

license issued pursuant to this ordinance revoked within twelve months prior to application.

- c) **Location.** No Class "A", "B", or "C" license shall be granted for any premises within three hundred (300) feet of any school, hospital, or church.
- d) **Issuance for Residential Premises.** No license shall be issued to any person for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling house, flat, or residential apartment.
- e) **Inspection of Application and Premises.** The Town Clerk/Treasurer shall notify the Winnebago County Sheriff's Department and Fire Department Inspector of all licenses and permit applications, and these officials shall inspect each application and premise to determine whether the applicant and the premises comply with the regulations, ordinances, and laws applicable and the applicant's fitness for the trust to be imposed. No license or permit provided for in this ordinance shall be issued without the approval of a majority of the Town Board.
- f) **Health and Sanitation.** No license shall be issued for any premises, which do not conform to the sanitary, safety, and health requirements of the State Industrial Commission and the State Board of Health, and to all such ordinances and regulations adopted by the Town.
- g) **Tax Delinquencies.** No license shall be granted for operation on any premises upon which taxes or assessments or other financial obligations to the Town are delinquent.
 - i. **Premises.** No initial or renewal alcohol beverage license shall be granted for any premises for which taxes, assessments, or other claims of the Town are delinquent.
 - ii. **Persons.** No initial or renewal alcohol license shall be granted to any person:
 - 1) Delinquent in payment of any taxes, assessments, or other charges levied by the Town.
 - 2) Delinquent in payment of a forfeiture resulting

from a violation of any ordinance in the Town.

h) Non-Renewals. Renewal of a license may be denied where any of the following has occurred:

- i. Providing false information on an application.
- ii. Violation of the provisions of Chapter 125 Wisconsin Statutes or Town Ordinance 5.2.
- iii. Failure to pay supplier of liquor or beer as required by Sections 125.33(7) or 125.69(4) Wisconsin Statutes.

i) Surrender of License Due to Non-use

- i. A licensee may hold a license until its expiration date or request approval of the Town Board to transfer the license to another qualified location in the municipality. The license may also be surrendered to the Town Clerk/Treasurer. (NOTE: An alcohol beverage license is not "tied" to a particular location. The license is issued to a particular person for a specific premise, but it is the person that holds the license not the place.)
- ii. If a licensed premise is leased or sold, the new owner or tenant may receive an available retail license for the premises, if, prior to granting the license, control of the premises can be shown by purchase or lease agreement.
- iii. An agreement between a landowner and tenant regarding the premises, is not binding on the Town Board. The Town Board decides whether licenses are granted and to whom they are granted. A landowner or previous licensee cannot force the Town Board to grant a license to the applicant of the landowner's choice or force revocation of the license at a later date.
- iv. The Town Board requires that no licensee shall close down an establishment for more than 90 days. To do so may result in a revocation or suspension of the license.

4) Search of Licensed Premises. It shall be a condition of any license issued that the licensed premises may be entered and

enrolled or completed a training course under§125.17(6), WI Stat.; or present a current copy of a valid operator's license issued by another Wisconsin municipality.

- f) Revocation. The provisional operator's license shall be revoked by the Town Clerk/Treasurer if it is discovered the holder of the provisional operator's license made a false statement on their application, or holder fails to complete the Responsible Beverage Server Training Course, or is in non-compliance of WI Stats.

3) **Temporary Operator's License.** The Town Clerk/Treasurer or designee may issue a temporary operator's license subject to the following conditions:

- a) A written application shall be filed with the Town Clerk giving the name, residence, age, and gender of the applicant, together with other such pertinent information as to determine whether applicant has a satisfactory background check.
- b) Fee shall be paid upon application as set in Section 9 Fee Schedule and Penalties.
- c) A temporary operator's license shall be valid for the duration of the event defined on the application and shall be issued only to holders of Temporary Class "B" license holders pursuant to Section 5.2(3)(1)(c) or to operators employed by or donating their services to not for profit organizations.
- d) No person may hold more than one temporary license per calendar year.

Section 5.) **Replacements of License.** A fee per Section 9 Fee Schedule and Penalties, reference this code section, shall be charged for a duplicate license of permit.

Section 6.) **Revocation, Suspension and Non-Renewal of Licenses.**

- 1) **Procedure.** The Town may revoke, suspend or refuse to renew any license authorized under this ordinance and Chapter 125 Wis. Stats., pursuant to the provisions of Section 125, 12 Wis. Stats.
- 2) **Repossession of License or Permit.** Whenever any license or permit under this ordinance shall be revoked or suspended by the

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3. To receiver in foreclosure action

- a. An alcohol beverage license may be transferred to the receiver in a foreclosure action if so ordered by a court. State statutes do not provide for the automatic transfer of a license to a court-appointed receiver in the case of foreclosure.
- b. The receiver may not operate under the license in effect at the time of the foreclosure action unless permitted to do so by the court order.
- c. It is recommended that municipal clerks obtain a copy of the court order to learn what action, if any, the municipality must take regarding the alcohol beverage license.

4. Duration of transferred license

A transferred license, like any other license, is valid only to the expiration date of the license.

J. License Denial, Nonrenewal, Revocation or Suspension

1. Refusal to grant a license: Sec. 125.12(3m)

- a. Municipal governing bodies have broad discretion regarding whether to issue a license to a particular applicant for a particular location. The courts have held that state law does not confer upon a qualified applicant an absolute right to a license. *State ex rel. Smith v. City of Oak Creek*, 139 Wis.2d 788, 407 N.W.2d 901, 906 (1987); *Intoxicating Liquors* 914. If a governing body conducts a proper review of the application, considers public sentiment and local concerns, and has a rational basis for denial, the courts should not interfere with the municipality's decision to deny. Section 125.51(2)(e), created by 2015 Wis. Act 55, *requires* that a municipality grant and issue a "Class A" cider license to an applicant if the municipality has issued the applicant a Class "A" license for the same premise.
- b. When a governing body decides not to issue a new alcohol beverage license it must notify the applicant in writing and set forth the reasons for the denial. Sec. 125.12(3m). Valid reasons for denial of a retail license are based on concern for the public health, safety, and welfare of the community. Possible reasons for denial include: (1) adverse impact on traffic; (2) adverse impact on the peace, quiet and cleanliness of the neighborhood where the establishment is located; (3) insufficient parking for patrons; (4) proximity to other licensed establishments, residential areas, schools, churches, or hospitals; (5) ability or inability of the police to provide law enforcement services to the new establishment and the impact of the new establishment on the ability of the police to provide law enforcement services to the balance of the community at all times.

[Note: Operator's, manager's and agent licenses should be denied only for failure to meet statutory qualifications. General public policy considerations would not normally be involved in denying these types of licenses.]

- c. An applicant denied a license may:
 - Reapply for the license
 - Appeal the denial to circuit court. Wis. Stat. sec. 125.12(2)(d).

2. Refusal to renew a license: sec. 125.12(3)

- a. A license renewal request may be denied only for the causes specified in sec. 125.12(2)(ag) for revoking a license.
- b. Prior to the time for renewal of the license, the governing body must notify the licensee in writing of its intent to deny renewal of the license and the reason(s) for doing so.
- c. The licensee must be provided with an opportunity for a hearing.

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- d. The hearing procedure for nonrenewal is the same as that for revocation or suspension under sec. 125.12(2)(b), which is described below. A governing body's decision to not renew a license may be reviewed by the circuit court under Sec. 125.12(2)(d).
- e. The governing body may not deny an application for renewal of an existing license unless the reason for denial is included in the clerk's minutes. Sec. 125.51(1)(c)

[Note: This provision is found only in the liquor subchapter; even though no similar language is found in the beer subchapter, a reason for denial of a beer license should be shown in the minutes.]

3. Revocation or suspension of license: Sec. 125.12(2)

- a. A license may be suspended or revoked by a municipal governing body only if the procedure in sec. 125.12(2) is followed. To commence a revocation or suspension proceeding, a sworn written complaint must be filed with the municipal clerk by any resident of the municipality. A written but unsworn complaint is insufficient. *Park 6 LLC v. City of Racine*, 2012 WI App 123, 344 Wis. 2d 661, 824 N.W.2d 903. The complaint must allege one or more of the following about a licensee:
- That the licensee has violated ch. 125 or municipal regulations adopted pursuant to sec. 125.10. However, no violation of the law prohibiting sales to underage persons may be considered as a basis for suspending, revoking, or nonrenewing a license unless the licensee has committed another violation of the law prohibiting sales to underage persons within one year preceding the violation. In other words, a licensee is allowed one violation per year of the law prohibiting sales to underage persons without fear of having his or her license suspended, revoked or nonrenewed as a result of such a violation. Sec. 125.12(1)(b)1. & 2.
 - That the licensee "keeps or maintains a disorderly or riotous, indecent or improper house."
[Note: See *City of Cudahy v. DeLuca*, 49 Wis.2d 90, 93-94 (1970) for an interpretation of the term "disorderly house."]
 - That the licensee has sold or given away alcohol beverages to known habitual drunkards.
 - That the licensee does not possess the qualifications required under ch. 125 to hold the license.
 - That the licensee has been convicted, under either state or federal law, of manufacturing or delivering or possessing, with intent to manufacture or deliver, an illegal drug.
 - That the licensee knowingly allows another person, who is on the licensed premises, to manufacture or deliver, or possess, with the intent of manufacturing or delivering, an illegal drug. Sec. 125.12(2)(ag).
- b. Upon the filing of a complaint, the governing body must issue a summons signed by the clerk and directed to any peace officer in the municipality. The governing body may require the complainant to provide security for costs before issuing the summons. Sec. 125.12(2)(ar).
- c. The summons shall command the licensee to appear before the governing body not less than three days nor more than ten days from the date of issuance and show cause why the license should not be revoked or suspended.
- d. The summons and copy of the complaint shall be served on the licensee at least three days before the licensee is commanded to appear.
- e. If the licensee does not appear, the allegations of the complaint shall be accepted as true and if found sufficient by the governing body, the license shall be revoked. The municipal clerk shall give written notice of the revocation to the person whose license has been revoked. Sec. 125.12(2)(b).

- f. If the licensee appears and denies the complaint, both the licensee and the complainant may be represented by counsel and produce and cross-examine witnesses. If the hearing is held before the governing body and the complaint is found to be true, the license shall be suspended for not less than 10 days nor more than 90 days or revoked. If a complaint under Wis. Stat. sec. 125.12(4)(ag)4. stating that the licensee does not possess the qualifications required under ch. 125 to hold the license is found to be true with respect to a license issued pursuant to the quota exemptions under sec. 125.51(4)(v), the license must be revoked. Sec. 125.12(2)(b)2.
- g. If the hearing is held before a duly authorized committee of a city council, the committee shall submit a report to the city council including its findings, conclusions of law, and a recommendation about what action the council should take.
- h. The committee shall provide a report to the complainant and the licensee who may file an objection to the report and present arguments to the council supporting the objection.
- i. If the city council after consideration of the committee's report and arguments by the licensee or complainant finds the complaint to be true, the license shall be suspended for not less than 10 days nor more than 90 days or revoked if there is no objection to a report recommending suspension or revocation.
- j. The municipal clerk must give notice to the person whose license has been suspended or revoked.
- k. If the governing body finds the complaint untrue, the proceedings shall be dismissed without cost to the licensee. If the complaint is found to be malicious and without probable cause, the complainant must pay the costs.
- l. If a license is revoked, no other alcohol beverage license may be granted to that person within 12 months of the date of revocation. No part of the license fee may be recovered. Sec. 125.12(2)(c).
- m. The action of any governing body in granting, failing to grant, renewing or failing to renew, suspending or revoking any license, or failing to revoke or suspend any license for good cause may be reviewed by the circuit court. Sec. 125.12(2)(d).

4. Notifying the Department

The clerk of the municipality must notify the Department within 10 days after the revocation or suspension of a retail license, and specify the name of the licensee, the address of the premises, and the penalty imposed. Sec. 125.13.

K. Multiple Retail Licenses and Interest Restrictions

1. No restriction on number of licenses

2. Acceptable license combinations

- a. Class B beer and liquor license/permit. Sec. 125.51(3)(f).
- b. Hotels only, for the same or connecting premises: "Class A" liquor and Class "B" beer, "Class B" liquor or "Class C" wine license. Sec. 125.51(8); Sec. 125.02(7).
- c. Class A beer and liquor.

[Note: Combination c. is allowed because it is not prohibited; see numbers 4 and 5 below for prohibitions.]
- d. Class "B" beer and "Class C" wine.