

Chapter 255

INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

[HISTORY: Adopted by the Common Council of the City of Bayfield as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Juveniles — See Ch. 260.
Licenses and permits — See Ch. 268
Parks and recreation — See Ch. 298.
Peace and good order — See Ch. 306.

ARTICLE I

Licenses

[Adopted 4-1-1992 (§§ 7-2-1 through 7-2-40 of the 1992 Code of Ordinances)]

§ 255-1. Adoption of statutory provisions.

The provisions of Ch. 125, Wis. Stats., relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this article as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this article. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this article in order to secure uniform statewide regulation of alcohol beverage control.

§ 255-2. Definitions. [Amended 10-18-2006 by Ord. No. 335]

As used in this article the terms "alcoholic beverages," "intoxicating liquors," "principal business," "legal drinking age," "premises," "sell," "sold," "sale," "restaurant," "club," "retailer," "person," "fermented malt beverages," "wholesalers" and "operators" shall have the meaning given them by Ch. 125, Wis. Stats.

§ 255-3. License required.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, or cause the same to be done, without having procured a license as provided in this article nor without complying with all the provisions of this article, and all statutes and regulations applicable thereto, except as provided by §§ 125.16, 125.27, 125.28 and 125.51, Wis. Stats.

§ 255-4. Classes of licenses.

A. Retail "Class A" intoxicating liquor license. A retail "Class A" intoxicating liquor license, when issued by the City Clerk under the authority of the Common Council, shall permit its

holder to sell, deal and traffic in intoxicating liquors only in original packages or containers and to be consumed off the premises so licensed.

- B. Retail "Class B" intoxicating liquor license. A retail "Class B" intoxicating liquor license, when issued by the City Clerk under authority of the Common Council, shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and in the original package or container in multiples not to exceed four liters at any one time, to be consumed off the premises so licensed.
- C. Class "A" fermented malt beverage retailer's license. A Class "A" retailer's fermented malt beverage license, when issued by the City Clerk under the authority of the Common Council, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers or bottles. Such license may be issued after July 1. The license shall expire on the following June 30.
- D. Class "B" fermented malt beverage retailer's license.
 - (1) License. A Class "B" fermented malt beverage retailer's license, when issued by the City Clerk under the authority of the Common Council, shall entitle the holder thereof to possess, sell or offer for sale, fermented malt beverages, to be consumed upon the premises where sold. The holder may also sell beverages containing less than 1/2 of 1% of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1. The license shall expire on the following June 30.
 - (2) Application. Class "B" licenses may be issued to any person qualified under § 125.04(5), Wis. Stats. Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six months before the date of application. A Class "B" license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this article. Except as provided in § 125.31, Wis. Stats., Class "B" licenses may not be issued to brewers or fermented malt beverages wholesalers.
- E. Temporary Class "B" fermented malt beverage and temporary "Class B" wine licenses. [Amended 10-18-2006 by Ord. No. 335; 5-11-2015 by Ord. No. 375]
 - (1) License(s). As provided in § 125.26(1) and (6), Wis. Stats., temporary Class "B" fermented malt beverage and, as provided in § 125.51(10), Wis. Stats., temporary "Class B" wine licenses may be issued 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 months before 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 license is valid for dates as approved by the Common Council, or Clerk if the next regular Council

Meeting follows the planned event.

- (2) Application. Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the City Clerk together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to the penalty provisions of § 255-28 of this article and will be ineligible to apply for a temporary Class "B" license for one year. The license shall specify the hours and dates of license validity.
 - (3) Restrictions:
 - (a) Licenses may not be issued to individuals.
 - (b) Licenses to organizations, other than ex-servicemen's organizations, can be issued only for a picnic or similar gathering. They may not be issued for business or social meetings of the organization.
 - (c) Licenses for club or organization meetings may be issued only to ex-servicemen's posts.
 - (d) Licenses may cover either a specified area or the entire picnic grounds.
 - (e) Licenses issued to a county or district fair must cover the entire fairground (§§ 125.26(6) and 125.51(10), Wis. Stats.).
 - (f) No license to clubs having any indebtedness to any wholesaler for more than 15 days for beer (§ 125.33(7), Wis. Stats.) and 30 days for wine (§ 125.69(4)(b), Wis. Stats.).
 - (g) Licensed operator(s) must be present at all times (§§ 125.26(6), 125.32(2) -- Beer; 125.51(10), 125.68(2) -- Wine; 125.17).
 - (h) The licensed club, club members, or any other persons are not permitted to possess intoxicating liquor on licensed premises on the Temporary Class "B"/"Class B" licensed picnic area. (§ 125.32(6), Wis. Stats.)
 - (i) Not more than two wine licenses may be issued to any club, county or local fair association, agricultural association, church, lodge, society or veterans' post in any twelve-month period.
 - (j) Licensed organizations must purchase their product from a licensed wholesaler.
- F. Wholesaler's license. A wholesaler's fermented malt beverage license, when issued by the Clerk under the authority of the Council, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only in original packages or containers to dealers, not to be consumed in or about the premises of said wholesaler.
- G. Retail "Class C" licenses.
- (1) In this subsection, "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.

- (2) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
- (3) A "Class C" license may be issued to a person qualified under § 125.04(5), Wis. Stats., for a restaurant in which the sale of alcohol beverages accounts for less than 50% of gross receipts and which does not have a barroom if the City's quota prohibits the City from issuing a "Class B" license to that person. A "Class C" license may not be issued to a foreign corporation or a person acting as agent for or in the employ of another.
- (4) A "Class C" license shall particularly describe the premises for which it is issued.¹

§ 255-5. License fees. [Amended 10-18-2006 by Ord. No. 335]

There shall be the following classes of licenses which, when issued by the City Clerk under the authority of the Common Council after payment of the license fee and publication costs hereinafter specified, shall permit the holder to sell, deal or traffic in intoxicating liquors or fermented malt beverages as provided in § 255-4 of this article and Ch. 125, Wis. Stats.:

- A. Class "A" fermented malt beverages retailer's license. The annual fee for this license shall be as set by the Common Council. The fee for a license for less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- B. Class "B" fermented malt beverage license. The annual fee for this license shall be as set by the Common Council. This license may be issued at any time for six months in any calendar year, for which 50% of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued. The fee for a license for less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- C. Temporary Class "B" fermented malt beverage license. The fee for this license shall be as set by the Common Council per event.
- D. Fermented malt beverage wholesalers' license. The annual fee for this license shall be as set by the Common Council.
- E. "Class A" intoxicating liquor retailer's license. The annual fee for this license shall be as set by the Common Council.
- F. "Class B" intoxicating liquor retailer's license. The annual fee for this license shall be as set by the Common Council. This license may be issued at any time for six months in any calendar year, for which 50% of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
- G. "Class C" wine license. The annual fee for this license shall be as set by the Common Council. The fee for less than one year shall be prorated.

1. Editor's Note: Former Subsection H, Temporary "Class B" wine licenses, which immediately followed this subsection, was repealed 5-11-2015 by Ord. No. 375.

- H. Temporary "Class B" wine license. The fee for this license shall be as set by the Common Council per event, except that no fee may be charged to a person who at the same time applies for a temporary Class "B" license for the same event.

§ 255-6. Application for license.

- A. Contents. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on the form prescribed by the Wisconsin Department of Revenue and shall be sworn to by the applicant as provided by §§ 887.01 to 887.03, Wis. Stats., and shall be filed with the City Clerk not less than 15 days prior to the granting of such license. The premises shall be physically described to include every room and storage space to be covered by the license, including all rooms not separated by a solid wall or joined by connecting entrances.
- B. Corporations. Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, of a corporation.
- C. Publication. The City Clerk shall publish each application for a Class "A," Class "B," "Class A," "Class B," or "Class C" license. There is no publication requirement for temporary Class "B" picnic beer licenses under § 125.26, Wis. Stats. The application shall be published once in the official City newspaper, and the costs of publication shall be paid by the applicant at the time the application is filed, as determined under § 985.08, Wis. Stats.
- D. Amending application. Whenever anything occurs to change any fact set out in the application of any licensee, such licensee shall file with the issuing authority a notice in writing of such change within 10 days after the occurrence thereof.
- E. License quotas. Retail intoxicating liquor and fermented malt beverage licenses issued by the Common Council shall be limited in number to the quota prescribed by state law.

§ 255-7. Qualifications of applicants and premises.

- A. Residence requirements. A retail Class "A" or Class "B" fermented malt beverage or "Class A" or "Class B" intoxicating liquor license shall be granted only to persons who are citizens of the United States and who have been residents of the State of Wisconsin continuously for at least 90 days prior to the date of the application.
- B. Applicant to have malt beverage license. No retail "Class B" intoxicating liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages.
- C. Right to premises. No applicant will be considered unless he has the right to possession of the premises described in the application for the license period, by lease or by deed.
- D. Age of applicant. Licenses related to alcohol beverages shall only be granted to persons who have attained the legal drinking age.
- E. Corporate restrictions.
 - (1) No license or permit may be issued to any corporation unless the corporation meets

the qualifications under § 125.04(a)1 and 4 and (b), Wis. Stats., unless the agent of the corporation appointed under § 125.04(6) and the officers and directors of the corporation meet the qualifications of § 125.04(a)1 and 3 and (b) and unless the agent of the corporation appointed under § 125.04(6) meets the qualification under § 125.049(a)2. The requirement that the corporation meet the qualifications under § 125.04(a)1 and (b) does not apply if the corporation has terminated its relationship with all of the individuals whose actions directly contributed to the conviction.

- (2) Each corporate applicant shall file with its application for such license a statement by its officers showing the names and addresses of the persons who are stockholders together with the amount of stock held by such person or persons. It shall be the duty of each corporate applicant and licensee to file with the City Clerk a statement of transfers of stock within 48 hours after such transfer of stock.
 - (3) Any license issued to a corporation may be revoked in the manner and under the procedure established in § 125-12, Wis. Stats., when more than 50% of the stock interest, legal or beneficial, in such corporation is held by any person or persons not eligible for a license under this article or under the state law.
- F. Sales tax qualification. All applicants for retail licenses shall provide proof, as required by § 77.61(11), Wis. Stats., that they are in good standing for sales tax purposes (i.e., hold a seller's permit) before they may be issued a license.
- G. Connecting premises. Except in the case of hotels, no person may hold both a "Class A" license and either a "Class B" license or permit, a Class "B" license or permit, or a "Class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.
- H. Limitations on other business; Class "B" premises. No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to the premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:
- (1) A hotel.
 - (2) A restaurant, whether or not it is a part of or located in any mercantile establishment.
 - (3) A combination grocery store and tavern.
 - (4) A combination sporting goods store and tavern in towns, villages, and fourth-class cities.
 - (5) A combination novelty store and tavern.
 - (6) A bowling alley or recreation premises.
 - (7) A club, society or lodge that has been in existence for six months or more prior to the

date of filing application for the Class "B" license or permit.

§ 255-8. Investigation.

The City Clerk shall notify the Chief of Police, Fire Inspector and Building Inspector 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 to the City Clerk in writing, who shall forward to the Common Council, 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 reinspection of the premises and report as originally required.

§ 255-9. Approval of application.

- A. No license shall be granted for operation on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the City 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 Department of Commerce and the Common Council 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 City.²
- C. Consideration for the granting or denial of a license will be based on:
 - (1) Arrest and conviction record of the applicant, subject to the limitations imposed by § 111.321, 111.322, and 111.335, Wis. Stats.;
 - (2) The financial responsibility of the applicant;
 - (3) The appropriateness of the location and the premises where the licensed business is to be conducted; and
 - (4) Generally, the applicant's fitness for the trust to be reposed.
- D. An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two offenses which are substantially related to the licensed activity within the five years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Common Council, the Common Council reserves the right to consider the severity, and facts and circumstances of the offense when making the

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

determination to grant, deny or not renew a license. Further, the Council, at its discretion, may, based upon an arrest or conviction record of two or more offenses which are substantially related to the licensed activity within the five years immediately preceding, act to suspend such license for a period of one year or more.

§ 255-10. Granting of license.

- A. Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license. Upon the approval of the applicant by the Common Council, the City Clerk shall issue to the applicant a license, upon payment by the applicant of the license fee to the City. License fees for "Class A," Class "A," "Class B" and Class "B" licenses shall be prorated as required by §§ 125.25(4), 125.26(4) and 125.51(9)(a), Wis. Stats, and the provisions of this article.³
- B. If the Common Council denies the license, the applicant shall be notified in writing, by registered mail or personal service, of the reasons for the denial. The notice shall also inform the applicant of the opportunity to appear before the Common Council and to provide evidence as to why the denial should be reversed. In addition, the notice shall inform the applicant that the reconsideration of the application shall be held in closed session, pursuant to § 19.85 (1)(b), Wis. Stats., unless the applicant requests such reconsideration be held in open session and the Common Council consents to the request. Such written notice shall be mailed or served upon the applicant at least 10 days prior to the Common Council meeting at which the application is to be reconsidered.

§ 255-11. Transfer and lapse of license.

- A. In accordance with the provisions of § 125.04(12), Wis. Stats., a license shall be transferable from one premises to another if such transfer is first approved by the Common Council. An application for transfer shall be made on a form furnished by the City Clerk. Proceedings for such transfer shall be had in the same form and manner as the original application. The fee for such transfer shall be as prescribed by § 125.04(12), Wis. Stats. Whenever a license is transferred, the City Clerk shall forthwith notify the Wisconsin Department of Revenue of such transfer. In the event of the sale of a business or business premises of the licensee, the purchaser of such business or business premises must apply to the City for reissuance of said license and the City, as the licensing authority, shall in no way be bound to reissue said license to said subsequent purchaser.⁴
- B. Whenever the agent of a corporate holder of a license is for any reason replaced, the licensee shall give the City Clerk written notice of said replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Common Council, the successor agent shall have the authority to perform the functions and be charged with the duties of the original agent. However, said license shall cease to be in effect upon receipt by the City Clerk of notice of disapproval of the successor agent by the Wisconsin Department of Revenue or other peace officer of the municipality in which the license was issued. The corporation's license shall not be in force after receipt of such

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

notice or after a regular or special meeting of the Common Council until the successor agent or another qualified agent is appointed and approved by the City.

§ 255-12. Numbering of license. ⁵

All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee.

§ 255-13. Posting licenses; defacement.

- A. Every person licensed in accordance with the provisions of this article shall immediately post such license and keep the same posted while in force in a conspicuous place in the room or place where said beverages are drawn or removed for service or sale.
- B. It shall be unlawful for any person to post such license or to be permitted to post it upon premises other than those mentioned in the application or knowingly to deface or destroy such license.

§ 255-14. Conditions of license.

All retail Class "A," Class "B," "Class A" and "Class B" licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of this section, and subject to all other ordinances and regulations of the City applicable thereto.

- A. Consent to entry. Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of City ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- B. Employment of minors. No retail "Class B" or Class "B" licenses shall employ any underage person, as defined in the Wisconsin Statutes, but this shall not apply to hotels and restaurants. Family members may work on the licensed premises but are not permitted to sell or dispense alcoholic beverages.
- C. Disorderly conduct prohibited. Each licensed premises shall, at all times, be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- D. Licensed operator on premises. There shall be upon premises operated under a "Class B," Class "B," or "Class C" license, at all times, the licensee, members of the licensee's immediate family who have attained the legal drinking age, and/or some person who shall have an operator's license and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

"Class B," "Class B," or "Class C" license unless he possesses an operator's license, or there is a person with an operator's license upon said premises at the time of such service.

- E. Health and sanitation regulations. The rules and regulations of the State Department of Commerce governing sanitation in restaurants shall apply to all "Class B" liquor licenses issued under this article. No "Class B" or "Class C" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- F. Restrictions near schools and churches. No retail Class "A," Class "B," "Class A" or "Class B" license shall be issued for premises, the main entrance of which is less than 300 feet from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises. This subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school building, hospital building or church building.
- G. Clubs. No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- H. Gambling prohibited. Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this article or the laws of the State of Wisconsin.
- I. Credit prohibited. No retail Class "A," Class "B," "Class A," "Class B," or "Class C" liquor, wine, or fermented malt beverage licensee shall sell or offer for sale any alcohol beverage to any person or persons by extending credit, except hotel credit extended to a resident guest or a club to a bona fide member. It shall be unlawful for such licensee or permittee to sell alcohol beverages to any person on a passbook or store order or to receive from any person any goods, ware, merchandise or other articles in exchange for alcohol beverages.
- J. Licensee or permittee responsible for acts of help. A violation of this article by a duly authorized agent or employee of a licensee or permittee under this article shall constitute a violation by the licensee or permittee. Whenever any licensee or permittee under this article shall violate any portion of this article, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this article.
- K. Improper exhibitions. It shall be unlawful for any person to perform, or for any licensee or manager or agent of the licensee to permit any employee, entertainer or patron to engage in any live act, demonstration, dance or exhibition on the licensed premises which:
 - (1) Exposes his or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - (2) Exposes any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - (3) Exposes any portion of the female breast at or below the areola thereof; or

- (4) Engages in or simulates sexual intercourse and/or any sexual contact, including the touching of any portion of the female breast or the male and/or female genitals.⁶

§ 255-15. Closing hours.

Closing hours shall be established in conformance with § 125.32(3), Wis. Stats., and further restricted as follows:

A. Certain classes of licenses.

- (1) No premises for which a retail "Class B" liquor, Class "B" fermented malt beverage, or "Class C" wine license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, and 2:30 a.m. and 6:00 a.m., Saturday and Sunday. There shall be no closing hours on January 1.
- (2) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, 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 liquor or malt beverages during the closing hours of Subsection A(1) above.

- B. Carry-out hours. Between 9:00 p.m. and 8:00 a.m., no person may sell, remove, carry out or permit to be removed or carried out from any premises having a "Class A" or Class "A" license, fermented malt beverages or intoxicating liquor in original unopened packages, containers or bottles or for consumption away from the premises.

§ 255-16. Restrictions on temporary fermented malt beverage licenses.

It shall be unlawful for any person or organization on a temporary basis to sell or offer to sell any alcohol beverage upon any City-owned property or privately owned property within the City of Bayfield, except through the issuance of a temporary Class "B" fermented malt beverage license issued by the Common Council in accordance with Wisconsin Statutes and as set forth in this section. A temporary Class "B" fermented malt beverage license authorizing the sale and consumption of beer and/or wine on City-owned property or privately owned property may be authorized by the Common Council provided the following requirements are met:

- A. Compliance with eligibility standards. The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in § 125.26(6), Wis. Stats., and shall fully comply with the requirements of this section and § 255-30 of Article II, Offenses Involving Alcoholic Beverages, of this chapter. Members of an organization which is issued a temporary license and who are issued operator's licenses for the event shall attend a pre-event informational meeting to learn what rules and regulations apply and what the responsibilities of the bartenders and organization will be.
- B. Posting of signs and licenses. All organizations issued a temporary license shall post in a conspicuous location at the main point of sale and at all remote points of sale a sufficient

⁶. Editor's Note: Annotation: See *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 90 S. Ct. 774 (1970); and *State v. Erickson*, 101 Wis. 2d 224 (1981), for guidelines for warrantless searches of licensed premises.

number of signs stating that no fermented malt beverage shall be served to any underage person without proper identification.

- C. Fencing. If necessary due to the physical characteristics of the site, the Common Council may require that organizations install a double fence around the main point of sale to control ingress and egress and continually station a licensed operator, security guard or other competent person at the entrance for the purpose of checking age identification. Where possible, there shall be only one point of ingress and egress. When required, the double fence shall be a minimum of four feet high and a minimum of six feet between fences.
- D. Underage persons prohibited. No underage persons as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverages or wine at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.
- E. Licensed operators requirement. A licensed operator shall be stationed at all points of sales at all times.
- F. Waiver. The Common Council may waive or modify the requirements of this section due to the physical characteristics of the licensed site.
- G. Insurance. The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the City and its employees and agents harmless against all claims, death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the license, the applicant may be required to furnish a Certificate of comprehensive general liability insurance with the City of Bayfield.
- H. Beer and liquor not to be carried in. No person shall bring fermented malt beverages or intoxicating liquor in any form of a container with him, or in his automobile, to any public function within the City of Bayfield for his own consumption, or consumption of others; except only under permission of the Common Council granted for such function. The term "public function" shall be construed to mean any function that is open to the general public for an admission charge or without admission charge upon any premises in the City.

§ 255-17. Revocation and suspension of licenses; nonrenewal.

- A. Intent. Chapter 125 of the Wisconsin Statutes provides for remedies and sets forth proper procedures with respect to suspension, revocation, or nonrenewal of licenses. The City of Bayfield states that it is the public policy of the City to balance the interest of its citizens and of visitors to the City against the interest of the license holders in operating and maintaining their business activities upon licensed premises.
- B. Adherence to requirements. If the license holder fails to adhere to certain minimum standards, or fails to abide by this article and/or applicable Wisconsin law, the license holder shall be subject to the provisions herein set forth.
- C. Rules. To provide for an orderly administration of this article and the maintenance of existing licenses, it is the policy of the City to provide and adopt rules relative to maintenance of licenses and the suspension, revocation or nonrenewal thereof.

- D. Demerit point system. In order to implement this policy, the Council imposes an alcohol beverage demerit point system. This demerit point system is designed to enable the City to enforce violations of this article and Wisconsin law. A violation and the accumulation of demerit points may lead to a forfeiture, suspension, revocation or nonrenewal as set forth herein.
- E. Procedure. Whenever the holder of any license under this article violates any portion of this article or Article II, Offenses Involving Alcoholic Beverages, of this chapter, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this section.
- F. Abandonment of premises. Any 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 revocation of any alcohol beverage license. The losing of the licensed premises for at least 12 months shall be prima facie evidence of the abandonment, unless extended by the Common Council.
- G. License revocation or suspension. License revocation or suspension procedures shall be as prescribed by Ch. 125, Wis. Stats., and this section.
- H. Demerit point schedule.
 - (1) The scale of demerit points is listed according to the type of violation.
 - (2) The following demerit point schedule is adopted:

| Type of Violation | Point Value |
|--|--------------------|
| Traffic to intoxicated person | 25 |
| Underaged person on premises | 50 |
| Altering premises | 50 |
| False statement on application | 50 |
| Transfer of License Without Permission | 50 |
| Failure to frame and post license | 25 |
| Failure to maintain residence | 25 |
| Conducting unlawful business | 50 |
| No licensed bartender | 50 |
| Licensed premises to be sanitary | 25 |
| Licensed/federal stamp to be posted | 25 |
| Sell or dispense after hours | 50 |
| Open after hours | 50 |
| On-premises consumption — Class A | 50 |

| | |
|--|----|
| After-hours consumption — Class B | 50 |
| Intoxicated employee | 50 |
| Sell or serve on public street | 25 |
| Gambling | 25 |
| Sale or Dispensing in building — off premises | 25 |
| Brand disclosure on tap | 25 |
| Adult entertainment without permit | 50 |
| Nude or seminude entertainer or employee visible outside | 50 |
| Oral solicitation | 25 |
| Failure to display permit | 25 |
| Exceeded license limitations | 25 |
| Failure to obtain cabaret permit, "Class B" Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II). | 25 |

I. Penalties for accumulation of demerit points.

- (1) Penalties for the accumulation for demerit points by a licensed premises within one year are set forth as follows:
 - (a) 25 demerit points: \$25 forfeiture.
 - (b) 50 demerit points: \$50 forfeiture.
 - (c) 75 demerit points: \$100 forfeiture.
 - (d) 100 demerit points: Suspension of not less than three nor more than 90 days, or revocation.
- (2) The date of the violation shall determine the accumulation of demerit points within a twelve-month period.
- (3) When one year from the date of a given violation expires, the points for that violation are no longer a part of the demerit point accumulation. However, the violation may be considered by the Council in its evaluation of any suspension, revocation or nonrenewal matter involving the same licensed premises.

J. Complaints. Any resident of the City may file a sworn written complaint with the City Clerk alleging a violation of this article.

K. Notification.

- (1) The license holder shall be notified that:
 - (a) A complaint has been filed.

- (b) The complaint alleges a specific violation.
 - (c) The demerit point value of the alleged violation.
 - (d) He/she may request a fact-finding hearing.
 - (e) Waiver of the fact-finding hearing shall constitute an admission of the alleged violation and demerit points will be assessed and the penalty, if any, imposed.
- (2) The City Clerk shall furnish notification to the license holder within 10 days of receiving the sworn written complaint. The notification is to be given in writing and submitted to the license holder by regular mail or certified mail.

L. Fact-finding hearing.

- (1) If a fact-finding hearing is requested:
- (a) The hearing shall be conducted by the Council.
 - (b) Written notice shall be given no less than five days nor more than 10 days prior to the date scheduled for the hearing.
 - (c) Notice shall be given by certified mail.
- (2) Fact-finding hearing shall be conducted in a manner similar to the procedures set forth in § 125.12(2)(b), Wis. Stats.
- (3) At the conclusion of the fact-finding hearing, the Council shall:
- (a) Make findings of fact and conclusions.
 - (b) Announce its decision at a regular or special meeting of the Council.
- (4) The Council may take the matter before it in a fact-finding hearing under advisement. If findings and conclusions are not announced within 90 days of the date of the fact-finding hearing, the complaint is deemed to be dismissed.
- (5) The Clerk shall notify the license holder of the Council's decision, in writing, within 10 days of the date the decision was announced by the Council.
- (6) If the decision involves a suspension of the license, the Council shall specify the dates of the suspension, and the notification from the Clerk shall so designate. If the decision involves a revocation, the Council shall specify the effective date of the revocation and the notification from the Clerk shall so designate.

M. Suspension, revocation or nonrenewal. The provisions of § 125.12, Wis. Stats., are hereby adopted by reference and made a part of this section for the following purposes:

- (1) For purposes of determining whether or not a license holder should have his license suspended, revoked or nonrenewed due to the accumulation of demerit points in a given period of time.
- (2) For causes other than the accumulation of demerit points.
- (3) For other violations of this article.

§ 255-18. Nonalcohol events for underage persons on licensed premises.

The presence of underage persons on a licensed premises as provided under § 125.07(3)(a)10, Wis. Stats., shall be subject to the following:

- A. The licensee or agent of a corporate licensee shall notify the Police Department at least 48 hours in advance of the date of any event at which underage persons will be present on the licensed premises. Each such nonalcohol event notice shall specify the date(s) on which the event is to occur and the time(s) of commencement. All notices shall be filed with the Police Department during normal working hours (8:00 a.m. to 5:00 p.m., Monday through Friday) and shall be given on forms prescribed by the Department. After a nonalcohol event notice has been given, the licensee may cancel an event(s) only by giving like notice to the Department in accordance with the provisions of this subsection. Regardless of the date given, all notices shall expire and be deemed canceled no later than the date of expiration or revocation of the applicable retail Class "B" or "Class B" license.
- B. During the period of any nonalcohol event a notice card prescribed by the Police Department shall be posted at all public entrances to the licensed premises notifying the general public that no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises during the event. Such notice cards shall be made available by the Department to a requesting licensee.
- C. Once a nonalcohol event has commenced, no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises until the next day following the closing hours of the licensed premises.
- D. During the period of any nonalcohol event all alcohol beverages shall be stored in a locked portion of the licensed premises in a secure place out of the sight and physical reach of any patron present and shall be under the direct and immediate control and supervision of the licensee or a licensed bartender in the employ of the licensee. All beer taps and automatic dispensers of alcohol beverages ("speed guns") shall be either disconnected, disabled or made inoperable.

§ 255-19. (Reserved) ⁷

§ 255-20. Operator's license required.

- A. Operator's licenses; Class "A," Class "B," or "Class C" premises. Except as provided under §§ 125.32(3)(b) and 125.07(3)(a)10, Wis. Stats., no premises operated under a Class "A," Class "B" or "Class C" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under § 125.18, Wis. Stats., is valid outside the municipality that issues it. For the purpose of this section, any person holding a manager's license under § 125.18, Wis. Stats., or any member of the licensee's or permittee's immediate family who has attained the age of 18 shall be considered the holder

7. Editor's Note: Former § 255-19, Cabaret permit, was repealed 9-10-2012 by Ord. No. 364.

of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent, may serve fermented malt beverages in any place operated under a Class "A," Class "B," or "Class C" license or permit unless he or she has an operator's license or is at least 18 years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.

B. Use by another prohibited.

- (1) No person may allow another to use his or her Class "A" or Class "B" license or permit to sell alcohol beverages.
- (2) The license or permit of a person who violates Subsection B(1) above shall be revoked.

§ 255-21. Procedure upon application for operator's license.

- A. The Common Council may issue an operator's license, which license shall be granted only upon application in writing on forms to be obtained from the City Clerk only to persons 18 years of age or older. Operator's licenses shall be operative only within the limits of the City.
- B. All applications are subject to an investigation by the Chief of Police and/or other appropriate authority to determine whether the applicant and/or premises to be licensed complies with all regulations, ordinances and laws applicable thereto. The Police Department shall conduct an investigation of the applicant including, but not limited to, requesting information from the state, surrounding municipalities, and/or any community where the applicant has previously resided concerning the applicant's arrest and conviction record. Based upon such investigation, the Chief of Police shall recommend, in writing, to the Common Council approval or denial of the application. If the Chief of Police recommends denial, the Chief of Police shall provide, in writing, the reasons for such recommendation.

§ 255-22. Duration of operator's license.

Licenses issued under the provisions of §§ 255-20 through 255-28 of this article shall be valid for a period of one year and shall expire on the 30th day of June of each year.

§ 255-23. Operator's license fee. ⁸

The annual fee for an operator's license shall be as set by the Common Council.

§ 255-24. Provisional operator's license. ⁹

A provisional operator's license may be issued by the City Clerk in accordance with § 125.17(5), Wis. Stats., only to a person who has applied for an operator's license. A provisional license may

8. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

9. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

not be issued to any person who has been denied a license by the Common Council. A provisional license expires 60 days after its issuance or when a regular operator's license is issued to the holder, whichever is sooner. The fee for a provisional operator's license shall be as set by the Common Council.

§ 255-25. Issuance or denial of operator's license.

- A. After the Common Council approves the granting of an operator's license, the City Clerk shall issue the license. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- B. Denial.
 - (1) If the application is denied by the Common Council, the City Clerk shall, in writing, inform the applicant of the denial, the reasons therefor, and of the opportunity to request a reconsideration of the application by the Common Council in a closed session. Such notice must be sent by registered mail to, or served upon, the applicant at least 10 days prior to the Council's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.
 - (2) If, upon reconsideration, the Board again denies the application, the City Clerk shall notify the applicant in writing of the reasons therefor. An applicant who is denied any license upon reconsideration of the matter, may apply to Circuit Court pursuant to § 125.12(2)(d), Wis. Stats., for review.
- C. Criteria for granting or denying license.
 - (1) Consideration for the granting or denial of a license will be based on:
 - (a) Arrest and conviction record of the applicant, subject to the limitations imposed by §§ 111.321, 111.322, and 111.335, Wis. Stats.;
 - (b) The financial responsibility 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.
 - (2) If a licensee is convicted of an offense substantially related to the licensed activity, the Common Council may act to revoke or suspend the license.
- D. An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two offenses which are substantially related to the licensed activity within the five years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Common Council, the Common Council reserves the right to

consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Common Council, at its discretion, may, based upon an arrest or conviction record of two or more offenses which are substantially related to the licensed activity within the five years immediately preceding, act to suspend such license for a period of one year or more.

§ 255-26. Training course.

- A. Except as provided in Subsection B below, the Common Council may not issue an operator's license 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 educational approval board, or unless the applicant fulfills one of the following requirements:
 - (1) The person is renewing an operator's license.
 - (2) Within the past two years, the person held a Class "A," Class "B," "Class A," "Class B," or "Class C" license or permit or a manager's or operator's license.
 - (3) Within the past two years, the person has completed such a training course.
- B. The Common Council may issue a provisional operator's license to a person who is enrolled in a training course under Subsection A above and shall revoke that license if the applicant fails successfully to complete the course in which he or she enrolls.
- C. The Common Council may not require that applicants for operators' licenses undergo training in addition to that under Subsection A, but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under Subsection A.

§ 255-27. Display of operator's license. [Amended 10-18-2006 by Ord. No. 335]

Each license issued under the provisions of this article shall be posted on the premises whenever the operator dispenses beverages or be in his possession.

§ 255-28. Revocation of operator's license.

Violation of any of the terms or provisions of the state law or of §§ 255-20 through 255-28 of this article relating to operator's licenses by any person holding such operator's license shall be cause for revocation of the license.

§ 255-29. Violations and penalties. [Amended 10-18-2006 by Ord. No. 335]

- A. Any person who shall violate any provision of this article or who shall conduct any activity or make any sale for which a license is required without a license shall be subject to a forfeiture as provided in Chapter 1, General Provisions, Article I, § 1-3, Violations and penalties, of the Code of the City of Bayfield.

- B. Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

ARTICLE II

Offenses Involving Alcoholic Beverages

[Adopted 4-1-1992 (§§ 11-4-1 through 11-4-9 of the 1992 Code of Ordinances)]

§ 255-30. Outside consumption.

- A. Alcoholic beverages in public areas. [Amended 10-18-2006 by Ord. No. 335; 9-10-2012 by Ord. No. 365]
- (1) Regulations. It shall be unlawful for any person to sell, serve or give away, or offer to sell, serve or give away, any alcoholic beverage upon any public street, sidewalk, alley, public parking lot, highway, cemetery or drives or other public area within the City of Bayfield or on private property without the owner's consent, except at licensed premises. It shall be unlawful for any person to consume, carry for purpose of immediate consumption, or have in his possession any open container containing an alcoholic beverage upon any public street, public sidewalk, public way, public alley or public parking lot within the City except as licensed premises.
 - (2) Private property held out for public use. It shall be unlawful for any person to consume any alcohol beverages upon any private property held open for public use within the City unless the property is specifically named as being part of a licensed premises.
 - (3) Leaving licensed premises with open container.
 - (a) It shall be unlawful for any licensee, permittee or operator to permit any patron to leave the licensed premises with an open container containing any alcohol beverage.
 - (b) It shall be unlawful for any patron to leave a licensed premises with an open container containing any alcohol beverage.
 - (4) Exceptions to the provisions of Subsection A(1), (2), and (3) of this section are as follows:
 - (a) The provisions may be waived by the Common Council for duty authorized events.
 - (b) The provisions shall not apply to any organization which has been issued a special Class "B" fermented malt beverage picnic license pursuant to the Code of the City of Bayfield, provided that the provisions of this article and Article I, Licenses, of this chapter are fully complied with.
 - (c) The provisions of Subsection A(1) shall not apply in Dalrymple Park or East Dock Park.
 - (d) From 8:00 a.m. on the first Friday of October of each year to 8:00 a.m. the following Monday (Apple Fest), the provisions shall not apply to fermented beverages or wine contained in a non-glass container during statutorily

authorized hours of operation for establishments selling alcoholic beverages. The City elects to come under § 125.51(3)(b), Wis. Stats. for purposes of this provision as it pertains to wine.

B. Definitions. As used in herein, the following terms shall have the meanings indicated:

ALCOHOLIC BEVERAGE — As used in this section, includes all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented, or not, and by whatever name called, as well as all liquors and liquids made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated or degerminated grains or sugar, which contain 1/2 of 1% or more of alcohol by volume and which are fit for use for beverage purposes.

PUBLIC AREA — As used in this section, shall be construed to mean any location within the City which is open to access to persons not requiring specific permission of the owner to be at such location, including all parking lots serving commercial establishments.

UNDERAGE PERSON — As used in this article, means any person under the legal drinking age as defined by the Wisconsin Statutes.

§ 255-31. Sale to underage or intoxicated persons restricted.

A. Sales of alcohol beverages to underage persons.

- (1) No person may procure for, sell, dispense or give away any fermented malt beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, or procure for, sell, dispense or give away any intoxicating liquor to any underage person.
- (2) No license or permittee may sell, vend, deal or traffic in fermented malt beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age or sell, vend, deal or traffic in intoxicating liquor to or with any underage person.

B. Penalties. A person who commits a violation of Subsection A above is subject to a forfeiture of:

- (1) Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or
- (2) Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.
- (3) In addition to the forfeitures provided in Subsection B(1) and (2) above, the Common Council shall suspend any license issued under Article I, Licenses, of this chapter to a person violating this section pursuant to § 125.07(1)(b)3, Wis. Stats.

C. Sale of alcohol beverages to intoxicated persons.

- (1) No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.

- (2) No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.

D. Penalties. Any person who violates Subsection C above shall be subject to a forfeiture of not less than \$100 nor more than \$500 and, on default of payment of such forfeiture, shall be imprisoned until such forfeiture is paid, but not to exceed 60 days. [Amended 10-18-2006 by Ord. No. 335]

§ 255-32. Underage persons' presence in places of sale; violations and penalties.

A. Restrictions. An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This subsection does not apply to:

- (1) An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.
- (2) An underage person who enters or is on a "Class A" retail intoxicating liquor premises for the purpose of purchasing edibles or beverages other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.
- (3) Hotels, drugstores, grocery stores, bowling alleys, cars operated by any railroad, regularly established athletic fields, stadiums or public facilities as defined in § 125.51(5)(b)1.d, Wis. Stats., which are owned by a county or municipality.
- (4) Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in Chs. 27 and 28, Wis. Stats., and parks owned or operated by agricultural societies.
- (5) Ski chalets, golf clubhouses and private tennis clubs.
- (6) Premises operated under both a Class "B" fermented malt beverage or "Class B" alcohol beverage license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class "B" or "Class B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.
- (7) An underage person who enters or remains on a Class "B" or "Class B" premises for the purpose of transacting business at an auction or market if the person does not enter or remain in a room where alcohol beverages are sold or furnished.¹⁰

10. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

(8) An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served for the purpose of engaging in marching or drilling with a group of other persons if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this subsection. An underage person may enter and remain on Class "B" alcoholic beverage or "Class B" fermented malt beverage premises under this subsection only if the municipality which issued the Class "B" fermented malt beverage or "Class B" alcoholic beverage license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subsection and the law enforcement agency responsible for enforcing the ordinance issues to the Class "B" alcoholic beverage or "Class B" fermented malt beverage licensee a written authorization permitting underage persons to be present under this subsection on the date specified in the authorization. Before issuing the authorization, the law enforcement agency 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. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.

B. Penalties. A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of Subsection A is subject to a forfeiture of not more than \$500.

§ 255-33. Underage persons; prohibitions; violations and penalties.

A. Any underage person who does any of the following is guilty of a violation:

- (1) Procures or attempts to procure alcohol beverages.
- (2) Knowingly possesses or consumes intoxicating liquor.
- (3) Enters or is on licensed premises in violation of § 255-32A.
- (4) Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.
- (5) Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information.
- (6) Makes, alters or duplicates an official identification card.
- (7) Presents false information to an issuing officer in applying for an official identification.
- (8) Intentionally carries an identification card or other documentation showing that the person has attained the legal drinking age, with knowledge that the documentation is false.
- (9) Provides to another underage person an official identification card or other documentation purporting to show that the other underage person has attained the

legal drinking age, with knowledge that the documentation is false.

- B. Any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes fermented malt beverage is guilty of a violation.
- C. Any person violating Subsection A or B is subject to the following penalties:
 - (1) For a first violation, a forfeiture of not more than \$50, suspension of the person's operating privilege as provided under § 343.30 (6)(b)1, Wis. Stats., participation in a supervised work program under Subsection D or any combination of these penalties.
 - (2) For a violation committed within 12 months of a previous violation, either a forfeiture of not more than \$100, suspension of the person's operating privilege as provided under § 343.30 (6)(b)2, Wis. Stats., participation in a supervised work program under Subsection D or any combination of these penalties.
 - (3) For a violation committed within 12 months of two or more previous violations, either a forfeiture of not more than \$150, revocation of the person's operating privilege under § 343.30(6)(b)3, Wis. Stats., participation in a supervised work program under Subsection D or any combination of these penalties.
- D. Supervised work program.
 - (1) If the Court orders a person to participate in a supervised work program under Subsection D, the Court shall set standards for the program within the budgetary limits established by the Common Council. The program may provide the person with reasonable compensation reflecting the market value of the work performed, or it may consist of uncompensated community service work and shall be administered by the County Department of Public Welfare or a community agency approved by the court.
 - (2) The supervised work program shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from an agency staff member or other qualified person. The program may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.
- E. When a court revokes or suspends a person's operating privilege under Subsection C, the Department of Transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this subsection may not disclose the information to any other person or agency.
- F. A person who is under 17 years of age on the date of disposition is subject to § 938.344, Wis. Stats., unless proceedings have been instituted against the person in a court of civil or

criminal justice after dismissal of the citation under § 938.344(3), Wis. Stats.¹¹

- G. Subsections A and B do not prohibit an underage person employed by a licensee or permittee from possessing fermented malt beverages during the brewing process or for sale or delivery to customers.
- H. Subsections A and B do not prohibit an underage person employed by a brewery, a winery or a facility for the rectifying or manufacture of intoxicating liquor or the production of fuel alcohol from possessing alcohol beverages during regular working hours and in the course of employment.

§ 255-34. Defense of sellers.

- A. Defenses. Proof of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this section:
 - (1) That the purchaser falsely represented in writing and supported with other documentary proof that he or she had attained the legal drinking age.
 - (2) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.
 - (3) That the sale was made in good faith and in reliance on the written representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.
- B. Book kept by licensees and permittees. Every retail alcohol beverage licensee or permittee shall cause a book to be kept for the purpose of this subsection. The licensee or permittee or his or her employee shall require any person who has shown documentary proof that he or she has attained the legal drinking age to sign the book if the person's age is in question. The book shall show the date of the purchase of the alcohol beverages, the identification used in making the purchase, the address of the purchaser and the purchaser's signature.

§ 255-35. False or altered identification cards.

- A. Person who has attained the legal drinking age.¹²
 - (1) Any person who has attained the legal drinking age, other than one authorized by § 343.50, Wis. Stats., who makes, alters or duplicates an official identification card, who provides an official identification card to an underage person or who knowingly provides other documentation to any underage person purporting to show that the underage person has attained the legal drinking age may be subject to a forfeiture of not less than \$50 nor more than \$500 upon conviction.
 - (2) Any person who has attained the legal drinking age who, in applying for an identification card, presents false information to the issuing officer may be fined not less than \$50 nor more than \$100, and upon default of payment of such fine, shall be

11. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

imprisoned until such forfeiture is paid, but not to exceed 10 days.

- B. Any underage person who does any of the following is subject to the penalties specified under § 255-33C or D:
- (1) Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information. A law enforcement officer shall confiscate any card that violates this subsection.
 - (2) Makes, alters or duplicates an official identification card.
 - (3) Presents false information to an issuing officer in applying for an official identification card.

§ 255-36. Possession of alcohol beverages on school grounds prohibited.

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

MOTOR VEHICLE — A motor vehicle owned, rented or consigned to a school.

SCHOOL — A public, parochial or private school which provides an educational program for one or more grades between grades one and 12 and which is commonly known as an "elementary school," "middle school," "junior high school," "senior high school" or "high school."

SCHOOL ADMINISTRATOR — The person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.

SCHOOL PREMISES — Premises owned, rented or under the control of a school.

- B. Except as provided by Subsection C no person may possess or consume alcohol beverages:
- (1) On school premises;
 - (2) In a motor vehicle, if a pupil attending the school is in the motor vehicle; or
 - (3) While participating in a school-sponsored activity.
- C. Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.
- D. A person who violates this section is subject to a forfeiture of not more than \$200, except that § 48.344, Wis. Stats., and § 255-33C and D of this article provide the penalties applicable to underage persons.

§ 255-37. Adult permitting or encouraging underage violation.

- A. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the person or under the person's control. This subsection does not apply to alcohol beverages used exclusively as part of a religious service.

- B. No adult may intentionally encourage or contribute to a violation of § 255-33A or B.
- C. A person who violates this section is subject to a forfeiture of not more than \$200.

§ 255-38. Solicitation of drinks prohibited.

Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued by the City who permits an entertainer or an employee to solicit a drink of any alcohol beverage defined in § 125.02(1), Wis. Stats., or any other drink from a customer on the premises, or any entertainer or employee who solicits such drinks from any customer is deemed in violation of this section.