

Chapter 6

**ALCOHOL BEVERAGES\***

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\* **Cross References**--Businesses, ch. 18; drunkenness, § 54.103.

**State Law References**--Alcohol beverages generally, Wis. Stats. § 125.01 et seq.

## ARTICLE I. IN GENERAL

### **Sec. 6.100. Provisions of state law adopted by reference.**

(a) Except as otherwise specifically provided in this chapter, all provisions of Wis. Stats. ch. 125, as amended, relating to alcohol beverages, are adopted and by reference made a part of this chapter as if fully set forth. Any act required to be performed or prohibited by any statute incorporated in this chapter by reference is required or prohibited by this chapter.

(b) Sections of Wis. Stats. ch. 125 adopted by reference shall include but not be limited to the following:

Wis. Stats. § 125.02	(Definitions)
Wis. Stats. § 125.04	(General licensing requirements)
Wis. Stats. § 125.07	(Underage and intoxicated persons; presence on licensed premises; possession; penalties)
Wis. Stats. § 125.09	(General restrictions)
Wis. Stats. § 125.11(1)	(Penalties--except for imprisonment)
Wis. Stats. § 125.12	(Revocations, suspensions, refusing to issue or renew)
Wis. Stats. § 125.13	(Report of suspension, revocation or imposition of penalty)
Wis. Stats. § 125.14	(Enforcement provisions)
Wis. Stats. § 125.17	(Issuance of operators licenses)
Wis. Stats. § 125.18	(Issuance of managers licenses)
Wis. Stats. § 125.185	(Provisional retail licenses)
Wis. Stats. § 125.25	(Class "A" licenses)
Wis. Stats. § 125.26	(Class "B" licenses)
Wis. Stats. § 125.27	(Class "B" permits)

Wis. Stats. § 125.28	(Wholesalers' licenses)
Wis. Stats. § 125.32	(General restrictions and requirements)
Wis. Stats. § 125.33	(Restrictions on dealings between brewers, wholesalers and retailers)
Wis. Stats. § 125.51	(Retail licenses and permits)
Wis. Stats. § 125.66	(Sale without license; failure to obtain permit; penalties)
Wis. Stats. § 125.67	(Evading provisions of law by giving away intoxicating liquor; penalties)
Wis. Stats. § 125.68	(General restrictions and requirements)
Wis. Stats. § 125.70	(Trade show samples)

(Ord. of 7-23-1984, § 2)

**Sec. 6.101. Penalties.**

(a) Any person who shall violate any of the provisions of Wis. Stats. ch. 125 adopted in this chapter by reference shall be assessed a forfeiture in an amount not exceeding the maximum fine provided in Wis. Stats. ch. 125 for such violation and in default of payment shall be confined in the county jail for a period not to exceed 90 days. Any person violating any other provision of this chapter shall upon conviction be punished by a forfeiture in an amount not exceeding \$500.00, together with the costs of prosecution, and in default of payment of such fine and costs shall be committed to the county jail for a period not to exceed 90 days.

(b) Upon written charges made and filed with the village clerk/treasurer by the chief of police or by any resident of the village that any person has violated any of the provisions of this chapter, the village may revoke, suspend or refuse to renew any license or permit allowing the sale of alcohol beverages to the premises upon which the violation takes place. The procedures of Wis. Stats. § 125.12(2) shall be followed before any such license may be revoked or suspended.

(c) In addition to the penalties provided in subsection (b) of this section, any person violating this chapter shall upon conviction pay a forfeiture of not less than \$100.00 nor more than \$300.00 together with the costs of prosecution, and in default of

payment shall be imprisoned in the county jail for a period of 30 days. Each day during which a violation shall continue shall constitute a new and separate offense.

(Ord. of 7-23-1984, § 4; Ord. of 12-5-1990, § 8)

## **ARTICLE II. LICENSES AND FEES**

### **Sec. 6.102. License restrictions; delinquent taxes, assessments, other claims.**

(a) *Premises.* No initial or renewal alcohol beverage license shall be granted for any premises for which taxes, assessments or other claims of the village are delinquent and unpaid.

(b) *Persons.* No initial or renewal alcohol license shall be granted to any person delinquent in payment:

- (1) Of any taxes, assessments or other claims owed to the village.
- (2) Of a forfeiture resulting from a violation of any ordinance.
- (3) To the state of any state taxes owed.

(c) *Required Period Open for Business.* Any establishment for which a Class “A” or Class “B” fermented malt beverage, “Class A” or “Class B” intoxicating liquor or “Class C” wine license has been granted shall be open for business and in full operation within 6 months of granting of such license. In the event any such business is not open and in full operation within 6 months of granting said license it shall be deemed revoked.

(Ord. No. 562, § 1, 6-13-1983, Ord. of 6-28-2006 and Ord. of 9-24-2010)

### **Sec. 6.103. Retail liquor, beer and Operator license fees.**

(a) *Class A licenses.* The annual fees for class A licenses shall be as set by board resolution, and this fee shall be listed in the schedule of licenses and permit fees.

(b) *Class B licenses.* The annual fees for class B licenses shall be as set by board resolution, and this fee shall be listed in the schedule of licenses and permit fees.

(c) *Reserve Class B Liquor Licenses.* The fee for reserve Class B Liquor License shall be \$10,000.00 for the initial issuance except that the fee for the initial issuance of a Reserve Class B License to a bona fide club or lodge situated and incorporated in the state for at least six (6) years is the fee established in subdivision (b) for such a club or lodge. The annual fee for renewal of a Reserve Class B

1. The Village of Weston hereby finds that it is in the interests of the public welfare to increase the property tax base, provide employment opportunities, attract tourists, and generally enhance the economic and cultural climate of the community by providing additional economic incentives for new businesses with liquor licenses. License is the fee established in subdivision (b).
  
2. After the granting of any new Reserve Class B License and payment of the \$10,000.00 initial issuance fee, the applicant may file an application for an Economic Development Grant of \$9,300.00 with the Village Clerk. The Clerk shall determine whether the licensee is operating in compliance with the approved license. The Clerk may require the assistance of any other Village agency in making said determination. If the Clerk determines that the licensee is so operating, the Clerk shall authorize the approval of the \$9,300.00 Economic Development Grant. If the Clerk determines that the licensee is not in compliance with the approved license, no Economic Development Grant may be authorized, and the Clerk shall make such finding in writing and cause to be delivered a copy of the findings to the licensee. If the licensee disagrees with the Clerk's determination, the licensee may file a written notice of appeal upon the Clerk within ten (10) calendar days of the written notice of the Clerk's findings. Upon receiving such notice from the licensee, the Clerk shall relay said notice to the VILLAGE BOARD which shall hold a hearing thereon. The VILLAGE BOARD may affirm or reverse the Clerk's determination. If the Clerk's determination is upheld, an appeal thereon may be taken to the Circuit Court pursuant to §753.04, Wis. Stats. If the Clerk's determination is reversed, the Clerk shall authorize the payment of the Economic Development Grant.

(d) *Operator's Licenses.* The fee for an operator's license shall be as set by board resolution, and this fee shall be listed in the schedule of licenses and permit fees and except as otherwise provided shall be issued for one year and shall expire on June 30 of the year for which issued.

(e) *Liquor, beer and operator late filing application fee.* All renewal applications for liquor, beer and operator licenses shall be filed by the application deadline. A late fee of 10% shall be imposed on any license renewal application filed after the application deadline.

(Code 1982, ord. Of 11-06-06 § 12.03 ; Ord. of 9-24-2010; Ord. of 6-9-2011)

**Sec. 6.104. Issuance of alcohol beverage licenses.**

(a) *Village of Weston Policy Guidelines for Alcohol Beverage Licenses*

- (1) **Intent.** It is the responsibility of the Village Clerk and the Everest Metro Police Department to screen applications for alcohol beverage licenses in the Village of Weston. The Village of Weston adopts the following guidelines in order to specify the reasons for denying, non-renewing or revoking an alcohol beverage license.

All applications for alcohol beverage licenses are forwarded to the Everest Metro Police Department for a background check. The Police Department will review the forwarded application and make a recommendation to the Village Board regarding approval or denial. The Village Board makes the final decision on licensing by either accepting or rejecting the recommendation. If the Village Board denies, revokes, suspends or does not renew a license, that person will be notified, in writing, of the denial and the guideline that was used as reason for the denial.

The following guidelines are established by the Village Board to provide a framework for which persons are eligible for issuance of an alcohol beverage license (i.e. grounds for denial) and a framework for suspension, revocation or non-renewal. There is broad discretion retained on behalf of the Village Board to consider each case on an individual basis. Deviation from the guidelines may be allowed if mitigating circumstances exist, which may include, but are not limited to, the particular circumstances documented or the length of time that has expired since the offense.

Individuals granted an alcohol beverage license must act in cooperation with law enforcement to enforce the alcohol beverage laws, drunk driving laws, and assist in minimizing disturbances of the peace and maintaining the safety of the community. Therefore, individuals with a past history of negative or uncooperative contacts with police agencies will be scrutinized; provided, however, that the Village Board shall not discriminate against such applicants based on a prior arrest or conviction record, pursuant to Wis. Stat. 111.321, 111.322, 111.335 and 125.12(1)(b), unless said arrest or conviction record substantially relates to the circumstances of the particular licensed activity. It is with these goals in mind that these guidelines are adopted.

For the purposes of these guidelines, an “alcoholic beverage license”, “license” or “permit” constitutes a retail license or an operator’s license. These guidelines also apply to corporations, limited liability companies, agents and partnerships. A corporation or limited liability company with an arrest or conviction record may be issued a license if the corporation or limited liability company has terminated its relationship with all the individuals whose actions directly contributed to the conviction [Sec. 125.04(5)(c)].

The Village Board will only deny renewal of, suspend or revoke a current alcohol beverage license under these guidelines, or other justification provided by law, if the person committed an offense substantially related to the licensed activity within the license year period immediately preceding the year for which the person is seeking renewal or within the license year period in which the suspension or revocation is sought, unless the police chief demonstrates that previous offenses were not considered in the approval of the current license. In the event the person is considered for non-renewal, suspension or revocation as the result of such an offense, the Village Board shall consider all offenses, regardless of when they occurred, to determine the application of these guidelines.

**(2) What is meant by substantially related?** The law does not specifically define this term although there are many court decisions on the topic. The Wisconsin Supreme Court has stated that the purpose of the test is to assess whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed. The “substantially related” test looks at the circumstances of an offense, where it happened, when, what, etc. compared to the circumstances of the licensed activity. Where does the licensed activity typically occur, when, what is involved in performing the licensed activity, etc. Examples of “substantially related” in the context of an operator’s license: There is a substantial relationship between the illegal purchase, use and sale of controlled substances and engaging in bartending, which involves the purchase and sale of a closely regulated substance. The same is true for offenses involving alcohol, e.g. drunk driving, selling to underage, possessing and/or consuming as an underage, committing law violations while under the influence of alcohol or drugs, etc.

### **(3) Guidelines**

**Guideline 1.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of any felony, unless duly pardoned, does not qualify for an alcohol beverage license. Sec. 125.04(5)(b), Wis. Stats. (To the extent the other guidelines reference a specific offense, this guideline shall apply if the offense constitutes a felony.)

**Guideline 2.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of or has a current charge pending, for one (1) or more offenses within the last five (5) years or for two (2) or more offenses, arising out of separate incidents, within the last ten (10) years in the following subcategories, does not qualify for an alcohol beverage license:

(a) Violent crimes against the person of another, including but not limited to battery, disorderly conduct, sexual assault, injury by negligent use of a vehicle, intimidation of victim or witness.

(b) Crimes involving cooperation (or lack thereof) with law enforcement officials, including but not limited to, resisting or obstructing a police officer, bribery of public officers/employees, eluding police, bail jumping, hit and run, perjury, or acts/threats of terrorism.

(c) Manufacturing, distributing, delivering a controlled substance or a controlled substance analog; maintaining a drug trafficking place; possessing with intent to manufacture, distribute, or deliver a controlled substance or a controlled substance analog. Sec. 111.335(1)(cs), Wis. Stats.

**Guideline 3.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who has been convicted of or has a current charge pending, for two (2) or more offenses, arising out of separate incidents, within the last five (5) years in the following subcategories, does not qualify for an alcohol beverage license:

(a) Disorderly conduct, criminal damage to property, solicitation of prostitution or other prostitution related offenses, wherein the offense involves an incident at a place that is, or should have been licensed under Wis. Stat. Ch. 125.

(b) Alcohol beverage offenses (under Wis. Stat. Ch. 125 or adopting ordinances excluding administrative violations such as “failure to post license under glass”). (furnishing alcoholic beverages to underage persons shall not be used as grounds for suspension, revocation, or non-renewal of an existing license unless the licensee has committed two (2) violations within a one (1) year period).

(c) Perjury or false swearing wherein the offense involves an incident at a place that is, or should have been licensed under Wis. Stat. Ch. 125.

(d) Possessing a controlled substance, controlled substance analog without a valid prescription, or possessing drug paraphernalia.

(e) Operating a motor vehicle while under the influence of intoxicants or drugs.

(f) Operating a motor vehicle with a prohibited alcohol concentration (PAC) in excess of .08% by weight.

(g) Open intoxicants in public places or in a motor vehicle.

**Guideline 4.** Provided the circumstances of the offense substantially relate to the circumstances of the job or licensed activity, any person who is a habitual law offender does not qualify for an alcohol beverage license. Sec. 125.04(5)(b), Wis. Stats. For purposes of these guidelines, a habitual offender includes, but is not limited to a person who has committed:

(a) Two (2) or more offenses, each a separate incident, within the immediately preceding one (1) year.

(b) Three (3) or more offenses, each a separate incident, within the immediately preceding five (5) years.

(c) Six (6) or more offenses, each a separate incident, within the preceding ten (10) years.

**What is a “habitual law offender?”** The term “habitual” refers to multiple convictions or pending charges and could include an offender with two (2) offenses occurring within a relatively short period of time. 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 licensing activity. A legal opinion rendered by the League of Wisconsin Municipalities states that a person with two drunk driving convictions within the last couple of years would be considered an habitual offender under the alcohol beverage licensing laws. Intoxicating Liquors #890 (1991).

**Guideline 5.** In addition to the other provisions under these guidelines, pursuant to Wis. Stat. Ch. 125.12, a person’s alcoholic beverage license may be denied, non-renewed, suspended or revoked if the person:

(a) Keeps or maintains a disorderly or riotous, indecent or improper house.

(b) Sold or has given away alcoholic beverages to known habitual drunkards.

(c) Does not possess the qualifications under Chapter 6 of the Weston Ordinances to hold a license.

**Guideline 6.** Applicants must truthfully and completely fill out applications.

(a) If an applicant provides false information on an application, that application shall be denied and the applicant shall not be eligible to reapply for an alcohol beverage license for a period of one (1) year from the date of denial of such application.

(b) If it is determined that information was intentionally omitted from an application, the application shall be denied and the applicant shall not be eligible to reapply for an alcohol beverage license for a period of one (1) year from the date of denial of such application.

(c) If the Village Clerk or Police Chief determines that information was omitted from an application due to inadvertence, mistake or excusable neglect, the Village Clerk may allow the applicant to submit a corrected application and recommend granting the license if the applicant is otherwise qualified.

(b). No alcohol beverage license shall be issued, except as otherwise provided, unless the individual, partners or agents have completed a responsible beverage server training course. Applicants are exempted from the training course requirement if they meet Wis. Stats. § 125.04(5)5. Operator License applicants may be issued a provisional operator's license if they are enrolled in a training course.

(c). Provisional operator's license. The Village Clerk shall issue a provisional operator's license to a person who has applied for an operator's license. The standards contained in subsections (b) and (c) of this section shall apply to any person issued a provisional operator's license. Such license shall be effective for a period of 60 days or until a regular operator's license is issued, whichever event shall first occur. The fee for a provisional operator's license shall be set by the board in the village fee schedule.

(d) Provisional retail license. The Village Clerk may issue provisional retail licenses in accordance with Section 125.185 of the Wisconsin Statutes, and the requirements of this section. Such licenses shall be issued within ten days of application. Provisional retail licenses may be issued only to persons applying for Class "A" beer, Class "B" beer, Class "A" liquor, Class "B" liquor, or Class "C" wine authorizing only the activities allowed under that type of license. The fee for a provisional retail license shall be set by the board in the village fee schedule. The provisional retail license shall expire sixty days after issuance or when the person is issued a retail license described in Wis. Stats. § 125.51. The Provisional license may be revoked by the Village Clerk or Police Chief if it is discovered that the holder of the license made any false statement in the application for the license. Prior to issuing the provisional retail license, the Police Chief, shall conduct a background check on the applicant. Such a background check shall occur within ten days of application under this section. The Village Clerk shall not issue the provisional license until receiving the results of any background check. The Village Clerk may not issue any provisional license under this section if such issuance will

violate the Village's quota under Chapter 125 of the Wisconsin Statutes. No person may hold more than one provisional retail license for each type of license applied for per year.

(e). If an alcohol beverage license application is denied, the applicant has the right to file an appeal with the Village Clerk within thirty (30) days and appear and be represented before the Village Board to be heard, to present evidence in favor of the granting of the license, and to rebut evidence presented in opposition to the granting of the license, at a hearing held within forty (40) days of the filing of such appeal.

(Code 1982, § 12.04; Ord. of 5-20-1991, §§ 2, 3; Ord. of 9-24-2010; Ord. of 4-22-2011)

**Sec. 6.105. Fermented malt beverages; closing hours and restricting hours of sale.**

Closing hours and restrictions on hours of sale for Class A, Class B, Class C licenses or wineries shall be in conformity with § 125.32(3) Wis. Stats.

(Code 1982, § 12.07; Ord. of 9-24-2010; Ord. of 12-22-2011)

**ARTICLE III. ADULT ENTERTAINMENT ESTABLISHMENTS\***

**Sec. 6.106. Legislative authorization.**

This article is enacted in the interest of the public health, peace, safety, morals and general welfare of the citizens and inhabitants of the village, pursuant to the state constitution and laws of the state and the authority of the village and exercising its right to regulate the sale and consumption of alcohol beverages, pursuant to the 21st Amendment to the Constitution of the United States.

(Ord. of 12-5-1990, § 2)

**Sec. 6.107. Findings of fact.**

The board finds that evidence has been propounded that indicates that nudity and sexual conduct and their depiction, coupled with alcohol in public places, beget undesirable behavior, and that prostitution, attempted rape, rape, murder and assaults on police officers have occurred in and around establishments dealing in alcohol beverages where nude and sexual conduct and their depiction are permitted.

(Ord. of 12-5-1990, § 4)

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\* **Cross References**--Adult-oriented establishments generally, § 18.103 et seq.

**Sec. 6.108. Intent.**

(a) It is found that the acts prohibited in section 6.110 encourage the conduct of prostitution, attempted rape, rape, murder, and assaults on police officers in and around establishments dealing in alcohol beverages, that actual and simulated nudity and sexual conduct and their depiction, coupled with alcohol in public places, beget undesirable behavior and conduct among patrons and employes with establishments dealing in alcohol beverages, which results in violation of law and dangers to the health, safety and welfare of the public.

(b) It is the intent of this article to prohibit nudity, gross sexuality, and their simulation and depiction in establishments dealing in alcohol beverages.

(Ord. of 12-5-1990, § 5)

**Sec. 6.109. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Establishment dealing in alcohol beverages* means any business or commercial establishment (whether open to the public at large or where entrance is limited by cover charge or membership requirement), including those licensed by the state for sale and/or service of alcohol beverages, and any bottle club; hotel; motel; restaurant; nightclub; country club; cabaret; meeting facility utilized by any religious, social, fraternal or similar organization; business or commercial establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that they will be, or are intended to be mixed, combined with or drunk in connection or combination with an alcohol beverage on the premises of such business or commercial establishment; or business or commercial establishment where the consumption of alcohol beverages is permitted. A private residence, whether permanent or temporary in nature, is not an establishment dealing in alcohol beverages.

(Ord. of 12-5-1990, § 6)

**Cross References--**Definitions generally, § 1.101.

**Sec. 6.110. Prohibited acts.**

(a) No person shall expose to public view his genitals, pubic area, vulva, anus, anal cleft or cleavage or buttocks or their simulation in an establishment dealing in alcohol beverages.

(b) No female person shall expose to public view any portion of her breast below the top of the areola or their simulation in the establishment dealing in alcohol beverages.

(c) No person maintaining, owning or operating an establishment dealing in alcohol beverages shall suffer or permit any person to expose to public view his genitals, pubic area, vulva, anus, anal cleft or cleavage or buttocks or their simulation within the establishment dealing in alcohol beverages.

(d) No person maintaining, owning or operating an establishment dealing in alcohol beverages shall suffer or permit any female person to expose to public view any portion of her breasts below the top of the areola or their simulation within the establishment dealing in alcohol beverages.

(e) No person shall engage in and no person maintaining, owning or operating an establishment dealing in alcohol beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, touching, caressing, fondling of the breasts, buttocks, anus or genitals or their simulation within an establishment dealing in alcohol beverages.

(f) No person shall cause and no person maintaining, owning or operating an establishment dealing in alcohol beverages shall suffer or permit the exposition of any graphic representation, including pictures or the projection of film, that depicts human genitals, pubic area, vulva, anus, anal cleft or cleavage, buttocks, female breasts below the top of the areola, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or their simulation within any establishment dealing in alcohol beverages.

(Ord. of 12-5-1990, § 7)