

**CITY OF MUSKEGO
CHAPTER 12 - LICENSES AND PERMITS**

12.01 LICENSING SALES OF ALCOHOLIC BEVERAGES (Ord. #718 – 07-03-91)

(1) STATE STATUTES ADOPTED.

The current and future provisions of Chapter 125, WIS. STATS., defining and regulating the types, sale, procurement, dispensing, and transfer of alcohol beverages, including provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein, are intended to be made part of this Ordinance in order to secure uniform statewide regulations of alcohol beverages in this State.

(2) BASIC REQUIREMENTS.

- (a) Occupancy Permit Required. No person on any licensed premises, as defined in this Ordinance, shall conduct any transactions regulated by this Ordinance unless a Licensee holds a valid Occupancy Permit, as may be required, issued by the Municipality. The Occupancy Permit shall be specific in detail as to what area of the premises shall be licensed for the sale of alcoholic beverages. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.
- (b) Seller's Permit Required. No person on any licensed premises, as defined in this Ordinance, shall conduct any transactions regulated under this section unless a licensee holds and maintains a valid Seller's Permit as required under 77.52 WIS. STATS., issued to the premises and licensee described in the license during the period of licensing. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.

(3) APPLICATIONS.

A written application for any license or permit by the provisions of this Ordinance shall be on the form(s) provided by the City Clerk-Treasurer. (Ord. #1263 – 09/20/2007)

- (a) Content. All applications other than operator's licenses shall contain all the information required under Section 125.04(3), WIS. STATS., and any other information required by the City Clerk-Treasurer. Operator's license applications shall be on a form prescribed by the City Clerk-Treasurer containing all information deemed necessary, including but not limited to name, residence, age. (Ord. #1263 – 09/20/2007)
- (b) Filing. All applications for licenses and permits to sell alcohol beverages shall be filed with the Clerk of the Municipality in which the premises are located as required by State law. Operator's licenses and licenses issued under Section 125.26(6), WIS. STATS., for a picnic or other gathering lasting less than four (4) days must be filed with the Clerk at least 24 hours prior to granting of the license or permit.

(4) FEES.

- (a) Licenses and permits may be issued by the Municipal Clerk under the authority of the Governing Body after payment of the appropriate fees, which when so issued shall permit the holder to sell, deal or traffic in alcoholic beverages as provided in Chapter 125.
- (b) Fees for the above-noted licenses and permits shall be in such amount as may be established by the Governing Body from time to time by separate resolution.

- (c) Any applicable publication fee and/or application fee and/or investigation fee shall be submitted with the license or permit application as may be established by the governing body from time to time by separate resolution.
- (d) The fees for licenses or permits which are not granted shall be refunded after deducting the application fee and all actual publication fees and investigation fees.
- (e) Fees for partial licensing years may be prorated at the discretion of the Governing Body. In all cases when an alcohol beverage license is issued for a partial year, a minimum fee of \$25.00 and all actual publication fees and investigation fees must be paid.
- (f) Once any license or permit is issued, no return of any payment shall be made regardless of whether the license or permit is used for the entire year.

(5) INVESTIGATION. (Ord. #807 - 8-5-93)

Upon receipt of a license application under the provisions of this Ordinance, the City Clerk-Treasurer shall forward a copy of the application to the appropriate persons to conduct an investigation of the applicant(s) as set forth below. (Ord. #1263 – 09/20/2007)

- (a) All Alcoholic Beverage Licenses. The Police Department, Fire Department, Health Department, and Building Inspector and other persons authorized, may conduct an investigation and inspection of the premises mentioned in the applications, to determine if the premises comply with all applicable regulations, ordinances and laws. The Police Department shall investigate all persons included in the application, both new and renewal, to determine the suitability and character of the applicants.
- (b) Review. The Governing Body may refer any and all licenses to the appropriate committee for review and recommendation prior to action by the Governing Body. (Ord. #1263 – 09/20/2007)

(5.5) PROVISIONAL RETAIL LICENSE. (Ord. #878 - 12-07-95)

- (a) The City Clerk may issue a Provisional Retail License to any person who has applied for a Class A Retail Fermented Malt Beverage License, a Class B Retail Fermented Malt Beverage License, a Class A Retail Liquor License, or a Class B Retail Liquor License and whose license application has been approved by the Common Council except for the failure of the applicant to have completed a Responsible Beverage Server Course as required under §125.04(5)(a)5, Wis. Stats. The Provisional Retail License shall authorize only those activities authorized by the type of retail license applied for and shall only be issued to an applicant who is in the course of completing a Responsible Beverage Server Course as required under §125.04(5)(a)5, Wis. Stats.
- (b) A Provisional Retail License shall expire sixty (60) days after the issuance of the Provisional Retail License or upon the issuance of the Class A Retail Fermented Malt Beverage License, a Class B Retail Fermented Malt Beverage License, a Class A Retail Liquor License, or a Class B Retail Liquor License to the holder, whichever is sooner.
- (c) The City Clerk may revoke the Provisional Retail License if he or she discovers that the holder of the license made a false statement on the application.
- (d) The fee for a Provisional Retail License shall be in such amount as may be established by the Governing Body from time to time by separate resolution.
- (e) No person may hold more than one Provisional Retail License for each type of license applied for by the holder per year.

- (f) No person shall apply for or obtain a Provisional Retail license for purposes of circumventing the license requirements of this Code. A Provisional Retail License shall only be issued to a person who has satisfied all provisions of this Code and whose application for a regular Retail Malt Beverage or Liquor License has been approved by the Common Council, but who cannot obtain such license because of failure to complete the Responsible Beverage Server Course as required under §125.04(5)(a)5, Wis. Stats.

(6) REGULAR OPERATOR'S LICENSE. (Ord. #1263 – 09/20/2007)

(a) Authority to Issue Regular Operator's Licenses.

- 1. Regular operator's licenses may be granted by the Common Council to individuals upon recommendation from the Finance Committee for the purposes of complying with Section 125.32(2) and 125.68(2), WIS STATS., and this Chapter.

(b) Qualifications.

- 1. Any individual applying for an operator's license must meet the following qualifications:
 - a. The individual must be eighteen (18) years of age by the time of issuance.
 - b. The individual must have successfully completed a responsible beverage server training course approved by the Wisconsin Department of Revenue. Individuals are exempted from the training course requirements if they are renewing an existing operator's license, have successfully completed the responsible beverage server training course within the last two years, or have held a retail license, manager's or operator's license anywhere in Wisconsin within the last two years. Section 125.17(6), WIS. STATS.
 - c. Complete an application provided by the City Clerk-Treasurer and payment of the proper fee.
 - d. Subject to requirements of Wisconsin Fair Employment Law, Chapter 111 (more specifically, §111.321, §111.322, §111.335), Wisconsin Statutes and also Wisconsin Statutes §125.04(5).

(c) Investigation.

- 1. The Chief of Police or his/her designee shall conduct a records search of all applicants, new or renewal. The Finance Committee shall not formulate any recommendation until the records search is completed and returned to the City Clerk-Treasurer.
- 2. The Chief of Police or his/her designee shall furnish a written report of the information derived from the records search including a statement as to the following:
 - a. Conviction of a felony within the last five (5) years which substantially relates to the alcohol beverage licensing activity.

- b. Conviction of any combination of two (2) or more forfeiture/ordinance/misdemeanor violations of the following, within the last twenty-four (24) months:
 - 1. Any violation related to alcohol;
 - 2. Controlled substances;
 - 3. Resisting arrest/battery to a police officer/obstructing justice;
 - 4. Disorderly conduct if in conjunction with activity at a licensed alcohol establishment.
- c. Any other conviction which the Chief of Police or his/her designee deems relevant.
- 3. Any incomplete, misleading or falsified statement in an application if the incomplete, misleading or falsified statement pertains to either the identification of the applicant or to any matter occurring within five years prior to the date of application may be grounds for denial.

(d) Granting of Regular Operator's Licenses.

- 1. The City Clerk-Treasurer will submit a list of regular operator's licenses for consideration at each regular Finance Committee meeting for recommendation to the Common Council.
- 2. If the investigation report includes any matters listed in the preceding section or if the City Clerk-Treasurer deems an appearance by the applicant before the Finance Committee is warranted, the applicant shall be notified in writing that he/she has the right to appear in person before the Finance Committee or respond in writing to the Finance Committee when the Finance Committee considers the application. The notification shall include the date and time of the Finance Committee meeting when the application will be considered. The Finance Committee shall, after meeting with the applicant or reviewing the written response from the applicant, make a recommendation to the Common Council. A recommendation to deny a regular operator's license shall include a statement as to the reason(s) for the denial.
- 3. The Finance Committee will decide if a three (3), six (6), nine (9), and/or 12 month review is warranted for applicants in violation of Section (c) 2 and 3.

(e) Revocation or suspension of license.

- 1. Revocation or suspension of regular operator's licenses granted pursuant to this ordinance shall be governed as follows:
 - a. The Finance Committee may recommend revocation or suspension of any existing regular operator's license to the Common Council following the procedure as set forth in Section 125.12, WIS. STATS.
 - b. Automatic Revocation. Any regular operator's license issued under this ordinance may be revoked without further proceedings upon the conviction of the license holder, pursuant to Section 125.11, WIS. STATS.

(6.3) PROVISIONAL OPERATOR'S LICENSE. (Ord. #1330 – 09-23-2010)

(a) Authority to Issue Provisional Operator's Licenses.

1. The City Clerk-Treasurer shall have the authority to issue a Provisional Operator's License to individuals who have applied for a Regular Operator's License pursuant to Section 125.17 (5), Wisconsin Statutes.

(b) Issuance of Provisional Operator's Licenses.

1. All requirements pertaining to issuance and eligibility for a Regular Operator's License shall apply to a Provisional Operator's License. However, evidence that the applicant has either completed or is enrolled in the training course required by Section 125.17 (6), Wisconsin Statutes, must be submitted at the time of application.

(c) Qualifications.

1. No Provisional License shall be issued to any individual who:

- a. Has been denied an Operator's License by the Common Council.
- b. Has had his/her Operator's License revoked or suspended within the preceding 12 months.

(d) Expiration.

1. The Provisional Operator's License shall expire sixty (60) days after its issuance or when a Regular Operator's is issued, whichever is sooner. A provisional Operator's License shall not be renewed

(e) Revocation.

1. The City Clerk-Treasurer may revoke a provisional license if it is discovered that the holder of the license made a false statement on his/her application. Notice to the holder of the license shall be mailed and a copy supplied to the police department.

(6.5) TEMPORARY OPERATOR'S LICENSES. (Ord. #1263 – 09/20/2007)

(a) Authority to Issue Temporary Operator's Licenses. Temporary operator's licenses may be granted to individuals by the Common Council pursuant to Section 125.17(4), WIS. STATS., upon recommendation by the Finance Committee for the purpose of allowing said individuals to dispense and serve alcohol beverages under a license issued under Section 125.26(6) or Section 125.51(10), WIS. STATS. No person may hold more than one license of this kind per year.

(b) Granting of Temporary Operator's Licenses. All requirements pertaining to qualifications, investigation and granting of a regular operator's license shall apply to a temporary operator's license.

(6.7) TERMS AND FEES FOR REGULAR, PROVISIONAL, TEMPORARY OPERATOR'S LICENSES. (Ord. #1263 – 09/20/2007)

(a) The fee for regular, provisional, and temporary operator's licenses shall be set by a resolution approved by the Common Council.

(b) Regular operator's licenses issued under this section shall expire biennially on June 30 of each year.

(c) Provisional operator's licenses issued under this section shall expire sixty (60) days after its issuance or when a regular operator's license is issued to the holder, whichever is earlier. Provisional operator's licenses shall not be renewed.

(d) Temporary operator's licenses issued under this section shall be valid for any period from one day to 14 days.

(7) RESTRICTIONS ON GRANTING LICENSES.

- (a) Statutory Requirements. Licenses and permits shall be issued only to those persons eligible under Chapter 125 WIS. STATS. Licenses and permits granted in error shall be void.
- (b) Health and Sanitation Requirements. No retail Class A or Class B alcohol beverage license shall be issued for any premises which has not been approved by Waukesha County Health Department. (Ord. #790 - 4-22-93)
- (c) Delinquent Taxes, Assessments, Claims, et al.
 - 1. No initial or renewal alcohol beverage license shall be issued for any premises or property for which taxes, assessments, forfeitures, or claims for the Municipality are delinquent and unpaid.
 - 2. No initial or renewal license or permit shall be issued under this Code to any person who is:
 - a. Delinquent in the payment of any taxes, assessment, or other claims owed the Municipality.
 - b. Delinquent in the payment of a forfeiture resulting from the violation of any ordinance of the Municipality.
 - c. Delinquent in the payment of any taxes to the State or County.
 - d. Who has any outstanding warrant or capias from any other municipal, state or federal court.
- (d) License Quota. (Ord. #1022 - 04-06-2000)
 - 1. Class "A" Fermented Malt Beverage License. None. (Ord. #1149 - 10-23-2003)
 - 2. "Class A" Retail Liquor Licenses. None. (Ord. #1149 - 10-23-2003)
 - 3. Class "B" Retail Fermented Malt Beverage Licenses. No more than 43 Class "B" Fermented Malt Beverage Licenses shall be issued within any license year.
 - 4. "Class B" Retail Liquor Licenses. The quota is based on the number of "Class B" Retail Liquor Licenses granted or issued in good faith and in force on December 1, 1997 in accordance with Section 125.51 (4)(b)1g, Wisconsin Statutes plus the number of reserve "Class B" retail liquor licenses determined in accordance with Section 125.51 (4)(br), Wisconsin Statutes. The number of reserve "Class B" retail liquor licenses increases in accordance with Section 125.51 (4)(br)2. (Ord. #976, 1-21-99)

The quota is not reduced because all available "Class B" licenses are not issued for one or more licensing years. (Ord. #976, 1-21-99)
 - 5. "Class C" Wine Licenses. "Class C" Wine Licenses shall be issued on the basis of the most recent estimated population received by the City as determined by the Wisconsin Department of Administration Population Estimates forwarded annually to the City of Muskego. Licenses shall be available for issue based on one (1) license per 2,100 population or fraction thereof over 2,100 within any

license year, except that no person licensed under a "Class C" Wine License shall be deprived of such license merely because of the quota.

(8) CONDITIONS OF LICENSE.

- (a) Consent to Inspection. Every applicant obtaining a license thereby consents to the entry of the police or other authorized representatives of the Municipality or the State at any reasonable time for the purpose of inspection and search, and consents to the removal from said premises all things found in violation of Municipal Ordinances or State Law and consents to the introduction of such things as evidence in any prosecution that may be brought for such offenses.
- (b) Safety and Sanitation Requirements. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose being used.
- (c) Sales on Credit Prohibited. No retail licensee shall sell or offer to sell any alcohol beverage to any person on credit except by a hotel to a resident guest, by a restaurant to a patron, a club to a bona fide member, and by grocers and pharmacists who maintain a credit system in connection with other purchases. No licensee shall sell alcohol beverages on a passbook or store order, or receive goods, wares, or merchandise in exchange for alcohol beverages.
- (d) Orderly Conduct Required. Every licensed premises shall be conducted in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed.
- (e) Gambling Prohibited. Gambling shall not be permitted on a licensed premises, unless authorized by State law. Slot machines or other devices of chance are prohibited and shall not be kept on the premises, unless authorized by State Law.
- (f) Repealed (Ord. #1018 - 03-09-00)
- (g) Sale to Intoxicated Persons Prohibited. No licensee, agent, operator or server shall sell, give, procure or otherwise furnish any alcohol beverages to an intoxicated person.
- (h) Underage Persons. No licensee shall employ any underage person to serve, sell, dispense, or give away an alcohol beverage unless authorized by State Law or the General Codes of the Municipality. The current and future provisions of Section 125.10(2), WIS. STATS., and Sections 125.07(4)(a), (b) or (bm), 125.08(3)(b) and 125.09(2), are adopted and made a part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein are intended to be made part of this ordinance in order to secure uniform statewide regulations of alcohol beverages in this state.
- (i) Controlled Substance Use Prohibited. Any licensee, partner, agent, authorized representative or employee who is convicted of the use, possession, delivery or intent to deliver, any controlled substance defined and regulated under Chapter 161, WIS. STATS., may be considered grounds for the revocation or suspension of any license provided for in this ordinance.

(9) MISCELLANEOUS GENERAL PROVISIONS.

- (a) Transfer of Licenses.

1. The transfer of every alcohol beverage license shall be governed by 125.04(12), WIS. STATS.
2. No transfer of operator's license is permitted.
3. If the transfer is approved by the Governing Body pursuant to 125.04(12)4, all conditions set forth under this Code shall be complied with.
4. Failure to conform with the terms of license transfer shall be grounds for denial, suspension or revocation of license.

(b) Non-Renewal of Licenses.

Before renewal of any license or permit issued under this ordinance is refused, the licensee or permittee shall be given written notice of any charges or violations or reasons proposed for non-renewal, and shall have an opportunity to be heard before the Governing Body.

(c) Violations by Agents and Employees.

A violation of this ordinance by an authorized agent or employee of the licensee shall constitute a violation by the licensee.

(d) Closing Hours. (Ord. #1350 – 02-02-12)

Closing hours shall be as set by State Statute.

(e) Local Option.

The holder of a Retail "Class B" Liquor License shall be permitted to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises and in the original packages or containers in multiples not to exceed four (4) liters at any one time and to be consumed off the licensed premises. Off premise sales shall cease at midnight of each day. It is intended by this Section that the packaged sales from Class "B" licensed premises will not be permitted after midnight under the option granted herein.

(10) REVOCATION AND SUSPENSION OF LICENSES. (Ord. #1263 – 09/20/2007)

- (a) Whenever the holder of any alcohol beverage license under this Ordinance violates any portion of this ordinance, proceedings for the revocation or suspension of the license may be instituted in the manner and under the provisions established under Chapter 125.12, WIS. STATS. In addition, the Governing Body, by its own motion by adoption of a resolution may begin proceedings for the revocation or suspension of such license.
- (b) Whenever the Governing Body or the Municipal Clerk, as agent thereof, is made aware of an incompatibility in the operation of a licensed premises in relation to its surrounding or nearby environment, or a licensed premises is in violation of any condition established,

or required at the issuance of the license or of this Code, proceedings for the purpose of revoking, establishing new conditions, or continuing the license under previous conditions will be initiated under the same procedures as provided in sub. (a).

- (c) Automatic Revocation. Any license or permit issued under this ordinance may be revoked without further proceedings upon the conviction of the licensee, agent, employee or representative thereof, pursuant to Section 125.11, WIS. STATS.

(10.5) (Ord. #862 - 03-23-95)

Additional Regulations Regarding Restrictions, Non-Renewal, Cancellation, Revocation and Suspension of Licenses. In addition to requirements of all other rules, laws and regulations of the State of Wisconsin and this municipality, licenses are subject to the following requirements:

Any license granted or issued pursuant to the general ordinances for this municipality shall be subject to further regulation or restriction as may be imposed by the governing body of the municipality, by amendment to this section or by the enactment of a new ordinance.

Further, the governing body of the municipality or any committee, if authorized by the governing body, is specifically authorized to impose reasonable conditions upon any alcohol beverage license granted or issued.

If any licensee shall fail or neglect to meet the requirements imposed by such restrictions and regulations or the conditions imposed by the municipality, or any committee, if authorized by the governing body, his or her license may be revoked, not renewed, suspended or canceled in accordance with this section.

In the case of revocation, non-renewal, suspension or cancellation of any license for any violation of any provision of this ordinance or violation of any condition imposed by the governing body of the municipality or any committee, if authorized by the governing body, or by the Court or for any reasonable cause, no refund shall be made of any part of the license fee.

The following situations may be grounds for cancellation, suspension, revocation or non-renewal of licenses in accordance with the provisions of this section and the laws of the State of Wisconsin:

- 1) A license is not used within 365 days of the original issuance to an applicant unless otherwise provided under Special Conditions on said license, or
- 2) When, at the request of the owner of the licensed premises, any licensee's usage of said premises is discontinued for 60 days or the remainder of a license period, whichever is less, or
- 3) Any licensed premises, for a period of 120 days, is being used for a purpose other than for the purpose of serving alcohol beverages, unless otherwise approved through special conditions.

(11) PENALTIES.

Any person, firm, corporation or the employee or agent of any licensee under this ordinance, who shall violate any provisions of this Code or Chapter 125, WIS. STATS., shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

12.02 (Deleted per Ord. #1181 - 11-18-2004)