

CHAPTER 35 ALCOHOL BEVERAGES

35.01 **STATE STATUTES ADOPTED.** The provisions of Chapter 125 Wis. Stats. regarding the sales of alcohol beverages except for 125.075, 125.085(3)(a)2, 125.105(2)(b), 125.11, 125.66(3), 125.68(12) and any provisions the penalties to be imposed for violations of that Chapter are adopted hereby and made a part of this section by reference. A violation of any such provisions shall constitute a violation of this section.

35.02 **FEES.** 1) Fees for licenses shall be as determined in Chapter 42 of the Municipal Code for the following license categories:

- "Class A" Intoxicating Liquor
- "Class B" Intoxicating Liquor
- Class "A" Fermented Malt Beverages
- Class "B" Fermented Malt Beverages
- Reserve "Class B" Intoxicating Liquor
- "Class C" Wine
- Wholesaler's Fermented Malt Beverages
- Class "B" Fermented Malt Beverages {Wis. Stat. § 125.26 (6)}
- Operator's License
- Provisional Operator's License
- Temporary Class "B" Retailer
- Provisional Retail
- Transfer of License to Another Premise
- Duplicate (if original license is lost or destroyed without licensee's fault)

2) The fee for initial issuance of Reserve "Class B" Intoxicating Liquor licenses is hereby established at \$10,000 plus the fee specified in Chapter 42 of the Municipal Code. The annual fee for renewal of a Reserve "Class B" license is the fee established in Chapter 42.

35.03 **RETAIL "CLASS B" INTOXICATING LIQUOR LICENSE.** A "Class B" license for the retail sale of intoxicating liquor also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed four liters at any one time, and to be consumed off the premises where sold. The number of "Class B" intoxicating liquor licenses shall be as established in Chapter 125 of the Wisconsin Statutes.

35.04 **RETAIL "CLASS A" FERMENTED MALT BEVERAGES AND INTOXICATING LIQUOR LICENSES.** The number of "Class A" combined licenses for the sale of intoxicating liquor and fermented malt beverage for consumption off premises shall not exceed one for every 3,000 of population in the City as determined by the annual Wisconsin Department of Administration population estimate. License fees shall be required to obtain both licenses.

35.05 **RETAIL CLASS "A" FERMENTED MALT BEVERAGE LICENSE.** No more than one (1) retail Class "A" license for the sale of fermented malt beverages shall exist.

35.06 **ANNEXED LICENSE.** If a municipal license is available, the City may, at its

discretion, allow an annexed licensee holding a valid Class "A" license issued by an abutting township to continue to operate under the town license for a period of time necessary to issue a City license.

35.07 LICENSE APPLICATION. 1) Applications for all licenses under this chapter shall be processed through the office of the City Clerk. Applications must be accurately completed, providing all information requested.

2) The appropriate license fee shall be submitted to the City Clerk at the time of submitting license application; such fee shall only be returned if license request is denied or withdrawn. The City shall not rebate license fees (or portions thereof) to license holders who cede or lose their licenses prior to normal expiration date.

3) The Common Council may consider, without limitation by enumeration, each of the following when evaluating, on a case by case basis, applications for initial retail "Class A", "Class B", Class "A", or Class "B" licenses:

- a. the total number of Class A and B licenses presently issued and, if an additional license is requested, the public need, desirability and purpose;
- b. the relevant experience and background of an individual applicant; if a partnership, the relevant experience and background of the partners; and if a corporation, the relevant experience and background of the directors, officers and agent;
- c. whether the granting of a license is necessary for the financial success of a proposed business;
- d. the effect of granting the license on local traffic and parking;
- e. the proximity of the location at which the license is proposed to be used to, among other, schools, churches, residential neighborhoods and/or any other Class A or Class B establishments licensed by the City;
- f. the premises meet the standards for occupancy of this type;
- g. the economic benefit to the community;
- h. the amount of employment the business will generate;
- i. past experience of the applicant or other license holders at the location at which the license is proposed to be used; and
- j. the overall effect on the community of the use of the license at the proposed location.

4) The Common Council may consider, without limitation by enumeration, each of the following when evaluating, on a case by case basis, the application for the renewal of a "Class A" or "Class B" or Class "A" or Class "B" license:

- a. the performance of the applicant under the previously issued license;
- b. the effect of the prior use of the license on local traffic and parking;
- c. the effect, if any, of the prior use of the license on adjacent residential neighborhoods; and
- d. the overall effect of the prior use of the license on the City of Hartford community.

5) The Common Council may consider, without limitation by enumeration, each of the following when evaluating on a case by case basis the application for the transfer of a "Class A" or "Class B" or Class "A" or Class "B" license:

- a. The appropriate zoning and suitability of the new location for a use of this type;
- b. The effect of transferring the license on local traffic and parking;
- c. The proximity of the new location to schools, churches, residential neighborhoods, and other licensed establishments;
- d. Other business activities conducted on the premises;
- e. The ability of the licensee to restrict access to intoxicating liquors and fermented malt beverages to minors; and
- f. The proximity of large numbers of minor children in or outside of the licensed premises which may inhibit proper control over alcohol products or may increase the necessity for the presence of law enforcement to control access to and illegal sale of intoxicating liquors and fermented malt beverages to minors.
- g. No license is entitled to be transferred to another location. Is transfer of the license to a new location in the commercial and general welfare interest of the City?

(SUBSECTION 5) CREATED 2/27/07—ORDINANCE NO. 1140)

35.08 INVESTIGATION. The Fire Chief and Building Inspector shall investigate each new license or permit application, and these officials shall inspect the premise to determine whether the premises sought to be licensed comply with the regulations, laws, or ordinances applicable thereto.

35.09 LAPSE. Whenever any licensee shall not conduct the licensed activity for at least one hundred (100) hours in any continuous ninety (90) day period, the license issued to that licensee shall lapse and become void, unless the Common Council extends the ninety (90) day period.

35.10 VIOLATIONS. A violation of this Chapter or Wisconsin Statutes Chapter 125 by a licensee's agent or employee shall constitute a violation of the licensee. In addition to other sanctions provided within the municipal code, violations of this chapter may result in the revocation or suspension of the license, pursuant to State Statutes Chapter 125.

35.11 SALES, PRESENCE, POSSESSION, MISREPRESENTATION. Wis. Stats. 125.07 (1)(a), (2)(a), (3)(a), (4)(a) (b), 125.08 (3)(b) and 125.09 (2), as may be amended, are adopted in strict conformity with those statutes.

35.12 REGULATIONS. 1) A retail Class "B" licensee for the sale of alcohol beverages shall post a notice at each exit of the licensed premises stating that "No beer, liquor or wine may be

carried in an open container outside this premises."

2) No person shall possess any open container which contains an alcohol beverage or fermented malt beverage on any street, alley, parking lot or sidewalk, unless such area is part of a licensed premises.

3) No person shall carry any open container which contains an alcohol beverage or fermented malt beverage outside a retail Class "B" licensed premises.

4) No person shall consume, within a licensed premises, any fermented malt beverage or intoxicating liquor purchased outside of the licensed premises without prior consent of the license holder or its agent.

35.13 LICENSE RESTRICTIONS. 1) Premises.

a) Definition. "Premise or Premises" is the area described in a license or permit.

b) Outdoor Service Area. In establishments holding any intoxicating liquor, fermented malt beverage, or wine license, the premises may also include an outdoor area provided the following conditions are met:

1. The outdoor area is adjacent to and accessible from the fully enclosed building on the premises unless a variance is granted by the Finance & Personnel Committee.
2. The outdoor area shall be completely enclosed by a permanent barrier, such as a fence, wall, screens, windows, or similar structure at six feet in height unless the outdoor area is located on a rooftop, in which case a secondary fence will be required.

The provisions of this section shall not apply to Temporary Class "B" licenses issued pursuant to Section 35.17 of the Code.

c) Noise Limitations. No live amplified music shall be permitted in any outdoor area. Amplified sound is allowed between the hours of 9:00 a.m. and 9:00 p.m.

d) Presence of Licensed Bartender. Alcohol may be served in the outdoor area to the same extent permitted in the licensed building.

e) Lighting. All lights shall be as approved by the Plan Commission and shall not be more than one candle-foot at the property line.

f) Prior to the issuance of a license for an outdoor area, the applicant shall apply to the Plan Commission for appropriate approval under the Zoning Code.

g) No approval granted hereunder relieves the license holder from compliance with building or zoning codes.

h) Additional facility restrictions may be imposed by the Plan Commission or the Plan Commission may grant variances to the standards of this section upon demonstration of hardship, special site limitations or special circumstances that make compliance impractical.

i) Size Limitation. The outdoor service area may not exceed, in area, the square footage of the indoor area of the licensed premises. (SECTION 1) AMENDED 5/11/10—ORDINANCE NO. 1237)

2) Persons. No initial or renewal alcohol license shall be granted to any person:

- a) Delinquent in payment of any taxes, assessments or other claims owed to the City.
- b) Delinquent in payment of a forfeiture resulting from a violation of any ordinance of the City.
- c) Delinquent in payment of any other obligation of whatever kind to the City.
- d) Delinquent in payment to the state of any state taxes owed.

35.14 AUTHORIZATION FOR UNDERAGE PERSONS TO ENTER AND REMAIN ON LICENSED PREMISES. Underage persons are authorized to enter and remain on a "Class B" or Class "B" licensed premises provided that the licensee has received written authorization from the Police Chief permitting underage persons to be present pursuant to this section on the date specified in the licensee's request.

- 1) Police Department Authorization. Before issuing the authorization, the Police Chief shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community.
- 2) The Police Department shall prescribe such conditions or restrictions on the location of all alcohol beverages as shall be necessary to ensure the health, safety or welfare of underage persons or other members of the community.
- 3) No authorization shall be allowed unless the underage persons are present in a room which is separate from any room where alcohol beverages are sold or served. No alcohol beverages may be furnished or consumed by any person in a room where the underage persons are present or authorized under this section.

35.15 OPERATOR LICENSES. 1) Operators' licenses shall be issued to individuals by the City for the purpose of complying with Sections 125.32(2) and 125.68(2), Wisconsin Statutes. Operators' licenses shall be issued only upon written application forms provided by the City Clerk.

2) Operators' licenses issued under this section are valid only within the City.

3) Criteria for Issuance. Licenses and permits related to alcoholic beverages issued to natural persons under this Chapter may be issued only to persons who fulfill all of the following requirements:

- a. Pursuant to Section 125.17(1), Wis. Stats., the City Clerk shall be authorized to issue Operators' Licenses. Any license application for which the Chief of Police or City Clerk recommend denial shall be referred to the Personnel and Finance Committee for recommendation and the Common Council for issuance. (CREATED 7/28/2020—ORDINANCE NO.

1421)

- b. The person must be at least 18 years of age.
- c. All applicants for an operator's license shall successfully pass a responsible beverage servers course as required in Section 125.04(5), Wisconsin Statutes.
- d. The individual requesting a license may be denied a license based upon his/her arrest or conviction record subject to the Fair Employment Act Sections 111.32, 111.322 and 111.335 and Section 125.04(5)(a)1. It is not employment discrimination because of a pending arrest record or a conviction record to deny a license if the circumstances of the charge substantially relate to the alcohol beverage licensing activity.
- e. The individual requesting a license may not be issued a license if they are a "habitual law offender," Section 125.04(5)(b), Wis. Stats. The term "habitual" refers to multiple convictions or pending charges. The term "offender" refers to a person with civil violations such as ordinance convictions and/or misdemeanor convictions (or pending charges) which substantially relate to the alcohol beverage licensing activity.
- f. An individual requesting a license shall not be issued a license if he or she has been convicted of a felony which substantially related to the alcohol beverage licensing activity.

4) Temporary Operators' Licenses. The City shall issue temporary operators' licenses under the terms of this ordinance except that:

- a. Pursuant to Section 125.17(1), Wis. Stats., the City Clerk shall be authorized to issue Temporary Operators' Licenses. Any license application for which the Chief of Police or City Clerk recommend denial shall be referred to the Licensing Board for recommendation and the Common Council for issuance. (CREATED 7/28/2020—ORDINANCE NO. 1421)
- b. The license may be issued only to operators employed by or donating their services to nonprofit organizations.
- c. No person may hold more than one temporary operator's license per year.
- d. The license is valid for any period from 1 day to 14 days, and the period for which it is valid shall be stated on the license.
- e. The fees for a temporary operator's license shall be as stated in Chapter 42 of the Municipal Code. It shall be non-refundable and shall not apply toward any other operator's license under this section.

The procedure for licenses issued in accordance with this section for temporary operators' licenses shall be as follows: Upon application therefore the City Clerk shall submit such application to the Common Council. If the Common Council deems referral appropriate, the application shall be submitted to the Finance & Personnel Committee for further review. In all other cases, the Common Council may act to grant or deny issuance of such license. In such situations where the temporary operator's license application is filed and time does not permit review by the Common Council, the City Clerk shall have the authority to grant or deny the issuance of such license; provided, however, that in such case the license fee shall be \$25.00, which shall be non-refundable and shall not apply toward another operator's license under this section.

5) Provisional Operators' Licenses. Provisional operators' licenses shall be issued according to the following:

- a. The City Clerk is authorized to issue a provisional operator's license to a person who has

submitted an initial application for an operator's license under subsection (1) of this section, provided that, based on the information contained in the application, the person meets the qualifications in Section 35.15 for issuance of licenses related to alcohol beverages, and provided further that the person has not previously been denied an operator's license by the City.

- b. The fee for provisional operators' licenses shall be as stated in Chapter 42 of the Municipal Code which shall be non-refundable and shall not apply towards any other operator's license under this section.
- c. A provisional operator's license shall expire 60 days after its issuance or licensed under subsection (1) of this section is issued to the holder, whichever is sooner.
- d. The City Clerk may revoke a provisional operator's license if it is discovered that the holder of the license made a false statement on the application. (SECTION 35.15 REPEALED AND RECREATED 3/27/07—ORDINANCE NO. 1144)

35.16 NUDE DANCING IN LICENSED ESTABLISHMENTS. 1) Prohibited. It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

- a) Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than fully opaque covering; or
- b) Shows any portion of the female breast below a point immediately above the top of the areola; or
- c) Show the covered male genitals in a discernibly turgid state.

2) Exemptions. The provisions of this ordinance do not apply to the following licensed establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.

3) Definitions. For purposes of this ordinance, the term "licensed establishment" means any establishment licensed by the Common Council of the City of Hartford to sell alcohol beverages pursuant to ch. 125, Stats. The term "licensee" means the holder of a retail "Class A", "Class B", Class "B", Class "A", or "Class C" license granted by the Common Council of the City of Hartford pursuant to ch. 125, Stats.

4) Penalties. Any person, partnership, or corporation who violates any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$500, and not more than \$2,000 per violation, as listed in the Bond Schedule found in Chapter 42 of the Municipal Code. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes sufficient ground for suspending, revoking or non-renewing any alcohol beverage license under sec. 125.12, Stats.

If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

35.17 TEMPORARY CLASS "B" RETAILER'S LICENSE. The City Clerk is authorized pursuant to Wis. Stats. 125.26(6) and 125.51(10) to issue a license for the sale of fermented malt beverages or wine at picnics or other community events. Conditions for the issuance of a license in addition to the requirements of Chapter 125 shall be as follows:

- a) At least one holder of an operator's license shall at all times be present in the licensed premises where fermented malt beverages and wine are sold or offered for sale at an event for which a Class "B" fermented malt beverage or Class "B" wine picnic license has been issued.
- b) The organization must provide sufficient security personnel satisfactory to the Chief of Police to ensure that fermented malt beverages and wine are not consumed outside of the approved areas specified for the consumption of such beverages and that minors are not present in the licensed premises except as permitted in Chapter 125 Wis. Stats.
- c) The license premises shall be fenced as required by the Chief of Police, including, but not limited to, double fencing a minimum of six (6) feet apart.
- d) The organizers shall post notices at each exit of the licensed premises stating, "No beer or wine will be carried in an open container beyond this point."
- e) The organizers shall post notices at each entrance of the licensed premises stating, "No carry-in alcohol allowed."
- f) The Chief of Police may require the organizer to provide adequate sanitary facilities, lighting, and other measures to ensure the health, safety and convenience of the public while attending the event.
- g) The Chief of Police may implement additional requirements for the welfare and safety of the general public, which shall be incorporated into the terms of the license upon issuance.
- h) The licensee shall prior to the commencement of the event notify the police department that event set-up has been completed so that a compliance inspection may occur. No fermented malt beverages or wine may be sold until the final inspection occurs.

35.18 PENALTIES. Any person, partnership, or corporation who violates any of the provisions of Chapter 35 shall be subject to a forfeiture of not less than \$10 and not more than \$5,000 per violation as listed in the bond schedule in Chapter 42 of the Municipal Code. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes grounds for suspending, revoking or non-renewing any alcohol beverage license. If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

(CHAPTER 35 RE-CREATED 9/13/06—ORDINANCE NO. 1126; RE-CREATED 7/10/18—ORDINANCE NO. 1388)