

Chapter 74

INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

[HISTORY: Adopted by the Town Board of the Town of Troy 2-12-2004 by Ord. No. 04-1. Amendments noted where applicable.]

§ 74-1. Adoption of statutory provisions.

All provisions of Ch. 125, Wis. Stats., specifically including those defining and regulating the sale, procurement, storage, dispersing and transfer of alcoholic beverages and provisions relating to underage persons, are adopted and made a part of this chapter by reference. A violation of any such statutory provision shall constitute a violation of this chapter.

§ 74-2. Denial of license for nonpayment of Town charges.

No initial or renewal alcohol beverage license shall be granted for any premises for which taxes, assessments, special charges, forfeitures or other claims owed to the Town of Troy are delinquent and unpaid. No initial or renewal alcohol beverage license shall be granted to any person who is delinquent in payment of any taxes, assessments, special charges or other claims owed to the Town or who is delinquent in payment of a forfeiture resulting from a violation of any ordinance of the Town.

§ 74-3. Off-sale hours.

A. Class "B" premises. No premises for which any Class "B" license or permit has been issued, nor its agents or employees, may sell or give away any alcoholic beverages for consumption off the premises after 9:00 p.m. or before 8:00 a.m.

B. Class "A" and "Class A" premises. No premises for which any Class "A" or "Class A" license or permit has been issued, nor its agents or employees, may sell or give away any alcoholic beverages for consumption off the premises after 9:00 p.m. or before 8:00 a.m.

§ 74-4. Nude dancing in licensed establishments.

A. Authority and determinations.

(1) The Town Board of the Town of Troy has explicit authority under § 125.10(1), Wis. Stats., to adopt regulations governing the sale of alcoholic beverages which are in addition to the regulations in Ch. 125, Wis. Stats. The Town Board has village powers pursuant to § 60.10(2)(c), Wis. Stats., that grant general police powers as set forth in § 61.34, Wis. Stats., to act for the good order of the Town, for its commercial benefit and for the health, safety and welfare of the public, and the Town Board may carry out its powers by regulation and suppression.

(2) The Town Board does not intend, by adopting this section, to regulate obscenity, as nudity in and of itself is not obscene. This is an ordinance-based regulation that addresses the undesirable secondary effects of live nude dancing in bars and taverns. Bars and taverns featuring live nude dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic

welfare of the communities and to negatively affect the quality of life of the communities, and secondary effects such as these are detrimental to the public health, safety and general welfare of citizens.

(3) The Town Board recognizes that the United States Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and is therefore entitled to some limited protection under the First Amendment. The Town Board further recognizes that freedom of speech is among our most precious and highly protected rights and wishes to act consistently with full protection of those rights. The Town Board is also aware that the authority of towns to enact regulations that regulate the manner of nude dancing in licensed establishments has been upheld by the 7th Circuit Court of Appeals.

(4) The Town Board is aware, based on the experiences of other communities, that bars and taverns in which live nude dancing occurs can generate secondary effects which the Town Board believes would be detrimental to the public health, safety and welfare of the citizens of the Town of Troy. Among these secondary effects are the potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses; the potential depreciation of property values in neighborhoods where bars and taverns featuring live nude dancing are located; health risks associated with the spread of sexually transmitted disease; and the potential for infiltration of affected areas by organized crime for the purpose of unlawful conduct. The Town Board finds that the consumption of alcoholic beverages exacerbates these negative secondary effects. The Town Board intends by this regulation to minimize, prevent and control these adverse secondary effects and thereby protect the health, safety and general welfare of the citizens of the Town of Troy, to protect the citizens from increased crime, to preserve the quality of life, to preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight. The Town Board has determined that the enactment of an ordinance prohibiting live nude dancing in bars and taverns licensed to serve alcoholic beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity.

B. Prohibition. 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 in the Town of Troy that:

- (1) Shows his/her genitals, pubic area, vulva, anus, anal cleft or cleavage uncovered or with anything less than a fully opaque covering.
- (2) Shows the female breast with a less than fully opaque covering of the entire nipple and areola area.
- (3) Shows the human male genitals in a discernibly turgid state, even if fully and opaquely covered.

C. Exemptions. The provisions of this section do not apply to the following licensed establishments or portions of licensed establishments:

- (1) Licensed 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

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, nude dancing.

(2) Places in licensed establishments that are provided or set apart for nudity, provided that:

(a) Persons who appear nude in a place so provided or set apart for nudity do so for the sole purpose of performing a lawful function(s) that is customarily intended to be performed within such place provided or set apart for nudity;

(b) Persons who appear nude in a place provided or set apart for nudity are not nude for the purpose of obtaining money or other financial gain for that person or for another person or entity.

(3) The performance in a licensed establishment of a work of serious literary or artistic merit, where the performance is not intended for the sexual interest or titillation of customers and where the performance is not distinguished by an emphasis on or the advertising or promotion of entertainment involving nudity.

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

LICENSED ESTABLISHMENT — Any establishment licensed by the Troy Town Board to sell alcoholic beverages pursuant to Ch. 125, Wis. Stats.

LICENSEE — The holder of a retail “Class A,” Class B,” Class “B,” Class “A” or “Class C” license granted by the Troy Town Board of pursuant to Ch. 125, Wis. Stats.

NUDE or NUDITY — The showing of human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola; and the showing of the human male genitals in a discernible turgid state, even if fully and opaquely covered.

PLACES IN LICENSED ESTABLISHMENTS THAT ARE PROVIDED OR SET APART FOR NUDITY — Enclosed single-sex public restrooms; enclosed single-sex functional shower, locker and/or dressing room facilities; and enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. This term does not include places where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business and/or is otherwise commercially exploited.

§ 74-5. License fees and conditions.

A. Annual license fees for the sale of alcoholic beverages are as follows:

(1) Retail Class “A” (beer): \$100.

(2) Retail “Class A” (liquor): \$500.

(3) Retail Class “B” (beer): \$100.

- (4) Retail "Class B" (liquor): \$500.
- (5) Retail Class "B" (beer - picnic): \$10.
- (6) Retail "Class B" (beer and wine coolers — picnic): \$10.
- (7) Retail Class "C" (wine): \$100.
- (8) Wholesaler: \$25.

B. The fee for the initial issuance of a reserve "Class B" license is \$10,000.

C. All retail licenses for the sale of alcoholic beverages that are granted hereunder are granted subject to the following conditions and all other ordinances and regulations of the Town applicable thereto:

(1) Every applicant procuring a license thereby consents to the entry of law enforcement personnel or other duly authorized representatives of the Town at all reasonable hours for the purpose of inspection and search and consents to the removal from such premises of all things and articles there had in violation of Town 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.

(2) No retail alcoholic beverage licensee shall sell or offer to sell any intoxicating liquor or fermented malt beverage to any person on the credit of that establishment, excepting credit extended by a hotel to a resident guest or by a club to a bona fide member and by grocers and druggists who maintain a credit system in connection with other purchases as well. No licensee shall sell intoxicating liquor or fermented malt beverage to any person on a passbook or store order or receive from any person any goods, wares, merchandise or other articles in exchange for intoxicating liquor or fermented malt beverages.

(3) Each licensed premises shall at all times be conducted in a orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.

§ 74-6. Operator's license.

A. License required. No premises operated under a Class "A," Class "B," "Class A" or "Class B" license or permit may be open for business unless there is upon the premises either the licensee, the agent named in the license if the licensee is a corporation, the agent named in a "Class B" or Class "B" permit or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages or intoxicating liquor to customers.

B. Application; term. The Town Board shall issue an operator's license to any applicant who is qualified under state statute [see § 125.04(5), Wis. Stats.]. An operator's license may be issued only upon written application. An operator's license shall be issued only to persons who have obtained the age of 18 years. The written application shall contain the applicant's name, age, address and intended place of employment and shall list any pending alcohol-related offenses. The fee for an initial operator's license issued under this article shall be \$10 and shall be valid for one year. All such licenses expire on June 30 of each year. Consecutive renewal licenses bear an annual fee of \$5.[1]

C. Revocation. Any violation of any provision of this chapter or any federal or state intoxicating liquor or fermented malt beverage law by any person holding an operator's license shall be cause for suspension or revocation of such license. The Clerk-Treasurer shall notify the licensee at the address given on his last application of the time and place at which the Town Board shall deliberate whether to suspend or revoke such license. The licensee shall have the opportunity to be heard and present whatever information he/she wishes.

D. Provisional operator's license. The Clerk-Treasurer may issue a provisional operator's license to a person qualified by law for an operator's license, provided that such person has applied for a regular operator's license and is enrolled in the responsible beverage server training course required by state law. The fee for a provisional operator's license shall be \$5, and such license shall expire 60 days after its issuance. A provisional license may not be issued to any person who has been denied an operator's license by the Town Board, and the Clerk-Treasurer may revoke the provisional operator's license if he or she discovers that the holder of the license made a false statement on the application.

§ 74-7. Violations and penalties.

Any person, partnership or corporation who or which violates any of the provisions of this chapter shall be subject to a forfeiture as provided in Chapter 39, Citations, of the Town Code. A separate offense and violation shall be deemed to have been committed on each day on which a violation occurs or continues. Violation of this chapter also constitutes sufficient grounds for suspending, revoking or nonrenewing an alcohol beverage license under § 125.12, Wis. Stats.

§ 74-8. Applicability

This chapter shall apply retroactively to all Class "A," Class "B," "Class A" and "Class B" licenses issued since July 1, 2003. No enforcement action shall be taken for violations of this chapter prior to the date of publication following enactment.

[1]. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).