

CHAPTER XII

INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES - LICENSING

- 12.01 [State Law Adopted](#)
- 12.02 [License Required](#)
- 12.03 [Classes of Licenses and License Fees](#)
- 12.04 [License Year](#)
- 12.05 [One Day or Event Licenses](#)
- 12.06 [Application](#)
- 12.07 [Investigation of Applicant and Premises](#)
- 12.08 [Restrictions](#)
- 12.09 [Granting Licenses](#)
- 12.10 [Transfer](#)
- 12.11 [Closing Hours](#)
- 12.12 [Operator's Licenses](#)
- 12.13 [Other Licensed Beverages](#)
- 12.14 [Drunkenness and Consumption Outside Licensed
Premises](#)

- 12.15 [Outdoor Alcoholic Beverage Permit](#) Required
For Outdoor Consumption at Class "B"
Intoxicating Liquor, Class "B" Fermented Malt
Beverage, and "Class C" Wine Premises

- 12.16 [Social Hosting](#)
- 12.17 [Underage Persons; Prohibitions](#)
- 12.18 [Conditions](#)
- 12.19 [Revocation](#)
- 12.20 [Revocation, Suspension and Non-Renewal](#)
- 12.21 [Penalties](#)

CHAPTER XII

INTOXICATING LIQUOR, FERMENTED MALT BEVERAGES, AND WINE - LICENSING

12.01 State Laws Adopted. The provisions of Wisconsin State Statutes Chapter 125 Alcohol Beverages, including all subsequent revisions and amendments thereto, exclusive of any provisions relating to the penalty to be imposed or the punishment for violation of such Statutes, are adopted and made a part of this Chapter by reference. (updated 07/07/2015)

12.02 License Required. No person shall vend, sell, deal or traffic in, or for the purpose of evading any law or ordinance, give away, any intoxicating liquor, fermented malt beverage, or wine in any quantity whatever, or cause the same to be done without having procured a license as provided in this Code, nor without complying with all the provisions of this Code, and all statutes, ordinances and regulations applicable thereto. A separate license shall be required for each stand, place, room or enclosure, or for each suite of rooms or enclosures, which are in direct connection or communication with and contiguous to the service room and connected therewith by an archway not less than five (5) feet wide without a door or other obstruction, where intoxicating liquor, fermented malt beverages, or wine are kept, sold, or offered for sale. (Updated 08/16/11)

12.03 Classes of Licenses and License Fees. There shall be the following classes and denominations of licenses which, when issued by the Village Administrator under authority of the Village Board after payment of the fee hereinafter specified, shall permit the holder to sell, deal or traffic in intoxicating liquors, fermented malt beverages, and wine as provided in Wis. Stats. Secs. 125.25, 125.26, 125.28, and 125.51. All licenses and late fees set forth herein may be amended from time to time by Resolution of the Village Board. (Updated 08/16/11)

(A) Class "A" Fermented Malt Beverage (Beer License). Authorizes the sale of beer to consumers in original packages or containers for off-premises consumption only. Fee: As set forth in Appendix "A" Fee Schedule.

(B) Class "B" Fermented Malt Beverage. Authorizes sale of beer for consumption on or off the premises where sold. Fee: As set forth in Appendix "A" Fee Schedule. **(updated 08/16/11)**

(C) Wholesaler's Fermented Malt Beverage. Authorizes sale in original containers and in quantities not less than 4.5 gallons at any one time, not to be consumed in or about the premises where sold. Fee: As set forth in Appendix "A" Fee Schedule; or authorizes any Class "B" retailer to sell fermented malt beverages in original containers and in quantities not less than 4.5 gallons at any one time for consumption on the premises.

(D) "Class A" Liquor License. Authorizes the sale of intoxicating liquor to consumers only in original packages or containers for off-premises consumption only. Fee: As set forth in Appendix "A" Fee Schedule.

(E) "Class B" Liquor License. Authorizes the retail sale of intoxicating liquor by the glass and not in the original package or container for consumption on the premises where sold or for consumption off the premises if the licensee seals the container of intoxicating liquor with a tamper-evident seal as defined by Wis. Stat. Sec. 125.02(20g) before the intoxicating liquor is removed from the premises. In addition, wine may be sold in the original package or container in any quantity to be consumed off the premise where sold. Fee: As set forth in Appendix "A" Fee Schedule. **(Amended 4/20/2021 - Ordinance No. 503)**

(F) Class "C" Retail Wine License. Authorizes the sale of wine to be consumed by the glass or in opened containers on the premises where sold or off the premises if the licensee seals the container of wine with a temper-evident seal as defined by Wis. Stat. Sec. 125.02(20g) before the wine is removed from the premises. This license also authorizes the sale of wine in the original package or container to be consumed off the premises where sold, but does not authorize the sale of fermented malt beverages or any intoxicating liquor other than wine. The license may be

issued to a person qualified under Section 125.04(5) for a restaurant in which the sale of alcohol beverages accounts for less than fifty (50%) percent of the gross receipts and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than fifty (50%) percent of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. Fee: As set forth in Appendix "A" Fee Schedule. **(Created 08/16/11; Amended 04/21/2021 by Ord. No. 503)**

(G) "Reserve Class B" Liquor License. Any Class B license issued as a new license from the unissued pool after December 1, 1997, shall be classified as a "Reserve Class B" liquor license, which shall only be issued after a one time issuance fee of Ten Thousand (\$10,000.00) Dollars is paid the municipality, in addition to the regular annual municipal license fees. Once issued, it shall have all the rights of a "Class B" license pursuant to the Village Code and the State Statutes. This Ordinance is subject to exceptions and rules of the State of Wisconsin Chapter 125 provisions as amended by Chapter 27 of the 1997 laws of Wisconsin and further amendments thereto which are made a part of this Code provision.

12.04 License Year.

(A) The license year shall be from July 1 to June 30 following.

(B) Liquor licenses may be issued at any time during the year. The fee for the license shall be pro-rated according to the number of months or fractions thereof remaining until the following June 30. (Wis. Stat. Sec. 125.51(9)).

(C) Licenses valid for six (6) months may be issued at any time at fifty (50%) percent of the annual fee. The license may not be renewed during the calendar year in which issued.

12.05 One Day or Event Licenses. A Class "B" beer license may be issued to bona fide clubs, county or local fair associations or agricultural societies, lodges or societies that have been in existence for a least six (6) months prior to the date of application, and to posts of veterans' organizations, authorizing the sale of fermented malt beverages at a particular picnic or similar gathering or at a meeting of any such posts or during a fair

conducted by the fair association or agricultural society, for a fee as set forth in Appendix "A" Fee Schedule.

12.06 Application. Application for a license to sell or deal in intoxicating liquor, fermented malt beverages, or wine shall be made in writing on the form prescribed by law and to which the applicant shall swear as provided by Wis. Stat. Sec. 125.04(3)(f)(1) and shall be filed with the Village Administrator not less than fifteen (15) days prior to the approval and granting of such license by the Village Board. Applications not received by the Village Administrator fifteen (15) days prior to the granting of such license will be required to pay a late fee per license application as set forth in Appendix "A" Fee Schedule. Said application shall be accompanied by the cost of publication as stipulated by Wis. Stat. Sec. 125.04(3)(G). **(updated 08/16/11)**

12.07 Investigation of Applicant and Premises. The Village Administrator shall notify the building inspector, Fire Chief, and Health Officer of each license application, and these officials shall inspect or cause to be inspected each application and the premises, together with any other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the code and applicable regulations and laws, and to assess the applicant's fitness for the trust to be imposed. These officials shall separately furnish to the Village Board in writing the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused. No license shall be renewed without a re-inspection of the premises.

12.08 Restrictions. In addition to the requirements imposed by provisions of the Wisconsin Statutes adopted by reference in Section 12.01, the following restrictions shall apply to the issuance of permits or licenses:

(A) No license shall be issued unless the applicant or its agents meet the requirements of Wis. Stat. Sec. 125.04(5) and (6)(2010) as amended and renumbered from time to time. **(updated 06/05/12)**

(B) No license shall be issued to anyone less than twenty-one (21) years of age.

(C) No license shall be issued for any premises if a license covering such premises has been revoked within six (6) months prior to application. No license shall be granted to any person who has had a license issued pursuant to this section revoked within twelve (12) months prior to application.

(D) No license shall be issued for any premise that is not connected with the Village water and sewage facilities, and that is not properly lighted, ventilated, and supplied with separate sanitary toilet and lavatory facilities equipped with running water, for each sex customarily using the premises.

(E) No license shall be issued to any entity of which fifty (50%) percent or more of the equity or voting ownership legal or beneficial is owned by any person or persons not eligible for a license under this Section. **(updated 08/16/11)**

(F) No license shall be issued to any person for the purpose of possession, selling or offering for sale any intoxicating liquor in any dwelling house, flat, or residential apartment.

(G) No retail Class "B" liquor license shall be issued to any person who does not have, or to whom is not issued, a Class "B" fermented malt beverage retailer's license as provided in this Chapter.

(H) No license shall be issued to any person acting as an agent for or in the employ of another, except that this restriction shall not apply to Class "B" licenses, to a hotel or restaurant, or a bona fide club, society, or lodge, in existence more than six months prior to the date of application. Such licenses for a hotel, restaurant, club, society or lodge may be taken in the name of an officer or manager, who shall personally be responsible for compliance with the provisions of this Code.

(I) A license may be denied if the licensee has outstanding real estate or personal property taxes, special assessments, local forfeitures or other charges owing to the Village of West Salem, Wisconsin.

12.09 Granting Licenses. Opportunity shall be given to any person to be heard for or against the granting of any license. Upon the approval of the application by the Village Board and upon the filing by the applicant of the required license fee, the Village Administrator shall issue to the applicant an attested license. Each license shall be numbered in the order in which issued and shall specifically state the premises for which issued, the date of issuance, the fee paid, and the name of the licensee. Unless revoked sooner, all licenses shall remain in force until the 30th day of June following the license issuance.

12.10 Transfer.

(A) As to licensee, a license may be transferable as provided in Wis. Stats. Sec. 125.04(12)(b) and with the permission of the Village Board.

(B) As to premises, a license may be transferred to another qualified premise within the Village with the permission of the Village Board and the payment of a fee as set forth in Appendix "A" Fee Schedule, but no license may be transferred more than once in any one license year. The application and proceedings for a transfer shall be the same as for the original application. All license transfer applications must be accompanied by a written surrender of the existing license signed by the current holder which is effective upon approval of the transfer application. **(updated 08/16/11)**

12.11 Closing Hours. Wis. Stat. Sec. 125.32(e) and 125.68(4)

(A) No premises shall be permitted to remain open for the sale or consumption of liquor or fermented malt beverages:

(1) If a Class "A" Retailers license, the Class "A" premises may remain open for the conduct of their regular business but may not sell fermented malt beverages between 12:00 midnight and 6:00 a.m. nor sell intoxicating liquor between 9:00 p.m. and 6:00 a.m. Section 12.12 below does not apply to Class "A" premises between 12:00 midnight and 6:00 a.m.

(2) If a "Class B" or "Class C" Retailers license, between the hours of 2:00 a.m. and 6:00 a.m. except as otherwise provided in this paragraph and in paragraph B. below. On Saturday and Sunday between the hours of 2:30 a.m. and 6:00 a.m. On January 1st the premises are not required to be closed. Provided, however, no sale of fermented malt beverages in an original, unopened package, container, or bottle or for consumption away

from the premises between the hours of 12:00 midnight and 6:00 a.m. **(updated 01/17/12)**

(B) Hotels and restaurants whose principal business is the furnishing of food or lodging to patrons or bowling alleys may remain open for the conduct of their regular business, but may not sell fermented malt beverages during the hours specified in (A)(2).

(C) **Premises to be Promptly Vacated at Closing Hour.** No alcoholic beverage shall be sold or consumed upon any licensed premises after the official closing hour for said licensed premises, and said premises shall be promptly vacated at such closing hour by all persons except the owner and regular employees of the licensed premises except that a licensed premises whose principal business is the furnishing of some other commodity or service may remain open after the official closing hour solely for the furnishing of such other commodity or services, provided that all alcoholic beverages contained in such premises be placed in padlocked cases promptly at the closing hour and shall be kept padlocked during official closed hours.

(D) **Presence on Premises After Closing Hour Restricted.**

(1) Any person who is not an employee of the licensee who remains on the premises after the designated closing hour is subject to the penalties as provided in this Chapter.

(2) Any person, including, but not limited to, employees, licensees, owners, or agents of a premises for which an alcohol beverage license has been issued, while on the licensed premises after closing, must be actively engaged in bona fide business activities and shall not consume alcohol beverages.

(12.11(C) and (D) created by Ord. 488 on 6-18-19)

12.12 Operators License.

(A) There shall be upon the premises operated under a "Class A", "Class B", or "Class C" license at all times the licensee or some person who shall have an operator's license and who shall be responsible for the acts of all persons serving or selling, any fermented malt beverages, intoxicating liquor, or wine to customers. For purpose of this subsection, any member of the immediately family

of the licensee who has attained the age of eighteen (18), is related to the licensee and resides in the common household of the licensee shall be considered as holding an operator's license. No person, including underage members of the licensee's immediately family who do not reside in a common household with the licensee, other than the licensee or agent, may serve fermented malt beverages, intoxicating liquor or wine in any place operated under a "Class A" or "Class B" or "Class C" license unless he or she has an operator's license or is at least eighteen (18) years of age and is under the immediate supervision of the licensee, or agent or a person holding an operator's license, who is on the premises at the time of the service. **(Amended 08/16/11)**

(B) Issuance. The Village Board or Village Administrator may issue an operator's license to persons who have attained age eighteen (18) and are of good moral character and who have been citizens of the United States and residents of Wisconsin continuously for not less than one (1) year prior to the filing of an application. A written application shall be filed with the Village Administrator stating the name, residence, age, date of birth, and any other such pertinent information as to fitness as the Village Administrator shall require. Applicant shall also supply proof of successful completion of a responsible beverage server training course at any location that is offered by a technical college district and that conforms to curriculum guidelines specified by the technical college system board or a comparable training course, which may include computer-based training and testing, that is approved by the department or the department of safety and professional services. Upon the review and approval of an application by the Chief of Police and Village Board or Village Administrator, the Village Administrator shall, upon payment by the applicant of a license fee as set forth in Appendix "A" Fee Schedule, issue to the applicant a license to expire on June 30 next or within the second year following. **(Amended 4/7/2020 - Ord. 493)**

(C) Provisional License. The Village Administrator is hereby authorized to issue a provisional license for a period not to exceed sixty (60) days or until the issuance of any operator's license as provided above, whichever is shorter, to persons the Village Administrator and Chief of Police deem are otherwise qualified under this Code and Wisconsin Statutes. Said provisions license shall be for a fee as set forth in Appendix "A" Fee Schedule and may be revoked by the Village Board.

12.13 Other Licensed Beverages.

(A) Definition. "Other licensed beverages" shall mean and include malt beverages containing less than one-half of one per centum of alcohol by volume and all other liquors or liquids capable of and designed for use as beverages which contain less than one-half of one per centum of alcohol by volume and all other liquors or liquids capable of and designed for use as beverages which contain less than one-half of one per centum of alcohol by volume or no alcohol at all, and shall include soda water beverages as defined by Sec. 66.0433, Wis. Stats.

(B) Classes of Licenses and Fees. There shall be two such classes of licenses to be known as Class "D" and Class "E" licenses.

(1) A Class "D" license shall authorize its lawful holder to sell other licensed beverages as defined in subsection A. of this Section to be consumed on any premises with a Class "B" license, under Sec. 12.03 above. The fee shall be as set forth in Appendix "A" Fee Schedule.

(2) A Class "E" license shall authorize its lawful holder to sell other licensed beverages as defined above to be consumed on the premises at wholesale or retail. The fee shall be as set forth in Appendix "A" Fee Schedule. **(12.13(B)(1)(2) amended 08/16/11)**

12.14 Drunkenness and Consumption of Intoxicants Outside Licensed Premises.

(A) No person shall be so drunk or intoxicated that he or she is unable to care for his or her own safety or for the safety of others.

(B) No person shall consume any intoxicating liquor, fermented malt beverage, or wine while in or upon any public street, alley, sidewalk, or other public way.

(C) All purchases of intoxicating liquor, fermented malt beverages, or wine by the glass or in open containers shall be consumed on the licensed premises where served and shall not be removed to thoroughfares, streets, sidewalks, or other public way in the Village.

(D) No person shall be in possession of any glass or open container containing intoxicating liquor, fermented malt beverages, or wine on any thoroughfare, street, sidewalk, or other public way. **(12.14(B),(C),(D) amended 08/16/11)**

12.15 Outdoor Alcoholic Beverage Permit Required for Outdoor Consumption at Class B" Intoxicating Liquor; Class "B" Fermented Malt Beverage; and "Class C" Wine Premises.

(A) Definition. An Outdoor Alcoholic Beverage Garden (hereinafter "OABG") is defined as an open air, roofed, or unroofed area contiguous with and adjacent to any Class "B" intoxicating liquor and/or Class "B" fermented malt beverage or "Class C" wine licensed premises, where beer and other alcoholic beverages are served or consumed, which is not included within the licensed premises. Not included in the definition are any premises where individuals under the age of twenty-one (21) are allowed by State Statute (for example but not by way of limitation: outdoor volleyball facilities and outdoor restaurants where alcohol sales account for less than fifty (50%) percent of gross receipts).

(B) Required for Outdoor Consumption. No licensee shall permit the consumption of alcoholic beverages on any part of their property unless it is a licensed premises enclosed within the building, except under an OABG permit granted by the Village Board or in areas where any individual under the age of twenty-one (21) may be present, pursuant to state statute. The permits are a privilege in which no rights vest, and, therefore, may be revoked by the Village Board for violation of this ordinance, State law or any condition imposed on the OABG permit or shall otherwise expire on June 30 of each year. An initial permit request may be applied for any time throughout the year, by completing a 'Village Outdoor Alcoholic Beverage Application' available from the Village Administrator and filing along with the applicable fee with the Village Administrator, but after the initial request is approved, any and all renewals shall accompany the regular license renewal application. No person shall consume or have in his or her possession alcoholic beverages on any property open to the public unless authorized by statute or within a building area licensed as a premises or in an area which is described in a valid Outdoor Alcoholic Beverage permit and which is a "OABG". No "OABG" may be operated without a permit issued under this section.

(C) Limitations on Issuance of Outdoor Alcoholic Beverage Permits.

(1) No Outdoor Alcoholic Beverage Permit shall be issued if the OABG area is greater than fifty (50%) percent of the gross floor area open to the public of the licensed premises enclosed within the building. Each applicant for an

OABG Permit shall, as part of the written application, accurately describe the area intended for use as an OABG area and shall indicate the nature of fencing, wall or other measures intended to provide control over the operation of the OABG area. Applicants shall submit a site plan professionally drawn to scale and an application for review by the Planning Commission. The Planning Commission will review all proposed Outdoor Alcoholic Beverage Permit design plans and applications to determine impacts upon the surrounding neighborhood and then recommend that the license be granted as requested considering zoning, current or proposed usage, and current improvements in the neighborhood or grant subject to specific improvement or usage conditions.

(2) Every outdoor entertaining area shall be **entirely** enclosed with a permanent barrier (which may be a fence, wall or part wall) not less than three (3') feet in height, and shall include one door or gate access to the open air. The gate or door must be placed and built so as to provide an open view for the public from the outside of the entire OABG without obstruction. This viewing area by window or otherwise must be at least 24" wide and at least 24" in height, part of which is located 5 feet above outside ground level. (Please note Wis. Stat. Sec. 101.23 does not allow smoking in an "enclosed space" which is currently defined as a roofed area with more than 2 substantial walls. This means under current State law, smoking is only allowed in an OABG if there is no roof, or if there is a roof, at least 2 of the walls are 25% or more open to the outside. This is State law not Village code and hence any changes in State law must be complied with immediately)

(3) Access to the OABG area shall be through the gate or door to the open air and a door to the Class "B" Intoxicating Liquor; Class "B" Fermented Malt Beverage; or "Class C" wine premises. All OABG improvements must meet current building code requirements and go through the Villages normal building permit and inspection process.

(D) Granting. The Village Administrator shall refer all applications for OABG Permits to the Police Chief, West Salem Fire District and Building Inspector for investigation. These departments shall furnish to the Planning Commission, in writing, a recommendation as to what conditions the license should be granted under. Upon approval of the Village Board, the Village Administrator shall issue a permit.

(E) Restrictions. All premises receiving OABG Permits will be required to comply with all of the following restrictions:

- (1) No amplified sound or music is permitted outside the enclosed (building) premises. Amplified sound or music is not permitted in the OABG area.
- (2) Sales of alcoholic beverages may occur in the OABG area.
- (3) The OABG area may only be open any time the licensed premises is allowed to sell alcohol by law.
- (4) All employees with operator's license and the licensee if working on premises shall be responsible for policing the OABG area at all times it is open for operation to prevent nuisances described herein.
- (5) The licensed premise's building capacity shall remain the same even with the addition of an OABG.
- (6) A licensee shall not permit activities in the OABG area to constitute a nuisance which includes, but is not limited to, excessive noise, excessive light, minor on premises issues, fights, drug dealing and/or use, disorderly conduct, and littering of public areas and adjacent private properties caused by use of the OABG.
- (7) A licensee shall comply with all other applicable State Statutes and Village Ordinances.
- (8) Within 15 minutes **after** closing time the licensee must clear the OABG of all patrons and all glasses, cups, bottles and litter.
- (9) The door and any service window from the building and into the OABG must be closed except when being actively used.
- (10) Licensee of the premises must place written notice to all patrons at gate or door from OABG to open air and at all doors from licensed premises to open air that "Open containers of alcohol are prohibited on Village streets, alleys and sidewalks by Ordinance".

(F) Adjoining Property Owners to be Notified of Pendency of Applications. All property owners within Three Hundred feet (300') of the proposed OABG area measured from property line to property line shall be notified of the pendency of application for an

Outdoor Alcoholic Beverage Permit and notice of a public informational hearing to be held by the Planning Commission prior to Village Board approval. Such notice shall be made by the Village Administrator's office via first class mail.

(G) Authority of Police to Suspend Outdoor Alcoholic Beverage Permit. The Police Department has the authority to order any OABG area to be closed down by suspension at any time the Police Chief believes its continued operation is in violation of this ordinance, any other applicable Village ordinance, or provisions of Ch. 125, Wisconsin Statutes. Suspension shall be subject to review by the Village Board at a public hearing within 30 days of a request by a licensee.

(H) State Statutes Enforced Within Outdoor Entertaining Area. Every licensee under this Section shall comply with and enforce all provisions of Ch. 125, Wis. Stats., applicable to "Class B" or "Class C" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Chapter 125, Wis. Stats., or this Ordinance shall be grounds for immediate suspension, revocation or non-renewal of the OABG permit by the Village Board.

(I) Fee. The fee which shall accompany the initial OABG application and any latter amendment after initial approval shall be Three Hundred (\$300.00) Dollars. The fees as set forth herein shall be subject to change annually by the Board in its annual fee schedule.

(12.15 created 08/16/11)

12.16 Social Hosting.

(A) The Village of West Salem intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and it intends to hold persons civilly responsible who host events or gatherings where persons under twenty-one (21) years of age possess or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. The Village Board finds:

- (1) Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of twenty-one (21) years are harmful to those

persons and constitute a potential threat to public health requiring prevention or abatement.

(2) Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.

(3) Alcohol is an addictive drug, which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.

(4) Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. However, there are times when the parent(s) is/are present and condone the activity, and in some circumstances, provide the alcohol.

(5) A deterrent effect will be created by holding a person responsible for hosting an event or gathering where underage possession or consumption occurs.

(B) Definitions. For purposes of this Section, the following terms have the following meanings:

(1) Alcohol. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.

(2) Alcoholic Beverage. "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one (1%) percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(3) Event or Gathering. "Event or gathering" means any group of three (3) or more persons who have assembled or gathered together for a social occasion or other activity.

(4) Host or Allow. "Host" or "allow" means to intentionally aid, hire, counsel, conduct, entertain, organize, supervise, control or conspire with or otherwise procure another to commit the prohibited act. A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible if the person has the requisite knowledge and acts intentionally.

(5) Parent. "Parent" means any person having legal custody of a juvenile:

- (a) As natural, adoptive parent, or step-parent;
- (b) As a legal guardian; or
- (c) As a person to whom legal custody has been given by order of the Court.

(6) Residences, Premises or Public or Private Property. "Residence", "premises", or "public or private property" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room or other dwelling unit, or a hall or meeting room, park or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.

(7) Underage Person. "Underage person" is any individual under twenty-one (21) years of age.

(8) Present. "Present" is being at hand or in attendance.

(9) In Control. "In control" is the power to direct, manage, oversee and/or restrict the affairs, business, or assets of a person or entity.

(C) Prohibited Acts. It is unlawful for any person(s) to host or allow an event or gathering at any residence, premises, or on any other private or public property where alcohol or alcoholic beverages are present when the person fails to take reasonable steps within that person's legal authority to prevent possession or consumption by the underage person(s) and the person knows:

- (1) that an underage person will:
 - (a) consume any alcohol or alcoholic beverage; or
 - (b) possess any alcohol or alcoholic beverage with the intent to consume it; or
- (2) that an underage person is currently:
 - (a) consuming any alcohol or alcoholic beverage; or
 - (b) is in possession of any alcohol or alcoholic beverage with the intent to consume it.

(D) Exceptions.

(1) This Chapter does not apply to conduct solely between an underage person and his or her parent while the parent is present and in control of the underage person.

(2) This Chapter does not apply to legally-protected religious observances.

(3) This Chapter does not apply to situations where underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of their employment.

(4) This Chapter does not apply to landlords unless the landlord qualifies as a parent of one of the tenants.

(E) Penalties. A person who violates any provision of this Ordinance is subject to a forfeiture of not less than \$1,000 nor more than \$5,000, together with the costs of prosecution. A person who is in default of payment is subject to imprisonment in the county jail until the forfeiture and costs are paid.

(12.16 Created per Ord. 466 - 10/20/15)

12.17 Underage Persons; Prohibitions.

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

(1) Procures or attempts to procure alcohol beverages from a licensee or permittee.

(2) Unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.

(3) Enters, knowingly attempts to enter, or is on licensed premises in violation of Wis. Stat. Sec. 125.07(3)(a).

(4) Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.

(B) Except as provided in Section (D), any underage person not accompanied by his or her parent, guardian, or spouse, who has attained the legal drinking age, who knowingly possesses, consumes, or is under the influence of an intoxicant, controlled substance, or alcoholic beverage is guilty of a violation.

12.17(C)

(C) Sections (A) and (B) do not apply to an underage person employed by or assisting a law enforcement agency in carrying out enforcement activities to determine compliance with, or

investigate potential violations of, the provisions of this Section.

(D) An underage person may possess alcohol beverages in the course of employment during his or her working hours if employed by any of the following:

- (1) A brewer or brewpub.
- (2) A fermented malt beverages wholesaler.
- (3) A permittee other than a Class "B" or "Class B" permittee.
- (4) A facility for the production of alcohol fuel.
- (5) A retail licensee or permittee under the conditions specified in s. 125.32 (2) or 125.68 (2) or for delivery of unopened containers to the home or vehicle of a customer.
- (6) A campus, if the underage person is at least eighteen (18) years of age and is under the immediate supervision of a person who has attained the legal drinking age.

(E) Penalties. A person who violates any provision of this Ordinance is subject to a forfeiture of not less than One Hundred (\$100.00) Dollars nor more than One Thousand One Hundred (\$1,100.00) Dollars, together with the costs of prosecution.
(Amended 4/20/2021 - Ordinance No. 503)

12.18 Conditions. All licenses granted hereunder shall be subject to the following conditions and to all other conditions of this chapter and subject to all other applicable ordinances and regulations of the Village.

(A) Posting. All permits and licenses issued under this Section shall be conspicuously displayed as provided in Wis. Stats. §125.04(10) in the room or place where beer or liquor is kept for sale. Whenever a license or permit shall be lost or destroyed without fault on the part of the licensee or the employee, a duplicate in lieu thereof under the original application shall be issued by the Village Administrator upon satisfying as to the facts, for a fee as set forth in Appendix "A" Fee Schedule. Any licensee who shall fail to post a license as required shall be presumed to be operating without one. This Section shall not apply to operator's licenses.

(B) No fermented malt beverage, intoxicating liquor, or wine shall be sold to any person under the legal drinking age or to a person who is either intoxicated or bordering on intoxication.

(C) It shall be a condition of any license issued hereunder that the licensed premises may be entered and inspected at any reasonable hour by any police officer of the Village without a warrant, and the application for a license hereunder shall be deemed as consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this Section.

(D) The licensed premises must conform to the sanitary, safety and health requirements of the State Industrial Commission and State Board of Health and to all ordinances and regulations adopted by the Village, which pertain to sanitation, safety and health requirements, and which are applicable to the licensed premises.

(E) No retail Class B licensee shall employ any person under the age of eighteen (18) to serve, sell, dispense or give away any fermented malt beverage, intoxicating liquor, or wine. Provided, that this shall not apply to hotels, restaurants, or combination grocery stores and taverns where not to exceed fifty (50%) percent of the gross revenue is derived from the sale of fermented malt beverages, intoxicating liquor, or wine.

(F) Underage persons permitted on Class "B" premises during certain times. In addition to the exceptions contained in Chapter 125 of the State Statutes, an underage person may enter or remain in a room on Class "B" licensed premises on a date specified by the licensee or permittee during times when no intoxicating liquors or fermented malt beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license of the licensee is a corporation or a person who has an operator's license, shall be on the premises unless all intoxicating liquors and fermented malt beverages are stored in a locked portion of the premises. An underage person may enter and remain on Class "B" premises under this paragraph only if the Village Police Department issues to the Class "B" licensee a written authorization permitting underage persons to be present under this paragraph on the date specified in the authorization. Before issuing an authorization, the Chief of Police, or his/her designee, 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. The request for written authorization shall be made at least five (5) days prior to that date.

(G) All windows in the front of any licensed premises shall be of clear glass, and the view of the interior shall be unobstructed by screens, curtains, booths or partitions. There shall be no booth, partition, box, stall, screen, curtain, or other device which shall obstruct the view of said room from the general observation of persons; provided, however, the licensee may serve beverages in a separate room at banquets or dinners.

(H) No licensee shall sell or offer to sell any fermented malt beverage, intoxicating liquor, or wine to any person on credit excepting credit extended by a hotel to a resident guest or a club to a bona fide member, and by grocers and druggists who maintain a credit system in connection with other purchases as well. It shall be unlawful for such licensee to sell to any person on a passbook or store order, or to receive from any person any goods, wares, merchandise or other articles in exchange for fermented malt beverages, intoxicating liquor, or wine.

(I) 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.

(J) No dancing of any kind shall be permitted upon the premises by patrons or entertainers unless the premise has a dance license, as provided in Chapter 11 of this Code.

(K) An underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age may enter or may knowingly attempt to enter or be on the premises for which a "Class B" or "Class C" license has been issued only where the principal business conducted on the premises is that of a restaurant unless otherwise authorized by Wisconsin State Statutes. Pursuant to Statute, the principal business conducted is presumed to be that of the sale of alcoholic beverages, but the presumption may be rebutted by competent evidence. Competent evidence is a certification under oath by a certified public accountant or the business' bookkeeper who has examined the books and records of the business that in the prior twelve (12) months from the date in question fifty (50%) percent or more of the gross receipts of the business have been from other than the sale of alcoholic beverages.

(L) Wearing Apparel. All persons involved in the operation of any licensed premises under this Section, whether as licensee, member of the immediate family of the licensee, licensed operator, unlicensed operator under the supervision of the licensee or licensed operator, waiter, waitress, entertainer, dancer, or any other employee, shall observe the following applicable minimum standards for such licensed premises:

(1) The costume, uniform, or attire of any female shall be of nontransparent material and must completely cover the breasts below the top of the areola at all times. The lower portion of such costume, uniform, or attire must be of nontransparent material and completely cover the person's pubic genitals and the buttocks at all times.

(2) The costume, uniform, or attire of any male shall be of nontransparent material and must completely cover the pubis area, genitals, and buttocks at all times.

(12.18(L) Created by Ord. 488 on 6-18-19)

12.19 Revocation.

(A) Any Village resident may file a sworn written statement with the Village Administrator alleging that a licensee or his or her duly authorized agent or employee has violated a provision of this Chapter, keeps or maintains a disorderly or riotous, indecent, or improper house, or has sold or given away alcoholic beverages to known habitual drunkards.

Upon the filing of the complaint, the Village Board shall issue a summons, signed by the Village Administrator, and directed to any peace officer in the Village, commanding the licensee complained of to appear before them on a specified day and place not less than three (3) days nor more than ten (10) days of the date of issuance to show cause why his or her license should not be suspended or revoked. Such summons shall be served at least three (3) days before the date at which such licensee is commanded to appear and may be served either personally or upon the person in charge of the licensed premises.

(B) If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the Village board finds the allegations sufficient, the license shall be revoked.

The Administrator shall give notice to the person whose license is revoked.

If the licensee appears and denies the complaint, each party may produce witnesses, cross-examine witnesses, and be represented by counsel. If the Village Board finds the allegations to be true, the license shall either be suspended for not less than ten (10) days nor more than ninety (90) days or revoked.

If the Board finds the allegations to be untrue, the proceeding shall be dismissed without costs to the accused, and if the Board finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant and the Board may require the complainant to provide security for such costs before issuing the summons.

(C) The Board's action in granting or failing to grant, suspending or revoking any license or the failure to suspend or revoke a license for good cause may be reviewed by Circuit Court upon application by any applicant, licensee or Village resident pursuant to §125.12, Wis. Stats.

12.20 Revocation, Suspension and Non-Renewal. In addition to all other grounds for revocation, suspension or non-renewal of intoxicating liquor and fermented malt beverage licenses permitted under Wis. Stat. Sec. 125.12, which are incorporated herein by reference, or otherwise permitted by these ordinances, the following shall constitute a basis for the Village Board to suspend, revoke or refuse to renew a renewal of a license:

(A) The subject premises is not open for business with stock and equipment within one hundred eighty (180) days of the granting of such license; the Village Administrator, for good cause, may extend said one hundred eighty (180) day period of time for an additional one hundred eighty (180) days if all of the following conditions exist:

(1) At the time of the application, the real property sought to be licensed did not have a permanent structure on it; and

(2) At the time of the application, the real property sought to be licensed is either owned by the applicant, or is under lease to the applicant for a period greater than one (1) year from the date of the application, or subject to an accepted offer to purchase, not conditioned on a future event. The deed, lease or offer to purchase must be presented to the Village Administrator for review; and

(3) At the time of the application, the applicant submits a floor plan for the structure intended to be constructed on the real property, said floor plan specifying that portion of the structure which is to be licensed; and

(4) The applicant agrees in writing, as part of the application, to submit to the Village Administrator within one hundred eighty (180) days of the granting of the license or licenses a copy of the building permit and a copy of the deed showing present ownership of the real property by the applicant if the original application contained an offer to purchase copy and not the deed; and

(5) The applicant agrees in writing as part of the application to be diligent in all efforts to get the structure built and stocked within one hundred eighty (180) days of the granting of the license.

(B) The license has not been issued following the granting by the Village Board contingent upon compliance with Village requirements.

(C) The subject premises is not open for business at least six (6) hours a day on fifty (50%) percent of the days within a sixty (60) day period, either within a licensing year, or overlapping two (2) licensing years.

(D) The licensee does not own or lease the premises for which the license is issued and from which business may be conducted.

(E) The licensee suspends or ceases doing business for a period of forty-five (45) days or more during a sixty (60) day period; the Village Administrator, for good cause, may extend said period for an additional ninety (90) days on application of the license holder, or on the application of a mortgage holder or other lien holder against the premises for which the license has been granted due to the fact that the property is in foreclosure. The Village Administrator may extend said period of time through the confirmation of the foreclosure sale or confirmation of title in another entity.

(F) An establishment has been deemed to cease doing business when any of the following occurs:

(1) The alcohol beverage license is surrendered to the Village Administrator absence the issuance of a newly granted license; or

(2) The establishment fails to maintain open and active accounts with its food and/or alcohol distributors; or

(3) The alcohol beverage license holder fails to submit a renewal application to the Village Administrator before the last possible submittal date.

(G) An applicant or establishment has not paid current any fine, personal property taxes, assessment, fee, charge, or other debt owed the municipality.

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

(1) Purpose and Definitions. The purpose of this subsection is to administratively interpret those portions of Section 12.02, West Salem Code of Ordinances, relating to establishing an alcohol beverage demerit point system to assist in determining which license holders should be subject to suspension or revocation procedures.

(2) Point Schedule. The scale of demerit points is listed according to the type of alcohol beverage violation. This demerit point system is used to identify habitually troublesome license holders who have repeatedly violated Wisconsin State Statutes and West Salem Ordinances, for the purpose of recommending suspension or revocation of their alcohol beverage licenses.

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

(4) Suspension or Revocation of License. The Law Enforcement Committee shall call before it for purposes of a revocation or suspension hearing all licensees who have accumulated seven (7) points in a twelve (12) month period as a result of court imposed convictions or who have had referred to it reports from the Police Chief which, if believed, would result in seven (7) demerit points in twelve (12) months.

(5) Formal Expression of Concern. In those instances in which a licensee has accumulated four (4) demerit points in a twelve (12) month period as determined by the Police Chief, the Law Enforcement Committee shall call before it the licensee for purposes of a formal expression of concern. If the licensee appears, no discussion of the alleged facts underlying the assessment of demerit points shall be permitted unless the licensee requests such discussion but only if the licensee is advised that any statements made by the licensee and/or her/his representatives regarding the alleged facts may be considered by the Law Enforcement Committee in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the formal expression of concern.

(6) If the demerit point accumulation, calculated from the date of violation, meets or exceeds seven (7) points in a twelve (12) month period, the Law Enforcement Committee may suspend the license. If suspended, the suspension shall be for not less than three (3) days or more than ninety (90) days. If the demerit point accumulation, calculated from the date of violation, meets or exceeds ten (10) points in a twelve (12) month period, the Law Enforcement Committee may revoke the license. If the license is revoked, no other license shall be granted to such licensee for a period of twelve (12) months from the date of revocation.

(7) This Ordinance amendment shall apply only to violations that would trigger a formal expression of concern which occur after this Ordinance is adopted.

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

(9) Demerit Points. The following demerit points shall be issued for the offenses as shown:

Code Section Offense Demerit Points

STATUTE OR ORDINANCE	DESCRIPTION	DEMERIT POINTS
125.07(4)	Service to underage person	2
125.07(2)	Service to Intoxicated Person	2
125.07(3)	Underage person on premises	1
12.18(A)	Failure to post license	1
12.18(C)	Failure to allow premises inspection	2
2.02(B)	Noise violations	1
12.11	Sales/dispense after hours	1
12.11	Open after hours	1
12.14	Leaving with open container	1
12.18(G)	Unobstructed view violation	1
12.18(L)	Improper wearing apparel	1
12.12	No licensed bartender on premises	2
12.18(I)	Disorderly Conduct	1/2
12.15	Outdoor Alcoholic Beverage Permit Violations	2
	Any other offense under Ch. 125 Statutes or Ch. 12, West Salem Ordinances	1

(12.20(H) created by Ord. 488 on 6-18-19)

12.21 Penalties. Any person violating any provision of this Chapter shall, upon conviction, be penalized as follows:

(A) Forfeit not less than Twenty-five (\$25.00) Dollars or more than Five Hundred (\$500.00) Dollars. Forfeiture amounts are subject to Village Board annual review and approval and may be changed from time to time by Village Board Resolution.

(B) A license or permit issued pursuant to this Chapter may be suspended or revoked as provided in §125.11, Wis. Stats. (1983-84).

(C) If convicted for a second offense, any license issued pursuant to this Chapter shall, without notice, be forfeited, in addition to penalties provided above.