. 7-2-20 Operator's License Required.**

There shall be upon the premises operated under a Class "A" or Class "B" intoxicating liquor license or Class "B" fermented malt beverage license at all times the licensee or some other person who shall have an operator's license and who shall be responsible for the acts of all persons serving or selling any intoxicating liquor or fermented malt beverages to customers. No person other than the licensee shall serve or sell fermented malt beverages or intoxicating liquor in any place operated under the Class "A" or Class "B" licenses unless he shall possess an operator's license or unless he shall be under the immediate supervision of the licensee or a person holding an operator's license who shall be upon the premises at the time of such service.

*State Law Reference:* Section 125.17, Wis. Stats.

Code in effect 2/12/19

### **Sec. 7-2-21 Procedure Upon Application.**

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 only to persons eighteen (18) years of age or older. Operator's licenses shall be operative only within the limits of the City. Operator's licenses shall be granted only to persons of good moral character who shall be citizens of the United States.

Code in effect 2/12/19

### **Sec. 7-2-22 Duration.**

Licenses issued under the provisions of this Chapter shall be valid for a period of one (1) or two (2) years and shall expire on the thirtieth (30th) day of June. Any license issued hereunder shall commence on July 1st of each year. The fee for a license shall be paid to the City Treasurer and his receipt therefor filed with the City Clerk with the application for such license.

Code in effect 2/12/19

### **Sec. 7-2-23 Operator's License Fee; Provisional License.**

- (a) **Fees.** The fee for an operator's license shall be Fifteen Dollars (\$15.00) for one (1) year and Twenty Five Dollars (\$25.00) for two (2) years. Provided, however, that the fee of a one (1) year operator's license shall be Five Dollars (\$5.00) and for a two year operator's license, Thirteen Dollars (\$13.00) for the first year in which a provisional license is obtained. The fees shall be reviewed annually.

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- (b) **Provisional License.** The City Clerk may issue provisional operator's licenses in accordance with Section 125.15(5), Wis. Stats., at a cost of Fifteen Dollars (\$15.00) per license so issued. The provisional operator's license shall expire sixty (60) days after its issuance or when an operator's license is issued to the holder, whichever is sooner. A provisional license may not be issued to any person who has been denied an operator's license by the Common Council or who has had his operator's license revoked or suspended within the preceding twelve (12) months. The City Clerk shall provide an appropriate application form to be completed in full by the applicant. The City Clerk may revoke the provisional license issued if he discovers that the holder of the license made a false statement on the application. The fee shall be reviewed annually.

Code in effect 2/12/19

### **Sec. 7-2-24 Issuance.**

After the Common Council approves the granting of an operator's license, the City Clerk 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.

Code in effect 2/12/19

### **Sec. 7-2-25 Display of License.**

Each license issued under the provisions of this Chapter shall be posted on the premises whenever the operator dispenses beverages or the operator shall have in his possession a wallet license card.

Code in effect 2/12/19

### **Sec. 7-2-26 Revocation of Operator's License.**

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.

Code in effect 2/12/19

### **Sec. 7-2-27 through Sec. 7-2-29 Reserved for Future Use.**

Code in effect 2/12/19

## **Article C: Penalties**

### **Sec. 7-2-30 Penalties.**

- (a) Forfeitures for violations of Sections 125.07(1)-(5) and 125.09(2) of the Wisconsin Statutes, adopted by reference in Section 7-2-1 of the Code of Ordinances of the City of Onalaska, 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 of the Code of Ordinances of the City of Onalaska, except as otherwise provided in Subsection (a) herein 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 the general penalty section of this Code of the City of Onalaska.
- (c) Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

Code in effect 2/12/19