

## CHAPTER 26

### AN ORDINANCE TO REGULATE THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES

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The Town Board of the Town of Theresa, at a duly-noticed public meeting with quorum present and voting, hereby ordains the following:

#### **26.1: ADOPTION OF STATE LIQUOR LAWS.**

- A. Chapter 125 of the Wisconsin Statutes relating to the use and sale of alcoholic beverages, exclusive of any provisions therein relating to the penalties to be imposed or the punishment for violation of the same, is hereby adopted and by reference made a part of this Ordinance with the same force and effect as though set forth herein verbatim.
- B. Any action required to be performed or prohibited by Ch. 125, Wis. Stats., is required or prohibited by this chapter. Any future amendments, revisions or modifications of Ch. 125, Wis. Stats., are intended to be made a part of this Ordinance. A copy of Ch. 125, Wis. Stats., and any future amendments thereto, shall be kept on file in the office in the Town Hall.

#### **26.2: LICENSE REQUIRED.**

- A. Subject to the exceptions stated in § 125.06, Wis. Stats., no person shall vend, sell, deal or traffic in alcoholic beverages in any quantity, or cause the same to be done, without having procured a license as provided in this Ordinance, nor without complying with all the provisions of this Ordinance, and all statutes, ordinances and regulations applicable thereto, except where the Wisconsin Statutes provide that a license is not necessary.
- B. A license is required for each stand, place, room, or enclosure, or for each suite of rooms or enclosures which are in direct connection or communications to each other, where alcoholic beverages are kept, sold, or offered for sale. No license shall be issued to any person for the purpose of possessing, selling, or offering for sale any alcoholic beverage in any dwelling house, flat, or residential apartment.
- C. No person shall give away any alcoholic beverage for the purpose of evading any law or ordinance.

### 26.3: CLASSES OF LICENSES.

There shall be the following classes of licenses which, when issued by the Town Clerk under the authority of the Town Board, after payment of the fee specified in Section 4, shall permit the holder to sell, deal, or traffic in alcoholic beverages as follows:

- A. Class “A” fermented malt beverage retailer’s license. A Class “A” fermented malt beverage retailer’s license shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers, or bottles.
- B. Class “B” fermented malt beverage retailer’s license. A Class “B” fermented malt beverage retailer’s license shall entitle the holder thereof to possess, sell, or offer for sale fermented malt beverages whether to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than ½ of a percentum of alcohol by volume without obtaining a special license to sell such beverages.
- C. “Class A” retail intoxicating liquor license. A “Class A” retail intoxicating liquor license shall permit its holder to sell, deal, and traffic in intoxicating liquors only in original packages or containers to be consumed off the premises so licensed.
- D. “Class B” retail intoxicating liquor license. A “Class B” retail intoxicating liquor license shall permit its holder to sell, deal, or traffic in intoxicating liquors to consumed by the glass only on the premises so licensed, and in the original package or container in multiples not to exceed four liters at any one time to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- E. Reserve “Class B” liquor license. Reserve “Class B” liquor licenses are those licenses available under the quota system existing before December 1, 1997, that were not granted or issued by the Town as of December 1, 1997. A Reserve “Class B” liquor license shall permit its holder to sell, deal, and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or container in multiples not to exceed four liters an any one time to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- F. Temporary Class “B” (picnic) fermented malt beverage license. A temporary Class “B” (picnic) fermented malt beverage license shall permit the holder thereof to sell fermented malt beverages (including wine coolers with a fermented malt beverage base) to consumers at a picnic or similar gathering of limited duration for only those dates approved by the Town Board. Such licenses may be issued only to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies

that have been in existence for at least six months, and to veterans' organizations pursuant to § 125.26(6), Wis. Stats.

- G. "Class C" wine license. A "Class C" wine license shall permit the holder thereof to sell wine by the glass or in an opened original container for consumption on the premises where sold.
1. A "Class C" wine license may be granted to an applicant only if:
    - a. The applicant meets the qualifications set forth in § 125.04(5), Wis. Stats., for other retail licenses;
    - b. The license is for a restaurant in which the sale of alcohol beverages accounts for less than 50% of gross receipts;
    - c. The restaurant does not have a barroom; or
    - d. The restaurant has a barroom in which wine is the only intoxicating liquor sold.
  2. A "Class C" license may not be issued to a foreign corporation, a foreign limited liability company, or a person acting as agent for or in the employ of another.

#### **26.4: FEES.**

- A. When Paid. All fees shall be paid at the time an application is filed. No application shall be considered until the fee is filed with the Town Clerk. The Town shall consider the application within thirty (30) days of filing, unless the applicant requests an extension.
- B. Amounts.
1. Change of Agent: \$10.00
  2. Transfer of licenses to different place: \$10.00
  3. Operator's license (Bartender's license): \$15.00
  4. Temporary operator's license (Picnic license – max 2/year): \$10.00
  5. Provisional operator's license (60 days): \$15.00
  6. Provisional retail license (60 days): \$15.00
  7. Class "A" fermented malt beverage retailer's license: \$75.00 for a period of twelve (12) months, prorated according to the number of months for which the license is issued.
  8. Class "B" fermented malt beverage retailer's license: \$100.00 for a period of twelve (12) months, prorated according to the number of months for which the license is issued.
  9. Temporary Class "B" (picnic) fermented malt beverage license: \$10.00
  10. "Class A" retail intoxicating liquor license (Liquor & Beer store): \$275.00
  11. "Class B" retail intoxicating liquor license (Bar): \$250.00
  12. Reserve "Class B" liquor license: \$10,000
  13. "Class C" wine license (Restaurant -on premise consumption): \$100.00

## **26.5: PROVISIONAL RETAIL LICENSE.**

The Town Clerk may issue a provisional retail license to a person who has applied for a Class “A”, Class “B”, “Class A”, “Class B”, or “Class C” license, which authorizes only the activities that the type of retail license applied for authorizes, in accordance with § 125.185, Wis. Stats., for a nonrefundable fee per license issued as provided in Section 4. The provisional retail license shall expire sixty (60) days after issuance or when a Class “A”, Class “B”, “Class A”, “Class B”, or “Class C” license is issued to the holder, whichever is sooner. The Town Clerk may revoke a provisional retail license if it is determined that the holder of the license made a false statement on the application. The Town Clerk may not issue a provisional “Class B” license if the Town’s quota under § 125.51(4), Wis. Stats., prohibits the issuance of a “Class B” license. No person may hold more than one provisional retail license in each type of license applied for by the holder, per year.

## **26.6: OPERATOR’S LICENSE & PROVISIONAL OPERATOR’S LICENSE.**

- A. The Town Clerk may issue an operator’s license if the applicant applies, in writing, meets the requirements of Ch. 125, Wis. Stats., and after payment of a nonproratable fee as provided in Section 4. The operator’s license shall be for a period of one (1) year to end on June 30. If an applicant is denied an operator’s license, said applicant has the option to appeal the denial to the Town Board of the Town of Theresa. All written applications for an operator’s license shall be filed with the Town Clerk at least ten (10 ) days prior to the granting of that license.
- B. Provisional operator’s license. The Town Clerk may issue a provisional operator’s license in accordance with §125.17(5), Wis. Stats., for a nonrefundable fee per license issued as provided in Section 4. The provisional operator’s license shall expire sixty (60) days after its issuance or when an operator’s license is issued to the holder, whichever is sooner. A provisional operator’s license may not be issued to any person who has been denied an operator’s license by the Town Board or who has had an operator’s license revoked or suspended within the preceding twelve (12) months. The Town Clerk may revoke a provisional operator’s license if it is determined that the holder of the license made a false statement of the application.

## **26.7: RIGHT OF ENTRY FOR INSPECTION.**

The Town of Theresa and its agents shall at all times have the right to enter and inspect the premises for which a Class “A”, Class “B”, “Class A”, “Class B”, Reserve “Class B”, or “Class C” license has been applied for or is in effect to determine whether or not the premises complies with the provisions of this Ordinance. Refusal or failure to admit any such agent of the Town to

enter and inspect the premises shall constitute a violation of this Ordinance and shall result as a revocation of the license(s) issued by the Town.

## **26.8: INVESTIGATION AND REPORT.**

Upon receipt of a completed application, the Town Clerk shall request the Wisconsin Department of Justice check for the prior record of each individual applicant, partner, LLC member, owner of 10% or more of corporate stock and agent. The Clerk shall also review the records, including civil case records, of such applicants at <http://wcca.wicourts.gov>. However, the Town Clerk has the discretion to determine if a record check is made of organizations that apply for a Temporary Class “B” license and/or temporary operator license. The Town Clerk also has discretion to pursue further investigation of any application. The Town Clerk shall provide the results of the record check to the Town Board.

## **26.9: FACTORS AND STANDARDS FOR DENIAL OF LICENSES.**

- A. In addition to the conditions, factors, and standards established in § 125.04(5), Wis. Stats., the Town may consider the following factors in determining whether to issue a license:
  - 1. Prior denial, suspension, or revocation of a license or pending proceedings under Ch. 125, Wis. Stats.;
  - 2. Conduct involving use of alcoholic beverages to an extent or manner dangerous to others or to an extent that such use impairs judgment;
  - 3. Conduct involving use or sale of controlled substances;
  - 4. An unpardoned criminal conviction if there is a relationship between the nature of the crime and the applicant’s ability to perform honestly and completely without endangering the safety and welfare of customers;
  - 5. Any matter the circumstances of which substantially relate to the circumstances of the license activity;
  - 6. Any other factors reasonably related to the public health, safety, and welfare.
- B. A license will not be issued unless:
  - 1. The applicant is of a good moral character;
  - 2. The applicant has paid all personal property taxes, assessments, utility bills and other claims owed to the Town of Theresa by said applicant and the premises to be licensed;
  - 3. If the applicant is a corporation, partnership, or LLC, all officers and directors of the corporation; all partners of a partnership; each member of an LLC; each corporate shareholder holding or owning 10% or greater of the issued shares, proxies or voting stock; and every person designated as an agent, meets the factors and standards of this Ordinance.

4. The premises to be licensed with a Class “A”, Class “B”, “Class A”, “Class B”, Reserve “Class B”, or “Class C” license, conform to the sanitary, safety and health requirements of the State Building Code, the State Plumbing Code, and the rules and regulations of the State Department of Health Services applicable to restaurants as contemplated in § 125.68(5), Wis. Stats., and also conforms to all ordinances and regulations adopted by Dodge County and the Town of Theresa.

**26.10: VIOLATIONS AND PENALTIES.**

- A. Forfeitures for violations of §§ 125.07(1) to (4) and 125.09(2), Wis. Stats., adopted by reference in Section 1 of this Ordinance, shall conform to the forfeiture penalty permitted to be imposed for violations of the comparable state statute, including any variations or increases for subsequent offenses. In the event a violator fails to pay said forfeiture, the violator may be imprisoned in the county jail for a period not to exceed ten (10) days.
- B. Any person who shall violate any provision of this Ordinance, except as otherwise provided in Subsection A above, or who shall conduct any activity or make any sale for which a license is required without a license shall be subject to a forfeiture of not less than \$100.00 nor more than \$1,000.00
- C. Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.
- D. For all violations taking place over more than one (1) day, each day shall constitute a separate violation subject to an additional forfeiture.
- E. In addition to the penalties in Subsections A – C above, all violations may be used as a basis to revoke or suspend the license(s).
- F. The Sheriff and Sheriff’s deputies are authorized to enforce and issue citations for violations of this Ordinance. The bond amount shall be 50% of the maximum forfeiture.

**26.11: ADOPTION AND EFFECTIVE DATE.**

1. The Town Board held a public hearing on this proposed Ordinance to Regulate the Sale and Consumption of Alcoholic Beverages on the 6<sup>th</sup> day of February, 2023.
2. The Town Board adopted this Ordinance on the 6<sup>th</sup> day of February, 2023.
3. The Ordinance shall be effective upon adoption and publication, dated the 16<sup>th</sup> day of February, 2023.

Approved: \_\_\_\_\_  
Lloyd Hilgendorf, Town Chairperson

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Dale Dyer, Supervisor 1

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Neil Burns, Supervisor 2

Attest: \_\_\_\_\_  
Diane Steger, Town Clerk

(Signed copy on file)