

ORDINANCE NO. 2024-06

Whereas, the Plan Commission has reviewed Chapter 114 of the Code of the Town of St. Joseph regarding Intoxicating Liquor and Fermented Malt Beverages; and

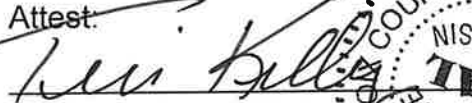
Whereas, the Plan Commission met on May 1, 2024, and has determined that Chapter 114 needs updating and has recommended that the Town Board adopt revisions to Chapter 114.

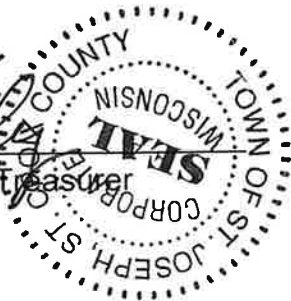
NOW THEREFORE, the Town Board, having reviewed the proposed Intoxicating Liquor and Fermented Malt Beverages recommended by the Plan Commission, hereby adopts Ordinance No. 2024-06 as the Town of St. Joseph Intoxicating Liquor and Fermented Malt Beverages Ordinance.

Passed and adopted by the Town Board of the Town of St. Joseph this 9th day of May, 2024.


Theresa Johnson, Town Chair

Attest:


Teri Kelly, Town Clerk/Treasurer



The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

Chapter 114

Intoxicating Liquor and Fermented Malt Beverages

[HISTORY: Adopted by the Town Board of the Town of St. Joseph as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Assemblies — See Ch. 68.

Beaches and parks — See Ch. 74.

Public entertainment — See Ch. 98.

Article I

Fermented Malt Beverages

[Adopted 11-12-1971]

§ 114-1 Sale to minors.

[Amended 9-2-1999]

No person shall sell, dispense, procure for, give away or furnish any fermented malt beverages to any person under the age of 21 years not accompanied by his parents, guardian or spouse who has attained the legal drinking age.

§ 114-2 Violations and penalties.

GENERAL PENALTY. Any person violating any provision of this article shall forfeit to the Town of St. Joseph a sum of not less than \$50 nor more than \$1000 for each and every offense, together with the costs of the action, and in default of immediate payment of said forfeiture and costs said offender shall be confined in the county jail not exceeding 30 days or until such forfeiture and costs have been paid in full.

INSPECTION VIOLATION. Any person who refuses to permit an examination of premises as provided in s. 125.025(3) shall be fined not more than \$500 nor less than \$50, or imprisoned not more than 90 days nor less than 10 days or both, and any license or permit issued to that person may be revoked.

Article II

Alcohol Beverage License

[Adopted 7-14-1983]

§ 114-3 Denial of license.

[Amended 5-1-2024]

No Initial/Original, Reserve or Renewal alcohol beverage license shall be granted for any premises for which

taxes, assessments or other claims to the Town of St. Joseph are delinquent and unpaid. No Initial/Original, Reserve or Renewal alcohol beverage license shall be granted to any person who is:

- (1) delinquent in payment of any taxes, assessments or other claims owed to the town, county, or state;
- (2) delinquent in payment of a forfeiture resulting from a violation of any ordinance of the town, county, or state;
- (3) the premises does not conform to the sanitary, safety and health requirements of the State Building Code, and the regulations of the State Board of Health and local Board of Health applicable to premises serving and/or selling alcoholic beverages; and
- (4) the premises does not conform to all State codes and ordinances of the town, county, and state requiring lighting and ventilation, equipped with sufficient sanitary toilet and lavatory facilities with running water and in sufficient numbers for the building's capacity.

Article III Closing Hours

[Adopted 10-8-1987]

§ 114-4 Adoption of statutory provisions.

The provisions of Chapter 125 of the Wisconsin Statutes defining and regulating the sale, procurement, dispersing and transfer of alcoholic beverages, including provisions relating to underage persons, are adopted and made a part of this article by reference. A violation of any such provision shall constitute a violation of this article.

§ 114-5 Class "B" premises.

A. Except as otherwise provided in this article:

- (1) No premises for which a Class "B" license or permit has been issued, nor its agents or employees, may sell or give away any alcoholic beverages for consumption on the premises after 12:45 a.m.
- (2) The agents or employees of a premises for which a Class "B" license or permit has been issued are responsible to have the premises closed and any parking areas used by said premises cleared of all customers by 1:00 a.m.

B. On January 1 of each year:

- (1) No premises for which a Class "B" license or permit has been issued, nor its agents or employees, may sell or give away any alcoholic beverage for consumption on the premises after 2:45 a.m.
- (2) The agents or employees of a premises for which a Class "B" license or permit has been issued are responsible to have the premises closed and the parking areas used by said premises cleared of all customers by 3:00 a.m.

C. During that portion of each year for which the standard of time is advanced under W.S.A. s. 175.095:

- (1) No premises for which a Class "B" license or permit has been issued, nor its agents or employees, may sell or give away any alcoholic beverage for consumption on the premises after 1:45 a.m.
- (2) The agents or employees of a premises for which a Class "B" license or permit has been issued are responsible to have the premises closed and any parking areas used by said premises cleared of all customers by 2:00 a.m.

§ 114-6 Violations and penalties.

- A. Any person who violates any provision of this article shall, upon conviction therefor, forfeit not less than \$25 nor more than \$500, plus the costs of the prosecution for the violation.
- B. Any person holding a Class "B" license or permit who violates any provision of this article shall also be subject to revocation or suspension of the license pursuant to W.S.A. s. 125.12(2).

§ 114-7 Statutory authority.

This article is adopted pursuant to the provisions of W.S.A. s. 125.10(1).

Article IV Provisional Operator's License

[Adopted 9-10-1992]

§ 114-8 Purpose.

This article allows for issuance on a provisional basis of a license to those applying for an operator's license for service or sale of alcoholic beverages. A provisional license may only be issued to those persons who have not completed a responsible beverage service course and exhibited proof of compliance with that training standard set forth in current W.S.A. s. 125.17(6). A provisional license allows time to obtain training required for working without supervision of another licensed person in a Class A or B business or organization.

§ 114-9 Eligibility.

Each applicant must be at least 18 years of age and have completed an application form supplied by the Clerk in order for the Board to consider approval. All arrests and convictions of the applicant shall be disclosed on the application or an attached sheet. The applicant for a provisional license must present with the application proof that the applicant is enrolled in a training course under W.S.A. s. 125.17(6)(a).

§ 114-10 Term of license.

The provisional license shall be effective until a certificate or other proof of compliance with training requirements is presented to the Clerk. In no case will the provisional license be effective more than 60 days after issuance. The issuance date, final date of validity, or both, shall be placed on the license form when issued.

§ 114-11 Issuance; extensions.

Only those persons initially approved by the Board shall receive a provisional license. The Clerk is authorized to issue such a license. In the event that a person requests issuance of a provisional license extension and has had no arrests or convictions since prior Board approval, the Clerk is authorized to issue a further license under the standards contained herein and payment of the fee.

§ 114-12 Fees.

[Amended 9-2-1999]

A sum as set by the Town Board is required to be paid by or for the applicant prior to license issuance. This fee amount will not exceed \$15 unless state law and this article are amended.

§ 114-13 Revocation.

- A. In the event that, following issuance, it is discovered that a part of the license application was false that, in the Clerk's judgment, might have affected the Board decision on whether to license, including but not limited to past crimes or arrests, then the Clerk may revoke said license. Upon making such a decision, the Clerk shall mail or have delivered to the license holder a written notice notifying the person of the action taken, the reason(s) for such action and the right to have a license review hearing before the

Town Board, upon the applicant's written request.

- B. When a request for hearing is made, the Board shall follow general procedures as set forth in W.S.A. s. 125.12, although no complaint is required. The Clerk shall notify the licensee of the Board time scheduled for hearing the matter, by mail or delivery. Any mail notice in this article is sufficient if mailed by first class to the last known address of the licensee in an envelope containing the return address of the town or Clerk.
- C. No request for a license review hearing is valid when received past the final day the provisional license would have been effective.

Article IVA Provisional Retail Licenses

[Adopted 2-25-2021 by Ord. No. 2021-02]

§ 114-13.1 Official authorized to issue provisional retail licenses.

The Town Clerk-Treasurer shall have the authority to issue provisional retail licenses only to a person who has applied for a Class "A" fermented malt beverage license, Class "B" fermented malt beverage license, "Class A" intoxicating liquor license, "Class B" intoxicating liquor license, or "Class C" wine license.

§ 114-13.2 Activities authorized.

A provisional retail license authorizes only the activities that the type of retail license applied for authorizes. No person may hold more than one provisional retail license for each type of license applied for by the holder per year.

§ 114-13.3 Quota.

Notwithstanding § 114-13.1, the Clerk-Treasurer may not issue a provisional "Class B" license if the municipality's quota under Wis. Stats. § 125.51(4) prohibits the municipality from issuing a "Class B" license.

§ 114-13.4 Fee.

The fee for a provisional license shall be \$15 and shall be paid at the time of application.

§ 114-13.5 Expiration.

A provisional retail license expires 60 days after its issuance or when the Class "A" fermented malt beverage, Class "B" fermented malt beverage, "Class A" intoxicating liquor, "Class B" intoxicating liquor, or "Class C" wine license is issued to the holder, whichever is sooner.

§ 114-13.6 Revocation.

As provided in Wis. Stats. § 125.185(4) the official who issued the provisional retail license may revoke the license if he or she discovers that the holder of the license made a false statement on the application. The official shall notify the provisional licensee in writing that the provisional license is revoked because the official has discovered that the licensee made a false statement(s) on the application. The official shall also notify the licensee that he/she can appeal the revocation to the Town Board at the next regular Town Board meeting or may request a Special Town Board meeting for such appeal.

Article V

"Class B" Liquor License

[Adopted 7-8-1995]

§ 114-14 Sale of intoxicating liquor and wine.

The Town of St. Joseph hereby declares that all "Class B" liquor licenses which are issued in the Town of St. Joseph shall be issued under the authority of W.S.A. s. 125.51(3)(b), which authorizes the sale of intoxicating liquor to be consumed by the glass on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed four liters at any one time, to be consumed off the premises where sold. Wine, however, may be sold for consumption off the premises in the original package or otherwise in any quantity.

§ 114-15 Conditions of license.

[Added 8-5-2010 by Ord. No. 2010-3]

Timely start-up and continuation of business is an ongoing condition of an alcohol beverage license issued under this chapter. The Town Board may cancel or not renew any license granted under this chapter if the privileges granted under the license are not exercised within 90 days after the granting of the license; or the business for which the license was issued is discontinued or not open for business for the purpose of the license for a period of 90 consecutive days or more. Being open intermittently for periods of two days or less during the ninety-day period shall not be sufficient to avoid cancellation under this subsection. Before cancellation of the alcohol beverage license under this section, the Town shall notify the licensee in writing of the Town's intent to cancel the license for nonuse and provide the licensee with an opportunity for a hearing. The hearing shall be conducted according to Wis. Stat. § 125.12(2)(b) or any amendments thereto.

§ 114-16 Applicability.

[Amended 9-2-1999]

This article shall apply retroactively to all "Class B" liquor licenses issued since July 1, 1995.

Article VI

Nude Dancing in Licensed Establishments Prohibited

[Adopted 6-21-2001 by Ord. No. 2001-3]

§ 114-17 Authority and determinations.

Whereas, the Town Board of the Town of St. Joseph has explicit authority under W.S.A. s. 125.10(1), to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in W.S.A. ch. 125 and whereas, the Town Board has village powers under W.S.A. s. 60.10(2)(c), that grants general police powers as set forth in W.S.A. s. 61.34(1), to act for the good order of the town, for its commercial benefit and for the health, safety and welfare of the public and may carry out its powers by regulation and suppression; and whereas, the Town Board recognizes it lacks authority to regulate obscenity in light of W.S.A. s. 66.051(3), and does not intend, by adopting this article, to regulate obscenity, since nudity in and of itself is not obscene; it declares its intent to enact an article addressing the secondary effects of live nude dancing in bars and taverns; and whereas, bars and taverns featuring live nude dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities, and such secondary effects are detrimental to the public health, safety and general welfare of citizens; and whereas, the Town Board recognizes the United States Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further recognizes that freedom of

speech is among our most precious and highly protected rights and wishes to act consistently with full protection of those rights; and whereas, however, the Town Board is aware, based on the experiences of other communities, that bars and taverns in which live nude dancing occurs may and do generate secondary effects which the Town Board believes are detrimental to the public health, safety and welfare of the citizens of the City of St. Joseph; and whereas, among these secondary effects are: the potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses; the potential depreciation of property values in neighborhoods where bars and taverns featuring live nude dancing exist; health risks associated with the spread of sexually transmitted diseases; and the potential for infiltration by organized crime for the purpose of unlawful conduct; and whereas, the Town Board finds that the consumption of alcoholic beverages exacerbates these negative secondary effects; and whereas, the Town Board desires to minimize, prevent and control these adverse secondary effects and thereby protect the health, safety and general welfare of the citizens of the Town of St. Joseph; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and whereas, the Town Board has determined that the enactment of an article prohibiting live nude dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity; now, therefore, the Town Board of the Town of St. Joseph ordains as follows.

§ 114-18 Prohibition.

It is unlawful for any person to perform or engage in or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

- A. Shows his/her genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering.
- B. Shows the female breast with less than a fully opaque covering of any part of the nipple and areola.
- C. Shows the human male genitals in a discernibly turgid state, even if fully and opaquely covered.

§ 114-19 Exemptions.

The provisions of this article do not apply to the following licensed establishments or portions of licensed establishments:

- A. Licensed theaters, performing arts centers, civic centers and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on or the advertising or promotion of, nude dancing.
- B. Places in licensed establishments that are provided or set apart for nudity, provided that:
 - (1) Persons appearing nude in a place provided or set apart for nudity do so for the sole purpose of performing a lawful function(s) that is customarily intended to be performed within such place provided or set apart for nudity.
 - (2) Persons appearing nude in a place provided or set apart for nudity are not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.
- C. A performance(s) in a licensed establishment of a work(s) of serious literary or artistic merit where the performance is not intended for the sexual interest or titillation of customers and where the performance is not distinguished by an emphasis on or the advertising or promotion of entertainment involving nudity.

§ 114-20 Definitions.

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

LICENSED ESTABLISHMENT

Any establishment licensed by the Town Board of the Town of St. Joseph to sell alcohol beverages pursuant to W.S.A. ch. 125.

LICENSEE

The holder of a retail "Class A," "Class B," "Class "B," Class "A" or "Class C" license granted by the Town Board of the Town of St. Joseph pursuant to W.S.A. ch. 125.

NUDE OR NUDITY

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

PLACES IN LICENSED ESTABLISHMENTS THAT ARE PROVIDED OR SET APART FOR NUDITY

Enclosed single-sex public restrooms, enclosed single sex functional shower, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. This term shall not be deemed to include places where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business or is otherwise commercially exploited.

§ 114-21 Violations and penalties.

Any person, partnership or corporation who violates any of the provisions of this article shall be subject to a forfeiture of not less than \$200, and not more than \$700 per violation. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this article constitutes sufficient grounds for suspending, revoking or nonrenewing an alcohol beverage license under W.S.A. s. 125.12.

§ 114-22 Severability.

In the event any portion of this ordinance is or becomes invalid or illegal, the remaining portions shall remain in full force and effect.