

TOWN OF GRAND CHUTE
OUTAGAMIE COUNTY

ORDINANCE O-06-2020, SERIES OF 2020

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 contains a demerit point system designed to address extraordinarily serious violations and/or habitual violations of lesser state statutes and Grand Chute ordinances for the purpose of recommending suspension or revocation of alcohol beverage licenses; and,

WHEREAS, the demerit point system in Chapter 335 does not include § 252.25, Wis. Stats., Violation of law relating to health, or § 415-2, Town of Grand Chute Municipal Code, adopting § 252.25; and,

WHEREAS, the willful violation or obstruction of any state statute or rule, county or town ordinance, or order issued by the Wisconsin Department of Health Services or Outagamie County Department of Public Health relating to public health represents an extraordinarily serious violation when such infraction occurs on licensed premises;

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 to add violations of § 252.25, Wis. Stats., Violation of law relating to health, and § 415-2, Town of Grand Chute Municipal Code, adopting § 252.25, to the demerit point system established in § 335-9, Town of Grand Chute Municipal Code, 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]

§ 335-9 Revocation and suspension of licenses. [Amended 8-9-2018 by Ord. No. 2018-17]

- 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 Grand Chute 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 plus statutory costs shall be issued and imposed by the Police Department.
- (3) Demerit points may be reduced as shown on the schedule one time in a three-year period if the license holder has met with the Licensing Committee as indicated in Section C(2), above. **[Amended 7-16-2019 by Ord. No. 2019-07]**
- (4) A 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 one time in a three-year period if the licensee has adopted, prior to the violation, and complied with, a written policy for the licensed premises, containing the following provisions:
[Amended 7-16-2019 by Ord. No. 2019-07]
 - (a) Each person authorized to sell alcoholic beverages at the licensed 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 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 establish that all reasonable measures will be taken to avoid serving any minors under any circumstances, and which include 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 Subsection C(4) , above)	§ 125.07(1)(a)	§ <u>335-18</u>	80 19	60
Selling to intoxicated person	§ 125.07(2)	§ <u>335-18</u>	50	0
Underage person on premises licensee/permittee	§ 125.07(3)(a)	§ <u>335-18</u>	50	35
Failure to be licensed	§ 125.04(1)	§ <u>335-2</u>	100	0
False statement on application	§ 125.04(3)(j)	§ <u>335-2</u>	100	0
Transfer of license without permission	§ 125.04(12)	§ <u>335-10</u>	75	0
Operate on another's license	§ 125.68(2m) § 125.32(2m)	§ <u>335-2</u>	200	0
Sale without a license	§ 125.04(1)	§ <u>335-2</u>	100	0
Unlicensed bartender	§ 125.32(2) § 125.68(2)	§ <u>335-12</u>	50	35
Open after hours	§ 125.32(3) § 125.68(3)	§ <u>335-1</u>	50	0
No carry-out after hours	§ 125.32(3) § 125.68(3)	§ <u>335-14</u>	50	0
Failure to purchase from licensed wholesaler	§ 125.33(9) § 125.69(6)(a)	§ <u>335-8</u>	75	0
Failure to maintain qualifications for license or permit	§ 125.04(5)	§ <u>335-2</u>	200	0
Keep a disorderly, riotous, indecent, or improper house	§ 823.09 § <u>398-2(c)</u>	§ <u>398-2(c)</u>	50	0
<u>Violation of law relating to public health</u>	§ 252.25	§ <u>415-2</u>	<u>149</u>	<u>0</u>
Gambling	§ 945.04	§ <u>415-8</u>	50	0
Adult entertainment/entertainer without permit		§ <u>335-23</u>	75	0
Obscene material or performances/operation of a sexually oriented business	§ 944.21	§ <u>335-21</u> § <u>335-22</u>	200	0
Solicitation of drinks by employee	§ 944.36	§ <u>415-2</u>	50	0
Failure to display permit	§ 125.04(10)	§ <u>335-6</u>	25	0
Owner/agent selling controlled substance	§ 961.41(1)	§ <u>415-2</u>	200	0

Type of Violation	State Statute	Town Ordinance	Demerit Points	Qualified Reductions
Employee selling controlled substance	§ 961.41(1)	§ <u>415-2</u>	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

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-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:

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

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

200 points within 18 months: revocation

(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.

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.

H. Transfer/sale of licensed business.

(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.

(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.

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 24 day of March, 2020

VOTED FOR: 4

VOTED AGAINST: 0

New Language in bold

Approved as to Form

AKR

for

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TOWN OF GRAND CHUTE

David Schowalter

David Schowalter, Town Chairman

Angie Cain

Angie Cain, Town Clerk