

ORDINANCE No. 16-1

AN ORDINANCE AMENDING REGULATION OF FERMENTED MALT BEVERAGE, WINE OR INTOXICATING LIQUOR LICENSES

SECTION I. PREAMBLE; STATEMENT OF PURPOSE.

WHEREAS, Section 7-2-1 of the Village of Elk Mound Code of Ordinances adopts provisions of Ch. 125, Wis. Stats., with respect to the regulation of the sale of intoxicating liquor, wine and/or fermented malt beverages and states that any act to be performed or prohibited by the Wisconsin Statutes shall be reflected in Title 7, Ch. 2 of the Code of Ordinances;

WHEREAS, the Village Board desires to bring pertinent Village ordinances pertaining to alcohol beverage licensing into conformity with State regulations to minimize regulatory conflicts and enhance public understanding;

WHEREAS, the Village Board intends to amend and update provisions of its Code of Ordinances to reflect new state law requirements regarding: cider-only intoxicating liquor licenses; allowing for temporary wine and beer walks; considering chambers of commerce the same as other clubs and non-profit organizations for purposes of obtaining temporary wine or fermented malt beverage licenses; reflecting state standards allowing liquor, wine and beer samples to be provided to customers; allowing for underage persons to be present on certain licensed premises for the purpose of being designated drivers; setting closing hours for Temporary "Class B" Wine Licenses; and increasing the number of temporary licensed events a temporary operator may serve.

NOW, THEREFORE, the Village Board do ordain as follows:

SECTION II. REPEAL AND ADOPTION OF PROVISIONS.

Sections 7-2-1 through 7-2-5 of the Village of Elk Mound Code of Ordinances are repealed and recreated to read as follows:

Sec. 7-2-1 State Statutes Adopted.

The provisions of Ch. 125, Wis. Stats., 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 Chapter 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 Chapter. Any future amendments, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Chapter in order to secure uniform statewide regulation of alcohol beverage control.

State Law Reference: Chapter 125, Wis. Stats.

Sec. 7-2-2 Definitions.

As used in this Chapter the terms "Alcoholic Beverages," "Intoxicating Liquors," "Principal Business," "Legal Drinking Age", "Premises," "Sell," "Sold," "Sale," "Restaurant," "Cider," "Chamber of Commerce," "Club," "Retailer," "Person," "Fermented Malt Beverages," "Wholesalers," "Retailers," "Operators," and "Non-Intoxicating Beverages" shall have the meaning given them by Ch. 125, Wis. Stats.

Sec. 7-2-3 License Required.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his/her/its 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, fermented malt beverage, wine or intoxicating cider in any quantity whatever, or cause the same to be done, without having procured a license as provided in this Chapter nor without complying with all the provisions of this Chapter, and all statutes and regulations applicable thereto, except as provided by Secs. 125.16, 125.27, 125.28 and 125.51, Wis. Stats.

Sec. 7-2-4 Classes of Licenses.

(a) Retail "Class A" Intoxicating Liquor License.

- (1) **Generally.** 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.
- (2) **Customer Samples.** A "Class A" license authorizes the licensee to provide, free of charge, to customers and visitors who have attained the legal drinking age, taste samples of intoxicating liquor other than wine

that are not in original packages or containers and that do not exceed 0.5 fluid ounces each, for consumption on the "Class A" premises. No "Class A" licensee may provide more than one such taste sample per day to any one person. Taste samples may be provided only between the hours of 11:00 a.m. and 7:00 p.m. Any representative of a manufacturer, rectifier, winery, or out-of-state shipper issued a permit under Secs. 125.52, 125.53, or 125.58, Wis. Stats., may assist the "Class A" licensee in dispensing or serving the taste samples. No "Class A" licensee may provide as taste samples under this Subsection intoxicating liquor other than wine that the "Class A" licensee did not purchase from a wholesaler.

- (b) **Retail "Class A" Intoxicating Liquor License – Cider Only.** A "Class A" intoxicating liquor license issued under this Section shall entitle the holder to sell, deal and traffic in cider only, and only in original packages or containers and to be consumed off the premises so licensed. A retail "Class A" Intoxicating Liquor License for Cider only shall be granted to an applicant who holds a Class "A" Fermented Malt Beverage Retailer's license issued under Sec. 125.25, Wis. Stats., or under Subsection (e) of this Section, for the same premises for which the "Class A" license application is made.
- (c) **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 (4) liters at any one (1) 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. Per Sec. 125.51(3), Wis. Stats., a "Class B" intoxicating liquor license can only be issued to a holder of a Class "B" fermented malt beverage license.
- (d) **Reserve "Class B" Licenses.** A Reserve "Class B" license means a license that is not granted or issued by the Village of Elk Mound on December 1, 1997, and that is counted under Sec. 125.51(4)(br), Wis. Stats., which, if granted or issued, authorizes the sale of intoxicating liquor to be consumed by the glass only on the premises where sold, and also authorizes the sale of intoxicating liquor in the original package or container in multiples not to exceed four (4) liters at any one time, to be consumed off premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- (e) **Class "A" Fermented Malt Beverage Retailer's License.**
 - (1) **Generally.** 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. Such license may be issued after July 1st. The license shall expire on the following June 30th.

- (2) **Customer Samples.** A Class "A" license also authorizes the licensee to provide, free of charge to customers and visitors who have attained the legal drinking age, fermented malt beverages taste samples that are not in original packages, containers, or bottles and that do not exceed three (3) fluid ounces each, for consumption on the Class "A" premises. No Class "A" licensee may provide more than two (2) taste samples per day to any one person. Taste samples may be provided under this Subsection only between the hours of 11:00 a.m. and 7:00 p.m. Any other regulatory provision applicable to retail sales of fermented malt beverages by a Class "A" licensee also applies to the provision of taste samples, free of charge, of fermented malt beverages by a Class "A" licensee.
- (f) **Class "B" Fermented Malt Beverage Retailer's License.**
- (1) **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 one-half (1/2) of a percentum of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1st. The license shall expire on the following June 30th.
 - (2) **Application.** Class "B" licenses may be issued to any person qualified under Sec. 125.04(5), Wis. Stats. Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six (6) months before the date of application. A Class "B" license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this Chapter. Except as provided in Sec. 125.31, Wis. Stats., Class "B" licenses may not be issued to brewers or fermented malt beverages wholesalers.
- (g) **Temporary Class "B" Fermented Malt Beverage License.**
- (1) **License.**
 - a. As provided in Sec. 125.26(1) and (6), Wis. Stats., Temporary Class "B" fermented malt beverage licenses may be issued to bona fide clubs and chambers of commerce, to county or local fair

associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society.

- b. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held.
- c. Such license is valid for dates as approved by the Village Clerk-Treasurer.

(2) **Application.**

- a. Application for such temporary license shall be signed by the president or corresponding officer of the society or association 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. Any denial of a license may be appealed to the Village Board under Section 7-2-10. Any application not filed at least five (5) days before the date of the licensed event may not provide enough time for the Village Clerk-Treasurer to take action of the application, and any application not filed at least forty-five (45) days before the date of the licensed event may not provide enough time for the applicant to appeal any denial of license by the Village Clerk-Treasurer.
- b. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary Class "B" license for one (1) year.
- c. The temporary license shall specify the hours and dates of license validity. The application shall be filed a minimum of fifteen (15) days prior to the meeting of the Village Board at which the application will be considered for events of more than four (4) consecutive days.
- d. If the application is for a temporary license to be used in a Village park, the applicant shall specify the main point of sale facility.
- e. The Village Board, or other official authorized to issue Temporary Class "B" fermented malt beverage licenses, may issue a qualified

organization Temporary Class "B" beer licenses for a multiple-location, single-day event on a specific date and time for the purpose of conducting a "beer walk". For such an event to occur:

1. The Temporary Class "B" fermented malt beverage licenses must be issued by the Village to the same qualified organization which is the licensee and sponsor of the multiple-location, single-day event.
 2. The Temporary Class "B" fermented malt beverage licenses must be issued for the same date and time.
 3. An admission fee shall be charged for participation in the event. No additional charge can be charged for service of alcohol at the event.
 4. There is no limit to the number of Temporary Class "B" fermented malt beverage licenses the Village may issue to a qualified organization.
- f. Temporary Class "B" licensees must purchase all beer from beer wholesalers or breweries/brewpubs authorized to self-distribute to retail licensees.

(h) **Temporary "Class B" Wine License.**

(1) ***License.***

- a. Notwithstanding Sec. 125.68(3), Wis. Stats., Temporary "Class B" wine licenses may be issued to bona fide clubs and chambers of commerce, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans' organizations authorizing the sale of wine in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. An eligible organization may obtain a Temporary "Class B" wine license without also obtaining a temporary Class "B" fermented malt beverage license.
- b. No fee may be charged to a person who, at the same time, applies for a Temporary Class "B" beer license under Sec. 125.26(6), Wis. Stats., for the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine from leased stands on the fairgrounds.
- c. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of wine from the stands while the fair is being held.

- d. Not more than two (2) such licenses may be issued under this Subsection to any club, chamber of commerce, county or local fair association, agricultural association, church, lodge, society or veterans' post in any twelve (12) month period.
- e. An applicant may receive up to twenty (20) temporary licenses for the purpose of conducting a "wine walk" if all of the following apply:
 - 1. Each license is issued for the same date and times and the licensee is the sponsor of an event held at multiple locations within the municipality on this date and at these times.
 - 2. An admission fee is charged for participation in the event and no additional fee is charged for service of alcohol at the event.
 - 3. Within the immediately preceding twelve (12) month period, the Village has issued licenses under authority of this Subsection for fewer than two (2) events.
 - 4. The duration of an event may not exceed one (1) day.
 - 5. Multiple licenses issued under this Subsection count as one (1) license for purposes of Subsection (h)(1)d.

(2) **Application.**

- a. Application for such temporary wine license shall be signed by the president or corresponding officer of the society or association 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. Any application not filed at least five (5) business days before the desired date of the license may not provide enough time for the Village Clerk-Treasurer to take action on the application. Any denial of a license may be appealed to the Village Board under Section 7-2-10.
- b. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and shall be ineligible to apply for a temporary "Class B" wine license for one (1) year.
- c. The license shall specify the hours and dates of license validity.
- d. If the application is for a license to be used in a Village park, the applicant shall specify the main point of sale facility.
- e. The Village Board, or other official authorized by the Village Board to issue temporary "Class B" wine licenses, may authorize an underage person to enter and remain on the premises so licensed if all of the following apply:
 - 1. The Village Board issuing the license, or other official authorized by the Village Board, authorizes the licensee to

- permit underage persons to be on the licensed premises for the purpose of acting as designated drivers.
2. The licensee permits on the licensed premises unaccompanied underage persons to be present only for the purpose of acting as designated drivers and the licensee provides a means of identification, such as a wrist band, to identify such underage persons as designated drivers.
 3. The underage person is present on the licensed premises to act as a designated driver and displays the means of identification specified herein.
- f. Temporary "Class B" licensees must purchase all wine from wine wholesalers or other entities authorized to self-distribute wine to retail licensees.
- (i) **Wholesaler's License.** A wholesaler's fermented malt beverage license, when issued by the Village Clerk-Treasurer under authority of the Village Board, shall entitle the holder thereof to possess, sell or offer for sale fermented malt beverages only in original packages or containers to dealers, not to be consumed in or about the premises of said wholesaler.
- (j) **Retail "Class C" Wine License.**
- (1) In this Subsection, "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.
 - (2) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
 - (3) A "Class C" license may be issued to a person qualified under Sec. 125.04(5), Wis. Stats., for a restaurant in which the sale of alcohol beverages accounts for less than fifty percent (50%) of gross receipts and which does not have a barroom if the Village's quota prohibits the Village from issuing a "Class B" license to that person. A "Class C" license may not be issued to a foreign corporation or a person acting as agent for or in the employ of another.
 - (4) A "Class C" license shall particularly describe the premises for which it is issued.

Cross-Reference: Section 7-2-17.

Sec. 7-2-5 License Fees.

- (a) **Fees.** There shall be the following classes of licenses in the Village of Elk Mound which, when issued by the Village Clerk-Treasurer under the authority of the Village Board after payment of the license fee and publication costs hereinafter specified, shall permit the holder to sell, deal

or traffic in intoxicating liquors or fermented malt beverages as provided in Section 7-2-4 of this Code of Ordinances and Chapter 125, Wis. Stats.:

- (1) **Class "A" Fermented Malt Beverages Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
 - (2) **"Class A" Intoxicating Liquor License – Cider.** There is no fee for a "Class A" Cider License.
 - (3) **Class "B" Fermented Malt Beverage License.** The annual fee for this license shall be as prescribed in Section 1-3-1. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
 - (4) **Temporary Class "B" Fermented Malt Beverage License.** The fee for this license shall be as prescribed in Section 1-3-1 per event.
 - (5) **Temporary "Class B" Wine License.** The fee for this license shall be as prescribed in Section 1-3-1 per event. However, there shall be no fee if the Temporary Wine License is obtained along with a Temporary Fermented Malt Beverage License.
 - (6) **Fermented Malt Beverage Wholesalers' License.** The annual fee for this license shall be as prescribed in Section 1-3-1.
 - (7) **"Class A" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1.
 - (8) **"Class B" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.
 - (9) **"Class C" Wine License.** The annual fee for this license shall be as prescribed in Section 1-3-1. The fee for less than one (1) year shall be prorated.
- (b) **Cancellation for Failure to Pay Fee.** The Village Clerk-Treasurer shall issue each license approved by the Village Board and shall make the same available at the Village Clerk-Treasurer's office. Any licenses for which the license fee is not paid within fifteen (15) days of approval of the application by the Village Board shall be returned to the Village Board for cancellation or other disposition.

SECTION III. AMENDMENT OF PROVISIONS.

Section 7-2-15(a) of the Village of Elk Mound Code of Ordinances is amended by the addition of a new Subsection (a)(3), as follows:

- (3) No person may serve wine after 9:00 p.m. on premises licensed by a Temporary "Class B" wine license issued as provided in Section 125.51(10)b and Section 7-2-4(h) of this Code of Ordinances.

SECTION IV. AMENDMENT OF PROVISIONS.

Section 7-2-16(d) of the Village of Elk Mound Code of Ordinances is amended to read as follows:

- (d) **Underage Persons Prohibited.** Except as provided in Section 7-2-4(h)(2)e regarding temporary wine licenses, no underage persons as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverages or wine at any point of sale, nor shall they be allowed to enter or linger in the area of any point of sale.

SECTION V. AMENDMENTS OF PROVISIONS.

Section 7-2-33(c) of the Village of Elk Mound Code of Ordinances is amended to read as follows:

- (c) **Temporary License.** The Village Clerk-Treasurer may issue a temporary operator's license provided that:
 - (1) The temporary operator's license may be issued only to operators employed by, or donating their services temporarily to, nonprofit corporations.
 - (2) No person may hold more than two (2) temporary operator's licenses per year.
 - (3) The temporary operator's license is valid for any period from one (1) day to fourteen (14) days, and the period for which it is valid shall be stated on the license.

SECTION VI. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION VII. EFFECTIVE DATE.

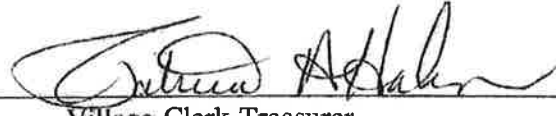
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 7th day of December, 2016.

VILLAGE OF ELK MOUND, WISCONSIN



Village President



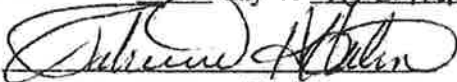
Village Clerk-Treasurer

INTRODUCED: 12/7/16
PASSED: 12/7/16
PUBLISHED: 12/1/16
(POSTED)

State of Wisconsin :
County of Dunn:

I hereby certify that the foregoing Ordinance is a true, correct and complete copy of an Ordinance duly and regularly adopted by the Village Board of the Village of Elk Mound on the 7th day of December, 2016, and that said Ordinance has not been repealed or amended and is now in full force and effect.

Dated this 7th day of December, 2016



Pat Hahn, Village Clerk-Treasurer