

ORDINANCE NO. 2478-17

By Legislative and Licensing Committee

**AN ORDINANCE REPEALING AND RECREATING CHAPTER 5.24
REGARDING ALCOHOL BEVERAGE LICENSING**

WHEREAS, the provisions of Chapter 5.24 regarding Intoxicating Liquor and Fermented Malt Beverages have not been updated in many years and certain provisions no longer comply with the statutes, have become outdated, or do not reflect actual practice; and

WHEREAS, City staff has recommended a comprehensive update to address these issues.

NOW THEREFORE, the Common Council of the City of Brookfield do ordain as follows:

PART I. The provisions of Chapter 5.24 are repealed and recreated as found in Exhibit A attached hereto and incorporated as if set forth herein.

PART II. The provisions of §3.24.050.L. shall be repealed and recreated to read as follows:

3.24.050 Schedule of city clerk permit, license and service fees.

L. The fee for a Class B beer license under Section [5.24.020](#) shall be one hundred (\$100.00).

PART III. Section 1.12, General Penalty, Title 5, “Business Licenses and Regulations” shall be amended by deleting references to §5.24.090, 5.24.100, 5.24.110, and 5.24.140 in their entirety including descriptions and penalty amounts.

PART IV. Section 1.12, General Penalty, Title 5, “Business Licenses and Regulations”, §5.24 shall be amended to read as follows:

| | | |
|------|---|--------|
| 5.24 | Intoxicating Liquor and Fermented Malt Beverages | 300.00 |
|------|---|--------|

PART V. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART VI. The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

PART VII. This ordinance shall be in full force and effect from and after its passage and publication.

ADOPTED AND APPROVED _____, May 2, 2017

Kelly Michaels, City Clerk

Steven V. Ponto, Mayor

Published: May 11, 2017

EXHIBIT A

5.24.010 State statutes adopted.

A. Chapter 125. The provisions of Chapter [125](#), Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, and any subsequent amendments, exclusive of any provisions thereof 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. The City does not adopt the provision of Section [125.51\(3\)\(b\)](#), Wisconsin Statutes, allowing the sale of intoxicating liquor by retail “Class B” licensees for consumption off-premises.

B. The provisions of §§139.08(4), Wisconsin Statutes, authorizing inspection for enforcement of Chapters 125 and 139 during all reasonable hours, and §139.22, authorizing seizure of alcohol beverages which violate §§139.01 to 139.25 and Chapter 125 are adopted and made part of this chapter by reference.

C. A violation of any such provisions shall constitute a violation of this chapter. Penalties for violation shall be as provided by Chapter [1.12](#).

| Municipal Code Violation/Statutory counterpart | | | Statute |
|--|----|--|---------------------|
| 5.24.010.C. | 01 | Sale of fermented malt beverages by Class “A” between 9 p.m. and 8 a.m. | 125.32(3) |
| | 02 | Class “B” fermented malt beverages open/patrons on premise between 2 a.m. and 6 a.m. M-F, 2:30 a.m. and 6 a.m. Saturday and Sunday, January 1 excepted | 125.32(3) |
| | 03 | “Class B” intoxicating liquor hours of operation | 125.68(4) |
| | 04 | Underage - sale to | 125.07(1)(a) |
| | 05 | Underage - purchase or possession by | 125.07(4)(a) & (b) |
| | 06 | Underage - presence in place of sale | 125.07(3) |
| | 07 | Underage - consumption and possession | 125.07(4)(b) & (bm) |
| | 08 | Possess consume on school grounds | 125.09(2) |
| | 09 | Misrepresent age | 125.085(3)(b) |

SUBTITLE 1 - LICENSING

5.24.020 License Fees. License fees are found at §3.24.050.B. No application will be processed until it is fully completed and the background check fees and publishing cost, if required, are paid. No license shall be issued until the license fees have been paid.

5.24.030 Background checks. The City conducts a background check on every applicant. There is an additional fee for the background check. If you have not lived in Wisconsin any time in the 5 years before applying, you will be charged an additional amount for background checks in each of those states.

5.24.040 Premise License application.

A. Application for a license to sell or deal in alcohol beverages shall be made in writing on the form prescribed by Section [125.04\(3\)](#), Wisconsin Statutes, and shall be filed, together with the cost of publication as provided by Section 3.24.050(B), with the city clerk not less than fifteen (15) days prior to the granting of the license., Applications for licenses to be issued under Sections [125.26\(6\)](#) and [125.51\(10\)](#), Wisconsin Statutes, (picnic) shall be filed with the city clerk at least four (4) weeks before the event, unless the same event has been approved previously, but even in those instances not less than 5 business days prior to the event.

B. Provisional Premises. The city clerk is the official who grants or revokes a provisional retail license.

C. Temporary Class “B” (fermented malt beverage) and “Class B” - wine (picnic license). The city clerk shall have the authority to approve requests for temporary Class “B” fermented malt beverage and temporary “Class B” - wine licenses under Section [125.26\(6\)](#) and [125.51\(10\)](#), Wisconsin Statutes, for those events for which common council approval may not be obtained in a timely manner and for which the applying organization has obtained approval by the council for previous similar events.

5.24.050 Premises Inspection.

The city clerk shall notify the police chief, the fire department chief, and the building inspector of Class B and “Class C” applications and these officials shall inspect or cause to be inspected each such application and the premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto. These officials shall report to the Clerk whether the premises meet the department requirements. No license shall be renewed without a re-inspection of the premises.

5.24.060 Restrictions on granting premises licenses.

A. In determining the suitability of an applicant, consideration shall be given to the financial responsibility of the applicant, the appropriateness of the location and premises where such licensed business is to be conducted the applicant’s fitness for the trust to be reposed and the best interest of the city’s economic health and welfare.

B. Right to Possession Required.

1. Right to Possession Required. No applicant shall be considered unless he has the right to possession of the premises described in the application for the license by lease or by deed. Leasees shall provide a copy of the lease with their application.

C. Business type limitations:

Fast food and casual dining restaurants are limited to applying for “Class A” - cider only”, Class “B” (fermented malt beverage), and “Class C” (wine) licenses. For purposes of this chapter, fast-food and casual dining restaurants means a restaurant where the food is pre-prepared or rapidly prepared upon ordering and the customer interaction and transaction generally occurs at a centralized location such as a counter or drive-up window.

D. Provisional retail licenses will be granted only to those applicants who:

i. meet the provisions of subsection C. and §125.68.(3), Wisconsin Statutes. Any premise requiring a location waiver may not apply for a provisional license;

ii. can prove they have a right to occupy the premises;

iii. do not have a suspended or revoked alcohol beverage license in the city;

iv. have not been denied an alcohol license by the city;

v. have obtained an occupancy permit; and

vi. provide a sworn affidavit that they are not a habitual law offender or convicted felon as defined herein. Habitual law offender means having multiple convictions or pending charges within a relatively short period of time including municipal ordinance violations, felonies or misdemeanors, and driving while under the influence of alcohol or controlled substance.

5.24.070 Operator’s (bartender’s) license—Requirements.

A. Applicants for an operator’s license are required to complete an application on a form provided by the clerk’s office and disclose all criminal (felony and misdemeanor) and civil convictions as well as any arrests for which charges are pending.

B. The city clerk is directed to provide each applicant a copy of the standards the legislative and licensing committee and council utilizes in granting licenses.

C. Operator’s licenses are issued for a period of two years for all applicants.

D. Provisional License.

1. The city clerk is the official charged with issuing and revoking a provisional operator’s license. A provisional license requires an additional fee.

2. Standards for Provisional license, unless applicant has a certified copy of a license issued by another municipality:

a. the applicant has applied for an operator’s license;

b. The applicant for a provisional operator’s license must furnish an affidavit stating that he/she has not been a habitual law offender or been convicted of a felony unless duly pardoned;

c. No provisional operator’s license may be issued to a person who has been previously denied an operator’s license by the council.

d. Applicant must provide evidence of completion or enrollment in Responsible Beverage Server Course.

SUBTITLE II - REGULATIONS

5.24.080 Restrictions on operation of licensed premises.

A. The licensee shall conduct the sale of all alcohol products in conformance with Chapters [125](#) and 139 of the Wisconsin Statutes.

B. Inspection and Search. Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the city at all reasonable hours for the purpose of inspection and search.

C. Disorderly Conduct Prohibited.

1. Each licensed premises shall be conducted in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.

2. It is unlawful for any licensee, or manager or agent of the licensee, to permit any employee, entertainer or patron to engage in or exhibit on the licensed premises any adult entertainment which requires a license under Chapter [5.04](#) of the Municipal Code. Any licensee who violates the provisions of this subsection shall be subject to liquor license suspension, revocation or nonrenewal as provided by Sections [125.10](#)(1) and [125.12](#)(1) of the Wisconsin Statutes.

D. Structural Alterations Prohibited Without Approval. No structural alteration which creates an expansion of or changes to the licensed area shall be permitted without approval of the legislative and licensing committee.

E. If a license issued hereunder is not used within thirty (30) days after its issuance or its usage is discontinued for a period of thirty (30) days or more, such situation may be grounds for cancellation of the license.

F. No alcohol may be sold or served through a drive-thru window.

5.24.090 Use of fermented malt beverages and intoxicating liquor on public property and parking lots prohibited.

A. No person shall, consume or sell any alcohol beverage in or upon any of the following:

1. Any public street, alley, sidewalk, street crossing, bridge, public playground, public park or public parking lot;

2. Any premises held out to the public for the use of their motor vehicles whether such premises are publicly or privately owned. This shall include the parking lots of all alcohol beverage licensees or permittees.

This prohibition shall not apply to community functions or events authorized by specific action of the council, authorized by the park authorities under Section [12.24.060](#) or the Sharon Lynne Wilson Center for the Arts leasehold under the license issued to the Center.

B. All purchases of alcohol beverages by the glass or in open containers shall be consumed on the licensed premises where served and shall not be removed to any of the places described in subsection A of this section.

5.24.100 Breweries.

Breweries are permitted by the Wisconsin Department of Revenue, but Wisconsin Statutes allows municipalities to prescribe regulations for the sale of alcoholic beverages not in conflict with Chapter 125. Breweries shall be subject to the following requirements and restrictions:

1. Breweries shall register their business with the city clerk by filing a copy of their permit application submitted to the State of Wisconsin Department of Revenue along with any current and valid permit(s) issued by the Department.

2. Sections of the city code:

- a. [5.24.080\(C\)](#)—Disorderly Conduct Prohibited.
- b. [5.24.090](#).—Consumption of all open containers on the licensed premises.

3. Closing hours shall be as provided at §125.32(3), Wisconsin Statutes or in their approved plan and method of operation.

5.24.110 Suspension and revocation.

A. A violation of this chapter by a duly authorized agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder. Whenever the holder of any license or permit under this section shall violate any provision of this section, proceedings for the revocation of such license or permit may be instituted in the manner and under the procedure established by Section [125.12](#), Wisconsin Statutes, and the provision therein relating to granting a new license shall likewise be applicable.

B. Pursuant to Sections 945.03(2m), 945.04(2m) and 945.041(11), Wisconsin Statutes, no Class “B” or “Class B” license shall be suspended, revoked or denied renewal for possession of up to five video gambling machines on such premises.