

ORDINANCE CHAPTER 17- No. 15-4-8
AN ORDINANCE RELATING TO LICENSING SALES OF INTOXICATING
LIQUOR CLASS B WINERY ONLY IN THE TOWN OF EXCELSIOR, SAUK
COUNTY, WISCONSIN

The Town Board of the Town of Excelsior, Sauk County, Wisconsin do ordain as follows:

GENERAL PROVISIONS for Winery Class B Liquor License.

- (1) **LICENSES REQUIRED.** No person / winery shall engage in the sale of wine for consumption at a winery which a license is required by any provision of this chapter without first obtaining such license from the Town of Excelsior in the manner provided in this chapter, unless otherwise specifically provided.
- (2) **APPLICATION.** Unless otherwise provided, application for a license shall be made in writing to the Town Clerk upon forms provided by the Town Clerk and the applicant shall state the location of the proposed activity and such other facts as may be required for or to be applicable to the granting of such license.
- (3) **PAYMENT OF FEE.** No alcohol beverage license shall be issued until the fee is paid.
- (4) **FORM.** Licenses and permits shall show the name of the licensee, the date of issue, the activity licensed and the term of the license , and shall be signed in the name of the Town by the Town Clerk and be impressed with the Town seal. The Clerk shall keep a record of all licenses and permits issued.
- (5) **TRANSFER.** No license shall be transferable or assignable.
- (6) **RENEWAL.** Unless otherwise provided, license renewals shall be issued in the same manner and be subject to the same conditions as the original license.
- (7) **SUSPENSION AND REVOCATION OF LICENSES AND PERMITS.**
Except as otherwise specifically provided, any license granted under this chapter may be suspended or revoked by the Town Board for cause after giving the licensee an opportunity to be heard, as provided by law. Cause may include the following:
 - (a) Fraud, misrepresentation or incorrect statement contained in the application or made in carrying on the licensed activity.
 - (b) Conviction of any crime or misdemeanor, subject to §111.32, Wis. Stats.

- (c) Conducting such activity in such manner as to constitute a breach of the peace or a menace to the health, safety, or welfare of the public, or a disturbance of the peace or comfort of residents of the Town upon recommendation of the appropriate Town official.
- (d) Actions unauthorized or beyond the scope of the license granted.
- (e) Violation of any regulation or provision of this Code applicable to the activity, for which the license has been granted, or any regulation or law of the State so applicable.
- (f) Failure to continuously comply with all conditions required as precedent to the approval of the license.

(8) LICENSE CONDITIONS - NON-PAYMENT OF TOWN TAXES AND CLAIMS.

- (a) No license shall be granted or renewed for the operation of any trade, profession, business or privilege, for which a license is required by any provision of this Chapter, for operation upon any premises upon which taxes or assessments or other financial claims of the Town, or of any Town utility are delinquent and unpaid.
- (b) No person who is delinquent in the payment of any taxes, assessments or other claims owed to the Town, including a forfeiture resulting from a violation of any Ordinance of the Town, shall be granted or renewed any license for any trade, profession, business or privilege in the Town for which a license is required by any provision of this Chapter.

INTOXICATING LIQUOR CLASS B WINERY ONLY.

- (1) **STATE STATUTES ADOPTED.** Except as otherwise specifically provided in this Chapter, the provisions of Ch. 125, Wis. Stats., defining and describing the sale, possession, procurement, dispensing, transfer and otherwise regulating intoxicating liquors and fermented malt beverages, exclusive of any regulations for which the statutory penalty is a term of imprisonment, are adopted and by reference made a part of this Chapter as if fully set forth herein. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions or modifications of the statutory regulations in Ch. 125, Wis. Stats., are intended to be made a part of this Chapter in order to secure to the extent legally practical uniform statewide regulation of alcohol beverages in the State of Wisconsin.
- (2) **DEFINITIONS.** As used in this section, the following definitions apply:
 - (a) Legal Drinking Age. Twenty-one (21) years of age.
 - (b) Underage Person. A person who has not attained the legal drinking age.
- (3) **LICENSE APPLICATION.** Application for a license to sell or deal in alcohol beverages shall be submitted to the Town Clerk in writing on forms furnished by

the Town Clerk. Applications shall contain such reasonable and pertinent information as the Board may from time to time require. Each application shall be signed and sworn to by the applicant, if an individual, or by all partners, if a partnership, or by a duly authorized agent or officer of a corporation, limited liability company, club or other entity eligible for an alcohol beverage license. All matters submitted by an applicant shall be true. It shall be grounds for denial of a license if the applicant makes an untrue statement on any license application.

Applications shall be filed with the Town Clerk not less than 15 days prior to the granting of the license except that applications for licenses to be issued under §125.26(6), Wis. Stats. shall be filed with the Town Clerk not less than 5 days prior to the granting of the license. All applications shall be accompanied by the appropriate fee and the cost of publication. Further, as a condition of granting a license, the applicant shall consent to a personal photograph and sign a waiver permitting the Town to secure from the Sauk County Sheriff Department, Federal Bureau of Investigation and the Wisconsin Crime Information Bureau a record check of the applicant and its officers, partners and agents.

(4) **APPLICATION INVESTIGATION AND REVIEW.** The Town Clerk shall notify the Town Board regarding all license applications. The Town Board shall cause an investigation to be made to determine whether the applicant and/or the premises sought to be licensed comply with the regulations, ordinances, and laws applicable thereto. The Town Clerk shall review and consider said reports and shall apply the licensing standards set forth in this section and in Ch. 125 Wis. Stats. and if the Town Clerk finds that there is no reasonable basis for denying the license applied for, he/she shall be authorized to grant the issuance of the license. If the Town Clerk determines that there is any reasonable basis for denying a license, or that the license application should be reviewed and considered by the Board, he/she shall file his/her report and recommendations with the Board. The Town Board shall grant or deny the issuance of the license. Any person objecting to the granting of any license under this section shall file his/her objections and the basis therefore in writing with the Town Clerk within 3 working days after the date of the last publication date of the legal notice published in the Town newspaper pursuant to §125.04 Wis. Stats., or if the publication of a legal notice is not required, then any objections shall be filed within 3 working days of the filing of the application with the Town Clerk. It shall be the duty of the Town Clerk whenever an alcohol beverage license shall have been granted by the Town Clerk or the Town Board, and the applicant shall have produced and filed with the Town Clerk, proof of the satisfaction of any conditions or requirements imposed as a condition of granting the license and a receipt showing payment of any sums required for such license to issue to such applicant a license in accordance with the provisions of this section and of the laws of the State of Wisconsin.

(5) **LICENSE FEES.** The fees for issuance of Class B Winery License as defined by Wis. Stat. 125.51(3) (am) shall be \$300.00 and must be renewed on a yearly basis as provided by law.

(6) **OPERATOR'S LICENSE.** All applications for an operator's license shall be filed in the office of the Town Clerk. Each application shall be accompanied by the required license fee. Applications for operator's license shall be reviewed and considered in accordance with Subs. (4) above. A regular operator's license shall be valid for a period of two years and shall expire on June 30. A conditional operator's license issued pursuant to the Current Standards Regarding Issuance of Bartender's Licenses established by the Town Board shall be valid for a period of one year and shall expire on June 30. All applications shall be filed on or before June 15, provided that nothing

shall prevent the Town Clerk or the Town Board from granting any licenses that are applied for at any other time for a fraction of the license period if the required license fee is paid.

LICENSE FEES. The fees for issuance of Class B Winery Operators License as defined by Wis. Stat. 125.17 shall be \$25.00_ and must be renewed every two year basis as provided by law. _____

(7) QUALIFICATIONS FOR LICENSES AND PERMITS.

(a) Natural Persons. Licenses related to alcohol beverages, issued to natural persons under this section, may be issued only to persons who:

1. Do not have an arrest or conviction record, subject to §§111.321, 111.322 and 111.335, Wis. Stats.
2. Have been residents of this State continuously for at least ninety (90) days prior to the date of the application.
3. Have attained the legal drinking age except an operator's license may be issued to applicants who have attained the age of 18.
4. Are free from all infectious or contagious diseases and the Town may require the applicant to produce a written certification to said effect by a duly licensed medical physician.
5. Have submitted proof that the person to whom such license is to be issued is the holder of a seller's permit under Ch. 77 of the Wisconsin Statutes or the Town has been informed by an employee of the Wisconsin Department of Revenue that the Department will issue a seller's permit to the applicant.
6. Have successfully completed within the two years prior to the date of application 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 that is approved by the Wisconsin Department of Revenue or the Educational Approval Board **unless the applicant held within the past two years, or a "Class B" license or a manager's or operator's license.**

(b) Criminal Offenders. No license related to alcohol beverages may, subject to §§111.321, 111.322 and 111.335, Wis. Stats., be issued under this section to any natural person who has been convicted of a felony unless the person has been duly pardoned.

(c) Corporations and Limited Liability Companies. No license may be issued to any corporation or limited liability company unless the corporation or limited liability company meets the qualifications under pars. (a) 1 and 5 and (b) above and unless the agent of the

corporation or limited liability company and the officers and directors of the corporation or the members or managers of the limited liability company meet the requirements under pars. (a) 1 and 3 and (b) above, and unless the agent of the corporation or limited liability company meets the qualifications under pars. (a) 2, 4, and 6

(d) Operators' Licenses. Paragraph (a) 2. above does not apply to applicants for operators' licenses.

(9) LIQUOR LICENSE QUOTAS. "Class B" Winery Liquor License Quota.

(10) LICENSE CONDITIONS AND RESTRICTIONS. In addition to the conditions and restrictions imposed by State law on the granting of a retail Class B Winery License,

Class B" Winery alcohol beverage license, the following conditions and restrictions shall apply:

(a) Consent to Inspection of Premises. It shall be a condition of any license issued hereunder that the licensed premises may be entered and inspected at any reasonable hour by any police officer of the County/Town without any warrant, and the application for a license hereunder shall be deemed consent to this provision. If such inspection is denied, such denial shall be deemed a violation of this section.

(b) Violation by Member/Agents or Employees. A violation of this section by a duly authorized member/agent or employee of a licensee shall constitute a violation of the licensee.

(c) Sales to Underage Persons Prohibited. No alcohol beverages shall be sold, dispensed, given away, or furnished to any underage person unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age.

(d) Cessation of Operations. If any licensee shall suspend or cease doing business for 6 consecutive months or more, **her/his Class B winery** license shall be subject to revocation by the Board after a public hearing. The Board may, for a good cause shown, extend such 6-month period.

(e) Transfer of License. No license shall be transferable from person to person except as provided by §125.04(12) (b), Wis. Stats., or from place to place, except as provided in §125.04(12) (a), Wis. Stats.

(f) Location of Premises Restricted. No Retail Class B Winery 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. 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. This paragraph shall not apply to premises licensed prior to June 30, 1947, or licensed prior to the location of the institutions enumerated above.

(g) Safety and Health Requirements. No retail Class B Winery license shall be issued unless the premises to be licensed conform 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 Health and Social Services applicable to restaurants, and also conform to all ordinances and regulations of the Town.

(h) Clear View of Premises Required. No premises licensed for sale of alcohol beverages shall permit the view of the interior to be substantially obstructed from the street or sidewalk by the use of curtains, blinds, screens, posters, advertising signage, lighting, or in any other manner. The premises shall be properly and adequately lighted during the hours in which the sale of alcohol beverages is permitted.

(i) 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.

(j) Wearing Apparel. All persons involved in the operation of any licensed premises under this section, 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 employee, 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 below the top of the areola at all times. The lower portion of such costume, uniform, or attire must be of nontransparent material and completely cover the person's pubic 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 pubis area, genitals and buttocks at all times.

(l) Nude Dancing in Licensed Establishments Prohibited.

FINDINGS:

It shall be unlawful for any person to perform or engage in, or for any licensee or manager or agent of a licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

1. Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than a fully opaque covering; or
2. Shows any portion of the female breasts below a point immediately above the top of the areola; or
3. Shows the covered male genitals in a discernable turgid state.

The provisions of this subsection do not apply to the following licensed establishments: theaters, performing art centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and

where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing. For the purposes of this subsection, the term “Licensed Establishment” means any establishment licensed by the Town Board of the Town of Excelsior to sell alcohol beverages pursuant to Ch. 125, Wis. Stats. The term “Licensee” means the holder of a retail “Class B Winery license granted by the Town Board of the Town of Excelsior pursuant to Ch. 125 and 125.51(3)(am) Wis. Stats.

- (m) Posting of Licenses Required. Licenses issued under this section shall be posted and displayed as provided in §15.04(10), Wis. Stats., and any licensee who shall fail to post his/her license as therein required shall be presumed to be operating without a license.
- (n) Loud Noise Prohibited. No licensee shall permit or allow the use or operation of sound amplifying equipment on the licensed premises in such manner that the sound emanating from said equipment through any open window, open doorway or other opening of the licensed premises is unreasonably loud so as to disturb the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- (o) Leaving Premises With Open Container Prohibited. No licensee shall permit or allow any person to leave the licensed premises with an open container that contains any alcohol beverage.
- (p) Premises to be Promptly Vacated at Closing Hour. No alcoholic beverage shall be sold or consumed upon any licensed premises after the official closing hour for said licensed premises, and said premises shall be promptly vacated at such closing hour by all persons except the owner and regular employees of the licensed premises except that a licensed premises whose principal business is the furnishing of some other commodity or service may remain open after the official closing hour solely for the furnishing of such other commodity or services, provided that all alcoholic beverages contained in such premises be placed in padlocked cases promptly at the closing hour and shall be kept padlocked during official closed hours.
- (q) Unlawful to Deliver Off Premises.
1. "Deliver" means the actual transfer of physical possession.
 2. No retail alcohol beverage licensee shall deliver any alcohol beverage to the purchaser thereof at any location other than on the licensed premises.
- (r) COMPLIANCE WITH CODE. No new or renewal licenses shall be issued for any premises with an outstanding violation of any applicable building, plumbing or electrical code or of any code relating to fire hazards or the prevention of fires. If any such violation exists, it shall be cause for withholding the license or renewal thereof until the necessary corrections have been made and certified by the building inspector or the fire chief and if such violations are not corrected within a reasonable time, the license may be denied.

(11) **HOURS.** No winery may be open to the public prior to 8am and after 9 pm. §125.68(4) (3m)

(12) **UNDERAGE PERSON; PRESENCE IN PLACES OF SALE.**

(a) Restrictions. Pursuant to §125.07(3), Wis. Stats., an underage person not accompanied by his parent, guardian or spouse who has attained the legal drinking age may not enter or be on any premise for which a license 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 employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities that normally constitute activities of a customer of the premises.

(b) Exceptions. Paragraph (a) above shall not apply to:

1. An underage person who is a resident or employee.

(13) **UNDERAGE PERSON; CONSUMPTION AND POSSESSION OF ALCOHOL BEVERAGES.**

(a) Restrictions. Pursuant to §125.07(4) (b) and (bm), Wis.Stats. 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.

(14) **REVOCAION OR SUSPENSION OF LICENSE.**

(a) Procedure. Except as hereinafter provided, the provisions of §125.12(2) and (3), Wis. Stats., shall be applicable to proceedings for revocation or suspension of licenses granted under this section. Revocation or suspension proceedings may be initiated upon written complaint by the Chair or Sauk County Sheriff Department or by the Town Board upon its own motion.

(b) No violations of §12.02 may be considered under this Subsection unless the licensee has committed another violation within one year preceding the violation. If a licensee has committed 2 or more violations within one year, all violations committed within one year of a previous violation may be considered under this Subsection. (§125.12(1) (b) 2, Stats.)

(c) Summons. Upon the filing of the complaint the Town Board shall issue a summons, signed by the Town Clerk and directed to any peace officer in the municipality. The summons shall command the licensee complained of to appear before the Board on a day and time and at a place named in the summons, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why the license should not be revoked or suspended. The summons and a copy of the complaint shall be served on the

licensee at least three (3) days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under Ch. 801, Wis. Stats., for service in civil actions in circuit court.

(d) Procedure on Hearing.

1. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the Board finds the allegations sufficient, the license shall be revoked. The Clerk shall give notice of the revocation to the person whose license is revoked.

2. **The Town Board shall serve as the hearing agency for the Town Board.**

The chair of the Board or the chair's designee shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in §227.45, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges by a preponderance of the evidence.

3. If the licensee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. All proceedings and testimony shall be recorded on tape and transcribed unless waived by both the complainant and licensee. If either party requests a stenographic recording and transcription, Town staff shall make the necessary arrangements, but the expense shall be borne by the requesting party. The Town Clerk shall mark and receive all exhibits admitted into the record.

4. Within twenty (20) days of the completion of the hearing, the Town Board shall submit a report including findings of fact, conclusions of law, and a recommendation as to what action, if any, the Town Board should take with respect to the license. They shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Town Board. The Town Board shall determine whether the arguments shall be represented orally or in writing or both.

5. If the Town Board, after considering the report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided below. If the Town Board rejects or modifies the report, the Town Board shall adopt appropriate findings of fact and conclusions of law. If the recommendation is based upon a stipulation of the parties, the Town Board may accept or reject the recommendation by a simple majority vote. If the recommendation is based upon a full fact-finding hearing, the recommendation shall become the decision of the Town Board unless reversed or modified by a simple majority vote. No further evidence shall be allowed before the Town Board.

6. If the Town Board, after considering the report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to the report recommending suspension or revocation, the license shall be suspended for not less than three (3) days nor more than ninety (90) days or revoked, except that, if a complaint under §125.12(2) (ag) 4, Stats., is found to be true the license shall be revoked.

7. The decision of the Town Board shall be a final determination for purposes of judicial review. If the complaint is found to be true, the licensee shall pay to the Town the actual cost of the proceedings.

8. The Town Clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.

9. If the Town Board finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Town Board finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Town Board may require the complainant to provide security for such costs before issuing the summons under §38.10(1) (ar). (§125.12(2) (b) 4, Stats.)

(e) Effect of Revocation. When a license is revoked under this subsection, the revocation shall be recorded by the Town Clerk and no other license issued under this chapter shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the revocation.

(f) Judicial Review. The action of the Town Board in granting or failing to grant, suspending or revoking any license, or the failure of the Town Board to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the Town. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the Town Board in the manner provided in Chapter 801, Wis. Stats., for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The Town Board, applicant, or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals. (§125.12(2) (d) Stats.)

(g) Nonrenewal of License. The Sauk County Sheriff Department may, after investigation, commence an action before the to hear evidence and make a recommendation to the Town Board that a license issued pursuant to this chapter not be renewed. The Chairperson shall, in writing, notify the licensee of the consideration of nonrenewal. Such notification shall be in the form of and shall serve as the summons and complaint and

shall include a statement of the reasons for the consideration of the nonrenewal of the license in the same specific. Town required for a summons and complaint for revocation or suspension. If the license is recommended for nonrenewal, costs may be assessed against the licensee and any renewal application fee shall be forfeited. In all other respects, the provisions of Subdivisions (c) and (d) shall apply.

15. VALIDITY:

Should any section, clause, or provision of the Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

16. EFFECTIVE DATE:

This Ordinance shall be in force from and after its introduction and publication as provided by statute.

17. PART OF CODE:

This Ordinance becomes part of the Town of Excelsior Code, Chapter 17.

Joe Fish Chairman

Lynette M. Gurgel Town Clerk

ORDINANCE INTRODUCED: 4/8/2015

ORDINANCE PASSED: 4/8/2015

ORDINANCE PUBLISHED: 4/30/2015 & 4/27/2015

ORDINANCE SUMMARY POSTED: 4/23/2015