

**TOWN OF ELLSWORTH
INTOXICATING BEVERAGES AND LIQUOR ORDINANCE
Ordinance 1996-1**

An Ordinance to revise the Town of Ellsworth rules and regulations concerning intoxicating beverages and liquors in the Town of Ellsworth, Pierce County, Wisconsin.

WHEREAS, the Town Board of the Town of Ellsworth has heretofore adopted a hard liquor ordinance and malt beverage ordinance, which ordinances need to be updated to be consistent with State laws; and

WHEREAS, the 21st Amendment to the United States Constitution grants States the authority to regulate the sale of alcohol beverages; and,

WHEREAS, Section 125.10(1) of the Wisconsin Statutes authorizes local municipalities to prescribe additional regulations for the sale of alcohol beverages which are not in conflict with Chapter 125; and,

WHEREAS, the Town Board upon due consideration finds nudity and near nudity and sexual conduct are proper subjects for regulation in connection with control of the sale of alcoholic beverages with the Town of Ellsworth; and,

WHEREAS, the Town Board further finds any form of nudity coupled with alcohol consumption in a public place begets undesirable behavior and there is a relationship between the consumption of alcoholic beverages and nudity and an increase in criminal activities, moral degradation and disturbances of the peace and good order of the community; the concurrence of nudity and alcoholic beverages are hazardous to the health and safety of those in attendance and tends to depreciate the value of the adjoining property and to harm the economic welfare of the community as a whole; when there is concurrence of nudity and consumption of alcoholic beverages, other activities which are illegal, immoral, and unhealthy tend to accompany them, concentrate around them, and be aggravated by them; and such other activities include but are not limited to prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances and violent crimes against persons and property; and,

WHEREAS, the Town Board has determined the enactment of an Ordinance prohibiting nudity and sexual conduct in establishments licensed to sell alcoholic beverages within the Town of Ellsworth will prevent or limit such undesirable conduct and activities;

NOW THEREFORE, the Town Board of the Town of Ellsworth do hereby ordain as follows:

Section 1. **STATE STATUTES ADOPTED.** The provision of Chapter 125, Wisconsin Statutes, relating to the sale of, possession of, and licensing for sale of intoxicating liquor and

fermented malt beverages, exclusive of any provisions for the penalty to be imposed for violations of said Chapter, are hereby adopted and made a part of this Section by reference.

Section 2. **LICENSES.**

- (a) **When required.** No person except as provided by Section 125.04, 125.17, 125.25, 125.26, 125.27, 125.28, 125.31, 125.32, 125.51, 125.57, and 125.68 WI Stats., shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in, or for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage, or cause the same to be done, without having procured a license as provided in this section, nor without complying with all the provisions of this section, and all statutes, ordinances, and regulations of the State and Town applicable thereto.
- (b) **Separate License Required for Each Place of Sale.** A license shall be required for each stand, place, room, or enclosure or for each suite of rooms or enclosures which are in direct connection or communication to each other where intoxicating liquor or fermented malt beverages are kept, sold, or offered for sale and no license shall be issued to any person for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling house, flat, or residential apartment.
- (c) **Quota on "Class A" licenses for sale of intoxicating liquors.** Only one "Class A" license for retail sale of intoxicating liquor for consumption off the premises where sold and in original packages and containers shall be issued for every 2,000 inhabitants of the Town. That is, one license may now be issued, the Town population being less than 2000 inhabitants; and a second license may not be issued until the population of the Town exceeds 4000 persons.
- (d) **Limits on "Class A" retail fermented malt beverage licenses.** Such licenses may be issued to holders of a "Class B" retail fermented malt beverage license; however, only one such "Class A" license shall be granted for every 500 inhabitants of fraction thereof in the Town. In addition, "Class A" retail fermented malt beverage licenses shall be granted only to retail grocery stores whose primary business, as so determined by the Town Board, is a complete general line of groceries. The term "primary business" refers to the commercial enterprise engaged in by the applicant, vis a vis all activities engaged in for profit upon the premises, as measured by the volume of sale, gross profits, or such other indicia or purpose as may be deemed relevant by the Town Board. The term 'complete general line of groceries' refers to a stock of household food and supply items providing a full range of such items, including broad variety of brand, size, and volume.
- (e) **"Class B" license, sale in original container.** A retail "Class B" license for the sale of intoxicating liquor authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at anyone time, and to be consumed off the premises where sold. Wine may be sold for consumption off the premises in any quantity.

(f) **License Limit on "Class B" Liquor Licenses.** No more than one retail "Class B" intoxicating liquor license shall be granted to and issued for each 500 inhabitants or fraction thereof in the Town, such population to be determined by the last preceding national census or official estimate thereof by the Bureau of Census of the United States government.

(g) **Delinquent Taxes, Assessments, Forfeitures.**

1. Premises. No initial or renewal alcohol beverages license shall be granted for any premises for which taxes, assessments, or other claims for the Town are delinquent and unpaid.
2. Persons. No initial or renewal alcohol license shall be granted to any person:
 - a. Delinquent in payment of any taxes, assessments, or other claims owed to the Town.
 - b. Delinquent in payment of a forfeiture resulting from a violation of any Ordinance of the Town.
 - c. Delinquent in payment to the State of any State taxes owed.

Section 3. **FEES.**

Fees for licenses under this section shall be as follows:

(a) Class "A" Retail License	
fermented malt beverage	\$100.00
intoxicating liquor	\$500.00
(b) Class "B" Retail License	
fermented malt beverage	\$100.00
intoxicating liquor	\$500.00
(c) Class "B" picnic or special events license	\$ 10.00
(d) Wholesale's License	\$ 25.00
(e) Operators License	\$ 10.00

All such fees are per year, except those for licenses under (c)

Section 4. **LICENSE APPLICATION**

(a) **Form.** Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the WI Department of Revenue and filed with the Town Clerk. In addition to information required on the forms prescribed by the WI Department of Revenue, the Town Board may require such further information as may be deemed necessary to make an appropriate review of the license application, including date of birth and place of past residence. The premises shall be physically described to include every room and storage space to be covered by the license, including all rooms joined by connecting entrances and not separated by a solid wall.

(b) **Application to be Notarized.** Applications shall be signed and sworn to by the applicant.

(c) **Responsible Beverage Server Training Course.** All applicants for operator's license must complete a responsible beverage server training course as provided in Section 125.17 (6), WI Stats. No license may be issued unless the applicant has successfully completed such course or unless the applicant fulfills one of the following requirements: Where the applicant is renewing an operator's license, where the applicant has held a Class A or Class B license or permit or a manager's or operator's license within the past two years; or where, within the past two years, the applicant has completed such training course. An applicant may be issued a provisional (temporary) license where the applicant has not completed a responsible beverage server training course, and said provisional license shall be issued for a period of 60 days. Upon filing by the applicant with the Town Clerk proof of completion of a responsible beverage server training course, by the applicant, the Town Clerk shall issue an operator's license to the applicant. If an applicant who has been issued a provisional operator's license has failed to successfully complete a responsible beverage server training course within sixty (60) days of the issuance thereof, said license shall expire and be void.

Section 5. **LICENSE RESTRICTIONS.** In addition to the any other restriction contained in Chapter 125, the following shall apply:

(a) **Violation of Liquor or Beer Law or Ordinance.** No retail "Class B" license shall be issued to any person who has been convicted of a violation of any Federal or State liquor or fermented malt beverage laws or of the provisions of this section during a period of one year prior to said application. A conviction of a member of a partnership or of the partnership itself shall make the partnership or any member thereof ineligible for such license for one year.

(b) **Class "B" Licensed Premises to be on street level.** Retail Class "B" licenses shall be issued only for that portion of a premises located on the street level. This restriction shall not apply to a bona fide club, society or lodge in existence not less than 6 months prior to application nor prohibit any hotel holding a state permit from supplying beverages in original containers to bona fide patrons in rooms rented by such patrons.

(c) **Health and Sanitation Requirements.** No retail "Class B" license shall be Issued for any premises which does not conform to the sanitary, safety, and health requirements of the State Department of Industry, Labor, and Human Relations pertaining to building and plumbing and the rules and regulations of the State Department of Health applicable to restaurants and to all such ordinances and regulations adopted by the Town.

d) **Corporations.** No license shall be granted to any corporation when more than 50% of the voting stock interest, legal interest or beneficial interest is held by any person or persons not eligible for a license under this section.

Section 6. **LICENSES, EXPIRATION**

- (a) **Fee Charged.** Licenses for "Class A" or "Class B" retail sales, when issued for a period less than one year, shall be prorated according to the number of months or fractions thereof remaining until the following June 30.
- (b) **Form and Expiration 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 dates of issuance, the fee paid, and the name of the licensee, and unless sooner revoked, shall expire on June 30 thereafter except as provided in otherwise in this section.

Section 7. **POSTING LICENSE.** Every license issued under this section shall be posted and at all times displayed as provided in Section 125.04(10) WI Stats. No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application, or knowingly deface or destroy such license.

Section 8. **REGULATION OF LICENSED PREMISES AND LICENSES.**

- (a) **Gambling and 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 licensed premises.
- (b) **Closing Hours.** The closing hours for licenses premises shall be as follows:
 - 1. The closing hours of taverns shall be as prescribed by Section 125.32(3) and Section 125.68(4) WI Stats., except that the closing hours of taverns during that portion of each year for which the standard of time is advanced under Section 175.095, WI Stats., shall be between hours of 2:00 a.m. and 8:00 a.m. and except that the closing hours of taverns shall be 1:00 a.m. (or 2:00 a.m. when the standard of time is advanced) to 12:00 p.m. (noon) on Sundays. The term "tavern" refers to Class "B" licenses premises.
 - 2. No holder of a "Class A" retail fermented malt beverage or intoxicating liquors license shall sell or offer for sale any such beverage on Sunday between 12:00 midnight and 12:00 p.m. (noon) or on other days between 12:00 midnight and 8:00 a.m.
- (c) **Safety and Sanitation Requirements.** Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

d. Underaged Persons

1. Any underage person who does any of the following is guilty of a violation:
 - a. Procures or attempts to procure alcohol beverages.
 - b. Knowingly possesses or consumes alcohol intoxicating liquor.
 - c. Enters or is on licensed premises in violation of Section 125.07, WI Stats.
 - d. Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.
2. Any underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age who knowingly possesses or consumes fermented malt beverages is guilty of a violation.
3. No underage person shall intentionally carry an official identification card not legally issued to him or her, or an official identification card obtained under false pretenses, or an official identification card which has been altered or duplicated to convey false information. For purposes of this section, a licensee issued by the Department of Transportation shall be deemed an official identification card in addition to the card referred to in Section 125.08, WI Stats.
4. No underage person shall make, alter, or duplicate an official identification card.
5. No underage person shall present false information to an issuing officer in applying for an official identification card.
6. No person shall misrepresent or misstate his or her age or the age of any other person or misrepresent his or her age through the presentation of any document purporting to show such person to be of legal age to purchase fermented malt beverages or intoxicating liquor.
7. Selling, furnishing to underage person. No person may procure for, sell, dispense, or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
8. Underage person prohibited on licensed premises. An underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued, except as provided in Sec. 125.07(3)(a), WI Stats.
9. Licensee or permittee, furnishing alcohol beverages. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to any underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age .
10. The penalty for violation hereunder shall be a forfeiture and suspension of operating privileges as set forth in Section 125.07(4)(c) and Section 343.30(6)(b).

e. Improper Exhibitions.

1. It shall be unlawful for any person to perform, or for any licensee or manager or agent of the license to permit any employee, entertainer, or patron to engage in any live act, demonstration, dance or exhibition on the licensed premises which:
 - A. Expose his or her genitals, pubic hair, buttocks, perineum, anal region, or pubic hair region; or
 - B. Expose any device, costume, or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - C. Exposes any portion of the female breast at or below the areola thereof; or
 - D. To engage in or simulate sexual intercourse and/or any sexual contact including the touching of any portion of the female breast or the male and/or female genitals.
2. Each licenses premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.
3. The penalty for violation hereunder in any twelve (12) consecutive months shall be \$500 plus current court costs for the first offense, \$1000 plus current court costs for the second offense, \$1500 plus current court costs for the third offense, and each subsequent violation \$1500 plus current court costs. A separate offense shall be deemed committed on each day a violation occurs or continues to occur. Pursuant to procedures set forth in Wisconsin Statute 125.12, violation constitutes sufficient grounds for board consideration of license suspension, revocation, or nonrenewal where such violation occurred in conjunction with or related to the activity for which license was issued.

Section 9. **CONSUMPTION ON PUBLIC STREETS AND SIDEWALKS PROHIBITED.**

- (a) No person shall consume, carry, transport, or have in his possession any intoxicating liquor or fermented malt beverage on public sidewalks or streets in the Town of Ellsworth unless such intoxicating liquor or fermented malt beverage is in an unopened, sealed container.
- (b) No person shall sell intoxicating liquors or fermented malt beverages when he knows that the intention of the buyer is to consume such intoxicating liquors or fermented malt beverages on the public sidewalks or streets of the Town of Ellsworth or to allow any person or persons to leave any licensed establishment with unopened, unsealed containers of intoxicating liquor or fermented malt beverages.

- (c) The provisions of this section may be waived from time to time by resolution of the Town Board as it shall deem advisable for specific occasions and events conducted on the streets or sidewalks of the Town.

Section 10. **TRANSFER OF LICENSES.**

Licenses may be transferred as provided in Section 125.04(12).

Section 11. **TAVERN KEEPER SHALL REQUIRE PROOF OF AGE.**

- (a) Any person in premises operating under a "Class A" or "Class B" retail license for the sale of fermented malt beverages or in premises operating under a "Retail Class A" or a "Retail Class B" license for the sale of intoxicating liquor shall upon demand of the person in charge of such premises or of any law enforcement officer show an identification card or other form of identification Sec. 125.08, WI Stats., or be regarded as a person underage.
- (b) Every retail "Class A" and retail "Class B" license shall cause a book to be kept and such licensee or his employee, or both, shall require any person who has shown documentary proof of age which substantiates his age to allow the legal purchase of fermented malt beverages or intoxicating liquor, to sign such book if the age of such person is in question. The book shall show the date of purchase, the identification used in making the purchase, the address of the purchaser and his signature.
- (c) The establishment of the following facts by a person making a sale of fermented malt beverages or intoxicating liquors to a person not of legal age shall constitute prima facie evidence of innocence and a defense to any prosecution thereto:
 - (1) That the purchaser falsely represented in writing and supported with other documentary proof that he was of legal age to purchase fermented malt beverages.
 - (2) That the appearance of such purchaser was such that any ordinary and prudent person would believe him to be of legal age to purchase fermented malt beverages.
 - (3) That the sale was made in good faith and in reliance upon the written representation and appearance of the purchase in the belief that the purchaser was of legal age to purchase fermented malt beverages.

Section 12. **POSSESSION OF ALCOHOL BEVERAGES ON SCHOOL GROUNDS**

PROHIBITED. The provision of Section 125.09(2), WI Stats., are adopted in their entirety, prohibiting a person from possessing or consuming alcohol beverages on school premises, in a motor vehicle if a pupil attending the school is in the motor vehicle, or while participating in a school-sponsored activity. The provisions of Section 48.344 and 125.07(4)(c) and (d) provide applicable penalties for underage persons.

Section 13. **SALES TO INTOXICATED PERSONS PROHIBITED.** No person, licensee, or permittee may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated, nor deal or traffic in same with a person who is intoxicated.

Section 14. **BARTENDER ON DUTY.** No licensed premises may be open for business unless there is upon the premises a licensee, agent, person who has an operator's license or member of the licensee's immediate family as provided in Section 125.32 (2) and 125.68 (2), WI Stats.

Section 15. **PRESENCE IN NONALCOHOLIC BAR PERMITTED.** An underage person may enter or remain on "Class B" licensed premises on a date specified by the license or permittee during times when no alcohol beverages are consumed, sold, or given away. During those times the licensee, the agent named in the license if the licensee is a corporation or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the local law enforcement agency, in advance, of the time underage persons will be allowed on the premises under this subsection.

Section 16. **REVOCAION AND SUSPENSION OF LICENSE.**

(a) The provisions of Section 125.12 WI Stats., shall govern the revocation, suspension and refusal to issue or renew licenses under this Section.

(b) A violation of this section by a duly authorized agent or employee of a license or permit holder shall constitute a violation by the license or permit holder.

Section 17. **PENALTY.** Any person, partnership or corporation who violates any of the provisions of this Ordinance shall be subject to liquor license suspension, revocation of non-renewal as provided herein. In addition, a person found guilty of violating this Ordinance shall be fined not less than \$50.00 nor more than \$500.00, plus court costs, except as provided in Section 8e Improper Exhibitions, where the penalty for violation in any twelve (12) consecutive months shall be \$500 plus current court costs for the first offense, \$1000 plus current court costs for the second offense, \$1500 plus current court costs for the third offense, and each subsequent violation \$1500 plus current court costs. A separate offense shall be deemed committed on each day a violation occurs or continues to occur.

Section 18. This ordinance shall take effect upon publication.
Passed and adopted this 2nd day of April, 1996.

Votes for 3 Against 0

TOWN BOARD, TOWN OF ELLSOWRTH

By _____
Barry Foy, Chairman

Everett Muhlhausen, Supervisor

Gerald Arndt, Supervisor

Phyllis J Beastrom, Clerk

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