

Chapter 70

ALCOHOLIC BEVERAGES

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[HISTORY: Adopted by the Village Board of the Village of Albany 5-11-1992 as Title 11, Ch. 4 of the 1992 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Fermented malt beverages and intoxicating liquor -- See Ch. 130.

Loitering -- See Ch. 173, §173-5.

Minors -- See Ch. 177.

Fermented malt beverages sold in parks -- See Ch. 198, §198-5J.

Temporary Park Beer Permit -- See Ch. 198, §198-5K.

Prohibition in cemeteries -- See Ch. 202, §202-12C(11).

§70-1. Outside consumption.

A. Alcoholic beverages in public areas.

(1) Regulations. It shall be unlawful for any person to sell, serve or give away, or offer to sell, serve or give away, any alcoholic beverage upon any public street, sidewalk, alley, public parking lot, highway, cemetery or drives or other public area within the Village of Albany or on private property without the owner's consent, except at licensed premises. It shall be unlawful for any person to consume or have in his possession any open container containing any alcohol beverage upon any public street, public sidewalk, public way, public alley or public parking lot within the village except a licensed premises.

(2) Private property held out for public use. It shall be unlawful for any person to consume any alcohol beverages upon any private property held open for public use within the village unless the property is specifically named as being part of a licensed premises.

(3) Leaving licensed premises with open container.

(a) It shall be unlawful for any licensee, permittee or operator to permit any patron to leave the licensed premises with an open container containing any alcohol beverage.

(b) It shall be unlawful for any patron to leave a licensed premises with an open container containing any alcohol beverage.

(4) Possession and consumption of alcohol beverages in parks.

(a) No person shall possess or consume any intoxicating beverages in any village park except with a special permit as follows.

(b) A special permit for possession and consumption of intoxicating beverages in the Albany Village Parks may be granted by the Police Department to residents of the area.

(c) Application shall be made on a form provided by the Police Department and shall set forth the name, address and age of the applicant, the date, time and place proposed for use and the number of persons to attend.

(d) Application shall be made in person by the applicant at least 24 hours prior to the date for which the permit is requested. The permit granted shall extend to all persons of legal drinking age invited by the applicant. The permit shall permit possession or consumption of intoxicating beverages on the date specified and during the hours that the park is open for use by the public.

(e) A fee will be charged at the time of application, with the amount to be set by the Village Board.

(f) The applicant shall be responsible for cleaning the area before leaving.

(g) A special permit for possession and consumption of intoxicating beverages in a park shall be revoked immediately if the applicant or any person possessing or consuming intoxicating beverages by that special permit violates any provision of this Code or harasses, intimidates or interferes with any other person in the full use and enjoyment of the park. Any police officer of the village shall have the authority to declare the special permit revoked. Upon revocation, the applicant and all persons possessing any intoxicating beverage shall remove the same from the area immediately. Failure to do so after notice of a police officer shall constitute a violation of this section.

(5) Exceptions.

(a) The provisions of this section may be waived by the Village Board for duly authorized events.

(b) Any organization which has been issued a Temporary Fermented Malt Beverage and/or Temporary Wine License for a designated area pursuant to this Code, provided that the provisions of this chapter and Chapter 130, Fermented Malt Beverages and Intoxicating Liquor, are fully complied with.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALCOHOLIC BEVERAGE -- Includes all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, as well as all liquors and liquids made by the alcoholic fermentation of an infusion in

potable water of barley malt and hops, with or without unmalted grains or decorticated or degerminated grains or sugar, which contain 1/2 of 1% or more of alcohol by volume and which are fit for use for beverage purposes.

PUBLIC AREA -- Any location within the village which is open to access to persons not requiring specific permission of the owner to be at such location, including all parking lots serving commercial establishments.

UNDERAGE PERSON -- Any person under the legal drinking age as defined by the Wisconsin Statutes.

§70-2. Sale to underage or intoxicated persons restricted.

A. Sales of alcohol beverages to underage persons.

(1) No person may procure for, sell, dispense or give away any fermented malt 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 fermented malt 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 subsection does not apply to alcohol beverages used exclusively as part of a religious service.

B. Penalties.

(1)¹ A person who commits a violation of Subsection A above is subject to a forfeiture of:

(a) Not more than \$500 if the person has not committed a previous violation within 30 months of the violation; or

(b) Not more than \$500 or imprisonment for not more than 30 days, or both, if the person has committed a previous violation within 30 months of violation.

(2) In addition to the forfeitures provided in Subsections B(1)(a) and (b) above, a court shall suspend any license issued under this chapter to a person violating this subsection for:

(a) Not more than three days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

(b) Not less than three days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing two other violations; or

(c) Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing three other violations.

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

C. Sale of alcohol beverages to intoxicated persons.

(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.

D. Penalties. Any person who violates Subsection C above shall be subject to a forfeiture of not less than \$100 nor more than \$500 or imprisoned for not more than 60 days, or both.

State Law Reference: W.S.A. s. 125.07.

§70-3. Underage persons' presence in places of sale; penalty.

A. Restrictions. An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This subsection does not apply to:

(1) An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.

(2) An underage person who enters or is on a Class "A" or "Class N" premises for the purpose of purchasing items other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.

(3) Hotels, drugstores, grocery stores, bowling alleys, service stations, vessels, cars operated by any railroad, regularly established athletic fields, stadiums or public facilities as defined in W.S.A. s. 125.51(5)(b)1.d, indoor golf simulator facilities, outdoor volleyball courts that are contiguous to a licensed premises and centers for the visual performing arts, which are owned by a county or municipality.²

(4) Premises in the State Fair Park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in W.S.A. chs. 27 and 28 and parks owned or operated by agricultural societies.

(5) Ski chalets, golf courses and golf clubhouses, private tennis clubs, racetracks, curling clubs and private soccer clubs.³

(6) Premises operated under both a "Class B" alcoholic beverage or Class "B" fermented malt beverage license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a "Class B" alcoholic beverage or Class "B" fermented malt beverage license or permit and a restaurant permit, the

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

³Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.

(7) An underage person who enters or remains on a "Class B" alcoholic beverage or Class "B" fermented malt beverage premises for the purpose of transacting business at an auction or market, if the person does not enter or remain in a room where alcohol beverages are sold, furnished or possessed.

(8) An underage person who enters or remains in a room on "Class B" alcoholic beverage or Class "B" fermented malt beverage licensed premises separate from any room where alcohol beverages are sold or served for the purpose of engaging in marching or drilling with a group of other persons if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this Subsection. An underage person may enter and remain on "Class B" alcoholic beverage or Class "B" fermented malt beverage premises under this subsection only if the municipality which issued the "Class B" alcoholic beverage or Class "B" fermented malt beverage license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subsection and the law enforcement agency responsible for enforcing the ordinance issues to the "Class B" alcoholic beverage or Class "B" fermented malt beverage licensee a written authorization permitting underage persons to be present under this subsection on the date specified in the authorization. Before issuing the authorization, the law enforcement agency shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.

(9) A person who is at least 18 years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.

(10) An underage person who enters or remains on Class "B" or "Class B" licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the local law enforcement agency, in advance, of the times underage persons will be allowed on the premises under this subsection.

(11) An underage person who enters or remains in a dance hall attached to Class "B" or "Class B" licensed premises if the dance hall is separate from any room where alcohol beverages are sold, if there is a separate entrance to the dance hall and if no alcohol beverages are furnished or consumed by any person in the dance hall where the underage person is present.

(12) Premises operating under both a "Class C" license and a restaurant permit.⁴

(13) An underage person who enters and remains on premises for which a temporary Class "B" license is issued if the licensee is authorized by the official or body that issued the license to permit underage persons to be on the premises and if the licensee permits underage persons to be on the premises.⁵

⁴Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

⁵ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

B. Penalties. A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of Subsection A is subject to a forfeiture of not more than \$500.

§70-4. Underage persons; prohibitions; penalties.

A. Any underage person who does any of the following is guilty of a violation:

- (1) Procures or attempts to procure alcohol beverages from a licensee or permittee.
- (2) Unless accompanied by a parent, guardian or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.
- (3) Enters, knowingly attempts to enter or is on licensed premises in violation of §70-3A.
- (4) Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.

B. Except as provided in W.S.A. s. 125.07(4)bm, any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes fermented malt beverages is guilty of a violation.

C. Any person violating Subsection A or B is subject to the following penalties:

- (1) For a first violation, a forfeiture of not more than \$50 suspension of the person's operating privilege as provided under W.S.A. s. 343.30(6)(b)1, participation in a supervised work program under Subsection D, or any combination of these penalties.
- (2) For a violation committed within 12 months of a previous violation, either a forfeiture of not more than \$200, suspension of the person's operation privilege as provided under W.S.A. s. 125.07(4)cg, participation in a supervised work program under Subsection D, or any combination of these penalties.
- (3) For a violation committed within 12 months of two or more previous violations, either a forfeiture of not less than \$300, revocation of the person's operating privilege under W.S.A. s. 343.30(6)(b)3, participation in a supervised work program under Subsection D, or any combination of these penalties.
- (4) For a violation committed within 12 months of three or more previous violations, either a forfeiture of not less than \$500 nor more than \$1,000, revocation of the person's operating privilege under W.S.A. s. 343.30(6)(b)3, participation in a supervised work program, or any combination of these penalties.

D. Work program.

- (1) If the court orders a person to participate in a supervised work program under Subsection D, the court shall set standards for the program within the budgetary limits established by the Village Board. The program may provide the person with reasonable compensation reflecting the market value of the work performed or it may consist of

uncompensated community service work and shall be administered by the County Department of Public Welfare or a community agency approved by the court.

(2) The supervised work program shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from an agency staff member or other qualified person. The program may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

E. When a court revokes or suspends a person's operating privilege under Subsection C, the Department of Transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this subsection may not disclose the information to any other person or agency.

F. A person who is under 18 years of age on the date of disposition is subject to W.S.A. s. 938.344, unless proceedings have been instituted against the person in a court of civil or criminal justice after dismissal of the citation under W.S.A. s. 938.344(3).⁶

G. Subsections A and B do not prohibit an underage person employed by a licensee or permittee from possessing fermented malt beverages during the brewing process or for sale or delivery to customers.

H. Subsections A and B do not prohibit an underage person employed by a brewery, a winery or a facility for the rectifying or manufacture of intoxicating liquor or the production of fuel alcohol from possessing alcohol beverages during regular working hours and in the course of employment.

§70-5. Defense of sellers.

A. Defenses. In determining whether or not a licensee or permittee has violated §70-2A or §70-3A, all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered. 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:

(1) That the purchaser falsely represented that he or she had attained the legal drinking age.

(2) 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.

(3) 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.

(4) That the underage person supported the representation under Subsection A(1) above with documentation that he had attained the legal drinking age.

B. Book kept by licensees and permittees.

⁶Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(1) Every retail alcohol beverage licensee or permittee may keep a book for the purpose of Subsection A above. The licensee or permittee or his or her employee may require any of the following persons to sign the book:

(a) A person who has shown documentary proof that he or she has attained the legal drinking age, if the person's age is in question.

(b) A person who alleges that he or she is the underage person's parent, guardian or spouse and that he or she has attained the legal drinking age, if the licensee or permittee or his or her employee suspects that he or she is not the underage person's parent, guardian or spouse or that he or she has not attained the legal drinking age.

(2) The book may show the date of the purchase of the alcohol beverage, 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 purchase and the purchaser's signature.

State Law Reference: W.S.A. s. 125.07(6) and (7).

§70-6. False or altered identification cards.

A. Penalties.

(1) Any person who has attained the legal drinking age, other than one authorized by W.S.A. s. 125.085 or 343.50, who makes, alters or duplicates an official identification card may be fined not less than \$100 nor more than \$500 or imprisoned not less than 10 days nor more than 30 days, or both.⁷

(2) Any person who has attained the legal drinking age who, in applying for an identification card, presents false information to the issuing officer may be fined not less than \$100 nor more than \$500 or imprisoned not more than 10 days, or both.

B. Any underage person who does any of the following is subject to the penalties specified under §70-4C or D:

(1) Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information. A law enforcement officer shall confiscate any card that violates this subsection.

(2) Makes, alters or duplicates an official identification card.

(3) Presents false information to an issuing officer in applying for an official identification card.

(4) Intentionally carries an official registration card or other documentation showing that the person has attained the legal drinking age, with knowledge that the official identification card or documentation is false.⁸

⁷ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

⁸ Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§70-7. Possession of alcohol beverages on school grounds.

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

MOTOR VEHICLE -- A motor vehicle owned, rented or consigned to a school.

SCHOOL -- A public, parochial or private school which provides an educational program for one or more grades between Grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

SCHOOL ADMINISTRATOR -- The person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.

SCHOOL PREMISES -- Premises owned, rented or under the control of a school.

B. Except as provided by Subsection C, no person may possess or consume alcohol beverages:

- (1) On school premises;
- (2) In a motor vehicle, if a pupil attending the school is in the motor vehicle; or
- (3) While participating in a school-sponsored activity.

C. Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted, in writing, by the School Administrator, consistent with applicable laws and ordinances.

D. A person who violates this section is subject to a forfeiture of not more than \$200, except that W.S.A. s. 938.344 and §70-4C and D provide the penalties applicable to underage persons.¹⁰

§70-8. Adult permitting or encouraging underage violation.

A. 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 person or under the person's control. This subsection does not apply to alcohol beverages used exclusively as part of a religious service.

B. No adult may intentionally encourage or contribute to a violation of §70-4A or B.

C. A person who violates this section is subject to a forfeiture of not more than \$500.¹¹

⁹Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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¹¹Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§70-9. Solicitation of drinks.

Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued by the village who permits an entertainer or an employee to solicit a drink of any alcohol beverage defined in W.S.A. s. 125.02(1) or any other drink from a customer on the premises or any entertainer who solicits such drinks from any customer is deemed in violation of this section.

§70-10. Violations and penalties.

A. Attempt.

(1) Whoever attempts to commit an act prohibited by this chapter may be required to forfeit amounts not to exceed 1/2 the maximum penalty for the completed act.

(2) An attempt to commit an act prohibited by this chapter requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of this chapter and that he does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.

B. Parties to acts prohibited.

(1) Whoever is concerned in the commission of an act prohibited by this chapter is a principle and may be charged with and convicted of the commission of said act although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other act prohibited by this chapter.

(2) A person is concerned in the commission of an act prohibited by this chapter if he:

(a) Directly commits the act;

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This subsection does not apply to a person who voluntarily changes his mind and no longer desires that the act be committed and notifies the other parties concerned of his withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.