

Chapter 205

INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

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[HISTORY: Adopted by the Village Board of the Village of Black Creek as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Licensing

[Adopted as Title 7, Ch. 2, of the 1987 Village Code]

§ 205-1. State statutes adopted.

The provisions of Chapter 125 and §§ 938.344 and 778.25 of the Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this

article as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this article. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this article.

§ 205-2. Definitions. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

- A. As used in this article, the terms "alcohol beverages," "intoxicating liquors," "sell," "sold," "sale," "restaurant," "club," "retailer," "person," "fermented malt beverages," and "wholesalers" shall have the meaning given them by Chapter 125, Wisconsin Statutes.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

OPERATOR — Any person who shall draw or remove any fermented malt beverage for sale or consumption from any barrel, keg, cask, bottle or other container in which fermented malt beverages shall be stored or kept on premises requiring a Class "B" license, for sale or service to a consumer for consumption in or upon the premises where sold; or one who shall sell or serve intoxicating liquor to customers upon premises operated under a retail "Class A" or "Class B" intoxicating liquor license or retail "Class C" wine license; or who shall sell bottled intoxicating liquors or bottled and canned fermented malt beverages on a premises requiring a "Class A" retailer's intoxicating liquor license or a Class "A" fermented malt beverage retailer's license.

§ 205-3. License required.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, or cause the same to be done, without having procured a license as provided in this article nor without complying with all the provisions of this article, and all statutes and regulations applicable thereto, except as provided by §§ 125.26, 125.27, 125.28 and 125.51 of the Wisconsin Statutes.

§ 205-4. Classes of licenses.

- A. Retail "Class A" intoxicating liquor license. A retail "Class A" intoxicating liquor license, when issued by the Village Clerk-Treasurer under the authority of the Village Board, shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers, and to be consumed off the premises so licensed.
- B. Retail "Class B" intoxicating liquor license. A retail "Class B" intoxicating liquor license, when issued by the Village Clerk-Treasurer under authority of the Village Board, shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or container, in multiples not to exceed four liters at any one time, and 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.

- C. Class "A" fermented malt beverage retailer's license. A Class "A" retailer's fermented malt beverage license, when issued by the Village Clerk-Treasurer under the authority of the Village Board, 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.
- D. Class "B" fermented malt beverage retailer's license. A Class "B" fermented malt beverage retailer's license, when issued by the Village Clerk-Treasurer under the authority of the Village Board, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages, either to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than 1/2 of a percentum of alcohol by volume without obtaining a special license to sell such beverages.
- E. Special Class "B" fermented malt beverage picnic license.
 - (1) A special Class "B" picnic license, when issued by the Village Clerk-Treasurer under authority of the Village Board, as provided for in § 125.26(6), Wis. Stats., shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages at a particular picnic, post meeting, fair or similar gathering. Such license may be issued only to bona fide clubs, churches, state, county or local fairs, associations or agricultural societies, lodges or societies that have been in existence for not less than six months prior to the date of application for such license or to posts of ex-servicemen's organizations now or hereafter established. Such license is valid for dates as approved by the Village Board.
 - (2) Application. Application for such license shall be signed by the President or corresponding officer of the society making such application and shall be filed with the Village Clerk-Treasurer together with the appropriate license fee for each day for which the license is sought. The license shall specify the hours and dates of license validity. Such license shall be valid for no more than four consecutive days. If the application is for a license to be used in a Village park, the applicant shall specify the main point-of-sale facility.¹
- F. Provisional retail license. A provisional retail license, as provided for in § 125.185, Wis. Stats., may be issued by the Clerk-Treasurer under the following standards: **[Added 11-1996]**
 - (1) 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 that type of license.
 - (2) The fee for a provisional license shall be \$15 for a beer license and \$15 for a liquor license.

1. Editor's Note: Original Sec. 7-2-4(f) of the 1987 Village Code, Wholesaler's license, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- (3) A provisional license shall expire 60 days after issuance or when the applicant is issued a retail license. The license may be revoked by the municipal official if he or she discovers that holder made false statements in the application.
- (4) A municipal office may not issue a provisional "Class B" license if the quota prohibits the issuance of such a license.
- (5) No person may hold more than one provisional retail license for each type of license applied for per year.

§ 205-5. License fees. [Amended 3-10-2003; at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

The following fees shall be chargeable for licenses issued by the Village Board:

- A. Retail "Class A" intoxicating liquor license: as set forth in the General Fee Schedule, on file in the Village offices.
- B. Retail "Class B" intoxicating liquor license: as set forth in the General Fee Schedule, on file in the Village offices.
- C. Class "A" fermented malt beverage retailers license: as set forth in the General Fee Schedule, on file in the Village offices.
- D. Class "B" fermented malt beverage retailer's license: as set forth in the General Fee Schedule, on file in the Village offices.
- E. Special Class "B" fermented malt beverage picnic license: as set forth in the General Fee Schedule, on file in the Village offices.
- F. "Class C" wine: as set forth in the General Fee Schedule, on file in the Village offices.

§ 205-6. Application for license.

- A. Contents. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made, in writing, on the form prescribed by the Wisconsin Department of Revenue and shall be sworn to by the applicant as provided by §§ 887.01 to 887.03, Wis. Stats., and shall be filed with the Village Clerk-Treasurer not less than 15 days prior to the granting of such license. The premises shall be physically described to include every room and storage space to be covered by the license, including all rooms not separated by a solid wall or joined by connecting entrances.
- B. Corporations. Such application shall be filed and sworn to by the applicant, if an individual, or by the president and secretary, if a corporation. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- C. Publication. The application shall be published in the official Village newspaper, and the costs of publication shall be paid by the applicant. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

- D. Amending application. Whenever anything occurs to change any fact set out in the application of any licensee, such licensee shall file with the issuing authority a notice, in writing, of such change within 10 days after the occurrence thereof.

§ 205-7. Qualifications of applicants and premises.

- A. Residence requirements. A retail Class "A" or retail Class "B" fermented malt beverage or intoxicating liquor license shall be granted only to persons who are citizens of the United States and of Wisconsin.
- B. Applicant to have malt beverage license. No retail "Class B" intoxicating liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages.
- C. Right to premises. No applicant will be considered unless he has the right to possession of the premises, described in the application for the license period, by lease or by deed.
- D. Age of applicant. No Class "A" or "B" licenses shall be granted to any person under the Wisconsin legal drinking age.
- E. Corporate restrictions.
- (1) No license shall be granted to any corporation which does not comply with the provisions of § 125.04(6), Wis. Stats., which does not have an agent eligible for a license under this article or under state law, or which has more than 50% of the stock interest, legal or beneficial, in such corporation held by any person or persons not eligible for a license under this article or under the state law.
 - (2) Each corporate applicant shall file with its application for such license a statement by its officers showing the names and addresses of the persons who are stockholders, together with the amount of stock held by such person or persons. It shall be the duty of each corporate applicant and licensee to file with the Village Clerk-Treasurer a statement of transfers of stock within 48 hours after such transfer of stock.
 - (3) Any license issued to a corporation may be revoked in the manner and under the procedure established in § 125.12, Wis. Stats., when more than 50% of the stock interest, legal or beneficial, in such corporation is held by any person or persons not eligible for a license under this article or under the state law.
- F. Separate licenses. A separate license shall be required for each business premises where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale.
- G. License quotas. License quotas for the Village shall be as provided in Chapter 125, Wis. Stats.
- H. Licensed premises. Licenses issued by the Village shall be for the structure itself and shall not confer any license or right to property outside of the licensed structure.

§ 205-8. Investigation.

The Village Clerk-Treasurer shall notify the Chief of Police and Building Inspector of each new application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. These officials shall furnish to the 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 reinspection of the premises and report, as originally required.

§ 205-9. Approval of application.

- A. In determining the suitability of an applicant, consideration shall be given to the moral character and financial responsibility of the applicant, the appropriateness of the location and premises proposed, and generally the applicant's fitness for the trust to be reposed.
- B. No license shall be granted for operation on any premises or with any equipment which taxes or assessments or other financial claims of the Village are delinquent and unpaid.
- C. No license shall be issued unless the premises conforms to the sanitary, safety, and health requirements of the State Building Code and the regulations of the State Department of Health Services applicable to restaurants. The premises must be properly lighted and ventilated, must be equipped with separate sanitary toilet and lavatory facilities equipped with running water for each sex, and must conform to all ordinances of the Village.

§ 205-10. Granting of license.

Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license. Upon the approval of the applicant by the Village Board, the Village Clerk-Treasurer shall issue to the applicant a license upon payment by the applicant of the license fee to the Village. The full license fee shall be charged for the whole or fraction of any year.

§ 205-11. Transfer and lapse of license.

- A. In accordance with the provisions of § 125.04(12), Wis. Stats., a license shall be transferable from one premises to another if such transfer is first approved by the Village Board. An application for transfer shall be made on a form furnished by the Village Clerk-Treasurer. Proceedings for such transfer shall be had in the same form and manner as the original application. The fee for such transfer is \$10. Whenever a license is transferred, the Village Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such transfer.
- B. Whenever the agent of a corporate holder of a license is, for any reason, replaced, the licensee shall give the Village Clerk-Treasurer written notice of said replacement, the

reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Village Board, the successor agent shall have the authority to perform the functions and be charged with the duties of the original agent. However, said license shall cease to be in effect upon receipt by the Village Clerk-Treasurer of notice of disapproval of the successor agent by the Wisconsin Department of Revenue or other peace officer of the municipality in which the license was issued. The corporation's license shall not be in force after receipt of such notice or after a regular or special meeting of the Village Board until the successor agent or another qualified agent is appointed and approved by the Village and the Wisconsin Department of Revenue.

- C. Whenever any licensee under this article shall not conduct his licensed business at the authorized location for a period of six consecutive months, the license issued to him shall lapse and become void, unless such six months period shall be extended by the Village Board.

§ 205-12. Numbering of license. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

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

§ 205-13. Posting licenses; defacement.

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

§ 205-14. Conditions of license.

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

- A. Consent to entry. Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the Village at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of Village ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- B. Employment of minors. No retail "Class B" licensee shall employ any person under the Wisconsin legal drinking age except as otherwise authorized by §§ 125.32 and 125.68, Wis. Stats., but this shall not apply to hotels and restaurants. Family members may

work on the licensed premises but are not permitted to sell or dispense alcohol beverages. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

- C. Disorderly conduct prohibited. Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- D. Licensed operator on premises. There shall be upon premises operated under a Class "B" 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 as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a Class "B" license, unless he possesses an operator's license, who is at the time of such service upon said premises.
- E. Health and sanitation regulations. The rules and regulations of the State Department of Health Services governing sanitation in restaurants shall apply to all "Class B" liquor licenses issued under this article. No "Class B" license shall be issued unless the premises to be licensed conforms to such rules and regulations.
- F. Restrictions near schools and churches. No retail "Class A" or "Class B" license shall be issued for premises the main entrance of which is less than 300 feet from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises. This subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school building, hospital building or church building.

§ 205-15. Closing hours. [Amended 2-14-2005]

- A. No premises in the Village for which a "Class B" intoxicating liquor or fermented malt beverage license(s) for the sale of fermented malt has been issued shall be permitted to remain open between the hours of 2:00 a.m. and 6:00 a.m., except as otherwise provided in this subsection. On January 1, premises operating under a "Class B" license or permit are not required to close. On Saturday and Sunday, no premises may remain open between 2:30 a.m. and 6:00 a.m. pursuant to §§ 125.32(3) and 125.68(4)(b), Wis. Stats. This subsection does not apply to a "Class B" license issued to a winery under § 125.51(3)(am), Wis. Stats., except that, on the Sunday that daylight saving time begins, as specified in § 175.095(2), Wis. Stats., no premises may remain open between 3:30 a.m. and 6:00 a.m. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- B. After-hours regulations.
 - (1) No premises holding a "Class A" intoxicating liquor or fermented malt beverage license(s) nor the holder of the license permitting such premises or holder to sell, deal and traffic in fermented malt beverages nor any person on such premises,

whether or not such person holds an operator's license pursuant to § 125.17, Wis. Stats., as amended, shall sell vend, barter, exchange, offer for sale, give away or otherwise furnish to any person any fermented malt beverages or intoxicating liquor in original packages, intending to mean aluminum/tin cans, bottles, barrels or any containers in which the beverages have been delivered to the premises, and to be removed from the premises between the hours of 9:00 p.m. and 8:00 a.m.

- (2) The licensee or permittee and one employee shall be permitted to check out receipts, check the licensed premises for security and do minor cleaning until 2:30 a.m., 3:00 a.m. on Saturday or Sunday, except on January 1 as provided in Subsection A. Under no circumstances shall the consumption of alcohol beverages be permitted after 2:00 a.m., or 2:30 a.m. on Saturday or Sunday, except on January 1 as provided in Subsection A. Commercial janitorial service personnel shall be allowed to enter the licensed premises for the purpose of cleaning between the hours of 2:00 a.m. and 6:00 a.m. The premises shall be well-lighted during cleanup.

§ 205-16. Restrictions on special Class "B" license.

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

- A. Compliance with eligibility standards. The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in § 125.26(6), Wis. Stats., and shall fully comply with the requirements of this section and § 205-28 of Article II, Offenses, of this chapter.
- B. Posting of signs and licenses. All organizations issued a liquor license shall post in a conspicuous location at the main point of sale and at all remote points of sale a sufficient number of signs stating that no fermented malt beverage shall be served to any underage person without proper age identification.
- C. Fencing. All organizations shall install a double fence around the main point of sale to control ingress and egress and shall continually station a licensed operator or security guard at the entrance for the purpose of checking age identification. There shall be only one point of ingress and egress. The double fence shall be a minimum of four feet high and a minimum of six feet between fences. A single eight-foot chain link fence may be used to meet the fence requirements.
- D. Underage persons prohibited. No underage persons, as defined by the Wisconsin Statutes, shall be allowed to assist in the sale of fermented malt beverages at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.

- E. Licensed operator's requirement. A licensed operator shall be stationed at all points of sale at all times.
- F. Permitted cups only. Intoxicants will be sold only in foam or plastic cups, or cans.
- G. Additional requirements. In addition, the requesting organization shall comply with the following:
 - (1) When the event sponsored by the requesting organization is to take place on Village park property, the organization shall work closely with Village officials in locating and setting up the snow fence area. Village officials shall work with the requesting organization in identifying the size of the fenced-in area and the exact location. Such information shall be made part of the temporary Class "B" permit application.
 - (2) When the event sponsored by the requesting organization is to take place on Village-owned property other than park property and/or privately owned property, the organization shall work closely with the Police Department in locating and setting up the snow fence area. The Chief of Police shall work closely with the requesting organization in identifying the size of the fenced-in area and the exact location. Such information shall be made part of the temporary Class "B" permit application. For indoor events, the structure used must have suitable exits and open spaces to accommodate anticipated attendance. It shall contain adequate sanitary facilities to accommodate the size of the group.
- H. Insurance. The applicant for a special Class "B" fermented malt beverage license may be required to indemnify, defend, and hold the Village and its employees and agents harmless against all claims, liability, loss, damage or expense incurred by the Village on account of any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, the applicant may be required to furnish a certificate of comprehensive general liability insurance with the Village. The applicant may be required to furnish a performance bond prior to being granted the permit. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

§ 205-17. Beer garden/patio licenses for outdoor consumption at Class "B" premises. [Amended 6-25-2012]

- A. Required for outdoor consumption. No licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under permit granted by the Village Board. The permits are a privilege in which no rights vest and therefore may be revoked by the Village Board at its pleasure at any time, or shall otherwise expire on June 30 of each year. No person shall consume or have in his or her possession alcohol beverages on any unenclosed part of a licensed premises which is not described in a valid beer garden permit.
- B. Limitations on issuance of beer garden permits. No permit shall be issued for a beer garden if any part of the beer garden is within 100 feet of a structure used for residential purposes, except residential uses located in the same structure as the licensed

premises. No permit shall be issued for a beer garden if the beer garden area is greater than 50% of the gross floor area of the adjoining licensed premises. Each applicant for a beer garden permit shall accurately describe the area intended for use as a beer garden and shall indicate the nature of fencing or other measures intended to provide control over the operation of the beer garden. Every beer garden shall be completely enclosed with a fence or wall not less than six feet in height. No amplified sound or music is permitted outside the enclosed (building) premises. Amplified sound or music is not permitted in the beer garden. There shall be a licensed operator with the beer garden at all times the beer garden is in operation.

- C. Adjoining property owners to be notified of pendency of applications. All property owners within 150 feet of the proposed beer garden shall be notified of the pendency of application for a beer garden permit by first class mail.
- D. State statutes enforced within beer garden. Every permittee under this section shall comply with and enforce all provisions of Ch. 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Ch. 125, Wis. Stats. shall be grounds for immediate revocation of the beer garden permit by the Village Board.
- E. Beer patio. A beer patio shall have the same requirements as a beer garden, except a patio is for consumption only, not for sale of alcohol, and would not require a licensed operator.

§ 205-18. Revocation and suspension of licenses; nonrenewal.

- A. Procedure. Whenever the holder of any license under this article violates any portion of this article or Article II, Offenses, of this chapter, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this section.
- B. Abandonment of premises. Any licensee holding a license to sell alcohol beverages who abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be sufficient grounds for revocation of any alcohol beverage license. The closing of the licensed premises for at least six months shall be prima facie evidence of an abandonment unless extended by the Village Board.
- C. License revocation or suspension.
 - (1) Notice and hearing. Whenever a person holding a license to sell alcohol beverages has failed to maintain the premises according to standards prescribed for sanitation, or in whose premises persons are permitted to loiter for purposes of prostitution, or that the licensee has not observed and obeyed any lawful order of the Village Board or police officers of the Village, has violated Village ordinances, or for any other good reason, the Village Board shall issue a summons, to be signed by the Village Clerk-Treasurer, commanding the licensee complained of to appear before the Fire and Police Committee, or a special committee designated by the Village Board, on a day and time and at a place named in the summons to show cause why the license should not be revoked or

suspended. Such summons shall be served not less than three and not more than 10 days before the time at which the licensee is commanded to appear, and may be served personally upon the licensee or the agent of the licensee or upon the person in charge of the licensed premises. The complaint shall be served with the summons and shall set forth the offense allegedly committed, the date and place of said offense, and the facts constituting the alleged offense. If such licensee shall not appear as required by the summons, the complaint shall be taken as true, and if the Committee deems its allegations sufficient, the Committee shall recommend revocation or suspension of the license as provided herein.

- (2) Procedure on hearing; effect of revocation.
 - (a) The Fire and Police Committee or a designated committee shall serve as a hearing agency for the Village Board.
 - (b) The Chairman of the Committee, or the Chair's designee, shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in § 227.45, Wis. Stats., shall be followed. The complainant shall have the burden of proving the charges to a preponderance of the evidence. The licensee and the complainant may be represented by counsel, may call and examine witnesses and cross-examine witnesses of the other party. All proceedings and testimony shall be recorded on tape and transcribed. If either party requests a stenographic recording and transcription, the Village shall make the necessary arrangements, but the expenses shall be borne by the requesting party. The Village Clerk-Treasurer shall serve as secretary to the Committee and shall mark and receive all exhibits admitted into the record.
 - (c) Within 10 days of the completion of the hearing and filing of briefs, if any, the Committee, upon the testimony and evidence presented at the hearing, shall determine by simple majority vote of those present whether the charges are true and, if so, submit a report to the Village Board, including its findings of fact, conclusions of law and a recommendation as to what action, if any, the Village Board should take with respect to the license. If the recommendation is to suspend the license, it shall be for a period of not less than 10 days or more than 90 days; in like manner, the recommendation may be to revoke the license. If the Committee determines that the charges are not substantiated, it shall recommend to the Village Board that the complaint be dismissed without cost to either party. The Committee's recommendation shall be promptly filed with the Clerk-Treasurer. The Clerk-Treasurer shall prepare five copies of the transcript of the proceedings, all exhibits and the recommendation of the Committee.
 - (d) At the regular meeting of the Village Board after the filing of the Committee's recommendation, the Village Board shall act on the recommendation and may reverse or modify any portion thereof by a simple majority vote. The recommendation of the Committee shall become the decision of the Village Board unless reversed or modified. No further testimony or evidence shall be allowed before the Village Board. Only those members of the Village Board who have certified to the Clerk, in

writing, that they have read the transcript, exhibits and recommendation made shall be permitted to vote on the matter. The Clerk-Treasurer shall make the said certifications a part of the record. The decision of the Village Board shall be a final determination for purposes of judicial review.

- (e) If the complaint is found to be true, the licensee shall pay to the Village the actual cost of the proceedings. If the complaint is found by the Village Board to be malicious and without probable cause, the complainant shall pay the cost of the proceedings in the same amount.
 - (f) When a license is revoked, it shall be so entered of record by the Clerk, and no other license shall be granted to such licensee or for such premises for a period of 12 months from the date of the revocation, nor shall any part of the money paid as application fee for any license so revoked be refunded.
- D. Nonrenewal of license. The Village Attorney may, after investigation, commence an action before the Fire and Police Committee to hear evidence and make a recommendation to the Village Board that a license issued pursuant to this article not be renewed. The Chairman of the Committee shall, in writing, notify the licensee of the consideration of nonrenewal. Such notification shall be in the form of and shall serve as the summons and complaint and shall include a statement of the reasons for the consideration of the nonrenewal of the license in the same specificity required for a summons and complaint for revocation or suspension. If the license is recommended for nonrenewal, costs may be assessed against the licensee and any renewal application fee shall be forfeited. In all other respects, the provisions of Subsection C above shall apply. The commencement of this action shall stay action by the Village Board on the licensee's application until the Committee makes its recommendation.
- E. Other provisions. Any license issued pursuant to this article shall be subject to such further regulations and restrictions as may be imposed by the Village Board by amendment to this section or by the enactment of new ordinances. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations, his license may be revoked in accordance with this section. In case of revocation of any license or any violation of any provision of this article in accordance with this section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.
- F. Point values for alcohol beverages' violations, revocations and suspensions.
 - (1) Purpose and definitions. The purpose of this subsection is to administratively interpret those portions of this article and Article II, Offenses, of this chapter 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 state statutes and Village ordinances, for the purpose of recommending suspension or revocation of their alcohol beverage licenses. **[Amended 6-22-2009]**

Type of Violation	Point Value
Sale of alcohol beverages without license or permit	100
Sale of alcohol beverages to underaged person	50
Sale of alcohol beverages to intoxicated person	50
Underaged person on premises	50
Intoxicated bartender	50
After-hours consumption	50
Refusal to allow police to search premises or refusal to cooperate with lawful police investigation	50
Licensee, agent or operator to be on premises at all times	25
No authorized persons on premises after closing hours	25
No carry-out, restricted to appropriate hours	25
Permit person to leave licensed premises with open alcohol beverage	25
All other violations of this article	25

- (3) Violations, how calculated. In determining the accumulated demerit points against a license within 12 months, the Village shall use the date each violation was committed as the basis for the determination.
- (4) Suspension or revocation of license.
 - (a) The Fire and Police Committee of the Village Board shall call before it for purposes of a revocation or suspension hearing all licensees who have accumulated 100 points in a twelve-month period as a result of court-imposed convictions or who have had referred to it reports from the Village Attorney which, if believed, would result in 100 demerit points in 12 months.
 - (b) If the demerit point accumulation, calculated from the date of violation, totals 100 points in a twelve-month period, 150 points in a twenty-four-month period or 200 points in a thirty-six-month period, the suspension shall be for not less than 10 days nor more than 90. If the license(s) is revoked, no other license shall be granted to such licensee or for such premises for a period of 12 months from the date of revocation. **[Amended 5-12-2008]**
 - (c) The procedure to be used for suspension or revocation shall be that found in Subsection C above.

§ 205-19. Operator's license required.

There shall be upon the premises operated under a "Class A" or "Class B" intoxicating liquor license or Class "B" fermented malt beverage license at all times the licensee or some other person who shall have an operator's license and who shall be responsible for the acts of all persons serving or selling any intoxicating liquor or fermented malt beverages to customers. No person other than the licensee shall serve or sell fermented malt beverages or intoxicating liquor in any place operated under the "Class A" or "Class B" licenses, unless he shall possess an operator's license or unless he shall be under the immediate supervision of the licensee or a person holding an operator's license who shall be upon the premises at the time of such service.

§ 205-20. Procedure upon application. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

The Village Board may issue an operator's license, which license shall be granted only upon application, in writing, on blanks to be obtained from the Village Clerk-Treasurer only to persons qualified pursuant to § 125.045(5), Wis. Stats. Operator's licenses shall be operative only within the limits of the Village.

§ 205-21. Duration.

Licenses issued under the provisions of this article shall be valid for a period of one year and shall expire on the 30th day of June.

§ 205-22. Fee; provisional operator's license. [Amended 3-10-2003; 7-14-2003; at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

- A. Fee. The fee for an operator's license shall be as set forth in the General Fee Schedule, on file in the Village offices.
- B. Provisional operator's license. The Village Clerk-Treasurer shall have authority to issue a provisional operator's license subject to the limitations contained in § 125.17(5), Wis. Stats., which shall expire 60 days after its issuance or when an operator's license is issued to the holder, whichever is sooner. A provisional license may not be issued to any person who has been denied an operator's license by the Village Board or who has had his/her operator's license revoked or suspended within the preceding 12 months. The Clerk-Treasurer shall provide an appropriate application form to be completed in full by the applicant. The Village Clerk-Treasurer may revoke the provisional license issued if he/she discovers that the holder of the license made a false statement on the application. The fee for a provisional license shall be as set forth in the General Fee Schedule, on file in the Village offices.

§ 205-23. Issuance.

After the Village Board approves the granting of an operator's license, the Village Clerk-Treasurer shall issue the license. Such licenses shall be issued and numbered in the order they

are granted and shall give the applicant's name and address and the date of the expiration of such license.

§ 205-24. Display of license.

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

§ 205-25. Revocation of operator's license.

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

§ 205-26. Underage consumption of alcohol beverages. [Added 11-8-2010]

A. Underage consumption of alcohol beverages.

- (1) An underage person may not possess or consume any alcohol beverage unless such underage person is accompanied by a parent, guardian, or spouse who has attained the legal drinking age.
- (2) An underage person may not have an illegal alcohol concentration while he/she is within the Village on either public or private land unless the underage person is accompanied by a parent, guardian or spouse who has attained the legal drinking age.
- (3) A parent, guardian or spouse who has attained the legal drinking age and has allowed an underage person under the age of 18 years that is their child, ward or spouse to consume alcohol must accompany the underage person under the age of 18 years until the underage person no longer has an illegal alcohol concentration.

B. Rebuttable presumptions.

- (1) There is a rebuttable presumption that an underage person has an illegal alcohol concentration if an odor of alcohol may be detected upon the underage person's breath and the underage person refuses to submit a test of their breath.
- (2) There is a rebuttable presumption that an underage person has an illegal alcohol concentration if an underage person submits to a preliminary breath test (PBT) and the preliminary breath shows that the underage person's alcohol concentration is greater than 0.00 grams of alcohol in 210 liters of breath.

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

ALCOHOL BEVERAGE — Fermented malt beverages and intoxicating liquor.

ILLEGAL ALCOHOL CONCENTRATION — An alcohol concentration of greater than 0.00 grams of alcohol in 210 liters of breath or equivalent alcohol concentration in the person's blood or urine.

UNDERAGE PERSON — A person who has not attained the legal drinking age.

§ 205-27. Violations and penalties.

- A. Forfeitures for violations of §§ 125.07(1) to (5) and 125.09(2) of the Wisconsin Statutes, adopted by reference in § 205-1 of this article, 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.
- B. Any person who shall violate any provision of this article of this chapter, except as otherwise provided in Subsection A herein, or who shall conduct any activity or make any sale for which a license is required without such license, shall be subject to a forfeiture as provided in § 1-4, General penalty, of this Code.
- C. Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

ARTICLE II

Offenses

[Adopted as Title 9, Ch. 5, of the 1987 Village Code]

§ 205-28. Outside consumption.

- A. Alcohol beverages in public areas.
 - (1) Regulations. It shall be unlawful for any person to sell, serve, or give away, or offer to sell, serve or give away, any alcohol beverage upon any street, sidewalk, alley, public parking lot, highway, cemetery or drives or other public area within the Village or on private property without the owner's consent except at licensed premises. It shall be unlawful for any person to consume or have in his/her possession an open container containing any alcohol beverage upon any public street, public sidewalk, public way, public alley or public parking lot within the Village except at licensed premises.
 - (2) Parks. It shall be unlawful for any person to drink or have in his/her possession any alcohol beverage in any Village park except at licensed premises or specially reserved areas.
 - (3) Private property held out for public use. It shall be unlawful for any person to consume any alcohol beverages upon any private property held open for public use within the Village, unless the property is specifically named as being part of a licensed premises.
 - (4) Leaving licensed premises with open container.
 - (a) It shall be unlawful for any licensee, permittee or operator to permit any patron to leave the licensed premises with an open container containing any alcohol beverage.

- (b) It shall be unlawful for any patron to leave a licensed premises with an open container containing any alcohol beverage.
 - (c) It shall be unlawful for any patron to remove an original, unopened package, container or bottle containing any alcohol beverage from the licensed premises between the hours of 12:00 a.m. and 6:00 a.m. **[Amended 4-9-2012]**
- (5) Picnic beer permits for parks.
 - (a) It shall be unlawful for any group of persons which exceeds 25 to consume any alcohol beverages in any park areas without first obtaining a picnic beer permit from the Village. The picnic beer permits shall be issued by the Village Clerk-Treasurer with a copy of the permit sent to the Chief of Police.
 - (b) Applicants for special Class "B" permits shall fully comply with the requirements of § 205-16.
 - (c) The sale of fermented malt beverages from remote sites, other than the main point-of-sale facility, shall be prohibited after the hour of 9:00 p.m.
- (6) Exceptions.
 - (a) The provisions of this section may be waived by the Village Board for duly authorized events.
 - (b) This section shall not apply to any organization which has been issued a special Class "B" fermented malt beverage picnic license pursuant to this Code, provided that the provisions of this article and Article I, Licensing, of this chapter are fully complied with. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

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

PUBLIC AREA — Any location within the Village which is open to access to persons not requiring specific permission of the owner to be at such location, including all parking lots serving commercial establishments.

UNDERAGE PERSON — Any person under the legal drinking age as defined by the Wisconsin Statutes.²

§ 205-29. Solicitation of drinks prohibited.

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

§ 205-30. Recovery of costs for blood or urine testing. [Added 2-1-2004]

Alcohol and/or drug related offenses. Upon conviction of any alcohol related offenses for which the Village of Black Creek has expended funds or incurred expense for the withdrawal or testing of blood or urine, the cost of such service to the Village shall be added to any forfeiture, court costs, and fees imposed by the court.

2. Editor's Note: The following original sections of the 1987 Village Code, which immediately followed this definition, were repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II): Sec. 9-5-2, Sale to underage or intoxicated persons restricted; Sec. 9-5-3, Underage persons presence in places of sale; penalty; Sec. 9-5-4, Underage persons; prohibitions; penalties; Sec. 9-5-5, Defense of sellers; Sec. 9-5-6, Persons of legal drinking age; false or altered identification cards; Sec. 9-5-7, Possession of alcohol beverages on school grounds prohibited; and Sec. 9-5-8, Adult permitting or encouraging underage violation.