

**ORDINANCE NO. 3791****AN ORDINANCE AMENDING CHAPTER 400, INTOXICATING LIQUORS AND FERMENTED MALT BEVERAGES, OF THE CODE OF THE CITY OF FOND DU LAC TO FURTHER DEFINE NO SALES OF ALCOHOL TO UNDERAGE PERSONS, DEFINE CONDITIONS FOR CLASS "B" LICENSES AND DEFINE THE REQUIREMENTS FOR A "CLASS C" LICENSE**

The City Council of the City of Fond du Lac do ordain as follows:

**Section 1.** That Section 400-1, Adoption of Statutory Provisions, is hereby amended as follows:

**Add Thereto:**

**1. Sale of Alcohol Beverages to Underage Persons.**

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

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

(c) 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 subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

(d) No adult may intentionally encourage or contribute to a violation of sub. (4) (a) or (b).

**2. Defenses.** In determining whether a licensee or permittee has violated Sub. (3)(a), all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered, including any circumstance under subdiv. (a) to (d). In addition, proof of all of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this section.

(a) That the purchaser falsely represented that they had attained the legal drinking age.

(b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.

(c) That the sale was made in good faith and in reliance on the representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.

(d) That the underage person supported the representation under subdiv. (a) with documentation that they had attained the legal drinking age.

**3. Book Kept by Licensees and Permittees.**

(a) Every retail alcohol beverage licensee or permittee may keep a book for the purposes of Subsection (4). The licensee or permittee or their employee may require any of the following persons to sign the book:

1. A person who has shown documentary proof that they have attained the legal drinking age if the person's age is in question.

a. 2. A person who alleges that they are the underage person's parent, guardian or spouse and that they have attained the legal drinking age, if the licensee or permittee or their employee suspects that they are not the underage person's parent, guardian or spouse or that they have not attained the legal drinking age.

b. (b) The book may show the date of the purchase of the alcohol beverages, the identification used in making the purchase or the identification used to establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchaser and the purchaser's signature.

**4. Proof of Age.**

(a) Definition. In this section, "official identification card" means a valid operator's license issued under Wis. Stat. ch. 343, that contains the photograph of the holder, an identification card issued under Wis. Stat. § 343.50 or an identification card issued under Wis. Stat. 1987 § 125.08.

(b) Use. No card other than the identification card authorized under this section may be recognized as an official identification card in this state. In place of an official identification card, documentary proof under Wis. Stat. § 125.07(7) may be substituted.

(c) No person may make, alter or duplicate an official identification card, provide an official identification card to an underage person or knowingly provide other documentation to an underage person purporting to show that the underage person has attained the legal drinking age. No person may possess an official identification card or other documentation used for proof of age with the intent of providing it to an underage person.

**Section 2.** That Section 400-6, Issuance of Licenses, is hereby amended as follows:

**Add Thereto:**

**H. Class "B" License Requirements**

1. The Class "B" licensed establishment must have a completely separate premises description from all other licensed establishments and comply with all relevant provisions of Wis. Stat. Ch. 125 and the Code of the City of Fond du Lac. The following requirements must be met before the license can be issued.
2. Separate premises must include the following:
  - a. The two businesses cannot permit cross access besides an emergency exit.
  - b. The two businesses must be completely walled off from one another.
  - c. Customers cannot easily go back and forth between the two businesses while consuming alcohol.
  - d. There are separate outside entrances to each of the two businesses.
  - e. There are separate counters at each location that can specifically monitor the requirements of each separate license.
3. The applicant must submit a site plan to the City of Fond du Lac Inspections Department showing said separate premises descriptions.
4. The property must pass all inspections with the City of Fond du Lac Inspections and Fire Departments and Fond du Lac County Health Department (when applicable), and obtain an occupancy permit.

**Section 3.** That Section 400-14, "Class C" License, is hereby amended as follows:

**Add Thereto:**

5. A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold. For establishments with two land uses, they are only available to the types of uses shown in Schedule I, see attached.  
For a Wine Bar, where there is only the land use of a drinking establishment or restaurant that just serves wine, the closing hours may mirror those of a "Class B" or Class "B" license.

- a. A "Class C" license shall particularly describe the premises for which it is issued.
- b. The fee for a "Class C" license shall be as shown in the fee schedule.
- c. Operator's or Manager's License. An Operator's or Manager's license shall permit its holder to serve or sell alcohol beverages and is required for a Class C license.

**6. Class C Hours.**

(a) Premises Hours. No premises which is more than one land use for which a Class C alcohol beverage license shall have been issued shall be permitted to remain open for the sale or dispensing of alcohol beverages between the hours of 9:00 p.m. and 8:00 a.m. but shall be permitted to stay open for the conduct of their regular business.

(b) Regulation of Closed Retail Space. Only the permitted, licensee, employees, salespersons, employees of wholesalers licensed under Wis. Stat. § 125.28(1) or 125.54(1), or service personnel may be present on Class C premises during hours when the premises are not open for business if those persons are performing job-related activities. All other employees and patrons shall vacate the premises at 9:00 p.m.

**7. Intoxicated Persons.**

a. (a) Restrictions.

1. No person may procure for, sell, dispense, or give away alcohol beverages to a person who is intoxicated.
2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.
3. No licensee or permittee may permit an intoxicated person to be on a licensed premises.

**8. Licensee/Operator under the Influence.** It shall be unlawful for the licensee or any employee of a licensed 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 premises.

**9. Identification of Patrons 21 Years of Age and Older.** Any licensed establishment that meets the exceptions contained in Section 125, Wisconsin Statutes and Chapter 400-1 of the Fond du Lac Code for allowing underage patrons on the licensed premise, must have a means of visually and conspicuously identifying patrons who are twenty-one (21) years of age and older. It shall be the sole responsibility of the license holder to determine whether any of the exceptions contained in

Wis. Stat. § 125, and Section 400-1, Fond du Lac Code, apply to their establishment.

10. **Control of Premises.** At no time may licensee relinquish control of the licensed premises or the service of alcohol to any other person or entity. The licensee must remain in control of the premises and must continue to be in control of the alcohol and service thereof through the licensee's own employees, including but not limited to checking identification of patrons, collecting money or tickets from patrons for drinks, or for charges for entry to the establishment or any area within the establishment, during all events, including private parties. The licensee and its employees will be held responsible for all conduct taking place on its premises at all times including conduct taking place during private parties. Notwithstanding the limitations of this subdivision, a licensee may contract with an agency that is licensed by the State of Wisconsin as a supplier of uniformed private security personnel to engage in private security activities.
11. **Face-to-face Retail Sales.** Except as provided in Wis. Stat. § 125.26(2m), 125.26(2s), 125.51(3)(bm) and 125.51(bs), and except with respect to caterers, a retail alcohol license issued under this chapter authorizes only face-to-face sales to consumers at the premises described in the retail license.
12. **Wholesaler Source.** No retail licensee shall purchase alcohol beverages from any source other than a licensed wholesaler, except as permitted by state law.
13. **Conditions on License.** A licensee shall comply with all conditions placed upon its license by action of the City Council.
14. **Exceeding Lawful Occupancy Capacity.**
  - a. (a) No licensee or person shall permit or allow occupancy of the licensed premise in excess of the lawfully established occupancy capacity. Occupancy capacity includes all staff and persons on the premise.
  - b. (b) Exceeding lawful occupancy capacity by more than thirty percent (30%) shall result in an enhanced penalty.
15. **Penalty.** In addition to the suspension or revocation of any license issued under this chapter, and except where otherwise specifically provided, any person found to be in violation of any provisions of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in § 1-4 of this Code.

**Section 4.** Any person violating the provisions of this Ordinance shall be subject to the penalty provided in Section 1-4 of the Code.

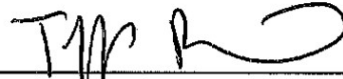
**Section 5.** The appropriate City officials are hereby authorized and directed to take such action as is necessary to effectuate the terms of this Ordinance.

**Section 6.** All other ordinances and resolutions inconsistent with the provisions of this Ordinance are hereby repealed.

**Section 7.** This Ordinance shall take effect and be in force upon its passage and publication as provided by law.

**ADOPTED:**

**JUL 10 2024**



Tiffany Brault, President  
Fond du Lac City Council

Attest:



Margaret Hefter, City Clerk

City Attorney:

Reviewed 

## **Schedule I**

1. Art Gallery, Art Studio or museum
2. Bank or Financial Institution
3. Bed and Breakfast Inn
4. Fitness Center, spa or gymnasium
5. Greenhouse, landscape nursery, retail nursery
6. Indoor amusement or recreational facility, cinema, theater
7. Meeting and exhibition hall
8. National or regional headquarters, offices
9. Offices, government, business or professional
10. Outdoor amusement
11. Personal Services (not Tattoo/piercing shops)
12. Publishing and Printing
13. Retail Businesses and Services
14. Shopping Center