

Ordinance 2012(5) Alcohol control ordinance

Any ordinances heretofore adopted by the town board on this subject are hereby repealed.

STATE OF WISCONSIN
Town of Pensaukee
Oconto County

SECTION I - TITLE AND PURPOSE

The title of this ordinance is the Town of Pensaukee Alcohol Control Ordinance. The purpose of this ordinance is for the town to regulate specific actions at or near any alcohol beverage retail locations in the town.

SECTION II - AUTHORITY

The town board has the authority under s. [125.10](#), Wis. stats., and under its village powers under s. [60.22 \(3\)](#), Wis. stats., to regulate the sale at retail or wholesale of alcoholic beverages at premises in the town, to the extent that town regulations are not in conflict with state statutes, specifically including the regulation of underage and intoxicated persons at alcohol beverage retail sale licensed premises in the town and the issuance, renewal, revocation, suspension, and regulation of alcohol retail sale or wholesale sale, licenses, or permits, along with the penalties for violations of this ordinance.

SECTION III - ADOPTION OF ORDINANCE

The town board, by this ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation of actions and activities at or near alcohol retail sales premises located in the town and for regulatory and enforcement authority noted in this ordinance.

SECTION IV - DEFINITIONS

- A. "Alcohol beverages" means fermented malt beverages, wine, and intoxicating liquor.
- B. "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I to V of [subchapter II of chapter 961](#), Wis. stats.
- C. "Fermented malt beverage" means any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.
- D. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.
- E. "Intoxicating liquor" means all ardent, spiritous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, that are beverages, but does not include fermented malt beverages that contain less than 5% of alcohol by weight.
- F. "Legal drinking age" means 21 years of age.
- G. "License" means an authorization to sell alcohol beverages at retail or wholesale issued by the town board or its agent under this ordinance.

- H. "Licensee" means any person issued a license under this ordinance and chapter [125](#), Wis. stats., by the town.
- I. "Open for business" means conducting a business publicly.
- J. "Permit" means any permit issued by the town under this ordinance.
- K. "Permittee" means any person issued a permit by the town under this ordinance.
- L. "Person" means a natural person, sole proprietorship, partnership, limited liability, company, corporation, association, or the owner of a single-owner entity that is disregarded as a separate entity under chapter [71](#), Wis. stats.
- M. "Premises" means the area described in a license or permit.
- N. "Regulation" means any rule or ordinance adopted by a municipal governing body.
- O. "Retail" means the sale of any alcohol beverages in the town to any person other than a person holding a permit or a license under this ordinance and chapter [125](#), Wis. stats.. "Retailer" means any person who sells, or offers for sale, any alcohol beverages in the town to any person other than a person holding a permit or a license under this ordinance and chapter [125](#), Wis. stats..
- P. "Sell," "sold," "sale," or "selling" means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme, or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.
- Q. "Soft drink" means any liquid capable of being used for beverage purposes containing any degree of alcohol less than one-half of one percent by volume.
- R. "Tavern" means any premises at which fermented malt beverages or intoxicating liquor are sold for consumption upon said premises.
- S. "Town" means the Town of Pensaukee, Oconto County, Wisconsin.
- T. "Town board" means the board of supervisors for the Town of Pensaukee, Oconto County, Wisconsin, and includes designees of the board authorized to act for the board.
- U. "Town clerk" means the clerk of the Town of Pensaukee, Oconto County, Wisconsin.
- V. "Town chairperson" means the chairperson of the Town of Pensaukee, Oconto County, Wisconsin.
- W. "Under the influence" means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition that is the result of indulging to any degree in alcohol beverages and that tends to deprive a person of the clearness of intellect and control of himself or herself that he or she would otherwise possess.
- X. "Underage person" means a person who has not attained the legal drinking age.
- Y. "Wis. stats." means the Wisconsin Statutes, including successor provisions to cited statutes.
- Z. "Wholesale" means the sale, other than by a brewer, manufacturer, or rectifier, of alcohol beverages to a licensed retailer in the town or to another person who holds a permit or license to sell alcohol beverages in the town at wholesale.
- ZA. "Wine" means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits, or other agricultural products, imitation wine, and compounds sold as wine, vermouth, cider, perry, mead, and sake, if such products contain 0.5% or more of alcohol by volume.

SECTION V - SUBDIVISION AND NUMBERING OF THIS ORDINANCE

This ordinance is divided into sections designated by uppercase Roman numerals. Sections may be divided into subsections designated by uppercase letters. Subsections may be divided into paragraphs designated by numbers. Paragraphs may be divided into subdivisions designated by lowercase letters. Subdivisions may be divided into subdivision paragraphs designated by lowercase Roman numerals. Reference to a "section," "subsection," "paragraph," or "subdivision" includes all divisions of the referenced section, subsection, paragraph, or subdivision.

SECTION VI - DISCIPLINE; HEARING PROCESS

A. In the event any alcohol beverage retail or wholesale sale licensee or permittee violates this ordinance or chapter [125](#), Wis. stats., the town board may take disciplinary action, including permit or license suspension for not less than 10 nor more than 90 days, or permit or license revocation or nonrenewal. Any license or permit that has been revoked shall not be reinstated within the following 12 months. Any disciplinary action taken by the town board shall follow notice to the licensee or permittee prior to a hearing in accordance with subsection B. The hearing notice shall include the reason for the hearing. The hearing decision of the town board shall be sent by first class mail to the licensee's last known address, or personally served, at the town chairperson's option.

B. In the event disciplinary action is taken against an alcohol beverage retail or wholesale sale licensee or permittee, the procedure mandated under s. [125.12](#), Wis. stats., or its successor, will be followed.*

C. There shall be no refund of any alcohol beverage retail or wholesale sale license or permit fee paid to a party whose license is revoked or suspended under this ordinance.

D. In lieu of a hearing, the board may accept surrender of the alcohol beverage retail or wholesale sale license or permit and the board shall then determine the time period before another application for the same type of license or permit will be accepted from the former licensee or permittee.

E. Evidence and testimony at the hearing shall be given in open session. The town clerk shall post or arrange to post the hearing notice or publish in a format acceptable to the town chairperson.

F. Unless no disciplinary action, including reprimand or probation, is ordered by the town board, the alcohol retail sale or wholesale licensee or permittee shall reimburse the town for costs of personal service, mailing, faxing, copies, and any per diem paid for a town officer to attend the hearing or other meeting due to a license violation. Unpaid costs assessed under this subsection shall accrue interest at the rate of 5% per annum if unpaid after 30 days. Payment is required before any future alcohol retail or wholesale sale license or permit is issued or reinstated to the license or permit holder.

SECTION VII - COMPLIANCE CONDITIONS

A. It is unlawful for any person to sell or keep for sale at wholesale or retail, or permit to be sold or kept for sale at wholesale or retail, within the town any alcohol beverage or soft drink, except in strict accordance with the provisions of this ordinance and state law. The issuance of any license or permit to any person under this ordinance and chapter [125](#), Wis. stats., is contingent upon full compliance with this ordinance and chapter [125](#), Wis. stats., by the licensee or permittee. Any building or place where alcohol beverages or alcohol is sold, possessed, stored,

brewed, bottled, manufactured, or rectified without a valid permit or license issued under this ordinance or chapter [125](#) or [139](#), Wis. stats., or where persons are permitted to drink alcohol beverages in violation of this ordinance and chapter [125](#), Wis. stats., is a public nuisance and may be closed until the activity in violation of this ordinance is abated. When the activity is abated, the building or place may be used for any lawful purpose.

B. It is unlawful for a licensee, permittee, or any employee, operator, or manager of a tavern or other licensed or permitted establishment to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while performing services on the licensed or permitted premises of the town.

C. It is unlawful for any person, including any owner, tenant, employee, operator, or manager of a tavern, who has engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct in a town tavern premises under circumstances in which that conduct tended to cause or provoke a disturbance and who has been ordered by the town board or a law enforcement officer not to enter or to remain in a tavern or other licensed or permitted establishment to so enter or remain during any period after having been ordered not to enter or remain by a law enforcement officer. An order prohibiting entry under this subsection may prohibit entry for a period up to 6 months.

D. As a condition of maintaining and keeping an alcohol beverage retail sale license for a tavern in the town, any licensee of a tavern premise must stay open for business and continue in business and demonstrate business continuance satisfactory to the town board. Issuance or retention of a license by a party not open for business and not demonstrating business continuation is declared by this ordinance to be against public policy of the town. A determination by the town board that a person is not demonstrating business continuation establishes grounds for suspension or revocation of the alcohol beverage retail sale license. The town board shall issue a summons and set a hearing to determine whether the license shall be suspended or revoked under this subsection. The hearing shall be held not later than 30 days after it is issued. The town board may elect to make its decision effective on a later date. The procedure for the hearing shall be in accordance with s. [125.12](#), Wis. stats. Testimony of any party, any eviction notice, court documentation, or other valid evidence of such actions may be presented. All testimony shall be under oath. A person who was licensed or permitted for the tavern premises for an alcohol beverage retail tavern is not demonstrating business continuation if any of the following is demonstrated:

1. The person has not done business in the tavern premises for at least 30 consecutive days.
2. The person has voluntarily vacated the premises more than 15 days before the hearing held under this subsection.
3. The person was ordered by a court of competent jurisdiction to vacate the premises at least 15 days before the hearing held under this subsection.

E. A license or permit shall not be denied on the grounds that the applicant lacks good moral character, unless there is evidence that the applicant would, if granted an initial or renewed license or permit, pose a threat to the safety or welfare of patrons of the licensed or permitted establishment in which he or she would be employed. The following will be considered grounds for a determination that an applicant lacks good moral character:

1. Suspension or revocation of a Class A, Class B, Operator's, or Manager's License under chapter [125](#), Wis. stats., or this ordinance, or dismissal from a bartending job if all of the following apply:

a. There is a relationship between the reasons for the suspension, revocation, or dismissal and the applicant's ability to competently tend bar without endangering the safety or welfare of the patrons of the premises where the applicant will tend bar under the authority of the applied-for license or permit.

b. The suspension, revocation, or dismissal occurred within a year of the date of the application, or there has been more than one such suspension, revocation, or dismissal within 3 years of the date of the application.

2. Conduct exhibiting the use, within 3 years of the date of the application, of alcoholic beverages or controlled substances, to an extent or in a manner dangerous to any other person, or to an extent that such use would impair the applicant's ability to competently tend the tavern business.

3. a. The applicant has habitually been a law offender or has been convicted of a felony and the circumstances of the crime or crimes substantially relate to the circumstances of the permitted or licensed activity, unless the person has been legally pardoned.

b. The applicant is subject to a pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the permitted or licensed activity.

c. The applicant has been convicted of one or more of the following:

i. Manufacturing, distributing, or delivering a controlled substance or controlled substance analog under s. [961.41 \(1\)](#), Wis. stats.

ii. Possessing, with intent to manufacture, distribute, or deliver, a controlled substance or controlled substance analog under s. [961.41 \(1m\)](#), Wis. stats.

iii. Possessing, with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. [961.41 \(1\)](#) or [\(1m\)](#), Wis. stats.

iv. Possessing, with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. [961.41 \(1\)](#) or [\(1m\)](#), Wis. stats.

4. If any town committee, or local law enforcement, recommends to the town board denial of an Operator's License or Manager License or other license or permit on the basis provided under this ordinance, the applicant shall be given the opportunity to present evidence of rehabilitation. Such evidence may include, but is not limited to, letters of recommendation, evidence of family stability or educational advancement, satisfactory work performed, professional counseling, and participation in community activities.

5. If a license or permit is denied by the town board, the applicant shall have the right to file an appeal with the town clerk within 30 days of the date of the decision, and to appear and be represented by legal counsel before the town board, to be heard, to present evidence in favor of the granting of the license or permit, and to rebut the evidence presented in opposition to the granting of the license or permit. The hearing on the appeal shall be held within 40 days of the filing of the appeal. Notice of the time and place of the hearing on the appeal shall be mailed by the town clerk to the applicant by certified mail at least 10 days before the date of the hearing. The town board shall, after the hearing, comply with chapter [125](#), Wis. stats. by providing in writing the reasons for its decision to grant or not grant a license or permit. The town board shall comply with s. [125.12](#), Wis. stats., in the denial, revocation, suspension, or nonrenewal of a license or permit.

F. It is a condition of any license or permit issued under this ordinance that the licensed or permitted premises, delivery vehicles, and any of the business books of account, bank

statements, billings, invoices, and any other documents relating specifically to the licensed or permitted business may be entered and inspected at any reasonable hour by any law enforcement officer of the town without any warrant, and application for a license or permit under this ordinance shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license or permit issued under this ordinance and shall be deemed a violation of this subsection.

G. No licenses or permits may be granted under this ordinance or under chapter [125](#), Wis. stats., unless the town board, by a vote of the majority of the members-elect of the town board, authorizes the issuance of the license or permit. The town board shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as it may be necessary for the purpose of action upon applications for licenses and permits as may be presented to them on or before April 15, and all applications for licenses so filed shall be granted or denied not later than June 15 for the ensuing license year.

SECTION VIII - UNDERAGE AND INTOXICATED PERSONS/DISORDERLY HOUSE/AFTER HOURS

A. Sale of Alcohol Beverages to Underage Persons; Restrictions. 1. No person may procure for or sell, dispense, or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

2. No licensee or permittee may sell, vend, deal, or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

3. 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 adult or under the adult's control. This paragraph does not apply to alcohol beverages used exclusively as part of a religious service.

B. Intoxicated Persons. 1. No person may procure for or sell, dispense, or give away alcohol beverages to an intoxicated person.

2. No licensee or permittee may sell, vend, deal, or traffic in alcohol beverages to or with an intoxicated person.

3. No licensee or permittee may permit an intoxicated person to be on a licensed or permitted premise.

C. Disorderly House. No licensee or permittee in charge and control of a licensed or permitted premises shall keep or maintain a disorderly or riotous, indecent, or improper tavern or licensed or permitted establishment.

D. After hours. No licensee or permittee shall permit any person to be present on the premises operated under a Class "A," "Class A," or "Class C" license or under a Class "B" or "Class B" license or permit during hours when the premises are not open for business unless these persons are performing job-related activities.

E. Unsanitary or Unsafe Conduct. No licensee or permittee in charge and control of a tavern shall fail to keep or maintain a tavern or other licensed or permitted premise in a sanitary and safe condition after written notice by the State of Wisconsin, Department of Health and Family Services or the town board.

SECTION IX - PENALTIES

A. A person who commits a violation of this ordinance is subject to a forfeiture of:

1. Not more than \$25 if the person has not committed a previous violation within 30 months of the violation.

2. Not more than \$50 if the person has committed one previous violation within 30 months of the violation.

3. Not more than \$75 if the person has committed 2 previous violations within 30 months of the violation.

4. Not more than \$100 if the person has committed 3 or more previous violations within 30 months of the violation.

B. For purposes of determining whether a previous violation has occurred, if more than one violation occurs at the same time, all those violations shall be counted as one violation.

C. Any person that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the town board may seek injunctive relief from a court of record to enjoin further violations.

SECTION X - SEVERABILITY

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION XI - EFFECTIVE DATE

This ordinance is effective on publication or posting.

The town clerk shall properly post or publish this ordinance as required under s. [60.80](#), Wis. stats.

Adopted this 10th day of July, 2012.

Dennis Clark

Jacki Nelis

Vernon Zoeller

Attest:

Joyce Stoegbauer