

Ordinance No. 15-02
Re: Alcohol Beverages

The Town Board for the Town of Albion, located in Dane County, Wisconsin, do ordain as follows:

Section 1: The following is hereby adopted as the Town of Albion's Alcohol Beverage Ordinance.

ALCOHOL BEVERAGES

§ 1.0. Incorporation of State Statutes. The provisions of Chapter 125 of the Wisconsin Statutes, as amended from time to time, and relating to the sale of alcohol beverages and the licensing of persons in connection therewith, are hereby adopted and incorporate herein by reference.

§1.01 Delivery of License. In the event a license is granted by the Town Board in § 1.0, the Town Clerk shall hold and not deliver the license until the Town Treasurer certifies that all real estate taxes, personal property taxes, assessments, claims, and forfeitures are paid in full by the due date. Failure to timely pay all amounts due and owing is grounds for cancellation of any license granted under this Ordinance, unless, after notice and hearing as provided in § 2(b)(2), the Town Board shall determine if good cause exists for the delinquency. If such good cause is found to exist, the Town Board may set such terms as it deems appropriate for payment of all amounts owed, to avoid cancellation of the subject license.

§ 2.0 Revocation, Cancellation, and Suspension of Licenses; Nonrenewal; Subsequent Changes.

(a) Procedure. Whenever the holder of any license under this Ordinance violates any portion of this Ordinance, proceedings for the revocation, cancellation, suspension or nonrenewal of such license may be instituted in the manner and under the procedure established by this Section.

(b) Cancellation of premised licenses.

(1) Grounds for cancellation for nonuse of license. Any Class "B" Combination fermented malt and/or intoxicating liquor licenses granted under this Ordinance for which the subject premises:

- a. Is not open for business within 30 days of the granting of such license;
- b. Is not open for business for a period of 180 consecutive days or more; or
- c. Is not open for business at least 50 percent of the days within any 12 month period, either within a licensing year or overlapping two licensing years;

shall be cancelled unless, after notice and hearing as provided in Subsection (b)(2) of this Section, the Town Board shall determine that good cause exists for the failure of the licensee to

be open for business for periods in excess of the minimums set forth in this Subsection. If such cause is found to exist, the Town Board may set such terms as it deems appropriate to the continuation of the license with respect to minimum days of operation or a time frame within which the subject premises must open for business to avoid cancellation of the subject license.

(2) Notice and hearing. Prior to cancellation of any license, the Town Clerk shall notify the licensee in writing of the Town's intention to cancel the license and provide the licensee with a hearing. Such notice shall also specify the time, place and date of the hearing, which shall be not less than 15 days after the date of the notice. Such hearing shall be conducted as provided in accordance with Wis. Stats. § 125.12(2)(b).

(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 when the licensee has not observed and obeyed any lawful order of the Town Board or police officers of the Town, has violated Town ordinances, or for any other good reason, including the reasons set forth in Wis. Stats. § 125.12(2)(ag) or any amendment thereto, the Town Board shall issue a summons, to be signed by the Town Clerk commanding the licensee complained of to appear before the Town 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. In addition, any resident may file a sworn, written complaint with the Town Clerk. Such summons shall be served not less than three and not more than ten days before the time at which the licensee is commanded to appear and shall be served on the licensee in the manner provided under Wis. Stats. Ch. 801, for service in civil actions in circuit court. 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 Town Board deems its allegations sufficient, the Town Board shall revoke or suspend the license as provided herein.

(2) Procedure on hearing; effect of revocation.

a. The Town Chairperson or, in the Town Chairperson's absence, the acting Town Chairperson, shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence provided in Wis. Stats. § 68.11, shall be followed. The complainant shall have the burden of providing 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. If either party requests a stenographic recording and transcription, the Town shall make the necessary arrangements, but the expenses shall be borne by the requesting party. The Town Clerk shall serve as secretary to the Town Board and shall make and receive all exhibits admitted into the record. The Town Board, upon the testimony and evidence presented at the hearing, shall determine by simple majority vote of those present whether the charges are true. If the Town Board finds the complaint to be true, the license shall either be

suspended for not less than ten days nor more than 90 days or revoked. The Town Clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.

b. If the complaint is found to be true, the licensee shall pay to the Town the actual cost of the proceedings. If the complaint is found by the Town Board to be malicious and without probable cause, the complainant shall pay the cost of the proceedings in the same amount.

c. When a license is revoked, it shall be so entered of record by the Town 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.

(1) Notice. The Town Board may refuse to renew a license for the causes provided in Wis. Stats. § 125.12 (2)(ag). Prior to the time for renewal of the license, the Chief of Police shall notify the licensee, in writing, of the Chief of Police's intention to recommend to the Town Board that the license not be renewed. The notice shall provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the Chief of Police's recommendation not to renew the license.

(2) Request for hearing. If the licensee requests a hearing, the hearing shall be conducted by the Town Board not less than three days nor more than ten days after the Town receives a written request, as provided in Subsection (c)(2) of this Section and Wis. Stats. § 125.12(2)(b).

(3) Hearing. Any hearing on the non-renewal shall be conducted as provided for in (b)(2) above. If the Town Board determines as a result of said hearing, to not renew the license it shall so advise the licensee.

(e) Subsequent changes.

(1) After issuance of a license, whenever anything occurs to change any fact set forth in the license application or renewal form, the licensee shall file with the Town Clerk written notice within ten days after the occurrence thereof.

(2) After issuance of a license, should the licensee under a retail "Class B" intoxicating liquor license wish to change the licensed premises from a restaurant into a tavern, or from a tavern into a restaurant, the licensee shall file with the Town Clerk a written notice setting forth said desire not less than 60 days prior to the contemplated change. The Town Clerk shall refer the notice to the Town Board, which shall schedule a public hearing as soon thereafter as possible, which shall be attended by the licensee. At the hearing, the licensee shall be given the opportunity to be heard as to why the Town Board should approve the change. The Town Board shall provide for an orderly opportunity for all other persons to be heard on the subject.

Following the hearing, the Town Board shall approve or disapprove of the proposed change and will issue a written decision upon the request of any interested person.

(3) Failure by the licensee to notify the Town under either of the above applicable procedures shall be grounds for suspension, nonrenewal, or revocation of the licensee's license.

(f) Other provisions. Any license issued pursuant to this Ordinance shall be subject to such further regulations and restrictions as may be imposed by the Town Board by amendment to this Ordinance 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 such licensee's license may be revoked in accordance with this Ordinance. In case of revocation of any license or any violation of any provision of this Ordinance 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.

(g) Penalty Provision. Any licensee who personally or through his or her managers, operators, agents or employees violates any of the provisions of this Ordinance shall be subject to a penalty as provided for below. In addition, the licensee's license or licenses shall be subject to revocation, suspension or nonrenewal pursuant to Wis. Stat. s. 125.15 and this Ordinance; or if the violation involves one or more minors, the penalties shall be as set forth in Wis. Stat. s. 125.07.

(1) First Offense-Penalty. Any person who shall violate any provision of this Ordinance subject to a penalty shall, upon conviction thereof, forfeit not more than \$3,500.00, together with the costs of prosecution and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the County Jail or county house of correction until said forfeiture and costs are paid, but not exceeding ninety (90) days.

(2) Subsequent Offenses. Any person found guilty of violating any provision of this Ordinance who shall previously have been convicted of a violation of the same provision shall upon conviction thereof, forfeit not less than \$50.00 nor more than \$3,500.00 for each such offense, together with the costs of prosecution and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until said forfeiture and costs of prosecution are paid, but not to exceed six (6) months.

(3) Subsequent Offenses. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Ordinance shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision contained in this Ordinance.

Section 2: That any ordinance of the Town of Albion in express conflict with the terms and provisions of the attached Ordinance be and hereby is repealed.

Adopted this 5th day of May, 2015.

TOWN OF ALBION

By: Robert J. Venske
Robert Venske, Town Chairperson

Attest: Julie Hanewall
Julie Hanewall, Town Clerk

Supervisor, Thad Andrews introduced the above ordinance and moved its passage. Seconded by Abigail Staff.

Ayes: 5

Nays: 0

Copies of this ordinance may be obtained at the clerk's office located at 620 Albion Road, Edgerton, WI 53534, Monday through Friday, 8:00 a.m. to 1:00 p.m.

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