

## CHAPTER 2

### Fermented Malt Beverages and Intoxicating Liquor

## 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.

#### **SEC. 7-2-2 DEFINITIONS.**

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

#### **SEC. 7-2-3 LICENSE REQUIRED.**

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, or cause the same to be done, without having procured a license as provided in this Chapter nor without complying with all the provisions of this Chapter, and all statutes and regulations applicable thereto, except as provided by Sections 125.16, 125.27, 125.28 and 125.51 of the Wisconsin Statutes.

#### **SEC. 7-2-4 CLASSES OF LICENSES.**

- (a) **RETAIL CLASS "A" INTOXICATION 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.

- (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) **SPECIAL CLASS "B" FERMENTED MALT BEVERAGE PICNIC LICENSE.**
  - (1) License. A special Class "B" picnic license, when issued by the City Clerk under authority of the Common Council, as provided for in Sec. 125.26(6) and Sec. 125.51(10), Wis. Stats., shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages or wine at a particular picnic, post meeting, fair, or similar gathering. Such license may be issued only to bona fide clubs, state, county, or local fairs, associations or agricultural societies, lodges or societies that have been in existence for not less than six (6) months prior to the date of application for such license or to posts of ex-servicemen's organizations now or hereafter established. Such license is valid for dates as approved by the City Clerk. Irrespective of other Sections of this Chapter, the City Clerk is hereby authorized to issue a fermented malt beverage license to any local civic, religious, or 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 society making such application and shall be filed with the City Clerk together with the appropriate license fee for each day for which the license is sought. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of five (5) days prior to the meeting of the Common Council at which the application will be considered. Such license shall be valid for no more than three (3) consecutive days. If the application is for a license to be used in a City Park pursuant to Section 11-5-1 of this Code, the applicant shall specify the main point of sale. The application shall include a Certificate of Insurance naming the City of Menasha as an additional insured with limits of at least \$1,000,000.
  - (3) The City Clerk shall consult with the City Attorney, the Chief of Police, the Health Department, and the Mayor prior to the issuance of such license.
  - (4) Any applicant and/or organization receiving such license who is convicted of any offense of the City of Menasha involving alcoholic or fermented malt beverages during the event for which the license is issued shall not be eligible for a subsequent license unless twenty-four months passes from the date of the incident resulting in the citation.
- (f) **WHOLESALE'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.

Cross Reference: Section 7-2-17

## **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 Chapter 125 Wis. Stats.:

- (a) “Class A” Intoxicating Liquor License—as per fee schedule approved by City of Menasha Common Council.
- (b) Class “A” Fermented Malt Beverages License—as per fee schedule approved by City of Menasha Common Council.
- (c) “Class B” Intoxicating Liquor License—as per fee schedule approved by City of Menasha Common Council.
- (d) Class “B” Fermented Malt Beverage License— as per fee schedule approved by City of Menasha Common Council.
- (e) Special Class “B” Fermented Malt Beverage Picnic License—as per fee schedule approved by City of Menasha Common Council.
- (f) Wholesaler’s License—as per fee schedule approved by City of Menasha Common Council.
- (g) Reserve “Class B” Intoxicating Liquor License fees—\$10,000 for the initial application and the renewal price as specified by 7-2-5 (b)
- (h) “Class C” Wine License—as per fee schedule approved by City of Menasha Common Council.
- (i) The provisions of s.125.185 Wis. Stats. are hereby adopted by reference. The City Clerk is designated as the municipal authority to authorize provisional licenses. Before issuing such provisional license, the Clerk shall ascertain that the inspections required by sec.7-2-8 have been stated and that the designated municipal official under sec. 7-2-8 has no objection to the provisional license. All fees for the permanent license shall have been paid prior to issuance of the provisional license. The fee for the provisional license shall be set by the Clerk and approved by the Common Council as part of the budget process. The initial fee shall be \$15. No provisional licenses may be granted where the application is for a picnic license or a temporary license. If the provisional license is requested for a premise that already holds a license, the existing license must be surrendered to the Clerk before a provisional license is issued.

## **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 shall be published once 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.

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

- (a) **RESIDENCE REQUIREMENTS.** No licensee shall be granted a license unless he or she is a real estate owner or a registered voter of the City of Menasha. Where the business premises is owned by a partnership, fifty percent (50%) of the partnership must either be a registered voter or a property owner; and where the business is owned by a corporation, the president, vice president, or secretary must either be a registered voter or a property owner. Where the selling of groceries is the principal form of business in which at least seventy-five percent (75%) of the sales are from groceries, said establishment can apply for a Class "A" Fermented Malt Beverage License. "Grocery store" is defined as a retail establishment where the principal source of income is the selling of food staples, produce and meats. For purposes of Sec. 7-2-7 (a) a person shall be determined to be a real estate "owner" if the applicant has a written lease with the real estate owner to operate the establishment for a term that exceeds one year. Such applicant shall file with the Clerk at the time the request for a license or renewal is made a copy of such lease.
- (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) **SEPARATE LICENSE REQUIRED FOR EACH PLACE OF SALE.** A separate license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are 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.

#### **SEC. 7-2-8 INVESTIGATION.**

The police investigation will include a criminal history check through the Wisconsin criminal history records transformation or other available database to determine the applicant's prior criminal history.

#### **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.

#### **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. The full license fee shall be charged for the whole or fraction of any year.

#### **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 is Ten Dollars (\$10.00). 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) 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. 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.

#### **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.

### **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.

### **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 if 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) **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 host or a club to a bona fide member. It shall be unlawful for such licensee or permittee to sell alcohol beverages to any person on a passbook or store order or to receive from any person any goods, ware, merchandise or other articles in exchange for alcohol beverages.
- (i) **LICENSEE OR PERMITTEE RESPONSIBLE FOR ACTS OF HELP.** A violation of this Chapter by a duly authorized agent or employee of a licensee or permittee under this Chapter shall constitute a violation by the licensee or permittee. Whenever any licensee or permittee under this Chapter shall violate any portion of this Chapter, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this Chapter.
- (j) **TYPES OF CONDUCT PROHIBITED.** The following types of conduct on premises which are licensed to sell intoxicating liquors and/or fermented malt beverages are prohibited:
  - (1) Specified sexual activities.
    - a. Display of human genitals in a state of sexual stimulation or arousal.
    - b. Acts or representation of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation.
    - c. Fondling or erotic touching of human genitals, pubic region, buttocks or the female breast.
    - d. Excretory functions as part of or in connection with any activities set forth in Subsections a. through c. above.
  - (2) Sexual contact. Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desires of either party.
  - (3) Simulation. The actual or simulated displaying of the pubic hair, anus, vulva or genitals.
  - (4) Certain Performances and Costumes Prohibited. No licensee, either personally or through his agent or employee, shall furnish entertainment or permit the performance of any act, stunt or dance by dancers, performers or entertainers, whether such dancers, performers or entertainers are employed by the licensee that does not meet the following wearing apparel standards when performing or when present upon the premises:
    - a. That portion of every costume to be worn by dancers, performers or entertainers covered by the provisions of this Subsection and which relates to the area of the sex organs herein defined as the pubic area and buttocks shall be on nontransparent material.
    - b. The lower portion of the costume worn by a female dancer, performer or entertainer, or a female impersonator, shall encircle the body at the area of the sex organs and buttocks. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the sex organs, the pubic area and the cleavage of the buttocks at all times. An animal fur piece or other device simulating the hair

surrounding the pubic area shall not constitute compliance with the costume requirements of the Ordinance.

- c. The lower portion of the costume worn by a male dancer, performer or entertainer shall encircle the area of the sex organs and the buttocks. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the pubic area, sex organs and the cleavage of the buttocks at all times. The display of the male genitals in the turgid state, whether covered or uncovered, shall constitute a violation of this Ordinance.

- (5) Disorderly Conduct by Patrons Prohibited. No licensee of a business where dancing occurs, be it personally or through his agent or employee, or persons sponsoring such dances shall permit any patron to participate in any act, stunt or dance in violation of the provisions of this Section.

- (6) Further Physical Conduct Prohibited. Entertainers may not have physical contact with customers during their act, nor shall they entice customers into joining into the same.

- (k) **ADDRESS AND TELEPHONE NUMBER.** All licensees of a Class "B" retail liquor and fermented malt beverage license and their agents shall file with the City Clerk their current home address and telephone numbers which shall be transmitted by the City Clerk to the Police Department. The City Clerk shall be advised of any change of same within fifteen (15) days. If the licensee or agent has an unlisted telephone number, such number shall be treated as confidential information and shall be used for no other purposes other than law enforcement.

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

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

Closing hours shall be established in conformance with 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 except that, on the Sunday that daylight saving time begins as specified in Section 175.095(2), Wis. Stats., the closing hours shall be between 3:30 a.m. and 6 a.m. There shall be no closing hours on January 1.

- (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.

- (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 during closed hours. Under no circumstances shall the consumption of alcohol beverages be permitted during closed 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.

- (b) **CLASS "A" LICENSES.** Premises that have been granted a "Class A" license may remain open for the conduct of their regular business daily but may not sell fermented malt beverages between 12 midnight and 8 a.m. Intoxicating liquor may not be sold between 9 p.m. and 8 a.m. If such "Class A" premise wishes to sell fermented malt beverages between 9 p.m. and 12 midnight, all intoxicating liquor must either be locked up or removed from that portion of the business open to customers.
- (c) **"CLASS A" LICENSES.** No premises for which a "Class A" license or permit has been issued may remain open for the sale of intoxicating liquor or fermented malt between the hours of 9 p.m. and 8 a.m. Such premises may remain open for the conduct of their regular business unrelated to the sale of intoxicating liquors or fermented malt beverages.
- (d) **TEMPORARY CLASS "B" AND TEMPORARY "CLASS B" LICENSES.** Temporary Class "B" and Temporary "Class B" licenses may only sell fermented malt beverages or wine during the hours specified in the temporary license.
- (e) **MODIFICATION OF CLOSING HOURS.** Closing hours may be modified for specific events by a majority vote of the Common Council.

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

Groups that have been granted a special Class "B" fermented malt beverage license shall comply with the following conditions of license:

- (a) Licensed Operators. There shall be at least one person properly licensed as an operator on the premises at all times to supervise the service of beverages.
- (b) Compliance With Laws. Holders of special Class "B" fermented malt beverage licenses shall fully comply with all provisions of this Code and the state statutes.
- (c) Suitable Facilities. For indoor events, the structure used must have suitable exits and open spaces to accommodate anticipated attendance. It should contain adequate sanitary facilities to accommodate the size of the group.
- (d) Posting of License. The special Class "B" fermented malt beverage license shall be posted in a conspicuous place and shall specify the date(s) and hours for which said license is issued.
- (e) Insurance. The applicant for a special Class "B" fermented malt beverage shall be required to indemnify, defend, and hold the City and its employees and agents harmless against all claims, death or any person or any damage to property caused by or resulting from the activities for which the permit is granted. Organizations holding a Class "B" license from the City that use municipal property must first file with the City Clerk evidence of insurability covering property damage in the amount of Fifty Thousand Dollars (\$50,000.00), personal liability in the amount of One Hundred Thousand Dollars (\$100,000.00) per person injured, and Three Hundred Thousand Dollars (\$300,000.00) in the aggregate. The applicant may be required to furnish a performance bond prior to being granted the permit.

Cross Reference: Section 11-5-1.

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

- (a) **REQUIRED FOR OUTDOOR CONSUMPTION.** No licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under permit granted by the Common Council. The permits are a privilege in which no rights vest and, therefore, may be revoked by the Common Council at its pleasure at any time. The request shall accompany the original or renewal license application. No person shall consume or have in his or her possession alcoholic beverages on any unenclosed part of a licensed premise which is not described in a valid Outdoor Food and Alcoholic Beverage permit.
- (b) **LIMITATIONS ON ISSUANCE OF OUTDOOR FOOD AND ALCOHOLIC BEVERAGE PERMITS.** No permit shall be issued for Outdoor Food and Alcoholic Beverage service if any part of the outdoor seating area is within one hundred (100) feet of the property line of improved property with a structure used exclusively for residential purposes. No Food and Outdoor Alcoholic Beverage permit shall be issued if the outdoor seating area is greater than fifty percent (50%) of the gross floor area of the licensed premises enclosed within the building; the area of limitation does not apply to rooftop service areas in the C-2 Central Business District. Each applicant for an Outdoor Food and Alcoholic Beverage permit shall accurately describe the area intended for use as an outdoor seating area and shall indicate the nature of fencing or other measures intended to provide control over the operation of the outdoor seating area. Except for the entryway, every outdoor seating area shall be completely enclosed with a fence or wall not less than forty-two (42) inches in height measured from the hard surface on which the outdoor seating area is constructed. Amplified sound or music is permitted in the outdoor seating area provided such music may not be audible within 150 feet of the outdoor seating area or the nearest structure used exclusively for residential purposes whichever is less. A licensed operator shall have control over the outdoor seating area at all times the outdoor seating area is in operation.
- (c) **TIME OF OPERATION.** The outdoor seating area may only be open from seven a.m. until one-half hour before the closing time required by State law. The shift commander of the Police Department has the authority to order any outdoor seating area to be closed down at any time the Shift Commander believes it is in violation of this ordinance.
- (d) **ADJOINING PROPERTY OWNERS TO BE NOTIFIED OF PENDING OF APPLICATIONS.** All property owners within one hundred fifty (150) feet of the proposed outdoor seating area measured from property line to property line shall be notified of the pendency of application for a permit by first class mail.
- (e) **STATE STATUTES ENFORCED WITHIN OUTDOOR SEATING AREA.** Every permittee under this Section shall comply with and enforce all provisions of Ch. 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Ch. 125, Wis. Stats., shall be grounds for immediate revocation of the Outdoor Food and Alcoholic Beverage permit by the Administration Committee.
- (f) **PERMIT REVOCABLE.** Three violations of this ordinance shall constitute prima facie evidence that the Outdoor Food and Alcoholic Beverage permit shall be revoked. Such revocation shall be preceded by a hearing with the Administration committee whose decision shall be final. There shall be no use of the Outdoor Food and Alcoholic Beverage permit from the time the third violation is alleged to have occurred and the hearing. Each violation shall also carry 40 points pursuant to sec. 7 – 2 – 19(b).

- (g) **FEE REQUIRED.** The Common Council shall approve the fee for Outdoor Food and Beverage Service permits.
- (h) **TEMPORARY EXPANDED PREMISES.**
  - (1) **Premises Defined.** Consumption means dispensation or sale of fermented malt beverages and intoxicating liquors on licensed premises shall be restricted to the building itself and no fermented malt beverages or intoxicating liquors may be consumed, dispensed or sold outside the building.
  - (2) **Permit Issued.** Whenever a licensee under this Subsection desires to expand the selling, dispensation of fermented malt beverages or intoxicating liquors on an area adjacent to said building, such as a parking lot, for a special event, it may do so by applying to the Chief of Police. Such permission shall not be unreasonably withheld. Should the Chief of Police withhold such permit, he shall immediately notify the City Clerk. It is the intention of this Subsection to permit scheduled special events and to prohibit extended use of off-premises sales, dispensation or consumption.

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

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

- (a) **PROCEDURE.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 5, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Chapter 125, Wis. Stats.
- (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 (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) **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 licenses 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.

#### **SEC. 7-2-19 POINT SYSTEM FOR ALCOHOL BEVERAGE LICENSE VIOLATIONS AND REVOCATIONS AND SUSPENSIONS.**

- (a) **PURPOSE.** The purpose of this section is to administratively interpret those portions of the Menasha Municipal Code relating to alcohol beverage violations and to establish a system for suspension and revocation.
- (b) **POINT SCHEDULE.** The scheme of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders who have repeatedly violated State Statutes and the Menasha City Ordinance, for the purpose of recommending suspension or revocation of their alcohol beverage license.

Type of Violation: Traffic to underage person  
 Demerit Points: 80

Type of Violation: Traffic to intoxicated person  
 Demerit Points: 50

Type of Violation: Underage person on premises  
 Demerit Points: 50

Type of Violation: Failure to be licensed  
 Demerit Points: 100

Type of Violation: False statement on application  
 Demerit Points: 50

Type of Violation: Failure to post liquor license  
 Demerit Points: 40

Type of Violation: Transfer of license without permission, including operating on another's license  
 Demerit Points: 90

Type of Violation: Unlicensed bartender  
 Demerit Points: 40

Type of Violation: Failure to display bartender license upon request  
 Demerit Points: 25

Type of Violation: Open after hours  
 Demerit Points: 40

Type of Violation: No carry-out after hours  
 Demerit Points: 25

Type of Violation: Gambling  
 Demerit Points: 50

Type of Violation: Adult entertainment without permit  
 Demerit Points: 50

Type of Violation: Nude or semi-nude entertainer employee visible outside  
Demerit Points: 100

Type of Violation: Nude or semi-nude entertainer employee visible inside  
Demerit Points: 50

Type of Violation: Failure to display permit  
Demerit Points: 25

Type of Violation: Owner selling controlled substances  
Demerit Points: 130

Type of Violation: Bartender selling controlled substances  
Demerit Points: 75

Type of Violation: Failure to continue residency or ownership status during the license year  
Demerit Points: 75

Type of Violation: Outdoor food and beverage service  
Demerit Points: 40

(c) **VIOLATIONS HOW CALCULATED.** In determining the accumulative demerit points against a licensee within 24 months, the City shall use the date each violation was committed as the basis for a determination if there has been a conviction.

(d) **SUSPENSION AND REVOCATION OF LICENSE.** Prior to the imposition of the demerit points by the Administration Committee, a hearing shall be scheduled to allow any licensee to provide any relevant information to the Administration Committee. Any conviction resulting from any violation is sufficient evidence for the Administration Committee to impose the demerit points. If the demerit point accumulation accumulated from the date of violation which results in a conviction which meets or exceeds 75 points in a 12-month period, the Administration Committee shall issue a warning to the licensee. Failure to appear at the time of the hearing before the Administration Committee shall not be a reason to claim lack of notice of the warning. Notice shall be provided to the named licensee that the Administration Committee intends to issue the demerit points. Should such accumulation of points exceed 125 within a 12-month period, the Administration Committee shall suspend the license for a period of not less than 3 days nor more than 10 days. Should such accumulation exceed 150 points and be less than 200 in an 18-month period, the Administration Committee shall suspend such license for not less than 10 days nor more than 90 days. Should such accumulation exceed 200 points in a 24 month period, the penalty shall be revocation.

(e) **TIME OF SUSPENSION OR REVOCATION.**

(1) The dates for any suspension shall be negotiated between the licensee and the City Attorney provided that the beginning date shall not be less than 15 days after the Administration Committee order.

(2) Any revocation ordered by the Administration Committee shall begin three

days from the date of the Administration Committee order. No licensee whose license has been revoked may apply to be an officer, agent, or licensee for 12 months after the revocation.

(3) The Common Council will not act on a request for a license for any property or license that has been revoked until not less than 60 days has elapsed since the date of revocation.

(4) The Common Council will not act on a request for a license for any property or license that has been suspended until the suspension period has expired.

(f) **EGREGIOUS VIOLATIONS.** Should the Administration Committee make a specific finding that the circumstances of the violation constitute an egregious violation, the Administration committee may determine to impose a suspension or revocation even if the number of demerit points is not sufficient to meet the threshold of paragraph d.