

VILLAGE OF NEWBURG

ORDINANCE NO. 09-2017

**AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 112 ENTITLED ALCOHOL BEVERAGES
FOR THE MUNICIPAL CODE OF NEWBURG**

SECTION I. PURPOSE

WHEREAS, there are changes to the Wisconsin State Statutes in regards to different classifications of the sale of alcoholic beverages; and

WHEREAS, the Village of Newburg must comply with these statutory changes within its municipal codes; and

WHEREAS, on occasion the Village Board does a complete review of various ordinances to adjust to changes in the community;

NOW THEREFORE, the Village Board of the Village of Newburg, Wisconsin, does hereby repeal and recreate Chapter 112 of the Municipal Code to read:

SECTION II. REPEAL AND RECREATE

112.01 STATE STATUTES ADOPTED. The provisions of Chapter 125 Wis. Stats. regarding the sales of alcohol beverages except for ss. 125.075, 125.085(3)(a)2., 125.105(2)(b), 125.11, 125.66(3), 125.68(12) and any provisions the penalties to be imposed for violations of that Chapter are adopted hereby and made a part of this section by reference. A violation of any such provisions shall constitute a violation of this section.

112.02 DEFINITIONS For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Habitual Law Offender” means any person who has been convicted of or has a current charge pending for two or more offenses within the last five (5) years, arising out of separate incidents and considering the provisions of ss. 111.321, 111.322, and 111.335, Wis. Stats., in the following subcategories:

- Violent crimes against the person of another, including but not limited to battery, disorderly conduct, sexual assault, injury by negligent use of a vehicle, or intimidation of a victim or witness.
- Crimes involving cooperation (or lack thereof) with law enforcement officials, including but not limited to, resisting or obstructing a police officer, bribery of public

officers/employees, eluding police, bail jumping, hit and run, perjury, or acts/threats of terrorism.

- Disorderly conduct, criminal damage to property, solicitation of prostitution or other prostitution-related offenses, wherein the offense involves an incident at a place that is, or should have been licensed under Ch. 125, Wis. Stats.
- Alcohol beverage offenses (under Ch. 125, Wis. Stats. or Village Ordinances).
- Possessing a controlled substance, controlled substance analog without a valid prescription, or possessing drug paraphernalia.
- Operating a motor vehicle while under the influence of intoxicants or drugs.
- Operating a motor vehicle with a prohibited alcohol concentration (PAC).
- Open intoxicants in a public places or in a motor vehicle.
- Manufacturing, distributing, delivering a controlled substance or a controlled substance analog; maintaining a drug trafficking place; possessing with intent to manufacture, distribute, or deliver a controlled substance or a controlled substance analog.
- Any offense, which in the discretion of the Chief of Police which substantially relate to the alcohol beverage licensing activity.

“Offenses” refer to civil violations such as ordinance convictions and/or misdemeanor convictions or pending charges in either category.

112.03 FEES.

(A) Fees for licenses shall be as determined in Chapter 161 of the Code for the following license categories:

- "Class A" Intoxicating Liquor
- "Class A" Cider
- "Class B" Intoxicating Liquor
- Class "A" Fermented Malt Beverages
- Class "B" Fermented Malt Beverages
- Reserve "Class B" Intoxicating Liquor
- "Class C" Wine
- Wholesaler's Fermented Malt Beverages
- Class "B" Fermented Malt Beverages {Wis. Stat. § 125.26 (6)}
- Operator's License
- Provisional Operator's License
- Temporary Class "B" Retailer
- Provisional Retail
- Transfer of License to Another Premise
- Duplicate (if original license is lost or destroyed without licensee's fault)

(B) The fee for initial issuance of Reserve "Class B" Intoxicating Liquor licenses is hereby established at \$10,000 plus the fee specified in Chapter 161 of the Municipal Code. The annual fee for renewal of a Reserve "Class B" license is the fee established in Chapter 161.

112.04 RETAIL "CLASS B" INTOXICATING LIQUOR LICENSE. A "Class B" license for the retail sale of intoxicating liquor also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed four liters at any one time, and to be consumed off the premises where sold. Between the hours of 12:00 midnight and 8:00 a.m., no person may sell any packaged goods from any "Class B" licensed premises. No more than 7 retail "Class B" intoxicating liquor licenses shall be granted or issued.

112.05 LICENSE APPLICATION.

(A) Applications for all licenses under this chapter shall be processed through the office of the Village Administrator/Clerk. Applications must be accurately completed, providing all information requested on the form prescribed by s. 125.04(3), Wis. Stats. Any application shall be filed with the Village Administrator/Clerk not less than 30 days prior to the granting of the license. All renewal applications shall be filed in the office of the Village Administrator/Clerk on or before April 15 of each year. As a further condition of the granting of an operator's license, the applicant shall consent to the taking of a current photograph of his or her person by the City and shall authorize the City to obtain a report of his or her criminal history from any municipal, state and federal law enforcement agencies maintaining such records.

(B) The cost of publication as provided by s. 125.04(3)(g)6., Wis. Stats., shall be submitted to the Village Clerk at the time of submitting license application. The license fee shall be submitted not less than 15 days prior to the date on which the license is to be issued. The Village shall not rebate license fees (or portions thereof) to license holders who cede or lose their licenses prior to normal expiration date. No refund for cost of publication shall be issued after the Village has incurred such cost.

(C) The Village Board may consider, without limitation by enumeration, each of the following when evaluating, on a case by case basis, applications for initial retail "Class A", "Class B", Class "A", or Class "B" licenses:

- (1) the total number of Class A and B licenses presently issued and, if an additional license is requested, the public need, desirability and purpose;
- (2) the relevant experience and background of an individual applicant; if a partnership, the relevant experience and background of the partners; and if a corporation, the relevant experience and background of the directors, officers and agent;

- (3) whether the granting of a license is necessary for the financial success of a proposed business;
- (4) the effect of granting the license on local traffic and parking;
- (5) the proximity of the location at which the license is proposed to be used to, among other, schools, churches, residential neighborhoods and/or any other Class A or Class B establishments licensed by the Village;
- (6) the premises meet the standards for occupancy of this type;
- (7) the economic benefit to the community;
- (8) the amount of employment the business will generate;
- (9) past experience of the applicant or other license holders at the location at which the license is proposed to be used; and
- (10) the overall effect on the community of the use of the license at the proposed location.

(D) The Village Board may consider, without limitation by enumeration, each of the following when evaluating, on a case by case basis, the application for the renewal of a "Class A" or "Class B" or Class "A" or Class "B" license:

- (1) the performance of the applicant under the previously issued license;
- (2) the effect of the prior use of the license on local traffic and parking;
- (3) the effect, if any, of the prior use of the license on adjacent residential neighborhoods; and
- (4) the overall effect of the prior use of the license on the Village of Newburg community.

(E) The Village Board may consider, without limitation by enumeration, each of the following when evaluating on a case by case basis the application for the transfer of a "Class A" or "Class B" or Class "A" or Class "B" license:

- (1) The appropriate zoning and suitability of the new location for a use of this type;
- (2) The effect of transferring the license on local traffic and parking;
- (3) The proximity of the new location to schools, churches, residential neighborhoods, and other licensed establishments;
- (4) Other business activities conducted on the premises;
- (5) The ability of the licensee to restrict access to intoxicating liquors and fermented malt beverages to minors; and
- (6) The proximity of large numbers of minor children in or outside of the licensed premises which may inhibit proper control over alcohol products or may increase the necessity for the presence of law enforcement to control access to and illegal sale of intoxicating liquors and fermented malt beverages to minors.

- (7) No license is entitled to be transferred to another location. Is transfer of the license to a new location in the commercial and general welfare interest of the Village?

112.06 INVESTIGATION. The Police Chief and, if needed, the Building Inspector shall investigate each new license or permit application, and these officials shall inspect the premise to determine whether the premises sought to be licensed comply with the regulations, laws, or ordinances applicable thereto.

112.07 LAPSE. Whenever any licensee fails to conduct the licensed activity for at least one hundred (100) hours in any continuous ninety (90) day period, the license issued to that licensee shall lapse and become void, unless the Village Board extends the ninety (90) day period.

112.08 VIOLATIONS. A violation of this Chapter or Ch. 125, Wis. Stats., by a licensee's agent or employee shall constitute a violation of the licensee. In addition to other sanctions provided within the municipal code, violations of this chapter may result in the revocation or suspension of the license, pursuant to Ch. 125, Wis. Stats.

112.09 SALES, PRESENCE, POSSESSION, MISREPRESENTATION. Secs. 125.07 (1)(a), (2)(a), (3)(a), (4)(a) (b), 125.085 (3)(b) and 125.09 (2), Wis. Stats., as may be amended, are adopted in strict conformity with those statutes.

112.10 REGULATIONS.

(A) A retail Class "B" licensee for the sale of alcohol beverages shall post a notice at each exit of the licensed premises stating that "No beer, liquor or wine may be carried in an open container outside this premises."

(B) No person shall possess any open container which contains an alcohol beverage or fermented malt beverage on any street, alley, parking lot, or sidewalk, unless such area is a part of a licensed premises, or carry such container outside a retail Class "B" licensed premises.

112.11 LICENSE CONDITIONS AND RESTRICTIONS.

(A) Premises.

(1) Definition. "Premise or Premises" is the area described in a license or permit.

(2) Outdoor Service Area. In establishments holding any intoxicating liquor, fermented malt beverage, or wine license, the premises may also include an outdoor area provided the following conditions are met:

(a) The outdoor area is adjacent to and accessible from the fully enclosed building on the premises unless a variance is granted by the Village Board.

- (b) The outdoor area shall be completely enclosed by a permanent barrier, such as a fence, wall, screens, windows, or similar structure at six feet in height unless the outdoor area is located on a rooftop, in which case a secondary fence will be required.
 - (3) Noise Limitations. No live amplified music shall be permitted in any outdoor area. Amplified sound is allowed between the hours of 9:00 a.m. and 9:00 p.m., unless authorized by the Chief of Police or his designee at least 48 hours in advance.
 - (4) Presence of Licensed Bartender. Alcohol may be served in the outdoor area to the same extent permitted in the licensed building.
 - (5) No approval granted hereunder relieves the license holder from compliance with building or zoning codes.
 - (6) Additional facility restrictions may be imposed by the Village Board or the Village Board may grant variances to the standards of this section upon demonstration of hardship, special site limitations or special circumstances that make compliance impractical.
- (B) Persons. No initial or renewal alcohol license shall be granted to any person:
- (1) Delinquent in payment of any taxes, assessments or other claims owed to the Village.
 - (2) Delinquent in payment of a forfeiture resulting from a violation of any ordinance of the Village.
 - (3) Delinquent in payment of any other obligation of whatever kind to the Village.
 - (4) Delinquent in payment to the state of any state taxes owed.
- (C) Consent to inspection of premises. It shall be a condition of any license issued hereunder that the licensed premises may be entered and inspected at any reasonable hour by any police officer of the village without any warrant, and the application for a license hereunder shall be deemed a consent to this provision. If such inspection is denied, such denial shall be deemed a violation of this section.
- (D) Violation by agents or employees. A violation of this section by a duly authorized agent or employee of a licensee shall constitute a violation of the licensee.
- (E) Commencement of operations. Within 180 days after the issuance or approved transfer of a "Class B" intoxicating liquor license or a Class "B" fermented malt beverage license, the licensee shall be open for business with adequate stock and equipment. Upon his or her failure to do business within such time, his or her license shall be subject to revocation by the Village Board after a public hearing. The Village Board may, for a good cause shown, extend such 180-day period.

(F) Transfer of license. No license shall be transferable from person to person, except as provided in Wis. Stats. § 125.04(12)(b), or from place to place, except as provided in s. 125.04(12)(a), Wis. Stats.

(G) Location of premises restricted. No retail 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 division (H) shall not apply to premises so licensed on June 30, 1947.

(H) Safety and health requirements. No retail Class “B” license shall be issued unless the premises to be licensed conform to the sanitary, safety, and health requirements of the state’s Building Code, the state’s Plumbing Code, and the rules and regulations of the state’s Department of Health and Social Services applicable to restaurants, and also shall conform to all ordinances and regulations of the village.

(I) Operator on duty required. The licensee, a member of his or her immediate family, or a licensed operator must be present at all times in the immediate area open to the public where alcohol beverages are being served.

(J) Disorderly conduct and gambling prohibited. Each licensed premises shall at all times be conducted in an orderly manner and no disorderly, riotous, or indecent conduct or gambling shall be allowed at any time on any licensed premises.

112.12 CLOSING HOURS.

No premises for which an alcohol beverage license has been issued shall remain open for the sale of alcohol beverages, as follows:

(A) Wholesale license. Between 5:00 P.M. and 8:00 A.M., except Saturdays when the closing hour shall be 9:00 P.M.

(B) Retail “Class B” or Class “B” license. No premises shall be open for the sale of intoxicating liquor or fermented malt beverage between the hours of 2:00 A.M. to 6:00 A.M., except on Saturday and Sunday the closing hour shall be 2:30 A.M.; on January 1 the closing hour shall be 2:30 A.M.

(C) Hotels and restaurants. Hotels and restaurants, the principal business of which is the furnishing of food and/or lodging to patrons, shall be permitted to remain open after closing hours for the conduct of regular business, but shall not sell intoxicating liquors or malt beverages during the closing hours stated in division (B) above.

- (D) Presence on premises after closing hour restricted.
- (1) Any person who is not an employee of the licensee who remains on the premises after the designated closing hour is subject to the penalties as provided in this chapter.
 - (2) Any person, while on the premises after closing hours, must be actively engaged in bona fide business activities and may not consume alcoholic beverages.

112.13 UNDERAGE PERSONS ON LICENSED PREMISES.

(A) Restrictions. Pursuant to s. 125.07(3), Wis. Stats., an underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving, or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises.

(B) Exceptions. Subsection (A), above, shall not apply to:

- (1) An underage person who is a resident, employee, lodger, or boarder on the licensed premises;
- (2) Licensed restaurants where the principal business is that of a restaurant;
- (3) A person who is at least 18 years of age and who is working under a contract with the licensee to provide entertainment for customers on the premises; and/or
- (4) A person who is present in a room which is separate from any room where alcohol beverages are sold or served. No alcohol beverages may be furnished or consumed by any person in a room where the underage persons are present or authorized under this section.
- (5) An underage person who enters on Class "B" or Class "B" premises on dates specified by the licensee when no alcohol beverages will be consumed, sold, or given away. The licensee shall notify the Police Department of such specified dates; unless all alcohol beverages are stored in a locked portion of the premises, the licensee or a licensed operator must be on the premises at all times.

112.14 OPERATOR LICENSES.

(A) Operators' licenses shall be issued to individuals by the Village for the purpose of complying with ss. 125.32(2) and 125.68(2), Wis. Stats. Operators' licenses shall be issued only upon written application forms provided by the Village Clerk.

(B) Operators' licenses issued under this section are valid only within the Village.

(C) Criteria for Issuance. Licenses and permits related to alcoholic beverages issued to natural persons under this Chapter may be issued only to persons who fulfill all of the following requirements:

- (1) The person must be at least 18 years of age.
- (2) All applicants for an operator's license shall successfully pass a responsible beverage servers course as required in Section 125.04(5), Wisconsin Statutes.
- (3) The individual requesting a license may be denied a license based upon his/her arrest or conviction record subject to ss. 111.32, 111.322 and 111.335, Wis. Stats., and s. 125.04(5)(a)1., Wis. Stats. It is not employment discrimination because of a pending arrest record or a conviction record to deny a license if the circumstances of the charge substantially relate to the alcohol beverage licensing activity.
- (4) The individual requesting a license may not be issued a license if they are a "habitual law offender" as defined in this Chapter.
- (5) An individual requesting a license shall not be issued a license if he or she has been convicted of a felony which substantially related to the alcohol beverage licensing activity.

(D) Temporary Operators' Licenses. The Village shall issue temporary operators' licenses under the terms of this ordinance except that:

- (1) The license may be issued only to operators employed by or donating their services to nonprofit organizations.
- (2) No person may hold more than one temporary operator's license per year.
- (3) The license is valid for any period from 1 day to 14 days, and the period for which it is valid shall be stated on the license.
- (4) The fees for a temporary operator's license shall be as stated in Chapter 161 of the Municipal Code. It shall be non-refundable and shall not apply toward any other operator's license under this section.

The procedure for licenses issued in accordance with this section for temporary operators' licenses shall be as follows: Upon application therefore the Village Clerk shall submit such application to the Village Board. In such situations where the temporary operator's license application is filed and time does not permit review by the Village Board, the Village Clerk shall have the authority to grant or deny the issuance of such license; provided, however, that in such case the license fee shall be \$25.00, which shall be non-refundable and shall not apply toward another operator's license under this section.

(E) Provisional Operators' Licenses. Provisional operators' licenses shall be issued according to the following:

- (1) The Village Clerk is authorized to issue a provisional operator's license to a person who has submitted an initial application for an operator's license under subsection (1) of this section, provided that, based on the information contained in the application, the person meets the qualifications in Section 112.14 for issuance of licenses related to alcohol beverages, and provided further that the person has not previously been denied an operator's license by the Village.
- (2) The fee for provisional operators' licenses shall be as stated in Chapter 161 of the Municipal Code which shall be non-refundable and shall not apply towards any other operator's license under this section.
- (3) A provisional operator's license shall expire 60 days after its issuance or licensed under subsection (1) of this section is issued to the holder, whichever is sooner.
- (4) The Village Clerk may revoke a provisional operator's license if it is discovered that the holder of the license made a false statement on the application.

112.15 NUDE DANCING IN LICENSED ESTABLISHMENTS.

(A) Prohibited. It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

- (1) Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than fully opaque covering; or
- (2) Shows any portion of the female breast below a point immediately above the top of the areola; or
- (3) Show the covered male genitals in a discernibly turgid state.

(B) Exemptions. The provisions of this ordinance do not apply to the following licensed establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.

- (1) Definitions. For purposes of this ordinance, the term "licensed establishment" means any establishment licensed by the Village Board of the Village or Newburg to sell alcohol beverages pursuant to Ch. 125, Wis. Stats. The term "licensee" means the holder of a retail "Class A", "Class B", Class "B", Class "A", or "Class C" license granted by the Village Board of the Village or Newburg pursuant to Ch. 125, Wis. Stats.

- (2) Penalties. Any person, partnership, or corporation who violates any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$500, and not more than \$2,000 per violation, as listed in the Bond Schedule found in Chapter 161 of the Municipal Code. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes sufficient ground for suspending, revoking or non-renewing any alcohol beverage license under sec. 125.12, Wis. Stats.

If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

112.16 TEMPORARY CLASS "B" RETAILER'S LICENSE. The Village Clerk is authorized pursuant to ss. 125.26(6) and 125.51(10), Wis. Stats., to issue a license for the sale of fermented malt beverages or wine at picnics or similar gatherings. Conditions for the issuance of a license in addition to the requirements of Ch. 125, Wis. Stats., shall be as follows:

- (A) At least one holder of an operator's license shall at all times be present in the licensed premises where fermented malt beverages and wine are sold or offered for sale at an event for which a Class "B" fermented malt beverage or Class "B" wine picnic license has been issued.
- (B) The organization must provide sufficient security personnel satisfactory to the Chief of Police to ensure that fermented malt beverages and wine are not consumed outside of the approved areas specified for the consumption of such beverages and that minors are not present in the licensed premises except as permitted in Ch. 125, Wis. Stats.
- (C) The licensed premises shall be fenced as required by the Chief of Police.
- (D) The organizers shall post notices at each exit of the licensed premises stating, "No beer or wine will be carried in an open container beyond this point."
- (E) The Chief of Police may require the organizer to provide adequate sanitary facilities, lighting, and other measures to ensure the health, safety and convenience of the public while attending the event.
- (F) The licensee shall prior to the commencement of the event notify the police department that event set-up has been completed so that a compliance inspection may occur. No fermented malt beverages or wine may be sold until the final inspection occurs.

112.17 REVOCATION AND SUSPENSION OF LICENSES.

- (A) Procedure. Except as hereinafter provided, the provisions of ss. 125.12(2) and 125.12(3), Wis. Stats., shall be applicable to proceedings for revocation or suspension of licenses or permits granted under this chapter. Revocation or suspension proceedings may be initiated upon written complaint by the Village President, the Chief of Police, or by the Village Board upon its own motion. No license shall be suspended, revoked, or non-renewed for a single violation of serving

an underage person in a one-year period, and no more than one citation may be issued for a single violation.

(B) Repossession of license or permit. Whenever any license or permit shall be revoked or suspended pursuant to this chapter, the Village Administrator/Clerk shall notify the licensee or permittee and the Chief of Police of such revocation or suspension and the Chief of Police or his or her designee shall take physical possession of the license or permit, wherever it may be found, and file it in the office of the Administrator/Clerk.

(C) Effect of revocation of license. No license shall be issued for any premises if a license covering such premises has been revoked within six months prior to application. No license shall be issued to any person who has had a license issued pursuant to this section revoked within 12 months prior to application.

112.18 PENALTIES. Any person, partnership, or corporation who violates any of the provisions of this Chapter shall be subject to a forfeiture of not less than \$10 and not more than \$5,000 per violation as listed in the bond schedule in Chapter 161 of the Municipal Code. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes grounds for suspending, revoking or non-renewing any alcohol beverage license. If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

SECTION III. MISCELLANEOUS

SEVERABILITY. 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 provision, sections or portions thereof of the Ordinance. The remainder of the Ordinance shall remain in full force and effect. Any other Ordinances whose terms are in conflict with the provisions of this Ordinance are hereby repealed as to those terms that conflict.

SECTION IV. EFFECTIVE DATE

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Passed and adopted by the Village Board of the Village of Newburg, Washington and Ozaukee Counties, Wisconsin, this 24th day of August, 2017.

Mike Heili, Village President

ATTEST:

Rick J Goeckner, MMC
Village Administrator/Clerk/Treasurer