

**TOWN OF WEST BEND
ORDINANCE 2023-05**

ALCOHOL LICENSING ORDINANCE

THE TOWN BOARD OF THE TOWN OF WEST BEND, WASHINGTON COUNTY,
WISCONSIN DO ORDAIN AS FOLLOWS:

Chapter 104. Alcohol Beverages

Article I. Licensing and Regulation

§ 104-1. State statutes adopted.

The provisions of Chapter 125 of the Wisconsin Statutes relating to the sale of intoxicating liquor and fermented malt beverages, except §§ 125.03, 125.075, 125.14(4), 125.15, 125.16, 125.19, 125.29, 125.30, 125.33, 125.52, 125.53, 125.54, 125.55, 125.56, 125.58, 125.60, 125.61, 125.62, 125.65, 125.67 and 125.69, are hereby adopted and made a part of this chapter by reference. A violation of any such provision, or future amendments thereto, shall constitute a violation of this article.

§ 104-2. Definitions.

As used in this article, the following definitions apply:

LEGAL DRINKING AGE

Twenty-one years of age.

UNDERAGE PERSON

A person who has not attained the legal drinking age.

§ 104-3. License application.

Application for a license to sell alcohol beverages shall be made in writing on the form prescribed by Wis. Stat. § 125.04(3), and shall be filed together with the cost of publication with the Town Clerk not less than 15 days prior to the Town Board consideration of the license. However, applications for licenses to be issued under Wis. Stat. §§ 125.26(6) and 125.51(3m), shall be filed with the Town Clerk not less than three days prior to consideration of the license. Further, as a condition of granting an operator's license, the applicant shall permit the Town to secure a criminal background check of the applicant. No license shall be issued until the fee has been paid.

§ 104-4. Application investigation.

The Town Clerk shall notify the Building Inspector and the Town Police Chief of each new license and permit application, and these officials shall review such application and inspect, or cause to be inspected, the premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto. These officials shall furnish to the Town Board, in writing, the information derived from such investigation. Except as otherwise

specifically set forth in this article, no license or permit provided for in this article shall be issued without the approval of a majority of the Town Board.

§ 104-5. License fees.

The fees for licenses under this chapter will be set by the Town's fee schedule.

§ 104-6. Operator's license issuance.

A. Operators' licenses may be issued by the Town Clerk or Deputy Clerk when the applicant complies with all requirements under this chapter and has no criminal record. The Town Board will review applicants with criminal records.

B. Provisional Operator Licenses.

(1) The Town Clerk may issue a provisional operator's license to anyone applying for a regular operator's license for the service or sale of alcohol beverages. A provisional operator's license may only be issued if any of the following apply:

(a) Those persons who, at the time of application and payment for an operator's license, present a certified copy of a valid operator's license issued by another Wisconsin municipality.

(b) Those persons who, at the time of application and payment for an operator's license, meet the requisite training requirement and wish to commence work as an operator before the Board will be able to meet to decide their application.

(2) Eligibility. Each applicant must be at least 18 years of age and have completed an application form supplied by the Town Clerk. All arrests and convictions of the applicant shall be disclosed on the application or an attached sheet.

(3) Term. The provisional operator's license shall be effective for 60 days from the date of issuance, or until a regular operator's license is issued, whichever is sooner.

(4) Issuance. Upon written application for an operator's license, the Town Clerk shall conduct a background check. If the applicant has no past crimes or arrests, the Town Clerk is authorized to issue a provisional operator's license to the applicant. The Town Board shall review the issuance of any such provisional operator's license at the next regularly scheduled Town Board meeting, reserving final approval authority. If the applicant does have an arrest or conviction record, the Town Board must determine whether the provisional operator's license will be issued.

(5) Revocation. The Clerk may revoke a provisional operator's license if:

(a) The holder of the license made a false statement on the application for the license;

(b) The operator license issued by the other Wisconsin municipality is not valid;

(c) The Town Board denies the person's application for a regular operator's license.

(6) Upon making the decision to revoke, the Town Clerk shall mail or have a written notice delivered to the license holder notifying the person of the action taken, the reason(s) for such action, and the right to have a license review hearing before the Town Board, upon the applicant's request. When a request for a hearing is made, the Board shall follow the general procedures as set forth in Wis. Stat. § 125.12, although no complaint is required. The Town Clerk shall notify the licensee, by mail or hand delivery, the date and time the hearing is scheduled before the Town Board. Any mail notice in this article is sufficient if mailed via first-class mail to the last known address of the licensee in an envelope containing the return address of the Town Clerk. No request for a license review hearing is valid when received past the final day the provisional operator's license would have been effective.

§ 104-7. License required.

No person shall vend, sell, deal, traffic in or, for the purpose of evading any law or ordinance, give away any liquor or fermented malt beverages, or cause the same to be done, without having procured a license as provided in this chapter nor without complying with all provisions of this chapter, and all applicable statutes, ordinances and regulations.

§ 104-8 Term of License.

A. Except as otherwise provided by statute or this chapter, the licensing term shall be from July 1 to June 30.

B. Where the issuance of a license is for less than (1) one year for reasons such as sale of licensed business or transfer of license, the remaining term of the license shall end on June 30.

§ 104-9. Qualifications for licenses and permits.

A. Natural persons. Licenses related to the sale of alcoholic beverages, may be issued to natural persons that satisfy the following:

(1) In accordance with Wis. Stat. § 125.04(5), are not a habitual criminal offender, have not been convicted of a felony (unless duly pardoned), and do not have an arrest or conviction record, subject to Wis. Stat. §§ 111.321, 111.322 and 111.335.

(2) Have been residents of this state continuously for at least 90 days prior to the date of application.

(3) Have attained the legal drinking age, except that operators' licenses may be issued to any person who has attained the age of 18.

- B. Must comply with all applicable provisions of this chapter relating to licensee qualifications.
- C. Corporations. No license or permit may be issued to any corporation unless the agent of the corporation appointed under Wis. Stat. § 125.04(6), and the officers and directors of the corporation meet the qualifications of Subsections **A(1)** and **(3)** and **B** above, except that Subsection **A(2)** does not apply to agents.

§ 104-10. License conditions and restrictions.

In addition to the conditions and restrictions imposed by state law on the granting of Class B fermented malt beverage licenses and intoxicating liquor licenses hereunder, the following conditions and restrictions shall apply:

- A. Consent to inspection of premises. Any person issued a license under this chapter consents to designated Town officials entering and inspecting the licensed premises at any reasonable hour without any warrant. The application for a license hereunder shall be deemed the applicant's consent to this provision. If such inspection is denied, such denial shall be deemed a violation of this chapter and serve as grounds for suspending, revoking, or non-renewing a license issued under this chapter.
- B. Violation by agents or employees. A violation of this chapter by an agent or employee of a licensee shall constitute a violation of the licensee.
- C. Sales to underage persons restricted. No alcohol beverage shall be sold, dispensed, given away or furnished to any underage person, unless the underage person is accompanied by a parent, guardian, or spouse who has attained the legal drinking age.
- D. Commencement of operations. Within 90 days of the issuance of a "Class B" intoxicating liquor license or a Class "B" fermented malt beverage license, the licensee shall be open for business with adequate stock and equipment. Upon failure to do business within such time, the license may be subject to suspension, revocation, or non-renewal by the Town Board.
- E. Cessation of operations. If any licensee shall suspend or cease doing business for 90 consecutive days or more, their Class B intoxicating liquor license and fermented malt beverage license shall be subject to suspension, revocation, or non-renewal by the Town Board. The Town Board may, for a good cause shown by the licensee, extend such ninety-day period.
- F. Transfer of license. No license shall be transferable from person to person except as provided in Wis. Stat. § 125.04(12)(b), or from place to place, except as provided in Wis. Stat. § 125.04(12)(a).
- G. Safety and health requirements. No retail Class B license shall be issued unless the premises to be licensed conforms to the sanitary, safety and health requirements of the State Building Code, the State Plumbing Code and the rules and regulations of the State Department of Agriculture, Trade and Consumer Protection applicable to restaurants, and also shall conform to all ordinances and regulations of the Town.
- H. Operator on duty required. During hours of operation, the licensee, a member of his or her immediate family or a licensed operator must be present at all times in the immediate area open to the public where alcohol beverages are being sold.

I. Town taxes and claims. No license shall be granted for operation on any premises upon which real estate taxes, special charges, assessments, or other financial claims of the Town are delinquent and unpaid.

J. Disorderly conduct and gambling prohibited. Each licensed premises shall at all times be conducted in an orderly manner and no disorderly, riotous or indecent conduct or gambling shall be allowed at any time on any licensed premises.

K. Wearing apparel. All persons involved in the operation of any licensed premises under this article, whether as licensee, member of the immediate family of the licensee, licensed operator, unlicensed operator under the supervision of the licensee or licensed operator, waiter, waitress, entertainer, dancer or any other employe, shall observe the following applicable minimum standards for such licensed premises:

(1) The costume, uniform or attire of any female shall be of nontransparent material and must completely cover the breasts at all times. The lower portion of such costume, uniform or attire must be of nontransparent material and completely cover the mons pubis genitals and the buttocks at all times.

(2) The costume, uniform or attire of any male shall be of nontransparent material and must completely cover the pubic area, genitals and buttocks at all times.

L. Posting of licenses required. Licenses or permits issued under this article shall be posted and displayed as provided in Wis. Stat. § 125.04(10), and any licensee or permittee who shall fail to post his or her license or permit as therein required shall be presumed to be operating without a license.

M. Live music and dancing. Dancing and live music shall be permitted in any premises holding a "Class B" liquor license, provided that such dancing and music is limited to the interior of the building only and does not violate section 193-4.

§ 104-11. Business hours.

No premises for which an alcohol beverage license has been issued shall remain open for the sale of alcohol beverages, as follows:

A. Wholesale license. Between 5:00 p.m. and 8:00 a.m., except Saturdays when the closing hour shall be 9:00 p.m.

B. Retail "Class B" license. No premises shall be open for the sale of intoxicating liquor or fermented malt beverage between the hours of 2:00 a.m. to 6:00 a.m., except on Saturday and Sunday the closing hour shall be 2:30 a.m.; on January 1, there are no closing hours.

C. Hotels and restaurants. Hotels and restaurants, the principal business of which is the furnishing of food and/or lodging to patrons, may remain open after closing hours for the conduct of regular business, but shall not sell intoxicating liquors or malt beverages during the closing hours stated in Subsection **B** above.

D. Presence on premises after closing hour restricted.

(1) Any person who is not an employee of the licensee who remains on the premises after the designated closing hour is subject to the penalties as provided in this chapter.

(2) Any person, while on the premises after closing hours, must be actively engaged in bona fide business activities and may not consume alcohol beverages.

§ 104-12. Sale restrictions.

A. Sale restrictions. Pursuant to Wis. Stat. § 125.51(3)(b), the sale of intoxicating liquor in the original package or container, in any quantity, to be consumed off the premises where sold, is allowed on any premises for which any "Class B" intoxicating liquor license or combination Class B alcohol beverage license has been issued. Packaged goods sales of fermented malt beverages and wine from such premises may also be made in any quantity.

B. Hours of sale. Between the hours of 12:00 midnight and 8:00 a.m., no person may sell any packaged goods from any Class B licensed premises.

§ 104-13. Underage person; presence in places of sale.

A. Restrictions. Pursuant to Wis. Stat. § 125.07(3), 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, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee.

B. Exceptions. Subsection A above shall not apply to:

(1) An underage person who is a resident, employee, lodger or boarder on the licensed premises.

(2) Licensed restaurants where the principal business is that of a restaurant.

(3) A person who is at least 18 years of age and who is working under a contract with the licensee to provide entertainment for customers on the premises.

(4) An underage person who enters on Class "B" or "Class B" premises on dates specified by the licensee when no alcohol beverages will be consumed, sold or given away. The licensee shall notify the Town Chairperson of such specified dates; unless all alcohol beverages are stored in a locked portion of the premises, the licensee or a licensed operator must be on the premises at all times.

§ 104-14. Underage person; consumption and possession of alcohol beverages.

A. Restrictions. Pursuant to Wis. Stat. § 125.07(4)(b) and (bm), no underage person not accompanied by a parent, guardian or spouse who has attained the legal drinking age may knowingly possess or consume alcohol beverages.

B. Exceptions. An underage person may possess alcohol beverages if employed by any of the following:

- (1) A brewer.
- (2) A fermented malt beverages wholesaler.
- (3) A permittee other than a Class "B" or "Class B" permittee.
- (4) A facility for the production of alcohol fuel.
- (5) A retail licensee or permittee under the conditions specified in Wis. Stat. §§ 125.32(2) or 125.68(2), or for delivery of unopened containers to the home or vehicle of a customer.

C. Selling or serving alcohol beverages. Pursuant to Wis. Stat. §§ 125.32(2) and 125.68(2), any underage person who is at least 18 years of age may sell or serve alcohol beverages on any Class B premises, provided that such underage person is under the immediate supervision of the licensee, agent or manager, or a licensed operator, who is on the premises at the time of such sale or service.

§ 104-15. Non-renewal, Revocation, and suspension of licenses.

A. Procedure. Except as hereinafter provided Wis. Stat. § 125.12 shall apply to proceedings for non-renewal, revocation, or suspension of licenses or permits granted under this chapter.

B. Repossession of license or permit. Whenever any license or permit shall be revoked or suspended pursuant to this subsection the licensee shall immediately return the license to the Town Clerk.

C. Effect of revocation of license. No license shall be issued for any premises if a license covering such premises has been revoked within six months prior to application. No license shall be issued to any person who has had a license issued pursuant to this article revoked within 12 months prior to application.

§ 104-16 Criteria for License Suspension, Revocation, Nonrenewal.

A point system is hereby established to guide the Town Board in considering the issuance, suspension, revocation, non-renewal, or transfer of licenses. A number of demerit points is assigned according to the type of violation. This system is intended to identify habitually troublesome licensees who repeatedly violate Wisconsin statutes or regulations, or Town of West Bend Ordinances and to take consistent action against such licensees. The following demerit points are assigned for each type of violation:

(S) Refusal to allow Police to search premises or resting or obstructing an officer pursuant to 139.08 Wis Stat.	150
(S) Hinderance or obstruction of a Fire Chief or their designee in performing an inspection.	150
(S) Conducting unlawful business, pursuant to the zoning requirements contained in the zoning ordinances of the Town of West Bend.	150
(S) Sale of controlled substances by a license or the licensee's employee on the licensed premises.	150
(S) Possession of illegal drug paraphernalia by licensee or the licensee's employee on the licensed premises.	150
Serving alcohol without a license.	80
Exceeding the posted occupancy capacity on the premises.	80
Sale to any person under the age of 21 years on the premises.	80
Sale to an intoxicated person.	80
Submission of a false statement on a license application.	70
Failure to maintain order, fights or disorderly conduct occurring on the property of a licensed establishment.	70
Excessive noise coming from the licensed business pursuant to Town of West Bend Nuisance Ordinance.	70
Failure to maintain a licensed operator on the licensed premises during hours of operation.	50
Failure to properly display license in visible location.	25
Operation of a licensed business after hours.	80
Possession or operation of an unlicensed amusement device(s) on the licensed premises.	25
Violation of Washington County Health Code.	25

Offenses marked **(S)** will result in a minimum (5) five-day suspension of the license. The Town Board may assign additional demerit points not to exceed a maximum of 150 points, as a penalty enhancement where the conduct:

- (1) Results in bodily harm to any individual;
- (2) Creates a substantial risk of death or serious bodily harm;
- (3) Involves the use of a firearm;
- (4) Demonstrates an ongoing disregard for the requirements of state of Wisconsin Statutes or Town of West Bend Ordinances and/or Zoning Ordinances.

The above list is not comprehensive, and is meant to be a guide for the Town Board. This section in no way limits the power, authority, or discretion of the Town Board to take actions deemed necessary regarding the suspension, revocation, nonrenewal, or transfer of a license.

After determining that a complaint regarding a licensee is true, the Town Board may take the following action, or any other action it deems appropriate, after first determining the number of demerit points to be assessed against the licensee.

- (1) For demerit points totaling 25 to 149 within the twelve-month term of the license period, a warning to the licensee of the consequences of additional violations.
- (2) For demerit points totaling 150 to 199 within the twelve-month term of the license period, suspension of the license for a period of not less than (10) ten day and not more than (45) forty-five days.
- (3) For demerit points totaling 200 or more within an eighteen-month period, revocation or nonrenewal of the license. Whenever a license is revoked, at least six months from such time of revocation shall elapse before another license shall be granted for the same premises, and twelve months shall elapse before any other license shall be granted to the person whose license was revoked.

§ 104-17 Demerit Points with Transfer or Sale of Licensed Business.

Upon the transfer or sale of a licensed business, all of the accumulated demerit points shall be cancelled unless any of the following applies:

- (1) The new licensee is related to the former licensee by blood, adoption, or marriage.
- (2) The former licensee, or manager, member, or officer of the licensee, retains an interest in the business, real estate or equipment used by the business.
- (3) The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing, but not obligated to sell, and the buyer is willing, but not obligated to buy.

§ 104-18 Repossession of License.

Whenever any license or permit under this chapter is suspended or revoked by the Town Board, the Town Clerk shall notify the licensee of such suspension or revocation, and shall notify Law Enforcement, who shall take possession of the license or permit wherever it may be found, and file it in the Town Clerks office.

§ 104-19 Issuance of temporary Class "B" license.

The Town Clerk is authorized to issue temporary Class "B" Licenses for the sale of fermented malt beverages.

Adopted this _____ day of _____, 2024.

BY ORDER OF THE TOWN BOARD
TOWN OF WEST BEND

Troy Zagel, Town Chair

Attest:

Julie Ihlenfeld, Town Clerk