

STATE OF WISCONSIN

VILLAGE OF CLYMAN

DODGE COUNTY

ORDINANCE NO. 2018-02

Alcohol Control Ordinance

The Village of Clyman Village Board, Dodge County, Wisconsin DOES ORDAIN AS FOLLOWS:

VILLAGE OF CLYMAN
DODGE COUNTY, WISCONSIN

Alcohol Control Ordinance

Section I. Title and Purpose.

The title of this ordinance is the Village of Clyman Alcohol Control Ordinance. The purpose of this ordinance is for the village to regulate specific actions at or near any alcohol beverage retail locations in the village.

Section II. Authority.

The village board has the authority under s. 125.10, Wis. Stats. and under its powers under s. 61.34(1), Wis. Stats., to regulate the sale at retail or wholesale of alcoholic beverages at premises in the village, to the extent that village regulations are not in conflict with state statutes, specifically including the regulation of underage and intoxicated persons at alcohol beverage retail sale licensed premises in the village and the issuance, renewal, revocation, suspension, and regulation of alcohol retail sale or wholesale sale, licenses, or permits, along with the penalties for violations of this ordinance.

Section III. Adoption of Ordinance.

The village board, by this ordinance, adopted by a majority of the village board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation of actions and activities at or near alcohol retail sales premises located in the village and for regulatory and enforcement authority noted in this ordinance.

Section IV. Definitions.

- A. "Alcohol beverages" means fermented malt beverages, wine, and intoxicating liquor.
- B. "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I to V of subchapter II of chapter 961, Wis. stats.
- C. "Fermented malt beverage" means any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.
- D. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

E. "Intoxicating liquor" means all ardent, spiritous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, that are beverages, but does not include fermented malt beverages that contain less than 5% of alcohol by weight.

F. "Legal drinking age" means 21 years of age.

G. "License" means an authorization to sell alcohol beverages at retail or wholesale issued by the Village Board or its agent under this ordinance.

H. "Licensee" means any person issued a license under this ordinance and chapter 125, Wis. Stats., by the village.

I. "Open for business" means conducting a business publicly at least 1,000 hours per calendar year.

J. "Permit" means any permit issued by the village under this ordinance.

K. "Permittee" means any person issued a permit by the village under this ordinance.

L. "Person" means a natural person, sole proprietorship, partnership, limited liability, company, corporation, association, or the owner of a single-owner entity that is disregarded as a separate entity under chapter 71, Wis. Stats.

M. "Premises" means the area described in a license or permit.

N. "Regulation" means any rule or ordinance adopted by a municipal governing body.

O. "Retail" means the sale of any alcohol beverages in the village to any person other than a person holding a permit or a license under this ordinance and chapter 125, Wis. Stats.. "Retailer" means any person who sells, or offers for sale, any alcohol beverages in the village to any person other than a person holding a permit or a license under this ordinance and chapter 125, Wis. Stats..

P. "Sell," "sold," "sale," or "selling" means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme, or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

Q. "Soft drink" means any liquid capable of being used for beverage purposes containing any degree of alcohol less than one-half of one percent by volume.

R. "Tavern" means any premises at which fermented malt beverages or intoxicating liquor are sold for consumption upon said premises.

S. "Village" means the Village of Clyman, Dodge County, Wisconsin.

T. "Village board" means the board of trustees for the Village of Clyman, Dodge County, Wisconsin, and includes designees of the board authorized to act for the board.

U. "Village clerk" means the clerk of the Village of Clyman, Dodge County, Wisconsin.

V. "Village President" means the president of the Village of Clyman, Dodge County, Wisconsin.

W. "Under the influence" means not only all the well-known and easily recognized conditions and degrees of intoxication, but any abnormal mental or physical condition that is the result of indulging to any degree in alcohol beverages and that tends to deprive a person of the clearness of intellect and control of himself or herself that he or she would otherwise possess.

X. "Underage person" means a person who has not attained the legal drinking age.

Y. "Wis. stats." means the Wisconsin Statutes, including successor provisions to cited statutes.

Z. "Wholesale" means the sale, other than by a brewer, manufacturer, or rectifier, of alcohol beverages to a licensed retailer in the village or to another person who holds a permit or license to sell alcohol beverages in the village at wholesale.

ZA. "Wine" means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits, or other agricultural products, imitation wine, and compounds sold as wine, vermouth, cider, perry, mead, and sake, if such products contain 0.5% or more of alcohol by volume.

Section V. Subdivision and Numbering of this Ordinance.

This ordinance is divided into sections designated by uppercase Roman numerals. Sections may be divided into subsections designated by uppercase letters. Subsections may be divided into paragraphs designated by numbers. Paragraphs may be divided into subdivisions designated by lowercase letters. Subdivisions may be divided into subdivision paragraphs designated by lowercase Roman numerals. Reference to a "section," "subsection," "paragraph," or "subdivision" includes all divisions of the referenced section, subsection, paragraph, or subdivision.

Section VI. Discipline; Hearing Process.

A. In the event any alcohol beverage retail or wholesale sale licensee or permittee violates this ordinance or chapter 125, Wis. Stats., the village board may take disciplinary action, including permit or license suspension for not less than 10 nor more than 90 days, or permit or license revocation or nonrenewal. Any license or permit that has been revoked shall

not be reinstated within the following 12 months. Any disciplinary action taken by the village board shall follow notice to the licensee or permittee prior to a hearing in accordance with subsection B. The hearing notice shall include the reason for the hearing. The hearing decision of the village board shall be sent by first class mail to the licensee's last known address, or personally served, at the village president's option.

B. In the event disciplinary action is taken against an alcohol beverage retail or wholesale sale licensee or permittee, the procedure mandated under s. 125.12, Wis. Stats., or its successor, will be followed.

C. There shall be no refund of any alcohol beverage retail or wholesale sale license or permit fee paid to a party whose license is revoked or suspended under this ordinance.

D. In lieu of a hearing, the board may accept surrender of the alcohol beverage retail or wholesale sale license or permit and the board shall then determine the time period before another application for the same type of license or permit will be accepted from the former licensee or permittee.

E. Evidence and testimony at the hearing shall be given in open session. The village clerk shall post or arrange to post the hearing notice or publish in a format acceptable to the village president.

F. Unless no disciplinary action, including reprimand or probation, is ordered by the village board, the alcohol retail sale or wholesale licensee or permittee shall reimburse the village for costs of personal service, mailing, faxing, copies, and any per diem paid for a village officer to attend the hearing or other meeting due to a license violation. Unpaid costs assessed under this subsection shall accrue interest at the rate of 5% per annum if unpaid after 30 days. Payment is required before any future alcohol retail or wholesale sale license or permit is issued or reinstated to the license or permit holder.

G. There is hereby established a point system for the purpose of guiding the Village Board in making decisions on possible suspensions or revocations of alcoholic beverage licenses. The number of demerit points shall be assigned according to the type of violation. The system is intended to identify habitually troublesome liquor licensees who repeatedly violate state statutes and/or Village of Clyman ordinances, and to take consistent action against such licensees.

1. There is hereby assigned the following demerit points for the following violations:

Types of Violations		Demerit Points (per incident)
1.	Refusal to allow police to search premises or resisting or obstructing an officer	75
2.	Conducting unlawful business in violation of this ordinance	150

3.	Nude or semi nude entertainer/employee on premises in violation of local ordinance or state law	75
4.	Sale of controlled substances by a licensee or the licensee's employee	150
5.	Possession of illegal drug paraphernalia by a licensee or the licensee's employee	100
6.	Unauthorized transfer or use of a liquor license by a licensee	150
7.	Sale to any person under the age of 21 on the premises without parent, guardian or spouse of legal drinking age	100
8.	Sale of alcohol to an intoxicated person	75
9.	Submission of a false statement on a license application required under this ordinance	100
10.	Failure to maintain order, fights or disorderly conduct occurring in a licensed establishment where the Sheriff's Department is not notified by the licensee or an employee of the licensee	100
11.	Failure to maintain order, fights or disorderly conduct in a licensed establishment where the Sheriff's Department is notified by the licensee or an employee of the licensee	50
12.	Excessive noise coming from a licensed business	50
13.	Licensee or licensee's employee permitting the public consumption of alcoholic beverages off the licensed business	75
14.	Operation of a licensed business after hours	50
15.	Failure to maintain a licensed operator on the licensed premises	75
16.	Sale of Carry-outs after hours	50
17.	Failure to properly display licenses	75
18.	Employee, operator, or manager to be under the influence of intoxicant or a controlled substance while performing services on licensed or permitted premises	50
19.	Allowing smoking on a licensed premises in violation of Wis. Stat., § 101.123	50
20.	Failure to report sheriff's department calls in accordance with Section VI.6 of this Ordinance	50

2. The Village may assign additional demerit points, not to exceed a maximum of 150, as a penalty enhancement for the following conduct:

Penalty Enhancer for Severe Offenses		Demerit Points (per incident)
Enhanced penalty for conduct which:		
1.	Results in bodily harm to any individual;	Up to 150 Additional points
2.	Creates a substantial risk of death or serious bodily harm;	
3.	Involves the use of a firearm or other dangerous weapon; or	
4.	Demonstrates an ongoing disregard for the requirements of State law or Village Ordinances	

3. After the hearing, the Village shall determine what action, if any, should be taken with respect to the license. In making its decision, the Village should consider the following guidelines. However, it is not intended that these guidelines limit the discretion of the Village. They are meant for general guidance only and do not prevent the Village from considering mitigating circumstances.

a. For demerit points totaling 50 – 199 within a rolling 12-month period, a recommendation that the licensee be warned of the consequences of additional violations.

b. For demerit points totaling 200 – 249 within a rolling 12-month period, a recommendation of suspension of the license for a period of not less than 10 days and not more than 90 days.

c. For demerit points totaling 250 or more within a rolling 18-month period, a recommendation of revocation of the license. Whenever any license is revoked, at least six months from the time of such revocation shall elapse before another license shall be granted for the same premises, and 12 months shall elapse before any other license shall be granted to the person whose license was revoked.

4. In determining the accumulated points, the date of the violation is used as the basis for assigning the demerit points per incident. A conviction for a violation is not necessary to assign points. Assignment of points lies with the discretion of the Village. The Village reserves the right to assess demerit points, in amounts determined in its discretion, for violations not specifically listed in Section VI.G.1. If any incident is assessed multiple violations and points, the highest point violation for that incident will be assessed.

5. Upon transfer or sale of a licensed business, all accumulated points shall be cancelled unless any of the following apply:

a. The new licensee is related to the former owner by marriage.

b. The new licensee has an interest in the operation of the previous licensed business.

c. The former licensee retains an interest in the previous licensed business, real estate, or equipment.

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.

e. If any of the above apply, the new licensee shall inherit the demerit points previously assessed and shall be subject to penalties as set forth in this ordinance. The Village Board may, in its discretion, limit the applicability of any of these exceptions upon transfer of a license. The Village Board may also take into consideration landlord/tenant relationships.

6. A licensee shall report each instance where law enforcement responds to a call at the licensed business, regardless of who initiated the call, to the Village Clerk within 72 hours after law enforcement responds to the call.

7. A licensee shall report any state or federal criminal charge against the licensee to the Village Clerk within 72 hours after such criminal charge has been filed. If the licensee becomes aware of any state or criminal charges filed against an employee of licensee alleging that the offense occurred on the licensee's premises, the licensee shall report such charge to the Village Clerk within 72 hours of becoming aware of such charges.

8. The Village reserves the right to suspend or revoke a license for any other reason set forth in Wis. Stat., § 125.12.

Section VII. Compliance Conditions.

A. It is unlawful for any person to sell or keep for sale at wholesale or retail, or permit to be sold or kept for sale at wholesale or retail, within the Village any alcohol beverage or soft drink, except in strict accordance with the provisions of this ordinance and state law. The issuance of any license or permit to any person under this ordinance and chapter 125, Wis. Stats., is contingent upon full compliance with this ordinance and chapter 125, Wis. Stats., by the licensee or permittee. Any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured, or rectified without a valid permit or license issued under this ordinance or chapter 125 or 139, Wis. Stats., or where persons are permitted to drink alcohol beverages in violation of this ordinance and chapter 125, Wis. Stats., is a public nuisance and may be closed until the activity in violation of this ordinance is abated. When the activity is abated, the building or place may be used for any lawful purpose.

B. It is unlawful for a licensee, permittee, or any employee, operator, or manager of a tavern or other licensed or permitted establishment to be under the influence of an intoxicant, or a controlled substance or a combination of an intoxicant and a controlled substance, while performing services on the licensed or permitted premises of the village.

C. It is unlawful for any person, including any owner, tenant, employee, operator, or manager of a tavern, who has engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct in a Village tavern premises under circumstances in which that conduct tended to cause or provoke a disturbance and who has been ordered by the Village Board or a law enforcement officer not to enter or to remain in a tavern or other licensed or permitted establishment to so enter or remain during any period after having been ordered not to enter or remain by a law enforcement officer. An order prohibiting entry under this subsection may prohibit entry for a period up to 6 months.

D. As a condition of maintaining and keeping an alcohol beverage retail sale license for a tavern in the village, any licensee of a tavern premise must stay open for business and continue in business and demonstrate business continuance satisfactory to the Village Board. Issuance or retention of a license by a party not open for business and not demonstrating business continuation is declared by this ordinance to be against public policy of the village. A determination by the Village Board that a person is not demonstrating business continuation establishes grounds for suspension or revocation of the alcohol beverage retail sale license. The Village Board shall issue a summons and set a hearing to determine whether the license shall be suspended or revoked under this subsection. The hearing shall be held not later than 30 days after it is issued. The Village Board may elect to make its decision effective on a later date. The procedure for the hearing shall be in accordance with s. 125.12, Wis. Stats. Testimony of any party, any eviction notice, court documentation, or other valid evidence of such actions may be presented. All testimony shall be under oath. A person who was licensed or permitted for the tavern premises for an alcohol beverage retail tavern is not demonstrating business continuation if any of the following is demonstrated:

1. The person has not done business in the tavern premises for at least 30 consecutive days.
2. The person has voluntarily vacated the premises more than 30 days before the hearing held under this subsection.
3. The person was ordered by a court of competent jurisdiction to vacate the premises at least 30 days before the hearing held under this subsection.

E. All persons subject to this ordinance are subject to the demerit system set forth in Section VI. A license may be revoked or suspended in accordance with its terms.

F. No person may sell or serve alcohol beverages in any place operated under a class B or class A alcohol beverage license or a restaurant class B fermented malt beverage license unless that person is the licensee or some person who has an operator's license or is a person who is under the immediate supervision of such a person who is on the premises and responsible for the acts of all persons serving or selling any alcohol beverages to customers. All sellers of alcohol beverages shall be 18 years of age or older.

G. A license or permit shall not be denied on the grounds that the applicant lacks good moral character, unless there is evidence that the applicant would, if granted an initial or renewed license or permit, pose a threat to the safety or welfare of patrons of the licensed

or permitted establishment in which he or she would be employed. The following will be considered grounds for a determination that an applicant lacks good moral character:

1. Suspension or revocation of a Class A, Class B, Operator's, or Manager's License under chapter 125, Wis. Stats., or this ordinance, or dismissal from a bartending job if all of the following apply:

a. There is a relationship between the reasons for the suspension, revocation, or dismissal and the applicant's ability to competently tend bar without endangering the safety or welfare of the patrons of the premises where the applicant will tend bar under the authority of the applied-for license or permit.

b. The suspension, revocation, or dismissal occurred within a year of the date of the application, or there has been more than one such suspension, revocation, or dismissal within 3 years of the date of the application.

2. Conduct exhibiting the use, within 3 years of the date of the application, of alcoholic beverages or controlled substances, to an extent or in a manner dangerous to any other person, or to an extent that such use would impair the applicant's ability to competently tend the tavern business.

3. a. The applicant has habitually been a law offender or has been convicted of a felony and the circumstances of the crime or crimes substantially relate to the circumstances of the permitted or licensed activity, unless the person has been legally pardoned.

b. The applicant is subject to a pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the permitted or licensed activity.

c. The applicant has been convicted of one or more of the following:

i. Manufacturing, distributing, or delivering a controlled substance or controlled substance analog under s. 961.41 (1), Wis. Stats.

ii. Possessing, with intent to manufacture, distribute, or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m), Wis. Stats.

iii. Possessing, with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under a federal law that is substantially similar to s. 961.41 (1) or (1m), Wis. Stats.

iv. Possessing, with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under the law of another state that is substantially similar to s. 961.41 (1) or (1m), Wis. Stats.

4. If any village committee, or local law enforcement, recommends to Village Board denial of an Operator's License or Manager License or other license or permit on the basis

provided under this ordinance, the applicant shall be given the opportunity to present evidence of rehabilitation. Such evidence may include, but is not limited to, letters of recommendation, evidence of family stability or educational advancement, satisfactory work performed, professional counseling, and participation in community activities.

5. If a license or permit is denied by the Village Board, the applicant shall have the right to file an appeal with the Village Clerk within 30 days of the date of the decision, and to appear and be represented by legal counsel before the Village Board, to be heard, to present evidence in favor of the granting of the license or permit, and to rebut the evidence presented in opposition to the granting of the license or permit. The hearing on the appeal shall be held within 40 days of the filing of the appeal. Notice of the time and place of the hearing on the appeal shall be mailed by the Village Clerk to the applicant by certified mail at least 10 days before the date of the hearing. The Village Board shall, after the hearing, comply with chapter 125, Wis. Stats. by providing in writing the reasons for its decision to grant or not grant a license or permit. The Village Board shall comply with s. 125.12, Wis. Stats., in the denial, revocation, suspension, or nonrenewal of a license or permit.

H. It is a condition of any license or permit issued under this ordinance that the licensed or permitted premises, delivery vehicles, and any of the business books of account, bank statements, billings, invoices, and any other documents relating specifically to the licensed or permitted business may be entered and inspected at any reasonable hour by any law enforcement officer of the Village without any warrant, and application for a license or permit under this ordinance shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license or permit issued under this ordinance and shall be deemed a violation of this subsection.

I. No licenses or permits may be granted under this ordinance or under chapter 125, Wis. Stats., unless the Village Board, by a vote of the majority of the trustees of the Village Board, authorizes the issuance of the license or permit. The Village Board shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as it may be necessary for the purpose of action upon applications for licenses and permits as may be presented to them on or before April 15, and all applications for licenses so filed shall be granted or denied not later than June 15 for the ensuing license year.

J. Permits for the retail sale of alcohol beverages, and licenses for the sale of alcohol beverages, shall be enclosed in a frame having a transparent front that allows the license or permit to be clearly read. All permits and licenses shall be conspicuously displayed for public inspection at all times in the room or place where the activity subject to permit or licensure is carried on.

K. Applications for temporary class "B" licenses under Wis. Stat., § 125.26(6) shall be filed at least seven days prior to a regularly-scheduled meeting of the Village Board.

Section VIII. Underage and Intoxicated Persons/Disorderly House/After Hours.

A. Sale of Alcohol Beverages to Underage Persons; Restrictions.

1. No person may procure for or sell, dispense, or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

2. No licensee or permittee may sell, vend, deal, or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age.

3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This paragraph does not apply to alcohol beverages used exclusively as part of a religious service.

B. Intoxicated Persons. 1. No person may procure for or sell, dispense, or give away alcohol beverages to an intoxicated person.

2. No licensee or permittee may sell, vend, deal, or traffic in alcohol beverages to or with an intoxicated person.

3. No licensee or permittee may permit an intoxicated person to be on a licensed or permitted premise.

C. Disorderly House. No licensee or permittee in charge and control of a licensed or permitted premises shall keep or maintain a disorderly or riotous, indecent, or improper tavern or licensed or permitted establishment.

D. After hours. No licensee or permittee shall permit any person to be present on the premises operated under a Class "A," "Class A," or "Class C" license or under a Class "B" or "Class B" license or permit during hours when the premises are not open for business unless these persons are performing job-related activities.

E. Unsanitary or Unsafe Conduct. No licensee or permittee in charge and control of a tavern shall fail to keep or maintain a tavern or other licensed or permitted premise in a sanitary and safe condition after written notice by the State of Wisconsin, Department of Health and Family Services or the Village Board.

Section IX. Penalties.

A. A person who commits a violation of this ordinance is subject to a forfeiture of:

1. Not more than \$50 if the person has not committed a previous violation within 30 months of the violation.

2. Not more than \$100 if the person has committed one previous violation within 30 months of the violation.

3. Not more than \$200 if the person has committed 2 previous violations within 30 months of the violation.

4. Not more than \$400 if the person has committed 3 or more previous violations within 30 months of the violation.

B. For purposes of determining whether a previous violation has occurred, if more than one violation occurs at the same time, all those violations shall be counted as one violation.

C. Any person that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the Village Board may seek injunctive relief from a court of record to enjoin further violations.

Section X. Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

Section XI. Effective Date.

This ordinance is effective on publication or posting.

The Village Clerk shall properly post or publish this ordinance as required under Wis. Stats., § 61.50 and Village of Clyman sec. 2-2-16.

Adopted this 10th day of December, 2018.

VILLAGE OF CLYMAN

By: 
Marty Piñt, Village President

Attest:


Village Clerk