

Chapter 140

INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

[HISTORY: Adopted by the Town Board of the Town of Scott at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

ARTICLE I General Licensing Provisions

§ 140-1. License fees.

Fees for licenses issued under this chapter shall be set by the Town Board. See the current Town Fee Schedule.

§ 140-2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

ALCOHOL BEVERAGES — Fermented malt beverages and intoxicating liquor.

BREWER — Any person who manufactures fermented malt beverages for sale or transportation.

CLUB — An organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain, and which only sells alcohol beverages incidental to its operation.

DEPARTMENT — The State Department of Revenue.

FERMENTED MALT BEVERAGES — Any beverage made by the alcohol 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 1/2 of 1% or more of alcohol by volume.

HOTEL — All places where accommodations are offered for pay to transients, in five or more rooms, and all places used in connection therewith provided with a restaurant. See § 254.61(3), Wis. Stats.

INTOXICATING LIQUOR — All ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume, which are beverages, but does not include fermented malt beverages.

LEGAL DRINKING AGE — Twenty-one years of age.

LICENSE — An authorization to sell alcohol beverages issued by the Town Board or Town Clerk under this chapter. Licenses issued under this chapter are described as follows:

- A. CLASS "A" FERMENTED MALT BEVERAGE LICENSE — Authorizes retail sales of fermented malt beverages in original packages, containers and bottles for consumption off the premises where sold.
- B. CLASS "B" FERMENTED MALT BEVERAGE LICENSE — Authorizes retail sales of fermented malt beverages to be consumed either on the premises where sold or off the premises.
- C. SIX-MONTH FERMENTED MALT BEVERAGE LICENSE — A Class "B" license may be issued at any time for six months in any calendar year, for which 1/2 of the annual license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
- D. TEMPORARY CLASS "B" BEER — A fermented malt beverage license issued to bona fide clubs, county or local fair associations, agricultural societies, lodges or societies that have been in existence for not less than six months prior to the date of application, and to posts of veterans' organizations authorizing them to sell fermented malt beverages at a particular picnic or similar gathering, or at a meeting of any such post, or during a fair conducted by such fair association or agricultural society.
- E. TEMPORARY "CLASS B" WINE — A license issued to bona fide clubs, county or local fair associations, agricultural societies, lodges or societies that have been in existence for not less than six months prior to the date of application, and to posts of veterans' organizations authorizing them to sell wine containing not more than 6% alcohol by volume in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, or at a meeting of any such post, or during a fair conducted by such fair association or agricultural society.
- F. WHOLESALE'S FERMENTED MALT BEVERAGE LICENSE — Authorizes sales of fermented malt beverages, only in original packages or containers, to retailers or wholesalers, not to be consumed in or about the premises where sold.
- G. RETAIL "CLASS A" INTOXICATING LIQUOR LICENSE — Authorizes the retail sale of intoxicating liquor in original packages, containers and bottles for consumption off the premises where sold.
- H. RETAIL "CLASS B" INTOXICATING LIQUOR LICENSE — Authorizes retail sales of intoxicating liquor for consumption on the premises where sold by the glass and not in the original package or container. In addition, wine may be sold for consumption off the premises in the original package or otherwise in any quantity.
- I. RETAIL RESERVE "CLASS B" LICENSE —
 - (1) Those licenses available under the quota system existing before December 1, 1997, that were not granted or issued by the Town as of December 1, 1997.

The number of reserve "Class B" licenses available to the Town is determined by a series of calculations described in § 125.51(4), Wis. Stats.

- (2) Grants for certain reserve "Class B" liquor licenses.
 - (a) Definition. Reserve "Class B" license shall have the meaning defined in § 125.51(4)(a)4, Wis. Stats.
 - (b) Findings and purpose. The Town Board finds that businesses such as restaurants, hotels, and taverns make important contributions to the Town's economy. These establishments serve important public purposes, including increasing the Town's property tax base, providing employment, and promoting tourism. Excessive license fees deter new business and are contrary to the above-stated public purposes. Wisconsin Act 27 of 1997 imposes upon municipalities the duty to establish a minimum issuance fee of \$10,000 for each reserve "Class B" liquor license issued. Since the new issuance fee far exceeds the actual cost of licensing the activity, additional revenue will be available to the Town. It is the purpose of this subsection to utilize revenue generated by Wisconsin Act 27 to assist new reserve "Class B" licensees to achieve the important public purposes identified herein.
 - (c) Grants. Following the issuance of an original reserve "Class B" liquor license, and upon application, the Town Board may provide a grant to the licensee in an amount not to exceed the amount actually paid by the licensee to the Town for issuance of the new reserve "Class B" liquor license, less that amount attributable to the reserve "Class B" liquor license. Prior to awarding any grant hereunder, the Town Board shall make such findings and establish such conditions to ensure that any funds awarded hereunder further the important public purposes identified herein.
- J. "CLASS C" WINE LICENSE — Authorizes the sale of wine by the glass or in an opened original container for consumption on the premises where sold. Such licenses may only be issued for restaurants if the sale of alcohol beverages accounts for less than 50% of the gross receipts and the premises do not have a barroom.
- K. MANAGER'S LICENSE — A license valid only in the Town, issued at the direction of the Town Board, to a person who has the responsibility or authority for:
 - (1) Personnel management of all employees, whether or not the person is authorized to sign employment contracts;
 - (2) The terms of contracts for the purchase or sale of goods or services, whether or not the person is authorized to sign the contracts; or
 - (3) The daily operations of the Class "B" or "Class B" premises.
- L. OPERATOR'S LICENSE — A one-year license valid only in the Town which authorizes a person 18 years of age or older, who is neither the licensee nor the agent of the licensee, to serve or sell alcohol beverages in any place operated under

a Class "A," "Class A," Class "B" or "Class B" license or permit without the immediate supervision of the licensee or agent or a person holding an operator's license on the premises at the time.

M. **PROVISIONAL OPERATOR'S LICENSE** — An operator's license issued only to a person who has applied for an operator's license as defined in Subsection L and who is enrolled in a training course pursuant to § 140-11H(1). A license expires 60 days after its issuance or when an operator's license under Subsection L is issued to the applicant, whichever is sooner.

MANUFACTURER — A person, other than a rectifier, who ferments, manufactures or distills intoxicating liquor.

PEACE OFFICER — A sheriff, undersheriff, deputy sheriff, police officer, constable, marshal, deputy marshal or any employee of the Department of Revenue or the Department of Justice authorized to act under Ch. 125, Wis. Stats.

PERMIT — Any permit issued by the Department of Revenue under Ch. 125, Wis. Stats.

PERSON — A natural person, sole proprietorship, partnership, limited-liability company, corporation or association.

PREMISES — The area described in a license or permit.

PRINCIPAL BUSINESS — The primary activity as determined by analyzing the amount of capital, labor, time, attention and floor space devoted to each business activity and by analyzing the sources of net income and gross income. The name, appearance and advertising of the entity may also be taken into consideration if they are given less weight.

REGULATION — Any rule or ordinance adopted by the Town Board.

RESTAURANT — Any building, room or place where meals or lunches are prepared, served or sold to transients or the general public, and all places used in connection therewith. See § 254.61(5), Wis. Stats.

RETAILER — Any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding a permit or license under this chapter.

SELL, SOLD, SALE or SELLING — Any transfer of alcohol beverages for a consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for or the sale for future delivery of alcohol beverages.

UNDERAGE PERSON — A person who has not attained the legal drinking age.

WHOLESALE — A person, other than a brewer, manufacturer or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

WINE — Products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain 1/2 of 1% or more of alcohol by volume.

§ 140-3. State statutes adopted.

The provisions of Ch. 125, Wis. Stats., relating to the sale or possession or use of intoxicating liquor and fermented malt beverages, exclusive of any provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made a part of this chapter by reference. A violation of any such provisions shall constitute a violation of this chapter. Any future amendments, revisions or modifications of the statutes incorporated herein are intended to be made a part of this chapter in order to secure statewide regulation of licensing and sale of alcoholic beverages.

§ 140-4. License required.

No person, except as provided by § 125.06, Wis. 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 alcohol beverages, 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, ordinances and regulations of the state and Town applicable thereto. No owner, lessee or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate license or permit.

§ 140-5. License application 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 State Department of Revenue or the Town and filed with the Town Clerk. The fee prescribed for such license shall accompany the application. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances or not separated by a solid wall. The application shall be notarized.

- A. Application to be notarized. The application shall be signed and sworn to by the applicant as provided in § 887.01, Wis. Stats.
- B. Subsequent changes. If any fact given in an application subsequently changes, the licensee shall file a notice, in writing, of such change with the Town Clerk within 10 days.

§ 140-6. Issuance of licenses.

- A. Licenses. The Town Board may issue those licenses identified in § 140-2 hereof. The Town Clerk may also issue temporary Class "B" beer and temporary "Class B" wine licenses, provisional operators' licenses and all soda licenses.

- B. Department notification. By July 15 annually, the Town Clerk shall mail to the Department a list containing the name, address and trade name of each person holding a license issued by the Town, other than a manager's or operator's license or a temporary Class "B" license, the type of license held and, if the person holding the license is a corporation or limited-liability company, the name of the agent appointed under § 125.04(6), Wis. Stats.
- C. Form and expiration of licenses. 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 and, unless sooner revoked, shall expire on June 30 thereafter except as otherwise provided.

§ 140-7. Transfer of licenses.

- A. As to person. No license shall be transferable as to licensee except as provided by § 125.04(12)(b), Wis. Stats.
- B. As to place. Licenses issued pursuant to this chapter may be transferred as provided in § 125.04(12)(a), Wis. Stats.

§ 140-8. Posting and care of licenses.

Every license issued under this chapter shall be posted and at all times displayed as provided in § 125.04(10), Wis. 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.

§ 140-9. Revocation and suspension of licenses.

- A. Procedure. Whenever the holder of any license under this chapter violates any portion of this chapter or Ch. 125, Wis. Stats., proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by § 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.
- B. Effect of revocation. When a license is revoked under this section, no other license issued under this chapter may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee paid for any license so revoked may be refunded.

§ 140-10. Nonrenewal of licenses.

The Town may refuse to renew a license for the causes provided in § 125.12(2)(ag), Wis. Stats. Prior to the time for the renewal of the license, the Town Board or a duly authorized committee shall notify the licensee in writing of the Town's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted before the Town Board as provided in § 125.12(2)(b), Wis. Stats., and judicial review shall be as provided in § 125.12(2)(d), Wis. Stats.

ARTICLE II
License Restrictions

§ 140-11. General restrictions.

- A. Statutory requirements. Licenses shall be issued only to persons eligible therefor under § 125.04(5) and (6), Wis. Stats.
- B. Location.
 - (1) No retail "Class A" or "Class B" license shall be issued for premises the main entrance of which is less than 300 feet from the main entrance of any established public school, parochial school, hospital or church, except that this prohibition may be waived by a majority vote of the Town Board. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises.
 - (2) This subsection shall not apply to premises licensed as such on June 30, 1947, to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school building, hospital building or church building, or to a restaurant within 300 feet of a church or school, provided that the sale of alcohol beverages accounts for less than 50% of such restaurant's gross receipts.
- C. Health and sanitary 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 Safety and Professional Services pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Family Services applicable to restaurants and to all such ordinances and regulations adopted by the Town.
- D. Corporations and limited-liability companies. No license may be issued to any corporation or limited-liability company unless the entity meets the qualifications under § 125.04(5)(a)1 and 4 and (b), Wis. Stats., unless the agent of the entity appointed under § 125.04(6), Wis. Stats., and the officers and directors, or members or managers of the entity, meet the qualifications of § 125.04(5)(a)1 and 3 and (b), Wis. Stats., and unless the agent of the entity meets the qualifications under § 125.04(5)(a)2, Wis. Stats. The requirement that the entity meet the qualifications under § 125.04(5)(a)1 and (b) does not apply if the entity has terminated its relationship with all of the individuals whose actions directly contributed to the conviction.
- E. Age requirement. No license hereunder may be issued to any person under the legal drinking age, except that operators' licenses may be issued to applicants who have attained the age of 18.
- F. Delinquent taxes, assessments and claims. No license shall be granted for any premises for which taxes, assessments or other claims of the Town are delinquent and unpaid or to any person delinquent in payment of such claims to the Town.

- G. Issuance for sales in dwellings prohibited. No license shall be issued to any person for the purpose of possessing, selling or offering for sale any alcohol beverages in any residential dwelling.
- H. Operator's license training course.
 - (1) Except as provided in Subsection H(2), no operator's license may be issued unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a vocational, technical and adult education district and that conforms to curriculum guidelines specified by the Board of Vocational, Technical and Adult Education or a comparable training course approved by the Educational Approval Board or unless the applicant fulfills one of the following requirements:
 - (a) The person is renewing an operator's license.
 - (b) Within the past two years, the person held a Class "A," Class "B," "Class A" or "Class B" license or permit or a manager's or operator's license.
 - (c) Within the past two years, the person has completed such training course.
 - (2) A provisional operator's license shall be issued by the Town Clerk to a person who has applied for an operator's license and who is enrolled in a training course under Subsection H(1). A provisional license expires 60 days after its issuance or when an operator's license is issued to the holder, whichever is sooner. The Town shall revoke a provisional license if the applicant fails to successfully complete the training course in which he or she enrolls, or if the Town Clerk discovers that the holder made a false statement on the application. A provisional license may not be issued to any person who has been denied an operator's license by the Town.

§ 140-12. Regulation of licensed premises and licensees.

- 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 or gambling shall be allowed at any time on any licensed premises.
- B. Sales by clubs. No club may sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.
- 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. Sales to intoxicated persons. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.
- E. Solicitation of drinks prohibited. No person may solicit or be allowed to solicit drinks on a licensed premises.

- F. Sales to underage persons. 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.

ARTICLE III
Enforcement

§ 140-13. Violations and penalties.

- A. Any person who commits a violation of any provision of this chapter shall be subject to a forfeiture as provided in Chapter 1, Article I, of the Code or shall be subject to the penalty as set forth in Ch. 125, Wis. Stats.
- B. Any license or permit issued to a person who commits a violation of this chapter may be revoked by the court.
- C. A violation of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee.