TOWN OF GRAND CHUTE

ORDINANCE O-16-2018, SERIES OF 2018

AN ORDINANCE AMENDING CHAPTER 335 OF THE CODE OF GENERAL ORDINANCES FOR THE TOWN OF GRAND CHUTE, OUTAGAMIE COUNTY, WISCONSIN, WHICH GOVERNS INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES IN THE TOWN OF GRAND CHUTE.

WHEREAS, Chapter 335 of the Town of Grand Chute Municipal Code relating to intoxicating liquor and fermented malt beverages adopts by reference Chapter 125, Wis. Stats., governing alcoholic beverages; and,

WHEREAS, Chapter 335 also incorporates specific language from Chapter 125, Wis. Stats., within the Code; and,

WHEREAS, certain provisions and language contained in Chapter 125, Wis. Stats., have substantially changed, rendering certain sections in Chapter 335 invalid; and,

WHEREAS, Chapter 335 contains a system of demerit points by which liquor license holders are held accountable for compliance with the Chapter; and,

WHEREAS, the system of demerit points contained in Chapter 335 was substantially affected by the modifications to Chapter 125, Wis. Stats., thereby degrading its purpose of holding liquor license holders accountable; and,

WHEREAS, additional statutory references contained in the system of demerit points were incorrect, thereby rendering their application to license holders invalid;

NOW THEREFORE BE IT ORDAINED by the Board of Supervisors of the Town of Grand Chute, Outagamie County, Wisconsin, that Chapter 335 of the Grand Chute Municipal Code is hereby amended and adopted as follows:

Chapter 335: Intoxicating Liquor and Fermented Malt Beverages

Article I: Licensing

[Adopted 1-7-1997 as §§ 9.01, 9.12 and 9.16 of the 1997 Code; amended 11-16-1999; 2-8-2002; 10-7-2003; 12-19-2006]

§ 335-1 State statutes adopted.

[Amended 2-21-2008 by Ord. No. 2008-03; 12-20-2011 by Ord. No. 2011-30]

The provisions of Chs. 125 and 139, Wis. Stats., relating to the sale of intoxicating liquor and fermented malt beverages are hereby adopted and made a part of this article by reference. To the extent of any inconsistency between this article and the statutory

provisions, this article shall control, except to the extent preempted by statutory provisions, in which case the provisions of the Wisconsin Statutes shall control.

§ 335-2 License required.

No person, except as provided by § **335-1** of this article, shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in, or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage, or cause the same to be done, without having procured a license or permit as provided in this article, nor without complying with all the provisions of this article and all statutes, ordinances and regulations of the state and Town applicable thereto.

§ 335-3 Classes of licenses.

[Amended 6-2-2009 by Ord. No. 2009-12; 12-20-2011 by Ord. No. 2011-30]

There shall be the following classes and designations of licenses, which, when issued by the Town Clerk under the authority of the Town Board after payment of the fee as prescribed in the Town Fee Schedule, shall permit the holder to sell, deal or traffic in intoxicating liquor or fermented malt beverages as provided in §§ 125.25(1), 125.26(1), (5) and (6) and 125.51(1), (3)(a) and (9)(a), Wis. Stats.

A. Class "A" fermented malt beverage retailer's license.

B. Class "B" fermented malt beverage retailer's license under § 125.26(1), Wis. Stats. ~~A Class "B" license may be issued at any time for a period of six months in any calendar year, for which 50% of the license fee shall be paid.~~

Commented [GIP1]: This is redundant, as Section G, below, addresses part-time or semi-annual licenses.

C. Retail "Class A" liquor license under § 125.51(2), Wis. Stats.

D. Retail "Class B" liquor license under § 125.51(3), Wis. Stats.

E. Reserve "Class B" license pursuant to § 125.51(4)(a)4 and (br), Wis. Stats.

F. "Class C" wine license under § 125.51(3m)(b), Wis. Stats.

G. Part-time or semi-annual liquor licenses shall be issued pursuant to §§ 125.26(5) and 125.51(9)(b), Wis. Stats.

H. Provisional retail licenses may be issued by the Town Clerk only, to a person who has applied for a Class "A," Class "B," "Class A," "Class B" or "Class C" license who meets the residency requirements of the State of Wisconsin. A provisional retail license expires 60 days after issuance. Provisional retail licenses may not be issued if the municipality quota under § 125.51(4), Wis. Stats., prohibits the municipality from issuing a "Class B" license. No person may

hold more than one provisional retail license for each type of license applied for by the holder per year.

§ 335-4 License restrictions.

In addition to the requirements imposed by provision of the Wisconsin Statutes adopted by reference in § **335-1** of this article, the following restrictions shall apply to the issuance of licenses or permits pursuant to this article:

A. Requirements for licenses. No license or permit shall be issued to any person who is not 21 years of age or over, of good moral character, and a citizen of the United States and the State of Wisconsin, except that an operator's license may be issued to an applicant who has attained the age of 18. No license shall be issued to any person who has multiple criminal misdemeanor convictions that relate to the licensed activity or has been convicted of a felony that relates to the licensed activity. This subsection shall not apply to Wisconsin corporations but shall apply to all officers and directors of any such corporations.

[Amended 12-20-2011 by Ord. No. 2011-30]

B. 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 article revoked within 12 months prior to application.

C. Inspection of application and premises. The Town Clerk shall notify the Licensing Committee of all license and permit applications. The Licensing Committee will direct the Police Department, Fire Department, and Building Inspector to review each application and inspect the premises identified in the application to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto and the applicant's fitness for the trust to be reposed. No license or permit provided for in this article shall be issued without the approval of a majority of the Town Board.

[Amended 12-20-2011 by Ord. No. 2011-30]

D. Health and sanitation. No license shall be issued for any premises which does not conform to the sanitary, safety and health regulations of the State Department of Safety and Professional Services and State Department of Health Services and to all such ordinances and regulations adopted by the Town.

[Amended 12-20-2011 by Ord. No. 2011-30]

E. Delinquent taxes, assessment and claims. No license or license renewal shall be issued under this article for any premises or person for which or for whom taxes, assessments or other claims of the Town or the State of Wisconsin are delinquent and not paid. Included within the definition of delinquent taxes, delinquent assessments or other delinquent payments due to the Town shall be any delinquency (unpaid) for special assessments, personal property taxes, real estate taxes, or motel or hotel taxes, failure to pay any adjudicated fines or penalties, failure to pay current any fees or moneys due to the Town of any kind or nature, etc.

F. The term "person" shall include an individual and any other form of partnership, corporation, or other entity, if any, to which a license has been issued. The revocation provisions of § **335-9** shall also apply to any partnership, corporation or other entity with one or more common owners of any license subject to revocation. The issuance of new licenses shall also be withheld from entities with one or more common owners with any other entity not qualified for issuance of a license pursuant to this article.

[Amended 12-20-2011 by Ord. No. 2011-30]

G. The Licensing Committee shall be an administrative review committee to carry out the duties as directed by the Town Board pursuant to this article. The Committee shall consist of the Town Chairperson or his/her designee, the Town Clerk or his/her designee, the Police Chief or his/her designee, the Fire Chief or his/her designee, the Chief Building Inspector or his/her designee, and other Town staff members as determined by the Town Administrator. The Town Clerk or designee shall serve as Committee Chair.

[Added 2-21-2008 by Ord. No. 2008-03; amended 5-21-2013 by Ord. No. 2013-11]

H. Outdoor service/beer gardens.

[Added 6-1-2010 by Ord. No. 2010-06]

(1) No holder of a "Class B," Class "B" and/or "Class C" license may operate under said license(s) in any outdoor area, whether or not said outdoor area was included in a description of the premises, without first having obtained the permission of the Town Board subject to the conditions of this subsection. Approval under this subsection by the Town Board shall result in the outdoor area becoming a part of the description of the premises, with said outdoor area also being subject to all State and Town laws, rules, regulations, and lawful orders governing "Class B," Class "B" and/or "Class C" premises.

(2) As used in this subsection, the following terms shall have the meanings indicated:

OUTDOOR AREA

An area, whether or not enclosed by a roof, which is open to the elements and which is not constructed for year-round use.

OUTDOOR PREMISES

A licensed premises located in an outside area.

(3) Application. Application for an outdoor extension of a "Class B," Class "B" and/or "Class C" license shall be made to the Community Development Department in the form of a request for a special exception permit. The application shall include a map describing the outdoor area sought to be included within the description of the licensed premises. In the event that such map is omitted and the "Class B," Class "B" and/or "Class C" license is granted and issued, said license shall not be deemed to include an outdoor area within the description of the licensed premises.

(4) Requirements. Outdoor premises approved under this subsection are subject to the following requirements:

(a) Outdoor premises may be permitted only on properties located in the CL Local Commercial, CR Regional Commercial, CP Planned Commercial, and IND Industrial Zoning Districts as those terms are defined in Chapter **535**, Zoning, subject to the special exception permit requirements of Chapter **535**.[1]
[1] *Editor's Note: Amended at time of adoption of Code (see Ch. **1**, General Provisions, Art. **II**).*

(b) Outdoor premises shall be completely surrounded by an attractive wall, fence, or barrier of at least four feet in height.

(c) Outdoor premises located in the front yard of the licensed premises shall also be completely surrounded by an attractive wall, fence, or barrier, and such installation shall be 42 inches in height for public safety and property aesthetics purposes.

(d) Outdoor premises shall be attached to the main business premises, and access to the outdoor premises shall only be allowed through the main building.

(e) Service in the outdoor premises shall be limited to persons seated at tables or at a bar.

(f) Food and beverage service in the outdoor premises shall stop no later than 10:30 p.m., with no food or beverage consumption allowed in the outdoor premises after 11:00 p.m.

(g) No music shall be broadcast directly into the outdoor area by means of outdoor speakers or jukeboxes, nor shall live music be permitted.

(h) Lighting of the outdoor premises must be shielded and not be of intensity or brilliance to create glare which is distracting to adjoining property owners or that can become a hazard or danger to vehicular traffic.

(i) Noise from any source that is emitted from the outdoor area and measured at any border of the real property on which the licensed premises is located shall not exceed 85 db from 7:00 a.m. to 9:00 p.m. and 75 db from 9:00 p.m. until closing.

(j) Outdoor premises shall not be located in any actual or required yard area that directly abuts an adjoining property used for residential purposes, unless the following additional conditions are met:

[1] Provide a twenty-foot buffer between outdoor premises and the adjoining lot containing the residential use.

[2] Provide a privacy fence six feet in height at the property line in the area abutting the outdoor premises.

[3] Notwithstanding Subsection **H(4)(f)** of this section, food and beverage service in the outdoor premises shall stop no later than 9:30 p.m., with no food or beverage consumption allowed in the outdoor premises after 10:00 p.m.

§ 335-5 Inspection of licensed 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 Town of Grand Chute without any warrant, and the application for a license hereunder shall be deemed a consent to this provision. Any refusal to permit such inspection shall constitute grounds for either revocation or non-renewal of any license issued hereunder and shall be deemed a violation of this article.

§ 335-6 License to be posted.

Licenses or permits issued under this section shall be posted and displayed as provided in § 125.04(10), Wis. Stats., and any licensee or permit holder who shall fail to post his license or permit as therein required shall be presumed to be operating without a license.

§ 335-7 Safety and sanitation requirements.

Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

§ 335-8 Requirement to purchase alcoholic beverages from wholesaler.

No campus or retail licensee or permittee may purchase fermented malt beverages or alcoholic beverages from, or possess fermented malt beverages or alcoholic beverages purchased from, any person other than a wholesaler holding a permit under Chapter 125, Wis. Stats., for the sale of fermented malt beverages or alcoholic beverages. §§ 125.33(9) and 125.69(6)(a), Wis. Stats.

Commented [GIP2]: There are two statutes requiring purchase form a wholesaler, one pertaining to fermented malt beverages and one pertaining to intoxicating liquor.

§ 335-9 Revocation and suspension of licenses.

A. Purpose. The purpose of this section is to establish guidelines governing the revocation and suspension of alcoholic beverage licenses through a system of demerit points that accrue for violations of this chapter or Chapter 125, Wis. Stats.

B. Procedure. Except as hereinafter provided, the provisions of § 125.12, Wis. Stats., shall be applicable to proceedings for the revocation or suspension of all licenses or permits granted under this article. Revocation or suspension proceedings may be instituted by the Town Board upon its own motion, subject to any additional requirements under § 125.12, Wis. Stats., for both suspension and revocation proceedings.

C. Point schedule.

(1) The scheme of demerit points appearing below is listed according to the type of drug or alcohol beverage violation. This demerit point system is used to identify both extraordinarily serious violations and/or habitually troublesome license holders who have repeatedly violated state statutes and ~~the~~ Grand Chute ~~Town~~ ordinances for the purpose of recommending suspension or revocation of their alcohol beverage license.

(2) If the demerit points accumulated from the date of a violation which results in a conviction meet or exceed 50 points in a twelve-month period, the agent or officer will be required to meet with the Licensing Committee. In

the event the agent or officer fails to appear before the Licensing Committee as required under this section, a citation and mandatory forfeiture of $250.00 plus statutory costs shall be issued and imposed by the ~~Town police~~ Police ~~department~~Department.

(3) Demerit points may be reduced as shown on the schedule if the license holder has had no violations for three years prior to the offense and has met with the Licensing Committee as indicated in Section C.(2), above.

(4) The first violation of § 125.07(1)(a), Wis. Stats., prohibiting selling of alcoholic beverages to underage persons will be assigned 19 demerit points instead of 80 points if the licensee has adopted, prior to the violation, and complied with, a written policy for the Licensed Premises, containing the following provisions:

a. Each person authorized to sell alcoholic beverages at the ~~Licensed~~ licensed ~~Premises~~ premises has completed the Operator's training course sponsored by the State of Wisconsin and required for Operators of Licensed Premises pursuant to Chapter 125, Wis. Stats., and

b. Signage is posted on the ~~Licensed~~ licensed ~~Premises~~ premises visible to customers at an area where alcoholic beverages are sold stating the date of birth subsequent to which no such customer is allowed to purchase alcoholic beverages, and

c. Clear written expectations are given to employees permitted to serve alcohol, which establishes that all reasonable measures will be taken to avoid serving any minors under any circumstances, and which includes reasonable discipline or incentives related to serving alcohol to patrons, and

d. Internal controls to test procedural compliance by staff for serving alcohol, such as utilizing "secret shoppers" to test policy compliance, and

e. Specific criteria for determining when identification must be presented by customers prior to the purchase of alcoholic beverages are established/followed, and

f. Quarterly refresher training for all employees permitted to serve alcohol on the policy and laws governing the sale of alcoholic beverages.

Type of Violation	State Statute	Town Ordinance	Demerit Points	Qualified Reductions
Selling to underage person • See paragraph C., (4), above.	§ 125.07(1)(a)	§ 335-17	80 19	60
Selling to intoxicated person	§ 125.07(2)	§ 335-17	50	0
Underage person on premises Licensee/Permittee	§ 125.07(3)(a)	§ 335-17	50	35
Failure to be licensed	§ 125.04(1)	§ 335-2	100	0
False statement on application	§ 125.04(3)(j)	§ 335-2	100	0
Transfer of license without permission	§ 125.04(12)	§ 335-10	75	0
Operate on another's license	§ 125.68(2m) § 125.32(2m)	§ 335-2	200	0
Sale without a license	§ 125.04(1)	§ 335-2	100	0
Unlicensed bartender	§ 125.32(2) § 125.68(2)	§ ~~335-11~~335-12	50	35
Open after hours	§ 125.32(3) § 125.68(3)	§ 335-1	50	0
No carry-out after hours	§ 125.32(3) § 125.68(3)	§ ~~335-13~~335-14	50	0
Failure to purchase from licensed wholesaler	§ 125.33(9) § 125.69(6)(a)	§ 335-8	75	0
Failure to maintain qualifications for license or permit	§ 125.04(5)	§ 335-2	200	0
Keep a disorderly, riotous, indecent, or improper house	§ 823.09 § 398-2(c)		50	0

Commented [GIP3]: I believe the proper Code reference is § 335-17: Underage and intoxicated persons; general restrictions.

Commented [GIP4]: I believe the proper Code reference is § 335-17: Underage and intoxicated persons; general restrictions.

Commented [GIP6]: I believe the proper Code reference is § 335-17: Underage and intoxicated persons; general restrictions.

Commented [GIP5]: I recommend adding this language to distinguish this violation, which prohibits the license holder from permitting loitering, from a violation that involves the minor being cited for loitering under § 125.07(4)(a)3.

Commented [GIP7]: I recommend including reference to the specific section of the statute, which involves adding (1).

Commented [GIP8]: I recommend including reference to the specific section of the statute, which involves adding (3)(j).

Commented [GIP10]: I believe the proper corresponding statute is § 125.04(12) for "Transfer of license without permission." § 125.68(2m) is the appropriate reference for "Operate on another's license."

Commented [GIP9]: "Operating on another's license" is covered separately and is next on the list. It is important to separate the two, as we assigned 200 points to "operating on another's license," while "Transfer of license without permission" is only 75 points.

Commented [GIP12]: I believe this would be the corresponding Code reference

Commented [GIP11]: There are two separate statutes related to "Operate on another's license," depending on whether the license authorizes sale of fermented beverages or intoxicating liquor.

Commented [GIP13]: I believe 125.66 only pertains to sale of intoxicating liquor, while 125.04(1) covers any f ... [1]

Commented [GIP14]: § 125.17 pertains to the Town's authority to issue operators' licenses, while § 125. ... [2]

Commented [GIP15]: Both statutes pertain to closing hours, with one applying to the sale of fermented bev ... [3]

Commented [GIP16]: Same comment as above.

Commented [GIP17]: One statute pertains to the purchase of fermented beverages, while the other per ... [4]

Commented [GIP18]: I believe this would be the appropriate Code reference.

Commented [GIP20]: Definitions for "disorderly house" found in state statute or Town Code suggest behavior ... [6]

Commented [GIP19]: § 125.12(2)(ag)2 permits a complaint to be filed in the event a licensed premi ... [5]

Type of Violation	State Statute	Town Ordinance	Demerit Points	Qualified Reductions
Gambling	§ 945.04	§ 415-8	50	0
Adult entertainment/ entertainer without permit		§ ~~335-21~~335-23	75	0
Obscene material or performances/Operation of a sexually oriented business	§ 944.21	§ ~~335-20~~335-21 § ~~335-21~~335-22	200	0
Solicitation of drinks by employee	§ 944.36	§ 415-2	50	0
Failure to display permit	§ 125.04(10)	§ 335-6	25	0
Owner/agent selling controlled substance	§ 961.41(1)	§ 415-2	200	0
Employee selling controlled substance	§ 961.41(1)	§ 415-2	75	0
Possession of controlled substance by owner/agent	§ 961.41(3g)		100 (misd.) 200 (felony)	0
Possession of controlled substance by employee	§ 961.41(3g)		50	0
Possession of drug paraphernalia by owner/agent	§ 961.573		75	0
Possession of drug paraphernalia by employee	§ 961.573		50	0

Commented [GIP21]: § 945.04 is the specific statue reference.

Commented [GIP23]: Given that operating as a sexually oriented business is established as grounds for nonissuance, revocation or suspension in our Code, I would recommend a higher point total for this violation.

Commented [GIP22]: I believe this verbiage better reflects the relevant state statute and also address our Code changes which prohibit licensed premises from operating as a sexually oriented business.

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

D. Calculation of violations. In determining the accumulative demerit points against a licensee within 12 months or 18 months, the Town shall use the date each violation was committed as the basis for a determination if there has been a conviction. If the violations are committed concurrently, the highest point violation shall be assessed.

E. Suspension and revocation of license.

(1) If the demerit points accumulated from the date of a violation which results in a conviction meet or exceed 50 points in a ~~twelve~~12-month period, the agent or officer will be required to meet with the Licensing Committee. The accumulation of points shall result in suspension or revocation of the license in accordance with the following schedule, subject to the exception that for violations under §§ 125.07(1)(a) and 125.04(5)(a)1, Wis. Stats., such violations may be counted only if the licensee has committed another violation under § 125.07(1)(a), Wis. Stats., within 12 months of the present violation, in which case all violations committed within one year of a prior violation may also be considered:
[Amended 2-21-2008 by Ord. No. 2008-03[2]]

100 to 149 points within 12 months: 10-day minimum suspension

150 to 199 points within 12 months: 20-day minimum suspension

200 points within 18 months: revocation

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

(2) When a license is revoked pursuant to this article, the revocation shall be recorded by the Clerk and no other license issued under Ch. 125, Wis. Stats., may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee for any license so revoked may be refunded.

F. Upon determination by the Town Board, after hearing, that the license is subject to suspension or revocation, the Clerk shall give notice of such suspension or revocation to the person whose license is suspended or revoked. Such suspension or revocation shall take effect 30 days from the date said notice is given to the licensee. Such notice may be given in person or mailed by certified mail to the address of the addressee shown on the licensee's application. Notice by mail shall be deemed effective five days from the date of mailing. If the suspension or revocation is appealed to the Circuit Court by service of notice of appeal on the Town in accordance with § 125.12(2)(d), Wis. Stats., on or before 30 days from the effective date of notice of suspension or revocation, the revocation or suspension shall be stayed pending a decision by the Circuit Court on the appeal unless the Board finds that public health, safety, or welfare imperatively require emergency action and incorporates a finding to that effect in its order. If the Circuit Court affirms the suspension or revocation, the period of suspension or revocation shall then take effect beginning on the fifth day following the date the decision is signed by the Circuit Court Judge unless a different date is ordered by the Court.[3]

[3] *Editor's Note: Original § 9.01(8)(g), which immediately followed this subsection, was repealed 12-20-2011 by Ord. No. 2011-30.*

G. Repossession of license or permit. Whenever any license or permit under this article shall be revoked or suspended by the Town Board or action of any court or Subsection **C**, it shall be the duty of the Clerk to notify the licensee or permit holder of such suspension or revocation and to take physical possession of the license or permit wherever it may be found and file it in the Clerk's office.
[Amended 12-20-2011 by Ord. No. 2011-30]

H. Transfer/sale of licensed business.
[Added 6-2-2009 by Ord. No. 2009-12]

(1) Upon the transfer or sale of the licensed business, all accumulated demerit points shall be canceled unless any of the following apply:

(a) The new licensee is related to the former licensee by blood, adoption, or marriage.

(b) The new licensee held a business interest in the previous licensed business, real estate, or equipment.

(c) The former licensee retains an interest in the business or equipment used by the business.
[Amended 12-20-2011 by Ord. No. 2011-30]

(d) The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing but not obligated to sell and the buyer is willing, but not obligated, to buy.

(2) If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to all penalties set forth by this article.

§ 335-10 Transfer of ~~premises~~license.

Commented [GIP24]: Changes in this section were recommended by Karen and are the result of changes to Ch. 125.

A. Any licensee desiring to transfer ~~his~~ a license from ~~his~~ its current Town location to another Town location shall complete and file with the Town Clerk Wisconsin Department of Revenue form AT-112, Retail License Transfer – Premises to Premises. ~~a written application with the Town Clerk stating:~~
[Amended 6-2-2009 by Ord. No. 2009-12]

~~(1) The place he desires to move to;~~

~~(2) Whether he is to be the owner or lessee;~~

~~(3) The nature of any other business carried on concurrently at the location proposed to be licensed; and~~

~~(4) Such other information as may be required from time to time by the Town Board.~~

B. Reserve "Class B" liquor licenses, unlike other retail licenses, cannot be transferred to another place or premises within the Town, per §125.04(12)(a).

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~~B.~~C. Such applications shall be filed for at least 15 days with the Town Clerk before being acted upon by the Board. The Town Clerk shall promptly notify the Licensing Committee of such application, and committee members representing the Police Department, Fire Department, and Community Development Department shall inspect or cause to be inspected the premises sought to be licensed. They shall make such other investigation as the Town Board or its Licensing Committee as authorized by the Town Board shall order to determine whether the application complies with the regulations, orders and laws applicable thereto and the premises are in a proper physical condition and a suitable location. The aforesaid officers shall furnish to the Town Clerk in writing the information derived from such investigation.
[Amended 2-21-2008 by Ord. No. 2008-03; 12-20-2011 by Ord. No. 2011-30]

~~C.~~D. As far as applicable, the provisions of § **335-3** of this article shall apply to further proceedings in regard to the granting or refusal by the Board of the applicant's request to transfer the license.

§ 335-11 Operator's license.

[Amended 2-21-2008 by Ord. No. 2008-03; 12-15-2009 by Ord. No. 2009-19]

A. ~~Anyone~~ Persons wishing to be employed as an operator under § 125.17, Wis. Stats., ~~shall~~ may make written application for an operator's license to the Town Clerk upon the form provided by the Town.

B. Licenses are valid from July 1 to June 30, and renewed every two years. Fees are as prescribed in the Town Fee Schedule. All applicants shall comply with § 125.17(6), Wis. Stats.
[Amended 12-18-2012 by Ord. No. 2012-22]

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~~B.~~C. No operator's license shall be granted to a person under 18 years of age.

~~C. No one except the licensee or a member of his immediate family shall act as an operator without such license. Licenses are valid from July 1 to June 30, renewed every two years. Fees are as prescribed in the Town Fee Schedule. All applicants shall comply with § 125.17(6), Wis. Stats.
[Amended 12-18-2012 by Ord. No. 2012-22]~~

Commented [GIP25]: This is more restrictive than state statute, which allows for someone to function as an operator without a license if they are supervised by an operator, agent, or licensee. In talking with CART team members, they have not been enforcing this stricter standard, but have been enforcing state statute. Is it our intent to impose the stricter standard?

D. Provisional license.

(1) Provisional licenses shall only be issued to person(s) who have applied for an operator's license under this section. A provisional license may not be issued to any person(s) who has been denied a license under this section. Provisional licenses shall expire 60 days after issued or when a license under this section is issued to the holder, whichever is sooner. Provisional licenses may be revoked if the holder of the license made false statements on the application or as determined by the Licensing Committee.

(2) Provisional licenses shall be issued by the Town Clerk at a fee as prescribed in the Town Fee Schedule.

E. Temporary license.

(1) Temporary licenses may be issued only to operators employed by, or donating their services to, nonprofit corporations. No person may hold more than ~~one~~ two licenses of this kind per year. This license is valid for any period from one day to 14 days, which shall be stated on the license.

(2) License fee is as prescribed in the Town Fee Schedule.

§ 335-12 Required onsite supervision of licensed premises.

A. Except in Class "A" beer premises between 9:00 p.m. and 8:00 a.m., one of the following must be present on all licensed premises during all business hours:

(1) The licensee, or;

(2) An adult member of the licensee's immediate family (actually living in the licensee's household), or;

(3) The corporation, or limited liability company's agent (the agent's immediate family members must have an operator's license if they supervisor the premises in the agent's absence), or;

(4) The holder of a provisional operator's license (issued to persons enrolled in the responsible beverage server training course pending approval of an operator's license by the Town), or;

(5) The holder of an operator's license.

B. An adult working under the immediate supervision of any of the above does not need an operator's license. To satisfy the "immediate supervision" criteria, the licensed person must be able to watch and supervise each unlicensed person's actions.

Commented [GIP26]: Statutory change, per Karen

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C. The holder of the liquor license may be prosecuted for not having the required supervision of their premises.

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§ 335-~~12~~ 13 Replacement of license.

[Amended 12-15-2009 by Ord. No. 2009-19]

Whenever a license or permit is lost or destroyed, a duplicate shall be issued by the Town Clerk upon the payment of a fee as prescribed in the Town Fee Schedule.

§ 335-~~13~~ 14 Hours of operation.

A. The holders of Class "A," Class "B," "Class A," "Class B" and "Class C" licenses, meaning all licenses as issued by the Town of Grand Chute as to the sale of fermented malt beverages and intoxicating liquor [§ 125.02(1), Wis. Stats.], shall not permit the selling, dispensing, giving away or furnishing, directly or indirectly, of said fermented malt beverages or intoxicating liquor for consumption off premises between the hours of 9:00 p.m. and 8:00 a.m., central standard time. During that portion of the year when standard time is advanced under § 175.095, Wis. Stats., then also said licensees shall not be permitted to sell, dispense, give away or furnish, directly or indirectly, fermented malt beverages or intoxicating liquor between 9:00 p.m. and 8:00 a.m.
[Amended 3-4-2008 by Ord. No. 2008-06]

B. It is the intention of this article to prevent the sale, dispensing, giving away or furnishing of fermented malt beverages or intoxicating liquor, for consumption off premises, during the above prohibited times. Any violation of this article shall be subject to the penalties as contained within § ~~335-15~~ 335-16 of this article.
[Amended 12-20-2011 by Ord. No. 2011-30]

§ 335-~~14~~ 15 Licenses not used for extended periods.

A. Any person who has been granted a "Class B" liquor and beer license for the operation of a liquor license premises who does not make use of such liquor license by operation of said premises for a period of four months shall be deemed to have forfeited such license, with the exception of premises that, by virtue of their operation, are only open for a portion of each year. Upon knowledge of such failure to use, the Town Clerk shall notify the license holder by certified or registered mail that the license is deemed to have been forfeited and direct by said certified or registered mail that the license holder deliver the license and surrender the license to the Town Clerk.

B. In the event the holder of said license encounters undue hardship or unusual circumstances beyond the license holder's control, the license holder can request

an extension of up to four months from the Town Board. The license holder must first address his or her request to the Licensing Committee, who will consider the request and provide a recommendation to the Town Board. Within the extension period of four months, the license holder may ask, and the Town Board may grant, an extension up to a further period of four months. The Town Board shall not authorize extensions in excess of four months. The decision of the Town Board in any extension request shall be final and binding..

§ 335-~~15~~-16 Violations and penalties.

A. The holder of any license under this article who shall violate this article or any of the provisions thereof or whose agents or employees shall do so or who, having had his or its license revoked, shall continue to operate such place of business, shall, upon the due proof and conviction thereof, be punished as follows:

(1) A violation of any provision of this article where a like violation is covered, provided for and penalized by Ch. 66 or 125, Wis. Stats., shall be punished by a fine of not less than the minimum fine and not more than the maximum fine provided for by said chapters for said violation or offense, besides the costs of prosecution, and in default of the payment of any such fine and/or costs of prosecution such guilty and convicted person shall be committed to and confined within the county jail of Outagamie County, Wisconsin, until such fine and/or costs of prosecution are paid, but not to exceed 60 days.

B. Each day of violation under this article shall constitute a separate and distinct offense.

C. A first violation of any provision of this article shall be punished by a fine as prescribed in the Uniform Forfeiture and Bond Schedules, together with the costs of prosecution, and on default of the payment of any such fine and/or costs of prosecution such person shall be committed to the county jail of Outagamie County until such fine and costs are paid, but not to exceed 60 days.

D. Any person violating this article who shall previously have been convicted of a violation of this article shall, upon proof and conviction thereof, forfeit an amount as prescribed in the Uniform Forfeiture and Bond Schedules, together with the costs of prosecution, and on default of the payment of any such fine and costs of prosecution, or either of them, such convicted person shall be committed to and confined within the county jail of Outagamie County, Wisconsin, until such fine and costs of prosecution are paid, but not to exceed six months.

E. Penalties set forth in this section shall be in addition to penalty provisions in other sections of this article, if any.

Article II: Offenses Involving Alcoholic Beverages

[Adopted 1-7-1997 as §§ 7.12, 7.16, 7.19 and 7.20 of the 1997 Code]

§ 335-~~16~~ 17 Possession and consumption of intoxicants.

A. No person shall consume any intoxicating liquor or fermented malt beverage while in or upon any street, alley, sidewalk, thoroughfare, parking lot, or other public way. No person shall consume any intoxicating liquor or fermented malt beverage while in or upon any private property without the property owner's consent.

B. All purchases of intoxicating liquor or fermented malt beverages by glass or in open containers shall be consumed upon the licensed premises where purchased and where served and shall not be removed to the public areas or private areas set forth in Subsection **A** above.

C. No person shall possess any glass or open container containing intoxicating liquor or fermented malt beverages in or upon any public areas set forth in Subsection **A** above or in or upon any private property without the owner's consent as set forth in Subsection **A** above.

D. The Town Board of Supervisors may, in special circumstances, where it is satisfied that adequate supervision and police protection exist and upon application therefor by any person, permit the consumption or possession of intoxicating liquor or fermented malt beverage contrary to this section, provided that said permission is limited to a specific date, a specific time, and a specific location. Request for such permission shall be in the form of an application for a special event permit, as outlined in Chapter 456, Town of Grand Chute Municipal Code.

E. Any person who shall violate the provisions of this section, or any part thereof, shall be punished by a forfeiture as prescribed in the Uniform Forfeiture and Bond Schedules for each offense, together with the costs thereof, and in default of payment thereof shall be imprisoned in the county jail for a period not exceeding 30 days.
[Amended 12-20-2011 by Ord. No. 2011-30]

§ 335-~~17~~ 18 Underage and intoxicated persons; general restrictions.

A. Pursuant to § 125.10, Wis. Stats., the Town does hereby adopt by reference §§ 125.07 and 125.09, Wis. Stats. A violation thereof may be prosecuted as a Town ordinance violation pursuant to this section and the adoption of the above-referenced state statutes.

B. The penalty for violation of this section shall be as prescribed in the Uniform Forfeiture and Bond Schedules.
[Amended 12-20-2011 by Ord. No. 2011-30]

§ 335-~~18~~ 19 Violations and penalties.
[Amended 12-20-2011 by Ord. No. 2011-30]

Any person who shall violate any provision of this article shall, upon conviction thereof, be punished as follows:

A. For a violation of any provision of this article, any person shall, upon proof and conviction thereof, forfeit an amount as prescribed in the Uniform Forfeiture and Bond Schedules, together with the costs of prosecution, and in default of payment of the forfeiture and costs of prosecution, or either of them, such convicted person shall be committed to and confined within the county jail of Outagamie County, Wisconsin, until such fine and costs of prosecution are paid, but not to exceed 60 days.

Article III: Attire, conduct, and entertainment on licensed premises

§ 335-~~19~~ 20 Definitions.

As used in this Article, the following terms shall have the meanings indicated:

ADULT ENTERTAINMENT TAVERN

Any establishment, including a sexually oriented business, whether or not licensed to sell alcoholic beverages pursuant to Ch. 125, Wis. Stats., which is used for, among other things, services, performances or entertainment by nude/semi-nude entertainers as defined in this section.

ANAL CLEFT AND CLEAVAGE

The definition of anal cleft and cleavage can generally be described as including only that 1/3 of the complete buttocks centered over the cleavage for the length of the cleavage, more particularly described as follows:

(1) The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being 1/2 inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being 1/2 inch above

the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two imaginary straight lines, one on each side of the body (the "outside line"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each nate meets the outer side of each leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor faciae latae muscle or any of the above-described portion of the human body that is between either:

(a) The left inside perpendicular line and the left outside perpendicular line; or

(b) The right inside perpendicular line and the right outside perpendicular line.

(2) For the purpose of Subsection **(1)(a)** and **(b)**:

(a) The left inside perpendicular line shall be an imaginary straight line on the left side of the anus:

[1] That is perpendicular to the ground and to the horizontal lines described above; and

[2] That is 1/3 of the distance from the anus to the left outside line; and

(b) The right inside perpendicular line shall be an imaginary straight line on the right side of the anus:

[1] That is perpendicular to the ground and to the horizontal lines described above; and

[2] That is 1/3 of the distance from the anus to the right outside line.

BREASTS

A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is:

(1) Reasonably compact and contiguous to the areola; and

(2) Contains at least the nipple and the areola and 1/2 of the outside surface area of such gland located below the top of the areola, which area shall be reasonably compact and contiguous to the areola.

ENTERTAINER or PERFORMER

Includes entertainers, performers and wait staff and means any person who provides services, performances or entertainment for customers or patrons at a sexually oriented business, whether or not for consideration, such as fees, wages, or tips, charged or accepted for the service, performance or entertainment, and whether or not the service, performance or entertainment is provided as an employee or independent contractor, meaning any person who serves, performs for or entertains, customers or patrons in the form of either live nudity, live semi-nudity, or live specified sexual activities.

LICENSED ESTABLISHMENT

Any premises licensed by the Town of Grand Chute pursuant to Ch. 125, Wis. Stats., for serving alcoholic beverages for on-premises consumption.

NUDE or NUDITY

The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft or cleavage with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola, or the showing of covered male genitals in a discernible turgid state. This definition shall not include any portion of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel commonly worn by persons in public.

NUDE/SEMI-NUDE ENTERTAINER: "Entertainer" includes both performers and wait staff

Any person who provides services to customers, performances, dancing or entertainment at a licensed establishment, adult entertainment tavern or sexually oriented business, as defined in this section, whether or not for consideration, such as fees, wages, or tips, charged or accepted for the services, performance or entertainment, and whether or not the services, performance or entertainment is provided in the capacity of an employee, independent contract or under some other arrangement, including any person who provides services, performances or entertainment in the form of either live nudity, semi-live nudity, or live specified sexual activities, or which is characterized by an emphasis on exposure to view of human genitals, pubic area or anus or a female's vulva or breasts below the top of the areola, or an emphasis on acts of or acts which simulate sexual intercourse, masturbation, flagellation, erotic touching or any sexual acts or specified sexual activities prohibited by Wisconsin Statutes.

OPERATOR

Any person operating, conducting, maintaining or owning any licensed establishment.

PREMISES

The real property upon which a licensed establishment, adult entertainment tavern or sexually oriented business is located, or is proposed to be located, and all appurtenances thereto and buildings thereupon, including, but not limited to, the licensed establishment, the grounds, the private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the operator of the licensed establishment.

PROHIBITED SEXUAL CONTACT

Touching the breasts, buttocks, anus, vulva, labia, penis or testicles of another person in public view of customers or patrons done for the purpose of gratifying the sexual desires of either party.

SEMI-NUDE or SEMI-NUDITY

All definitions of nude or nudity above, and also the exposure of a bare female breast including the nipple and areola, at any point below a horizontal line intersecting the top of the areola. This definition shall not include any portion of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel commonly worn by persons in public. The terms "semi-nude" and "semi-nudity" includes females adorned by clothing consisting of pasties covering only the nipple and areola and G-strings.

SEXUALLY ORIENTED BUSINESS

A business that regularly features either live nudity or live semi-nudity, as a permanent focus of its business, giving special prominence to such content on a permanent basis, as cited in Kraimer v. City of Schofield, 342 F. Supp. 2d 807 at page 822, citing Schultz v. City of Cumberland, 228 F.3d 831, or otherwise permits live display of specified sexual activities to members of the public.

SPECIFIED SEXUAL ACTIVITIES

Live simulated or live actual:

(1) Acts of human masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus;

(2) Excretory functions as part of or in connection with any of the activities set forth in Subsection **(1)** above.

§ 335-~~20~~-21 Entertainment in licensed establishments operating sexually oriented businesses.
[Amended 7-16-2013 by Ord. No. 2013-15]

A. Application. This section shall only apply to licensed establishments that operate sexually oriented businesses as defined in Section 335-19, subject to the excluded categories of businesses described as follows.

(1) Excluded from application of the provisions of this section are the following licensed establishments: wherever performances of serious artistic merit, theaters, performing arts center, civic centers, and dinner theaters, where live dance, ballet, or music, of serious artistic merit, are offered, or legitimate educational, medical or health-related programs, are offered, and in which the predominant business or attraction is not the offering to customers of entertainment which is intended for the sexual interests or titillation of customers, and where the licensed establishment is not distinguished by an emphasis on, or the advertising or promotion of, live nude or live semi-nude performances, or live specified sexual activities take place. Also excluded from application of this section are such establishments as hotels, motels, and restaurants which are licensed establishments but which do not operate sexually oriented businesses.

(2) Also excluded from application of this section are sexually oriented businesses, which are not licensed establishments.

B. Intent. It is the intent of this section to promote the health, safety, welfare, and morals of the citizens of the Town of Grand Chute by establishing reasonable and uniform regulations to prevent the deleterious secondary effects associated with licensed establishments that operate sexually oriented businesses. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative or expressive materials or acts, including sexually oriented materials or acts. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials or acts protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene materials as regulated by state law.

C. Authority.

(1) The Town Board of the Town of Grand Chute has explicit authority under § 125.10, Wis. Stats., to adopt regulations governing the sale of alcoholic beverages.

(2) Under Wisconsin Statutes §§ 60.10(2)(c), 60.22(3), and 61.34, and its police powers, respectively, the Town Board has authority to act for the good order of the Town of Grand Chute and for the health, safety and welfare of the public and may carry out its powers by ordinances and enforcement.

(3) The Town Board recognizes it lacks authority to regulate obscenity, to the extent preempted by State of Wisconsin Statutes, and does not intend by adopting this section to regulate or to condone obscenity.

(4) The Town Board recognizes that the authority to adopt zoning ordinances applicable to the Town falls under the jurisdiction of Outagamie County, and the Town Board does not by adoption of this section create a zoning regulation.

(5) The Town Board recognizes that the U.S. Supreme Court has held that nude or semi-nude dancing is expressive conduct within the outer parameters of the First Amendment to the United States Constitution and therefore is entitled to protection under the First Amendment, and the Town Board further recognizes that freedom of speech and expression are among our most precious and highly protected rights and wishes to act consistently with the full protection of these rights.

D. Findings

(1) Notwithstanding the foregoing, the Town Board has become aware, based upon its own observations and experiences, as well as testimony before the Board by legal counsel for the Town, and also the experiences of other communities, that sexually oriented businesses may and do generate secondary effects which the governing body believes are detrimental to the public health, safety, welfare, and morals of the citizens of the Town of Grand Chute.

(2) Specifically, the Town Board has reviewed evidence concerning adverse secondary effects on other communities found in, but not limited to, the cases of Ben's Bar, Inc. v. Village of Somerset, 316 F3d 702 (2003); City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991); Arcara v. Cloud Books, Inc., 478 U.S. 697 (1986); California v. LaRue, 409 U.S. 109 (1972); City of Newport, KY v. Iacobucci, 479 U.S. 92 (1986); United States v. O'Brien, 391 U.S. 367 (1968); DLS, Inc. v. City of Chattanooga, 107 F3d 403 (6th Cir. 1997); Kev, Inc. v. Kitsap County, 793 F2d 1053 (9th Cir. 1986); Hang On, Inc. v. City of Arlington, 65 F3d 1248 (5th Cir. 1995); South Florida Free Beaches, Inc. v. City of Miami, 734 F2d 608 (11th Cir. 1984); New York State Liquor Auth. v. Bellanca, 452 US 714 (1981); Blue Canary Corp. v. City of Milwaukee, 251 F3d 1121; MDK, Inc. v. Village of Grafton, 345 F. Supp 2d 952 at page 957; Daytona Grand, Inc. v. City of Daytona Beach, Florida, 490 F3d 860 (11th Cir. 2007); and a compilation of studies on various municipalities regarding the impact of adult-oriented business, and reports of harmful secondary effects occurring in and around sexually oriented businesses, including a publication of the American Planning Association compiled by Eric Damian Kelly and Connie Cooper entitled "everything you always wanted to know about regulating sex businesses

xxx," Report of the Attorney General's Working Group on the Regulation of sexually oriented businesses, June 6, 1989, reports from studies in Phoenix, Arizona-1984 and 1995-1998; Minneapolis, Minnesota-1980; Houston, Texas-1997; Indianapolis, Indiana-1984; Amarillo, Texas-1977; Garden Grove, California-1991; Los Angeles, California-1977; Whittier, California-1978; Austin, Texas-1986; Seattle, Washington-1989; Oklahoma City, Oklahoma-1986; Cleveland, Ohio-1977; Dallas, Texas-1997; St. Croix County, Wisconsin-1993; Bellevue, Washington-1998; Newport News, Virginia-1996; and New York Times Square study-1994.

(3) Based upon the foregoing evidence as well as Town Board members' own individual experiences, observations and reasoning, the Town Board finds that:

(a) Crime statistics show that many types of crimes, especially sex-related crimes, such as prostitution, occur with more frequency in neighborhoods where sexually oriented businesses are located.

(b) Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.

(c) Sexually oriented businesses will probably contribute to an increased public health risk through the spread of sexually transmitted diseases.

(d) Areas with sexually oriented businesses exhibit an increased potential for infiltration by organized crime for the purpose of unlawful conduct.

(e) The consumption of alcoholic beverages on the premises of a sexually oriented business exacerbates the deleterious secondary effects of such businesses on the community.

(f) That restricting performers and entertainers only to a requirement of wearing minimal coverings such as pasties or G-strings alone will not avoid undesirable secondary effects in licensed establishments.

(g) Some persons frequent sexually oriented businesses for the purpose of engaging in illicit sexual behavior on the premises.

(4) The Town Board desires to protect the health, safety, and welfare of the citizens of the Town by preventing and controlling the secondary adverse effects associated with licensed establishments that operate sexually oriented businesses.

(5) The Town Board has determined that the enactment of an ordinance prohibiting licensed establishments from operating sexually oriented businesses promotes the goal of minimizing, preventing, and controlling the above-referenced adverse secondary effects and thereby protects the health, safety, and welfare of the citizens of the Town of Grand Chute.

E. Grounds for nonissuance, suspension, revocation or nonrenewal of alcohol beverage license issued under Chapter 125, Wisconsin Statutes. The following shall constitute grounds for nonissuance, suspension, revocation or nonrenewal, in accordance with notice and hearing procedures under Ch. 125, Wis. Stats., of a license applied for, or issued, by the Town of Grand Chute pursuant to Ch. 125, Wis. Stats., which license permits on-premises consumption of alcoholic beverages.

(1) Conviction of an offense, contrary to Wisconsin Statute § 944.21 or any successor statute or later amended version.

(2) A finding by the Town Board that the operation of the licensed facility or activity is in conflict with § 944.21, Wis. Stats.

(3) A finding by the Town Board that any of the following have occurred on the proposed or existing licensed establishment's premises:

(a) Live nude, live semi-nude services or performances by entertainers or performers, provided or performed, and directed at a proposed or existing licensed establishment's patrons or customers, or the general public.

(b) An instance of live public display of specified sexual activities involving any entertainer or performer.

(c) An instance of live display of prohibited sexual contact involving an entertainer or performer.

(d) Operation of a sexually oriented business.

F. Penalties. In alternative to, or in conjunction with, action the Town may take, described in Subsection **E** above, with respect to licenses, the Town may impose a forfeiture for each violation as determined by the Town Board or Municipal Court Judge taking into account the number of past and present violations proven, and the severity of the current offense, pursuant to issuance of a summons and complaint to the operator of the licensed establishment followed by a hearing with respect to the charges in accordance with Municipal Court procedures of the Town of Grand Chute.

(1) Any person, partnership, or corporation who is found to have violated this section shall be punished by a forfeiture of not less than $500 nor more than $5,000 for each offense, together with the cost thereof, as determined by the Municipal Court Judge, in accordance with the following schedule:

(a) First offense: not more than $1,000.

(b) Second offense: not more than $3,000.

(c) Third offense: not more than $5,000.

(2) Each violation of this section shall be considered a separate offense, and any violation continuing more than one day shall be considered a separate offense.

(3) Nothing herein precludes the Town Board from taking action on any alcohol beverage license pursuant to, or consistent with, the requirements and procedures applicable under Ch. 125, Wis. Stats., or other applicable Town ordinances, on other legal grounds than those specified in this section.

G. Standards for enforcement action. All notice and hearing requirements required for action on licenses under Ch. 125, Wis. Stats., shall be followed for purposes of taking license action pursuant to this section. All actions of the Town Board regarding licenses under Ch. 125. Wis. Stats., pursuant hereto shall be subject to the rights of appeal applicable to action taken under this section in accordance with Ch. 125, Wis. Stats. For purposes of enforcement of this section pursuant to Subsection **E** and **F** above, regardless of the basis for the hearing involving any violation of this section, in those cases where hearings are conducted pursuant to Ch. 125, Wis. Stats., regarding a licensed establishment's violation of this section, the standard for enforcement action shall be whether the Town Board finds, by sufficient evidence, in the discretion of the Board, that the violation has occurred.

§ 335-~~21~~ 22 Visual Displays.

The following acts or conduct on licensed premises is deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted. The showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(2) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.

(3) Scenes wherein a person displays the vulva or the anus or the genitals.

(4) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

§ 335-~~22~~ 23 Registration of entertainers.
[Amended 7-16-2013 by Ord. No. 2013-14]

A. Registration requirement.

(1) Any person intending to be employed or work in any capacity as a nude/semi-nude entertainer, as defined in Section 335-19, in any licensed establishment, adult entertainment tavern or sexually oriented business, as defined Section 335-19, within the Town of Grand Chute shall, before engaging in such employment or work, register with, and obtain a license from, the Grand Chute Police Department by completing and filing a registration statement on the form provided by the Department and paying the required fee as established in the fee schedule maintained by the Grand Chute Town Clerk.

(2) No licensed establishment, adult entertainment tavern or sexually oriented business shall allow services or performances by any nude/semi-nude entertainer who is not registered with and has not obtained a license from the Grand Chute Police Department as required above.

B. Application.

(1) This section shall only apply to nude/semi-nude entertainers employed or desiring to work, entertain or perform in a licensed establishment, adult entertainment tavern or sexually oriented business and to the licensed establishments, adult entertainment taverns or sexual oriented businesses which allow services or performances by such entertainers, as defined in Section 335-19, subject to the excluded categories of businesses described as follows.

(2) Excluded from application of the provisions of this section are the following establishments: wherever performances of serious artistic merit, theaters, performing arts centers, civic centers, and dinner theaters, where live dance, ballet, or music, of serious artistic merit, are offered, or legitimate educational, medical or health-related programs are offered, and in which the predominant business or attraction is not the offering to customers of

entertainment which is intended for the sexual interests or titillation of customers, and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, live nude or live semi-nude performances, or live specified sexual activities take place. Also excluded from application of this section are such establishments as hotels, motels and restaurants which are licensed establishments but which do not operate adult entertainment taverns or sexually oriented businesses.

C. Intent. It is the intent of this section to promote the health, safety, welfare, and morals of the citizens of the Town of Grand Chute by establishing reasonable and uniform regulations to prevent the deleterious secondary effects associated with the operation of licensed establishments, adult entertainment taverns and sexually oriented businesses. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative or expressive materials or acts, including sexually oriented materials or acts. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to sexually oriented materials or acts protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene materials as regulated by state law.

D. Authority.

(1) The Town Board of the Town of Grand Chute has explicit authority under § 125.10, Wis. Stats., to adopt regulations governing the sale of alcoholic beverages.

(2) Under Wisconsin Statutes §§ 60.10(2)(c), 60.22(3), and 61.34, and its police powers, respectively, the Town Board has authority to act for the good order of the Town of Grand Chute and for the health, safety and welfare of the public and may carry out its powers by ordinances and enforcement.

(3) The Town Board recognizes it lacks authority to regulate obscenity, to the extent preempted by State of Wisconsin Statutes, and does not intend by adopting this section to regulate or to condone obscenity.

(4) The Town Board recognizes that the U.S. Supreme Court has held that nude or semi-nude dancing is expressive conduct within the outer parameters of the First Amendment to the United States Constitution and therefore is entitled to certain protections under the First Amendment, and the Town Board further recognizes that freedom of speech and expression are among our most precious and highly protected rights and wishes to act consistently with the full protection of these rights.

E. Findings.

(1) Notwithstanding the foregoing, the Town Board has become aware, based upon its own observations and experiences, as well as testimony before the Board by legal counsel for the Town, and also the experiences of other communities, that licensed establishments, adult entertainment taverns and sexually oriented businesses may and do generate secondary effects which the governing body believes are detrimental to the public health, safety, welfare, and morals of the citizens of the Town of Grand Chute.

(2) Specifically, the Town Board has reviewed evidence concerning adverse secondary effects on other communities found in, but not limited to, the cases of Ben's Bar, Inc. v. Village of Somerset, 316 F3d 702 (2003); City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991); Arcara v. Cloud Books, Inc., 478 U.S. 697 (1986); California v. LaRue, 409 U.S. 109 (1972); City of Newport, KY v. Iacobucci, 479 U.S. 92 (1986); United States v. O'Brien, 391 U.S. 367 (1968); DLS, Inc. v. City of Chattanooga, 107 F3d 403 (6th Cir. 1997); Kev, Inc. v. Kitsap County, 793 F2d 1053 (9th Cir. 1986); Hang On, Inc. v. City of Arlington, 65 F3d 1248 (5th Cir. 1995); South Florida Free Beaches, Inc. v. City of Miami, 734 F2d 608 (11th Cir. 1984); New York State Liquor Auth. v. Bellanca, 452 US 714 (1981); Blue Canary Corp. v. City of Milwaukee, 251 F3d 1121; MDK, Inc. v. Village of Grafton, 345 F. Supp 2d 952 at page 957; Daytona Grand, Inc. v. City of Daytona Beach, Florida, 490 F3d 860 (11th Cir. 2007); and a compilation of studies on various municipalities regarding the impact of adult and sexually oriented businesses, and reports of harmful secondary effects occurring in and around sexually oriented businesses, including a publication of the American Planning Association compiled by Eric Damian Kelly and Connie Cooper entitled "everything you always wanted to know about regulating sex businesses xxx," Report of the Attorney General's Working Group on the Regulation of sexually oriented businesses, June 6, 1989, reports from studies in Phoenix, Arizona-1984 and 1995-1998; Minneapolis, Minnesota-1980; Houston, Texas-1997; Indianapolis, Indiana-1984; Amarillo, Texas-1977; Garden Grove, California-1991; Los Angeles, California-1977; Whittier, California-1978; Austin, Texas-1986; Seattle, Washington-1989; Oklahoma City, Oklahoma-1986; Cleveland, Ohio-1977; Dallas, Texas-1997; St. Croix County, Wisconsin-1993; Bellevue, Washington-1998; Newport News, Virginia-1996; and New York Times Square study-1994.

(3) Based upon the foregoing evidence as well as Town Board members' own individual experiences, observations and reasoning, the Town Board finds that:

(a) Crime statistics show that many types of crimes, especially sex-related crimes, such as prostitution, occur with more frequency in neighborhoods where sexually oriented businesses are located.

(b) Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.

(c) Sexually oriented businesses will probably contribute to an increased public health risk through the spread of sexually transmitted diseases.

(d) Areas with sexually oriented businesses exhibit an increased potential for infiltration by organized crime for the purpose of unlawful conduct.

(e) The consumption of alcoholic beverages on the premises of a sexually oriented business exacerbates the deleterious secondary effects of such businesses on the community.

(f) That restricting performers and entertainers only to a requirement of wearing minimal coverings such as pasties or G-strings alone will not avoid undesirable secondary effects in licensed establishments.

(g) Some persons frequent sexually oriented businesses for the purpose of engaging in illicit sexual behavior on the premises.

(4) The Town Board desires to protect the health, safety, and welfare of the citizens of the Town by preventing and controlling the secondary adverse effects associated with licensed establishments or other businesses operating as adult entertainment taverns or sexually oriented businesses.

(5) The Town Board has determined that the enactment of an ordinance prohibiting licensed establishments from operating sexually oriented businesses and mandating that nude/semi-nude entertainers register through the Town promotes the goal of minimizing, preventing, and controlling the above-referenced adverse secondary effects and thereby protects the health, safety, and welfare of the citizens of the Town of Grand Chute.

F. Annual licensing of nude/semi-nude entertainers. Licensing shall be required on an annual basis from July 1 to June 30. The registration period shall terminate on June 30 and require renewal for each separate year thereafter, beginning July 1 of each year.

G. Grounds for nonissuance, suspension, revocation or nonrenewal of license issued to nude/semi-nude entertainers. The following, among others as determined appropriate by the Town, shall constitute grounds for nonissuance, suspension, revocation or nonrenewal of a license issued to a nude/semi-nude entertainer.

(1) Conviction of a sexually related offense, offenses of moral turpitude, prostitution, obscenity or an offense contrary to §§ 944.01 through 944.36, Wis. Stats., or any successor statutes or later amended versions.

H. Procedure for nonissuance, suspension, revocation, or nonrenewal of license. The Town Clerk shall give written notice of any decision by the Town Police Department or Town Board to nonissue, suspend, revoke, or nonrenew a license for any nude/semi-nude entertainer by regular mail to the last known address shown on the application or license previously issued. The decision of the Police Department or Town Board shall become final unless the nude/semi-nude entertainer requests a hearing before the Town Board in writing submitted to the Town Clerk, which request shall be received by the Town Clerk within 15 days of the postmark mailing of the notice of the Town Board decision. The Town hearing shall be conducted on the next regularly scheduled Town Board meeting, providing at least 72 hours advance notice of the request for hearing is received prior to the Town Board meeting, otherwise the hearing shall be at the next regularly scheduled Town Board meeting. The Town Board at such hearing may affirm, reverse, or modify its decision following the hearing, and written notice thereof shall be mailed by the Town Clerk to the nude/semi-nude entertainer.

I. Penalties.

(1) In alternative to, or in conjunction with, any action the Town may take in order to enforce this section, any nude/semi-nude entertainer failing to comply with the provision of this section shall be punished upon conviction thereof by a fine as prescribed in the Uniform Forfeiture and Bond Schedules for each separate offense. Each day an unregistered adult nude/semi-nude entertainer is performing, dancing or otherwise entertaining shall be considered and charged as a separate offense punishable by a separate fine.

(2) Any licensed establishment, sexually oriented business or adult entertainment tavern employing an unregistered nude/semi-nude entertainer or otherwise permitting an unregistered nude/semi-nude entertainer to perform, dance or otherwise entertain shall be punished, upon conviction, by fine as prescribed in the Uniform Forfeiture and Bond Schedule. Each day an unregistered adult nude/semi-nude entertainer is employed, or permitted to perform, dance or otherwise entertain by any licensee or any licensed establishments, adult entertainment taverns or sexually oriented businesses shall constitute a separate offense punishable by a separate fine.

END OF AMENDMENT

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

Approved and adopted this 17 day of July, 2018

TOWN OF GRAND CHUTE

VOTED FOR: 4

VOTED AGAINST: 0

David Schowalter, Town Chairman

New Language in bold

Karen L. Weinschrott, Town Clerk

Approved as to Form

for Charles Koehler, Attorney
Herrling Clark Law Offices
800 N. Lynndale Drive
Grand Chute, WI 54914