

CHAPTER 7

FERMENTED MALT BEVERAGES AND INTOXICATING LIQUOR

7.1 STRICT COMPLIANCE REQUIRED. It shall be unlawful for any person, firm, association, corporation or limited liability company, to sell, or keep for sale, at wholesale or retail, or permit to be sold, or kept for sale, at wholesale or retail, within the Town of Black Earth, any alcohol beverages except in strict accordance with the provisions of this chapter.

7.2 STATUTE ADOPTED. The Statutory provisions of Chapter 125 of the Wisconsin Statutes, describing and defining regulations with respect to alcohol beverages are hereby adopted and by reference made a part of this Ordinance as if set forth in full herein; except for those provisions requiring imprisonment or provisions permitting the Town to enact standards different from that set forth by the legislature. The definitions of terms and interpretation of provisions of Ch. 125, Wis. Stats., shall be deemed to be incorporated into this ordinance. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this ordinance unless there is specific provision to the contrary. Any future amendments, revisions or modifications of the statutes incorporated herein are made part of this Ordinance. In the event of a conflict between the provisions of this ordinance and any statute, the ordinance controls unless expressly forbidden by the statute. If the statute authorizes the Town to enact a provision in its sole discretion and the ordinance does not so provide, the Town shall be deemed to have declined to act.

7.3 DEFINITIONS. Whenever the following terms are used in this section, they shall be construed as follows:

- (1) "Alcohol beverages" means fermented malt beverages, wine and intoxicating liquor.
- (2) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation.
- (3) "Brewery premises means all land and buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business.
- (4) "Club" means 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.
- (5) "Department" means the State of Wisconsin Department of Revenue.
- (6) "Fast Food Restaurant" means a restaurant serving food primarily prepared in advance and sold to its customers at a counter, and/or a restaurant utilizing a drive through facility.

- (7) “Fermented malt beverages” means 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 0.5% or more of alcohol by volume.
- (8) “Full-service Restaurant” means a restaurant where meals are primarily prepared individually for the customer and are served to customers at their table by waitstaff. A restaurant which is a fast food restaurant, or which has drive-through facilities is not considered a full-service restaurant.
- (9) “Intoxicating liquor” means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include 'fermented malt beverages' which contain less than 5% of alcohol by weight.
- (10) “Legal drinking age” means twenty-one (21) years of age.
- (11) “License” means an authorization to sell alcohol beverages issued by a municipal governing body under this chapter.
- (12) “Permit” means any permit issued by the department under this chapter.
- (13) “Person” means a natural person, sole proprietorship, partnership, limited liability company, corporation or association, or the owner of a single-owner entity that is disregarded as a separate entity under ch. 71, Wis. Stats.
- (14) “Premises” means the area described in a license or permit.
- (15) “Principal business” means 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.
- (16) “Restaurant” has the meaning as defined in Wis. Stats. Sec. 254.61(5) and whose sale of alcohol beverages accounts for less than 50% of the establishment's gross receipts.
- (17) “Sell”, “sold”, “sale” or “selling” means any transfer of alcohol beverages with 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.
- (18) “Under the influence” means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition which is the result of indulging to any degree in alcohol beverages and which tends to

deprive a person of the clearness of intellect and control of himself or herself which he or she would otherwise possess.

(19) "Underage person" means a person who has not attained the legal drinking age.

(20) "Wholesaler" means a person, other than a brewer, manufacturer or rectifier (as defined in Sec. 125.02(16), Wis. Stats., who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

(21) "Wine" means 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 0.5% or more of alcohol by volume.

7.4 LICENSE CLASSIFICATIONS; APPLICATION PROCEDURE.

(1) Class A Licenses.

(a) A Class "A" license authorizes retail sales of fermented malt beverages within the Town of Black Earth, for consumption elsewhere than on the premises where sold.

(b) A "Class A" license authorizes retail sales of fermented malt beverages, intoxicating liquor and wine within the Town of Black Earth, for consumption elsewhere than on the premises where sold.

(2) Class B Licenses.

(a) A Class "B" license authorizes retail sales of fermented malt beverages to be consumed either on the premises where sold or off the premises, provided that only fermented malt beverages in original packages or containers may be removed from the premises where sold.

(b) A "Class B" license authorizes retail sales of wine, fermented malt beverages and intoxicating liquor for consumption on the premises where sold by the glass and to be consumed on the licensed premises where sold and the sale of wine, fermented malt beverages and intoxicating liquor in the original package or container in multiples not to exceed four (4) liters at any one time and to be consumed off the licensed premises, except that wine may be sold in the original container or otherwise in any quantity to be consumed off the premises.

(c) A "Class B site" license authorizes the retail sales of wine, fermented malt beverages and intoxicating liquor, for consumption on the premises where sold by the glass and to be consumed on the licensed premises where sold and the sale of wine, fermented malt beverages and intoxicating liquor in the original package or container, in multiples not to exceed four (4) liters at any one time and to be consumed off the licensed premises, except that wine may be sold in the original

container or otherwise in any quantity to be consumed off the premises. All provisions of Chapter 125 Wisconsin Statutes and this ordinance regulating "Class B" licenses shall apply to "Class B site" licensed premises unless otherwise expressly provided.

(3) Training Course.

(a) No licenses shall 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 that is approved by the department or the educational approval board or unless the applicant fulfills one of the following requirements; unless:

- i. The person is renewing an operator's license,
- ii. Within the past 2 years, the person held a Class "A" or "Class "B" license or permit or a manager's or operator's license, or
- iii. Within the past 2 years, the person has completed such a training course.

(b) Those who complete such program shall have an appropriate endorsement recorded and placed on their licenses. No operator's license shall be issued or renewed to any person who failed to complete the program during any previous period during which such person held an operator's license without first successfully completing the program.

(c) Where application is made for a license on behalf of a sole proprietorship, the sole proprietor shall have successfully completed the Beverage Server Training Course. Where such application is made on behalf of a partnership, all partners shall have successfully completed the Beverage Server Training Course. Where such application is made on behalf of a corporation or a limited liability company, the agent appointed shall have successfully completed the Beverage Server Training Course.

(4) Refusals to Issue New License or Permit. The Town reserves the right under Wisconsin law to decline to issue a new license for any lawful reason or in the best interests if the Town, as defined by the Town Board in its sole discretion. If the Town Board decides not to issue a new license or permit under this chapter, such denial shall include a reason. The Town Clerk shall transmit to the applicant by first class mail, the decision of the Town Board and shall state the reason thereof. This section shall not be construed to make the decision of the Town Board to refuse to grant a new license or permit reviewable by a court, or to limit or waive the Town Board's discretion in the matter of licensing and permitting.

(5) Procedure on Receiving and Application.

(a) No license shall be granted for operation on any premises or with equipment for which taxes, assessments, forfeitures or other financial claims of the Town are delinquent and unpaid.

(b) No license shall be issued unless the premises conform to the sanitary, safety and health requirements of the State Building Code, and the regulations of the State Board of Health and local Board of Health applicable to restaurants. The premises must be properly lighted and ventilated, must be equipped with separate sanitary toilet and lavatory facilities equipped with running water for each sex and must conform to all Ordinances of the Town.

(c) The Town Clerk shall notify the Fire Inspector and Building Inspection Coordinator, and may notify appropriate law enforcement agencies, of each new application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. These officials shall furnish the Town Clerk in writing, who shall forward to the Town Board, the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused. No license shall be renewed without a re inspection of the premises and report as originally required.

(d) No license shall be granted under this chapter unless a public hearing is held on such application.

(e) No such hearing shall be held except upon proper notice in the agenda for such hearing and notice to the public by a Class I Notice in the official newspaper, together with the posting of such notice in three public places in the Town, including the public posting area of the Town Hall. Such notice may be given by publication and posting of the agenda showing such hearing.

(f) Such hearing shall be conducted and recorded with either a Court Reporter or a tape recording, unless this condition is unanimously waived by vote of the Town Board with written agreement of the applicant.

(g) The order of procedure shall be that the applicant shall make a presentation on the application, followed by other persons appearing in favor of the granting of the license. The persons appearing in objection shall then make their presentations, and the persons appearing in favor shall then have an opportunity to present rebuttal. The Town Board shall have the right to limit the amount of time for each presentation, to receive petitions for or against, to request that persons signing such petitions sign either a form or a sheet stating who they are, who they

represent, whether they are electors or otherwise, their address and whether or not they are for, against or have no position on the matter.

(h) After the conduct of the hearing, which shall follow regular rules of order, the Board may meet in open or closed session. Closed sessions shall be held only if properly noticed in the agenda. They shall then act upon the application at such time or later, as the Board feels sufficient information has been received on which to act properly, and either grant, deny or table the application for a period of time.

(6) **Qualifications for Licenses and Permits.** Qualifications for licenses and permits issued under this ordinance are as set forth in this ordinance and the requirements of Chapter 125 Wisconsin Statutes. These qualifications shall include, but not be limited to, the following:

(a) Arrest and conviction record of the applicant, subject to the limitations imposed by Secs. 111.321, 111.322, and 111.335, Wis. Stats.;

(b) The financial responsibility or capacity of the applicant;

(c) The appropriateness of the location and the premises where the licensed business is to be conducted; and

(d) Generally, the applicant's fitness for the trust to be reposed.

(7) **Criteria for Granting the License.**

(a) **Issuance of License To Sell Alcohol Beverages.** Certain questions shall be answered by the Town Board in the affirmative before it shall be proper to grant a license. Among the questions, but not limited thereto, shall be those questions following, and it is mandatory for the said Board to consider these conditions on any request for any license permitting the sale of alcohol beverages, except that the Board may deem answers to questions ii, iii, vi and xii are unnecessary in the case of picnic licenses. The Board shall not issue such a license until it finds, in its discretion, the answers to the following questions to be in the affirmative:

i. Are the premises and the building in which the licensee is to be conducting business in accord with the Zoning and Building Codes of the State of Wisconsin and Town of Black Earth codes, and in compliance with other regulating bodies?

ii. Is the building sightly and will its construction and operation be in such a manner that it will be consistent with the character of the neighborhood and the Comprehensive Plan of the Town?

iii. Is it in the commercial and general welfare of the Town of Black Earth, Dane County, Wisconsin?

iv. Does the granting of the license have a valid purpose?

- v. Will the aesthetic propensities of the building and the operation generally, including fencing, grounds, parking and otherwise, contribute to the general attractiveness of the community?
- vi. Is the signage to be used with such business, on and off premises, such that it will not confuse the tourist public or the local public?
- vii. Will the effect of granting this license have any socially redeeming values effectuated for the benefit of the people of the community of the Town of Black Earth?
- viii. Is the building, business and entire set-up constructed, located and operated so that it is not a vengeance, spite or other type of operation based on contrariness or based on the destruction of some other business?
- ix. Has the traffic situation been reviewed by a proper traffic reviewing authority such as the Dane County Sheriff's Department, and is such report on file for the benefit of the Town Board's consideration?
- x. Has the Town Board considered the availability of the sale of the product that will be sold under this license in its total quantum capacity available to the residents, tourists, passers-through and others that will be affected and have access to same and is it the decision of the Town Board that the addition of this license will not create an over supply that would be adverse to the health, safety, general welfare and public peace, safety and order of the community?
- xi. Has the Town Board carefully considered the application in its entirety, including such background material as shall be lawful as it may require within the orbit of proper inquiry in this respect, and also the personnel involved in the operation, and is the Town Board satisfied that there is no one operating who is a convicted felon or who is not a person of good character and that every applicant and all employees and/or agents etc. are people of good character and that the application itself meets with all of the legal requirements of the laws of the State of Wisconsin and the ordinances of the Town of Black Earth?
- xii. Has the Town Board, or a majority of those members voting, made a personal inspection of the premises, or if a proposed structure, the plans and specifications for same, and if necessary, has it consulted with engineers?
- xiii. Has the Board consulted, should it deem necessary to do so, with special experts such as engineers, legal counsel, or otherwise, to check out the validity of allegations made by way of the application, the plans and specifications or other documents that the Board shall, in its reasonable wisdom, require in order that it may be properly advised as to the entire structure of the organization, its principal, the type and nature of the building and operation, and has the Board satisfied itself that it has met the legal requirements and the ethical requirements that would go with an operation so that it will not be a detriment to the health, safety and general welfare of the people of the Town of Black Earth.
- xiv. Is the proposed licensee financially capable of operating a business?

(b) Issuance of a "Class B Site" License: The Town Board may in its sole discretion issue "Class B site" licenses to qualified applicants. In reviewing an application for a "Class B site" license the Town Board shall, in addition to other requirements of this ordinance, and of Chapter 125, Wis. Stats., investigate and determine whether or not the premises meets the qualifications for a "Class B site" license. In making its determination of whether or not a particular application qualifies for a "Class B site" license the Town Board shall consider, in addition to the requirements of paragraph (7)(a) above, the following factors in making its determination:

- i. Whether or not the premises defined in the application constitutes a full-service restaurant that has a seating capacity of 300 or more persons;
- ii. Whether the premises are a hotel with 100 or more rooms of sleeping accommodations and either of the following:
 - A. an attached restaurant with a capacity of 150 or more persons
 - B. a banquet room with a capacity of 400 persons.For purposes of this paragraph seating capacity means the indoor seating capacity of the restaurant. The banquet room capacity shall be the maximum number of persons permitted under state or Town building regulations, whichever is more restrictive.
- iii. Whether issuance of the site license is in the public interest.

(c) Discretionary Authority of the Town Board. The fact that a particular premises meets the qualifications set forth in subparagraphs (7)(a) and (b) above does not entitle said premises to a license, the issuance of which remains the sole discretion of the Town Board considering all factors relevant to the issuance of said license. The Town Board shall be the sole trier of all facts which need to be established in connection with an application, and its determinations of facts may not be disturbed on review if there is any basis in the record to support them.

(8) Expiration Dates. Except as otherwise provided in this chapter all licenses and permits issued under this ordinance shall expire on June 30 of each year.

(9) License Framed and Posted. Licenses for the sale of alcohol beverages shall be enclosed in a frame having a transparent front which allows the license to be clearly read. All licenses shall be conspicuously displayed for public inspection at all times in a room or place where the activity subject to licensure is carried on.

(10) Transfer of Licenses and Permits.

(a) From Place to Place. With the exception of a "Class B site" license which is nontransferable, a license may only be transferred to another place or premises with the approval of the Town Board. The Town Board may permit one transfer during the license year provided that the licensee proves to the satisfaction of the Town Board that the new premises is in full and complete compliance with all state and Town law, regulations and ordinances; that the owner and/or lien holder of the existing premises consents to the transfer in writing, and that such transfer

is not detrimental to the public interest. Application to transfer shall be filed with the Town Clerk along with payment of a transfer fee as prescribed in the Fee Schedule. In the event of approval of the transfer by the Town Board the Town Clerk shall promptly notify the department of all transfers.

(b) From Person to Person.

i. Licenses to sell alcohol beverages may not be transferred to persons other than the licensee without the approval of the Town Board. If the licensee, or an applicant for a subsequently granted license, dies, becomes bankrupt or makes an assignment for the benefit of creditors during the license year or after filing the application, then under such circumstances or others deemed sufficient by the Town Board in its discretion, the Town Board may, upon application, transfer the license to the licensee's designee provided that such designee complies with all of the requirements under this chapter applicable to original applicants, except that a surviving spouse shall be exempt from payment of the license fee for the year in which the transfer takes place.

ii. Upon the happening of any of the events under paragraph (10)(b)(i) above, the personal representative, the surviving spouse, if a personal representative is not appointed, the trustee, or the receiver may continue or sell or assign the business.

iii. Businesses may be continued under paragraph (10)(b)(i) above only if the personal representative or surviving spouse is an U.S. citizen.

iv. Corporate licenses shall be deemed transferred upon the sale of more than 10 percent of the shares of stock or membership interest in a limited liability company.

v. Application to transfer shall be filed with the Town Clerk along with payment of a transfer fee as prescribed in the Fee Schedule. In the event of approval of the transfer by the Town Board the Town Clerk shall promptly notify the department of all transfers.

(11) Limitation Upon Issuance of Licenses.

(a) "Class A" License. All sales in or on the premises for which a "Class A" Fermented Malt Beverage and Intoxicating Liquor license has been issued shall be made by the owner (licensee) or by licensed employees, each of whom shall be responsible for checking the ages of such customers so as to prevent sales to customers not authorized to purchase such beverages and liquors because of age, and who shall be deemed to be aware of all the laws governing the sale of fermented malt beverages and intoxicating liquors with respect to such licensed premises and the types of sales that may lawfully be made under such license.

(b) Class "B" Fermented Malt Beverage License.

i. No Class "B" Fermented Malt Beverage license shall be issued in the Town of Black Earth except (a) in restaurants where full-course meals are

served, and where food is predominantly the major sales item, computed by gross sales, floor area and general use of the restaurant or (b) in restaurants or hotels meeting the criteria specified in Sec. 125.51(4)(v), Wis. Stats. This section does not apply to any existing licenses that were in existence as of January 13, 1965.

ii. No Class "B" license shall be issued hereunder for the sale of alcohol beverages on any premises unless such premises complies with and conforms to all ordinances, health, sanitation, building and fire regulations of the Town, County and of the State.

iii. Off-premises sale of liquor in original packages. Holders of "Class B" Fermented Malt Beverage and Intoxicating Liquor licenses may sell liquor in the original package for off-premises consumption, not to exceed four liters per sale. Such sales shall be made either by the licensee or by a licensed bartender or employee licensed for such purposes.

(c) Class "B" License (Picnic). Original Class "B" licenses may be issued by the Town Board to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months prior to the date of application and to posts of veterans' organizations, authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. Such application shall be filed with the Town Board at least thirty (30) days prior to the granting of the license. The Town Board may issue a license for an application that is not timely filed provided that it finds that it has all of the information necessary to make an informed decision. The license shall be issued upon written application, and for such time, not to exceed four (4) days, as shall be designated by the board and shall be subject to such restrictions as imposed by the board. The Town Clerk is authorized to issue renewal Class "B" picnic licenses to previously approved applicants. All Picnic licenses shall be issued on conditions which assure that persons under twenty one years of age shall not have access to premises in which fermented malt beverages are sold, and which prevent such beverages from being passed to underage persons.

(d) Class C license.

i. A Retail Class C license may be issued to a person qualified under sec. 125.04(5), Wis. Stats., for a restaurant operating under a restaurant license issued by the State of Wisconsin, in which the sale of alcohol beverages accounts for less than 50% of gross receipts and which does not have a barroom.

ii. Each applicant for a Class C license shall disclose on the application the receipts for the sale of alcohol beverages and the percentage of such sales to the gross sales.

(e) Quota On Class B Licenses. The number of "Class B" liquor licenses that will be issued within the Town shall be limited to the amount determined under sec. 125.51(4), Wis. Stats.

7.5 GENERAL PROVISIONS AND HOURS.

(1) ~~No~~ License Where Pending or Resolved Violation. No license shall be issued, renewed or granted hereunder to any person, firm, corporation, limited liability company or organization for any premises as a result of the sale or transfer of the business, stock in trade or furnishings of said premises, to a new applicant while there is pending or has been concluded adversely against the former licensee thereof any proceedings for the violation of any provisions of the general ordinances of the Town of Black Earth which on conviction would result in automatic forfeiture of said license.

(2) Licensee, Agent or Operator on Premises at All Times. There shall be at all times, upon the licensed premises the licensee, the agent named in the license if the licensee is a corporation or limited liability company, or some person who shall have an Operator's or Manager's license and who shall be responsible for the acts of all persons serving, as waiters or in any other manner, any alcohol beverages to customers. No person other than the licensee, or the agent named in the license if the licensee is a corporation or limited liability company, shall serve alcohol beverages in any place operated under a license unless he/she shall possess such Operator's or Manager's license, or unless he/she shall be under the immediate supervision of the licensee or a person holding an Operator's or Manager's license who shall be at the time of such service upon said premises. No person may manage premises operating under a license or permit, unless the person is the licensee or permittee, an agent of the corporation or limited liability company or the holder of a manager's license.

(3) Sign to be Posted. A sign bearing the words "Bar closed after 2:00 a.m., 2:30 a.m. on Saturday and Sunday" shall be conspicuously displayed over the bar in all premises for which a Class "B" or "Class B" license shall have been issued.

(4) Class A Hours.

(a) ~~Premises~~ Hours. No premises for which a Class "A" Fermented Malt Beverage license has been issued shall sell fermented malt beverages between the hours of 9:0 p.m. and 8:00 a.m. No premises for which a Class "A" Intoxicating Liquor license has been issued shall sell intoxicating liquors between the hours of 9:00 p.m. and 8:00 a.m.

(b) No-Carryout Law. Between 9:00 p.m. and 8:00 a.m., no seller shall permit nor shall any person carry out or remove from the "Class A" licensed premises, any alcohol beverages in an original unopened package, container or bottle or for consumption away from the premises.

(c) No On-Premises Consumption. It shall be unlawful for any person to possess or drink from any open container which contains alcohol beverages within a Class A licensed premises at any time unless said premises also holds a Class B license.

(5) Class B" and Class "B" Hours.

(a) No-Carryout Law. Between 9:00 p.m. and 6:00 a.m., no seller shall permit nor shall any person carry out or remove from the "Class B" licensed premises, any alcohol beverages in an original unopened package, container or bottle or for consumption away from the premises.

(b) Premises Hours. No premises for which a "Class B" or Class "B" license has been issued shall be permitted to remain open between the hours of 2:00 a.m. and 6:00 a.m., on weekdays and 2:30 a.m. and 6:00 a.m. on Saturday and Sunday. On January 1 the premises are not required to close.

(c) Hotel and Restaurant Exemption. Hotels and restaurants the principal business of which is the furnishing of food and/or lodging to patrons, and bowling centers, indoor horseshoe pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business, but shall not sell, serve, give away or in any way deal or traffic in alcohol beverages in violation of Subparagraphs (5)(a) and (b) above.

(d) Regulation of Closed Retail Space. Only the permittee, licensee, employees, salespersons, employees of wholesalers licensed under Sec. 125.28(1) or 125.54(1), Wis. Stats., or service personnel may be present on Class B premises during hours when the premises are not open for business if those persons are performing job-related activities.

(e) No After-Hours Consumption. It shall be unlawful for any person to possess or drink from any open container which contains alcohol beverages within a "Class B" or Class "B" licensed premises between 2:00 a.m. and 6:00 a.m. on weekdays and 2:30 a.m. and 6:00 a.m. on Saturday and Sunday.

(6) "Class C" Hours.

(a) Except as provided in paragraph (b) of this subsection, no premises for which a Class C license has been issued may be open between the hours of 2:00 a.m. and 6:00 a.m. on week days and 2:30 a.m. and 6:00 a.m. on Saturday and Sunday.

(b) Htels and restaurants, the principal business of which is the furnishing of food, drinks or lodging to patrons, bowling centers, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but may not sell alcohol beverages between the hours of 2:00 a.m. and 6:00 a.m.

(7) It shall be unlawful for the licensee or any employee of a licensed establishment to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while performing services on the licensed premises.

(8) Licenses for Less Than One Year. A license may be issued after July 1 in any license year. The license shall expire on the following June 30. The fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30.

(9) A Retail "Class A" and "Class B" license shall not both be issued for the same premises or connecting premises.

(10) No person may allow another to use his or her license or permit to sell alcohol beverages.

(11) No retail license shall be issued to any person who has not attained the legal drinking age.

(12) Police Record and Report. Before any license shall be issued or granted under this ordinance, the Clerk shall first perform and forward to the Board a complete written report showing the applicant's complete police record, if any, and likewise showing for the previous three (3) year period the complete police record, if any, of any licensee during such three (3) year period of the premises or business as to which application is being made, both reports to include arrests, complaints, prosecutions, and other proceedings. Said complete written report shall not be required for operator license renewals. The Town shall not take action on the basis of arrest records, and shall act only on convictions which are substantially related to the requirements of the license involved.

(13) Place-to-Place Deliveries. No person may peddle any alcohol beverage from house to house where the sale and delivery are made concurrently.

(14) Restrictions Applicable to "Class A" and Class "A" Licenses. No person operating premises for which a "Class A" or a Class "A" license has been issued may sell, keep for sale, or permit to be sold any fermented malt beverage or intoxicating liquor, except in original unopened packages, containers or bottles, not to be consumed in or about the premises where sold.

(15) Restrictions Applicable to Wholesaler's License. No person, corporation or limited liability company holding a wholesaler's license and no person as an agent or employee of such licensee shall sell or keep for sale any fermented malt beverage except in original packages or containers and in quantities of not less than four and one-half (4 1/2) gallons at any one time, and it shall be unlawful for any such licensee or any agent or employee of such licensee to sell or dispense any fermented malt beverage for consumption on the premises of such licensee.

7.6 FEES. The fees for licenses issued pursuant to this ordinance shall be established by the Town Board and included in the Fee Schedule attached to these Ordinances.

7.7 REVOCATION, SUSPENSION, ABANDONMENT OR NONRENEWAL OF LICENSE. The following provisions shall apply to the revocation, suspension, abandonment or nonrenewal of any license issued pursuant to this Ordinance, notwithstanding any other provision of Chapter 125, Wis. Stats., except those providing for revocation or suspension of any license by the court.

(1)Complaint.

(a) Any resident of the Town may file a sworn written complaint with the Town Clerk alleging one or more of the following about any person or other entity licensed pursuant to this chapter. The Town Board, if it becomes aware of a violation, may refer the matter for investigation by a special investigator who may initiate a complaint. Complaints may be filed on the following grounds, and others:

- i. The person has violated any provision of this chapter or Chapter 125, Wis. Stats.
- ii. The person keeps or maintains a disorderly or riotous, indecent or improper house.
- iii. The person has sold or given away any intoxicant to any underage person, or to persons intoxicated or bordering on intoxication, or to known habitual drunkards.
- iv. The person has failed to maintain the premises according to standards prescribed for sanitation by the Dane County Department of Public Health, or in whose premises persons are permitted to loiter for purposes of prostitution.
- v. The person has not observed and obeyed any lawful order of the Town Board or Sheriff's Department.
- vi. The person does not possess the qualifications required under this chapter to hold the license.
- vii. The person has been convicted of manufacturing or delivering a controlled substance under Sec. 161.41(1), Wis. Stats.; of possessing, with intent to manufacture or deliver, a controlled substance under Sec. 161.41 (1m), Wis. Stats.; or of possessing, with intent to manufacture or deliver, or of manufacturing or delivering a controlled substance under a substantially similar federal law or a substantially similar law of another state.
- viii. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture or deliver, or to manufacture or deliver a controlled substance.

(b) No violations under Section (1)(a) may be considered under this Subsection unless the licensee or permittee has committed another violation within one year preceding the violation. If a licensee or permittee 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.

(2) **Summons.** Upon the filing of the complaint, the Board shall issue a summons, signed by the Clerk and directed to any peace officer in the municipality. The summons shall command the licensee complained of to appear before the Town 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 sec. 801, Wis. Stats., for service in civil actions in circuit court.

(3) **Procedure on Hearing.**

(a) 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.

(b) The Town Board shall serve as the hearing agency for the Board. The Town Board shall retain an attorney to act as the hearing examiner and rule on objections, admissibility and legal issues. 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 sec. 227.45, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges by a preponderance of the evidence.

(c) 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.

(d) The Board shall engage a court reporter to keep a transcript of the proceedings. The licensee shall be provided a written transcript of the hearing at his or her expense. The Clerk shall mark and receive all exhibits admitted into the record.

(e) Within twenty (20) days of the completion of the hearing, the Board shall adopt findings of fact, conclusions of law and a disposition stating the action, if any, that the Town will take with respect to the license. The Board shall provide the complainant and the licensee with a copy of the report.

(f) If the Town Board, after considering the Board's 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 complaint 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 Subdivision

(1)(a)(vi) is found to be true with respect to a license issued under Sec. 125.51(4)(v), Wis. Stats., the license shall be revoked.

(g) 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.

(h) The Town Clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked. If the Board finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Board finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Board or Board may require the complainant to provide security for such costs before issuing the summons under this Ordinance.

(4) **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.

(5) **Judicial Review.** The action of the Board in granting or failing to grant, suspending or revoking any license, or the failure of the Board to revoke or suspend any license for good cause, may be reviewed by the circuit court for Dane County, 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 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 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.

(6) **Nonrenewal of License.** The Town Attorney may, after investigation, commence an action before the Town Board to hear evidence and make a recommendation to the Board that a license issued pursuant to this chapter not be renewed. Alternatively, the Town Board may recommend that a nonrenewal be investigated by an outside counsel. 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 specificity 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 Subsections (a)(1) and (2) shall apply. The commencement of this action shall stay action by the Board on the licensee's application until the Board makes its recommendation, notwithstanding this Ordinance. The Town Attorney shall prosecute

the action. The Town Board shall be advised by separate counsel in its deliberations on the matter if the Town Attorney has initiated the action.

(7) Other Provisions. Any license issued pursuant to this Ordinance shall be subject to such further regulations and restrictions as may be imposed by the Board by amendment to this section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations her/his license may be revoked in accordance with this section. In case of revocation of any license or any violation of any provision of this ordinance in accordance with this section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

(8) If a business which receives a license hereunder is not opened within fifteen (15) days after issuance of the license, or the delayed effective date provided in the license, the license shall be deemed abandoned. A licensee holding a license to sell alcohol beverages who abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be sufficient grounds for non-renewal or revocation of any alcohol beverage license. Eviction or foreclosure of the licensee from the licensed premises, or closing of the business for thirty (30) days or more, shall be prima facie evidence of abandonment, unless the Town Board grants permission for a temporary closing. All persons issued a license to sell alcohol beverages in the Town for which a quota exists limiting the number of such licenses that may be issued by the Town shall cause such business described in such license to be operated on the premises described in such license for at least one hundred fifty (150) days during the terms of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this subsection shall not apply. In the event that a licensee declares bankruptcy, the licensee shall notify the Town Clerk, and the Bankruptcy Trustee shall be required to apply for transfer of the license.

(9) Search Warrants.

(a) When complaint shall be made to the judge of the Circuit Court that intoxicating liquor is being sold or kept for sale in any particular building or premises in the Town in violation of this section, said judge, if s/he be satisfied that there is reasonable cause for such belief, shall issue her/his warrant to search for such intoxicating liquor.

(b) Such warrants shall be directed to any peace officer in the Town or the Sheriff's Department commanding such officer to search the building or premises designated and described therein, and to bring before the said judge of the Circuit Court any such intoxicating liquor and other evidence of violations, found being kept, sold, or kept for sale in violation of the provisions of this section, and the person in whose possession the same are found.

(c) When any officer, in the execution of a search warrant shall seize any intoxicating liquor or other evidence for which a search is authorized by this subsection, all such property or things shall be safely kept by the direction of the

court so long as shall be necessary for the purpose of being produced as evidence on any trial and as soon as may be afterward returned to the owner, destroyed, or otherwise disposed of as the judge of said court may direct.

(10) Exceptions.

(a) No license shall be required for the use of intoxicating liquor in hospitals or in bona fide institutions for the aged and infirm where such liquor is used for medicinal, mechanical, or scientific purposes only, or for one licensed to practice surgery or medicine in using alcohol in any form in the bona fide treatment of the sick or in using or prescribing such alcohol for such bona fide treatment.

(b) No provision of this chapter shall apply to alcohol intended for use and used in the manufacture and sale of any of the following when unfit for beverage purposes, namely:

- i. Denatured alcohol produced and used pursuant to acts of Congress and regulations promulgated thereunder;
- ii. Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;
- iii. Flavoring extracts, syrups, and food products;
- iv. Scientific chemical, mechanical and industrial products.

(c) Any person who shall knowingly sell any of the products enumerated in the preceding subdivision for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be guilty of a violation of this section.

(d) Nothing in this Chapter shall be construed to prevent any person from manufacturing wine or beer of any alcoholic content at his home or place of residence to be consumed by himself, his family, and guests without compensation.

(11) Point Values for Alcohol Beverage Violations and Revocations and Suspensions.

(a) Purpose and Definitions.

- i. The purpose of this subsection is to administratively interpret those portions of this Ordinance, relating to establishing an alcohol beverage demerit point system to assist in determining which license holder should be subject to suspension or revocation procedures.
- ii. Board means the Town Board.

(b) Point Schedule. The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders who have repeatedly violated state statutes

and Town ordinances, for the purpose of recommending suspension or revocation of their alcohol beverage licenses. The Schedule is attached to this Ordinance as Annex I.

(c) Violations, How Calculated. In determining the accumulated demerit points against a license within twelve (12) months, the Town shall use the date each violation was committed as the basis for the determination.

(d) Suspension or Revocation of License.

i. The Town Board requests that the Sheriff's Department and other police agencies furnish a copy of all incident reports involving licensees to the Town Administrator for monitoring the performance of licensees.

ii. The Board shall call before it for purposes of a revocation or suspension hearing all licensees who have accumulated 100 points in a twelve-month period as a result of court imposed convictions or who have had referred to it reports from the Town Administrator which, if believed, would result in 100 demerit points in twelve (12) months. If the demerit point accumulation, calculated from the date of violation, meets or exceeds 100 points in a 12-month period, the license shall be suspended for not less than three (3) days nor more than ninety (90).

iii. If the demerit points meet or exceed 125 points in any 12-month period, the license shall be revoked, and no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation. If the licensee is a corporation or limited liability company, the agent and shareholders or members of such corporation or limited liability company are also debarred from obtaining a license during the period of revocation.

iv. The procedure to be used for suspension or revocation shall be that found in this ordinance.

(e) Formal Expression of Concern. In those instances in which a licensee has accumulated less than 100 demerit points as determined by the Town Attorney, and additional violations on one date would result in the accumulation of at least 100 points but not more than 200 points, the Board may elect to call before it the licensee for purposes of a formal expression of concern. Formal expression of concern shall not apply to cases of failure to comply with an order pursuant to these ordinances. If the licensee appears, no discussion of the alleged facts underlying the assessment of demerit points shall be permitted unless the licensee requests such discussion. Such discussions may occur only if the licensee is advised that any statements made by the licensee and/or her/his representatives regarding the alleged facts may be considered by the Board in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the formal expression of concern. If the licensee appears, no points shall be assessed for the alleged violations which triggered the formal expression of concern. If the licensee fails to appear after service of the notice to appear, the matter shall be scheduled for a suspension/revocation hearing. Service

of the notice to appear shall be by first class mail sent to the agent, if the licensee is a corporation or a limited liability company, to the licensee if an individual, or to any partner if the licensee is a partnership. If the notice is returned by the Post Office as undeliverable, the notice may be left with any employee found on the licensed establishment at least 24 hours before the date and time of the scheduled appearance before the Board. A formal expression of concern in lieu of the assessment of demerit points may only occur once within a one-year period. This ordinance amendment shall apply only to violations that would trigger a formal expression of concern which occur after this ordinance is adopted.

7.8 OTHER PROVISIONS. Any license issued pursuant to this order shall be subject to such further regulations and restrictions as may be imposed by the Town Board of the Town of Black Earth by amendment to this section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations her/his license may be revoked in accordance with this section. In case of revocation of any license or any violation of any provision of this ordinance in accordance with this section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

7.9 SEVERABILITY. The several terms and provisions of this section shall be deemed severable, and if any provision hereof or the application hereof to any person or circumstances is held invalid, the remainder of the section and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

ANNEX I

Schedule of Point Values for Alcohol Beverage Violations

Type of Violation	Point Value
EEOC Or ERD Finding of Public Accommodation Discrimination	50
Other Violation for Public Accommodation Violation	50
Failure to Comply with a Lawful Order of the EEOC or ERD	50
Federal or state public accommodation discrimination	100
Nonalcohol Night - Minors on Licensed Premises	50
Traffic to Underaged Person	75
Traffic to Intoxicated Person	75
Underaged Person on Premises	35
No-Alcohol Night Violations	25
Failure to Keep Proper Book	25
Failure to Be Licensed	100
Failure to maintain control of premises resulting in injury	100
Failure to maintain control of premises resulting in police or sheriff call	50
Altering Premises or Changing Location Without Permission	75
False Statement on Application	60
Transfer of License Without Permission	100
Corporation and Agent Responsibility Violations	50
Failure to Frame & Post License	25
Failure to Maintain Residence - Class A	50
Permitting Intoxicated Persons to Be on Licensed Premises	50

Type of Violation	Point Value
Conducting Unlawful Alcohol Or Other Business In Wisconsin	50
Failure to File Performance Bond	25
Search of Licensed Premises	100
Catering Service Violations	25
No Licensed Bartender	25
Licensed Premises to Be Sanitary	25
Sign to Be Posted	25
Sell Or Dispense After Hours	50
Open After Hours	50
Regulation of Closed Retail Spaced	25
No Carryout After Hours	25
On-premise consumption - Class A	50
After-Hours Consumption - Class B	50
Intoxicated Employee	50
Place-to-Place Deliveries	50
Leaving with Open Container	25
Sell or Serve on Public Street	25
Unlawful Sale Device	25
Inadequate Parking Provided	25
Inadequate Lighting	25
Gambling Constituting Criminal Violation of Ch. 945	25
Postering	25
Unlawful Quantities on Containers	25
Wholesalers Restrictions	50
One Room Only and Booths	50
Sale or Dispensing in Building - Off Premises	25
Brand Disclosure on Tap	25

Type of Violation	Point Value
Adult Entertainment Without Permit	50
Nude or Semi-Nude Entertainer or Employee Visible Outside	50
Nonconforming Street Graphics	25
Indecent Photographs	25
Oral Solicitation	25
Failure to Display Permit	25
Allowing Patron to Touch Performer	50
Permitting Indecent Acts	50
Improper Advertising	25
Noise Violation – First in 12 months	35
Noise Violation – Subsequent in 12 months	75
Allowing people to congregate outside premises	50
Any other nonenumerated violations of Ordinance	25