

CHAPTER 23

REGULATION OF FERMENTED MALT BEVERAGES
AND INTOXICATING LIQUORS

23.01 PURPOSE.

Whereas, the Wisconsin Statutes, and in particular Sections 61.34, 66.053 and Chapter 125 thereof, grant the Village Board the power to regulate the sale of fermented malt beverages and intoxicating liquors; and

Whereas, the Village of Allouez is predominantly a residential community with a small business district and provides limited fire and police protection; now then,

The Village Board deems it to be in the best interests of the Village and for the health, safety, welfare, convenience and morality of the public to regulate the sale of fermented beverages and intoxicating liquors in the Village of Allouez.

23.02 DEFINITIONS.

Terms used in this chapter mean as follows:

Common area means any area within any building or other structure in which the area for the sale, offer for sale, or display for sale of any intoxicating liquor is not separated from the area for the sale, offer for sale, or display for sale, of any non-related good, product, thing or service, by a solid floor-to-ceiling wall which contains no door, window or other opening which is capable of allowing any person or thing to pass from either area to the other, unless the same is a secondary doorway which serves solely as a safety exit.

Fermented malt beverages means any liquor or liquid capable of being used for beverage purposes made by the alcoholic fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing one-half of one percent or more of alcohol by volume.

Intoxicating liquor means any ardent, spiritous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented, or not, by whatever name called containing one-half of one percent or more of alcohol by volume, which are fit for use for beverage purposes, but shall not include fermented malt beverages which contain less than five percent of alcohol by weight.

Peace officer includes sheriffs, under-sheriffs, deputy sheriffs, police officers, constables, and any duly authorized employee of the Wisconsin Department of Revenue.

Reserve Retail Class B License means a Class B license which the Village has been authorized to issue under Section 125.51(4)(br), Wisconsin Statutes (as now existing and as the same may hereafter be amended), but which it has not granted or issued.

Sell, sold or sale shall mean sale, transfer, gift, barter, trade or exchange, or any shift, device, scheme or transaction whatever whereby fermented malt beverages or intoxicating liquors may be obtained, but does not include the solicitation of orders for, or the sale for future delivery of, fermented malt beverages or intoxicating liquors.

23.03 LICENSE REQUIRED.

No person shall vend, sell, deal or traffic in, or have in his possession with intent to vend, sell, deal or traffic in, or for the purpose of avoiding any ordinance of the Village of law of this state give away any fermented malt beverages or intoxicating liquors without having a license as provided by this chapter nor without complying with all of the provisions of this chapter and all regulations and laws of this state applicable thereto.

23.04 TYPES OF LICENSES.

A. Fermented Malt Beverages.

Licenses to sell, deal or traffic in fermented malt beverages shall be designated either "Retail Class A", "Retail Class B", "Wholesaler's License", or a "Special Wholesaler's License".

- (1) A "Retail Class A" license shall permit its holder to sell, deal or traffic in fermented malt beverages only for consumption away from the premises where sold and in the original package, container or bottle.
- (2) A "Retail Class B" license shall permit its holder to sell, deal or traffic in fermented malt beverages either to be consumed on the premises where sold or away from such premises. The holder may also sell non-intoxicating beverages and soda water beverages containing less than one-half of one percent of alcohol by volume without obtaining a special license required under Section 66.053(1) of the Wisconsin Statutes.
- (3) A "Wholesaler's License" shall permit its holder to sell, deal or traffic in fermented malt beverages only in the original packages or containers to dealers, not to be consumed in or about the premises where sold.
- (4) A "Special Wholesaler's License" may be issued to any holder of a "Retail Class B" license for the sale of fermented malt beverages and will permit the holder to sell fermented malt beverages in original packages or containers and in quantities of not less than four and one-half gallons at any one time for consumption on the premises.

B. Intoxicating Liquors.

Licenses to sell, deal or traffic in intoxicating liquors shall be

designated either "Retail Class A" or "Retail Class B".

- (1) A "Retail Class A" license shall permit its holder to sell, deal or traffic in intoxicating liquors only in original packages or containers, in quantities of not more than three wine gallons at any one time and to be consumed off the premises so licensed, except that wine may be sold in the original package or otherwise in any quantity.
- (2) A "Retail Class B" license shall permit its holder to sell, deal or traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or container, in quantities of not more than one quart at any one time, and to be consumed off the premises so licensed, except that wine may be sold in the original package or otherwise in any quantity to be consumed off the premises. The Village of Allouez hereby elects to come under the provisions of Section 125.26 of the Wisconsin Statutes.

23.05 LICENSE FEES.

A. The annual fee for fermented malt beverage and intoxicating liquor licenses shall be as follows:

- (1) For a "Retail Class A" license for fermented malt beverages, \$250.
- (2) For a "Retail Class B" license for fermented malt beverages, \$100.
- (3) For a "Wholesaler's License" for fermented malt beverage, \$25.
- (4) For a "Special Wholesaler's License" for fermented malt beverages, \$25.
- (5) For a "Retail Class A" license for intoxicating liquors, \$250.
- (6) For a "Retail Class B" license for intoxicating liquors, \$400.
- (7) For a "Temporary Operator's License" which is valid for one twenty-four hour period, \$10.00.
- (8) For a publication fee for a "Retail Class A" Fermented Malt Beverage, "Retail Class A" Intoxicating Liquors, "Retail Class B" Fermented Malt Beverage or "Retail Class B" Intoxicating Liquors, license, \$60.00.
- (9) For a "Picnic Beer License" for selling fermented malt beverages at social events, \$10.00.
- (10) For a "Picnic Wine License" for selling wine or wine coolers at social events, \$10.00.

- B. License transfer fee from one premises to another within the Village is \$10.00. (See Sec. 23.12).
- C. Operator's License Fee for a 2-year period, expiring on June 30th of the second year: \$40.00
- D. Provisional operator's license shall be \$15.00 for a 60-day period. (See Sec. 23.15 F).
- E. Reserve Retail Class B License.

The fee for the initial issuance of a Reserve Retail Class B License for fermented malt beverages or for intoxicating liquors shall be \$10,000.00, which shall be payable in addition to the annual license fee provided by Section 23.05 A. This initial fee shall not be payable by a bona fide club or lodge which is situated and incorporated in the State of Wisconsin, and which has been situated and incorporated in this State for at least six years.

23.06 NUMBER OF LICENSES.

- A. The number of licenses granted by the Village Board for any license year shall not exceed the following:
 - (1) Eight Retail Class "A" licenses for the sale of fermented malt beverages.
 - (2) Fourteen Retail Class "B" licenses for the sale of fermented malt beverages.
 - (3) One "Wholesaler's License" for the sale of fermented malt beverage.
 - (4) One "Special Wholesaler's License" for the sale of fermented malt beverages.
 - (5) Seven Retail "Class A" licenses for the sale of intoxicating liquors.
 - (6) Fourteen Retail "Class B" licenses for the sale of intoxicating liquors.
- B. For the purposes of this section, any combination license granted by the Village Board shall be counted as one license for each class of license included in the combination license.

23.07 APPLICATION FOR LICENSE.

The application for an original license or a renewal license to sell, deal or traffic in fermented malt beverages or intoxicating liquors shall be made in writing on a form prescribed and furnished by the Wisconsin Department of Revenue and sworn to by the applicant. The application shall state the kind of license applied for, designate the premises where such fermented malt

beverages or intoxicating liquors are to be sold and designate such other information as filed with the Village Clerk-Treasurer and be accompanied by the cost of publication of notice of such application as provided by Section 125.04, Wisconsin Statutes. The Village Clerk-Treasurer shall keep all applications for licenses and they may be inspected by any citizen.

23.08 REQUIREMENTS FOR A LICENSE.

No license permit shall be granted to any person or persons under the age of 18 years for the sale of any fermented malt beverages or intoxicating liquors, or to any person who is not of good moral character and a full citizen of the United States and of the State of Wisconsin and who has not resided in this state continuously for at least one year prior to the date of filing application; no license shall be issued or granted to any person who has habitually been a petty law offender, or has been convicted of an offense against the laws of this state or any other state punishable by imprisonment in the state prison, unless the person so committed has been duly pardoned. Where the applicant is a corporation the provisions of this section shall apply to the officers and directors of such corporation. The Village Board may also consider, but shall not be limited to, the applicant's financial responsibility, the proposed location, the condition of the premises and the applicant's fitness for the trust to be reposed.

23.09 ANNUAL LICENSE MEETING.

The Village Board shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as may be necessary, for the purpose of acting upon such applications for licenses as may be presented to them on or before April 15, and all applications for licenses so filed shall be granted, issued or denied not later than June 15 for the ensuing license year, provided that nothing shall prevent the Village Board from granting any licenses which are applied for at any other time. As soon as the application has been approved, a duplicate copy thereof shall be forwarded to the Wisconsin Department of Revenue. No application for a license which is in existence at the time of such annual license meeting shall be rejected without a statement on the Clerk-Treasurer's minutes as to the reasons for such rejection. No license issued by the Village Clerk-Treasurer shall be valid unless and until it shall have affixed thereto an Affidavit signed under oath by the Village Clerk-Treasurer that a copy of the application for such license and all information required by law to be furnished by the Village Board to the Wisconsin Department of Revenue relating to such applicant and license has been mailed to the Wisconsin Department of Revenue.

23.10 ISSUANCE AND DURATION OF LICENSES.

A. Inspection of Application and Premises. The Village Clerk shall notify the Directed Enforcement Officer, Fire Chief and the Building Inspector of all license and permit applications. The Building Inspector and Fire Chief shall inspect each application and premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable

thereto and the applicant's fitness for the trust to be imposed.
NOTE: All outdoor fences and/or gates used to cordon off an exterior patio area of bar/restaurant and will be located in the path of egress, must meet all current building and fire code egress/exit path requirements. The Fire Chief and Building Inspector shall furnish to the Village Clerk, in writing, the information derived from such investigation. The Directed Enforcement Officer shall furnish a report to the Village Board concerning any law violations relating to the application and premises including but not limited to the Village's Municipal Code, Chapter 125 and other Wisconsin Statutes. No license or permit provided for in this article shall be issued without the approval of the Village Board. The provisions of Chapter 125, Wis. Stats. and Chapter 23, Allouez Municipal Code shall apply to the approval and/or nonrenewal of licenses subject to Chapter 23.

B. Search of Licensed Premises. It shall be a condition of any license or permit issued hereunder that the licensed or permitted premises may be entered and inspected at any reasonable hour by any Building Inspector, Fire Inspector or other authorized officer of the Village without any warrant and the application for a license hereunder shall be deemed a consent to this provision. Any refusal to permit such inspection shall be deemed a violation of this ordinance.

C. Approval. Upon the approval of the application by the Village Board, the Village Clerk-Treasurer shall attest the license and upon the filing by the applicant of a receipt showing the payment of the required license fee to the Village Clerk-Treasurer, issue the license to the applicant. Each license shall be numbered in the order in which issued and shall specifically state the name of the licensee, the premises for which issued under the date of issuance, and the fee paid. All such licenses shall remain in full force until July 1 next after the granting thereof, unless sooner revoked or suspended.

23.11 POSTING OF LICENSES.

Every license for the sale of fermented malt beverages and intoxicating liquors shall be enclosed in a suitable wood or metal frame, having a clear glass face and a substantial wood or metal back, so that the whole of such license may be seen therein, and shall be posted and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same.

23.12 TRANSFER OF LICENSES.

Every license issued pursuant to this chapter may, for a fee as outlined in Section 8.06 B, and upon application by the licensee and for good cause shown, be transferred by the Village Board from one premises to another within the village, but no licenses shall be entitled to more than one transfer in any one license year. Whenever a license is transferred, the Village Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such transfer. No license shall be transferable from any licensee to any other person.

23.13 REVOCATION OR SUSPENSION OF LICENSES.

- A. The Village Board shall have the power to revoke or suspend any license issued under this chapter on the grounds designated in Section 125.12 of the Wisconsin Statutes, or for any other valid reason.
- B. The proceedings shall be commenced by a summons, signed by the Village Clerk-Treasurer, directed to any peace officer commanding the licensee to appear before the Village Board on a day certain and at a place named in such summons, not less than 20 days from the date it is served on the licensee, to show cause why his license or licenses should not be revoked or suspended. The summons may be served on the licensee personally or upon the person in charge of the place to which the license relates.
- C. A complaint signed by the Village President, stating the grounds for the proposed revocation or suspension shall be served at the same time as the summons.
- D. If the licensee does not appear at the hearing, the complaint shall be taken as true. If the licensee appears at the hearing and denies the complaint, each party may produce witnesses and be heard by counsel. If, upon such hearing, the Board shall find that any of the alleged grounds stated in the complaint are true, the license may be suspended for not less than 10 days nor more than 90 days, or be revoked. If the Board shall find the complaint to be untrue, the proceedings shall be dismissed without cost to the accused. When a license is suspended or revoked, it shall be so entered of record by the Village Clerk-Treasurer, and the Village Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such suspension or revocation. No other license shall be granted to such person within 12 months of the date of a license revocation nor shall any part of the money paid for any license so suspended or revoked be refunded.
- E. Any license granted but not issued, or issued but not used for a period in excess of 6 months during a licensing year is presumed invalid. Upon allegation, the Village Board may order a hearing to determine the validity of such license by ordering the licensee to show cause why such license should not be revoked.

23.14 RESTRICTIONS ON ISSUANCE OF LICENSES.

- A. No license under this chapter shall be issued to any person acting as agent for or in the employ of another.
- B. No "Retail Class B" intoxicating liquor license shall be issued to any person who does not have a "Retail Class B" fermented malt beverage license.
- C. No license for the sale of fermented malt beverages or intoxicating liquor shall be issued for premises less than 300 feet from 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 boundary of such school, church or hospital to the closest entrance to such premises.

- D. A license for the sale of fermented malt beverages or intoxicating liquor shall be issued only for premises located in a Commercial or Light Industrial District.
- E. No license shall be issued to any person until such person has obtained a valid federal special tax stamp appropriate to his business and provided proof to the Village that he holds a Wisconsin seller's permit.
- F. No license shall be issued to any person until such person has obtained a valid federal special tax stamp appropriate to his business.
- G. No license shall be granted to any corporation when more than 50 percent of the ownership of such corporation, whether represented by stock or other beneficial control, is held by any person or persons not themselves individually eligible for a license under this chapter.
- H. No license for the sale of fermented malt beverages or intoxicating liquors shall be issued until all delinquent municipal taxes, assessment or other fees have been paid by the applicant to the Allouez Clerk-Treasurer. This applies to all municipal licenses, not just alcoholic beverage licenses.

23.15 OPERATOR'S LICENSE.

- A. The Village Board may issue a license known as an "operator's license" which shall be granted upon application in writing filed with the Village Clerk-Treasurer. An operator's license may be issued only to natural persons who:
 - (1) Do not have an arrest or conviction record, subject to sections 111.321, 111.322, and 111.335, Wisconsin Statutes, which are incorporated by reference herein, said statutes in part describing prohibited basis because of discrimination of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record;
 - (2) Have been a resident of this state continuously for a least ninety days prior to the date of application;
 - (3) Have attained the age of 18 years by the time of issuance; and
 - (4) Have not been a habitual law offender or convicted of a felony, unless the person has been duly pardoned.
 - (5) Have completed a responsible beverage server training course. Persons are exempt from the training course requirement if they renew an existing operator's license.
- B. There shall be upon the premises operated under a "Class B License" for fermented malt beverages or intoxicating liquor, at all times while such premises are open for business, the licensee or some person who has an operator's license and who is responsible for the acts of all

persons serving any fermented malt beverages or intoxicating liquors to customers. For purposes of this subsection, any member of the licensee's immediate family who has attained the legal drinking age shall be considered the holder of an operator's license. No person, including underage members of the licensee's immediate family, other than the licensee, may serve fermented malt beverages or intoxicating liquors in any place operated under a "Class B License" unless he or she has an operator's license, or is at least eighteen years of age and is under the immediate supervision of the licensee or a person holding an operator's license and who is on the premises at the time of the service.

- C. The fee for an operator's license shall be as outlined in Section 8.06 C.
- D. The Clerk-Treasurer, or the Deputy Clerk in the Clerk-Treasurer's absence, may issue a provisional operator's license which shall be granted upon application in writing filed with the Village Clerk-Treasurer. A provisional operator's license may be issued only to natural persons who have applied for an operator's license under 23.15(A) of the Allouez Village Code and who meet the requirements of 23.15(A) 1-5.
- E. A provisional license may not be issued to any person who has been denied a license under 23.15(A) by the Village Board.
- F. The fee for a provisional operators license shall be as outlined in Section 8.06 D.
- G. A provisional operator's licenses will expire sixty days after its issuance or when a license under 23.15 (A) is issued to the holder, whichever is sooner.
- H. A provisional operator's license may be revoked by the Clerk-Treasurer if the application of the license holder contains any false statements. The Clerk-Treasurer may issue the license before receipt of the applicant's record check but shall immediately revoke the license if the record check indicates the applicant has failed to meet any of the requirements under 23.15(A) of the Code.
- I. Any violation of the terms of this chapter, or any of the laws of the State of Wisconsin applicable to the sale of fermented malt beverages and intoxicating liquors, by any person holding an operator's license shall be cause for revocation of said license.

23.16 PENALTIES.

- A. Any person who, either personally or by his agents or employees, shall violate any of the provisions of this chapter shall, upon conviction thereof be punished as follows:
 - (1) If for selling intoxicating liquor without a license or permit, by a forfeiture of not less than \$25.00 nor more than \$200.00 plus the

costs of prosecution, and in the event of the failure to pay such forfeiture, such person shall be imprisoned in the county jail for a period not to exceed 90 days.

(2) If for a violation of any other provision of this chapter, by a forfeiture of not more than \$200.

B. Any license issued under this chapter shall, upon conviction of the licensee of a violation of the provisions of this chapter or any of the laws of the State of Wisconsin applicable to the sale of fermented malt beverages or intoxicating liquors, be subject to revocation by the court which tries the violation or as provided by Section 23.13. In the event of a conviction for a second offense during any one license year for a violation of this chapter or Chapter 125 of the Wisconsin Statutes, any license which may have been issued by the Village, shall, without notice be forthwith forfeited by the licensee.

23.17 OTHER LICENSES.

This chapter shall not be construed as prohibiting, limiting, or restricting the Village Board from granting any other type or class of fermented malt beverage or intoxicating liquor license which it is, or may be, authorized to grant by the laws of the State of Wisconsin.

23.18 HOUR RESTRICTIONS.

- A. No licensee of a "Retail Class A" fermented malt beverage licensed premises shall remain open for the sale of fermented malt beverages between 10:00 o'clock p.m. and 8:00 o'clock a.m.
- B. No licensee of a Class "B" fermented malt beverage licensed premises shall remain open between the hours of 2:00 o'clock a.m. and 6:00 o'clock a.m. on weekdays and between 2:30 o'clock a.m. and 6:00 o'clock a.m. on Saturdays and Sundays, except that said premises may remain open on January 1.
- C. No licensee of a Retail Class "A" liquor licensed premises shall remain open for the sale of intoxicating liquors between 9:00 o'clock p.m. and 8:00 o'clock a.m.

23.19 DISPLAY AND SALE.

No person, firm or corporation which holds, or is acting for or on behalf of the holder of, a Class A or Class B license shall:

- A. - removed -
- B. Allow or permit a person who is not of sufficient age to lawfully purchase an intoxicating liquor, or to enter and/or remain in an area where an intoxicating liquor is sold, offered for sale or displayed for

sale, unless such person is accompanied by an adult parent or legal guardian.

- C. Allow or permit a person to purchase a fermented malt beverage or an intoxicating liquor if that person is not of sufficient age to lawfully make such purchase.
- D. Allow or permit a person who has purchased any good, product or thing in an area where intoxicating liquors are sold, offered for sale or displayed for sale, to exit such area without first paying for the same and having all such goods, products and things (except for fermented malt beverages) in a bag, carton or other container furnished by the seller and which is separate from any container furnished by the manufacturer or distributor.
- E. In the interest of limiting juvenile access to alcohol beverages at retail establishments, and in the interest of promoting effective, unhampered, and efficient enforcement of such provisions as they relate to juveniles, no Class "A" (Liquor) License shall be granted for any premises where the principal business conducted thereon is other than the sale of alcohol beverages, unless the establishment has:
 - (1) 24-hour surveillance camera with recordings available to law enforcement at their request; and
 - (2) Signage informing minors that they "must be 21" to purchase alcohol.
 - (3) Intoxicating liquors (wine excluded), sold at a gas station, will be kept in an area locked off from the public at all times.