

VILLAGE OF BROOKLYN ORDINANCE CHAPTER 4

AN ORDINANCE TO AMEND

CHAPTER 4 OF THE CODE OF THE VILLAGE OF BROOKLYN

REGARDING ALCOHOLIC BEVERAGES

THE BOARD OF TRUSTEES OF THE VILLAGE OF BROOKLYN DO ORDAIN AS FOLLOWS:

Chapter 4, Alcoholic Beverages; of the Code of the Village of Brooklyn Code is hereby amended to read as follows:

Chapter 4 - ALCOHOLIC BEVERAGES¹¹

Footnotes:

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State Law reference— Licenses for nonintoxicating and soda water beverages, Wis. Stats. § 66.0433; alcoholic beverages, Wis. Stats. ch. 125; local regulation of alcohol, Wis. Stats. § 125.10.

Sec. 4-1. - State statutes adopted.

The provisions of Chap. 125 and statute 66.0433, Wis. Stats., defining and regulating the sale, procurement, dispensing and transfer of intoxicating liquor and fermented malt beverages, and other nonintoxicating and soda water beverages, including provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made a part of this section by reference. A violation of any such provisions shall constitute a violation of this section.

(Ord. of 2-8-1999, § 27.01)

Sec. 4-2. - Licenses, permits, authorization required.

- (a) *When required.* No person except as provided by 125.04(1), 125.06 and 66.0433, Wis. Stats., shall, within the village, serve, sell, manufacture, rectify, brew or engage in any other activity for which this chapter or Chap. 125 or statute 66.0433, Wis. Stats., requires a license, permit or other authorization as provided in this chapter.
- (b) *Separate license required for each place of sale.* 125.04(9) Except for licensed public warehouses, a license shall be required for each location or premises where intoxicating liquor, fermented malt beverages or nonintoxicating and soda water beverages are commercially stored, sold or offered for sale.

(Ord. of 2-8-1999, § 27.02)

Sec. 4-3. - Classes of licenses and fees.

The following classes and denominations of licenses may be issued by the village clerk upon the granting by the village board after payment of the fee herein specified, which when so issued shall permit the holder to sell, deal or traffic in beverages as provided in state statutes 66.0433, 125.17, 125.25, 125.26, 125.27, 125.28, 125.51 and 125.56, Wis. Stats. License fees shall be prorated as is allowed by statute when requested for less than a full year. For the purposes of this section, a license year is defined

as the period from July 1 to June 30. Except as to special six-month licenses, all licenses shall expire on the June 30 next following the date of issuance.

- (1) *Retail Class "A" fermented malt beverage license.* The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
- (2) *Retail Class "B" fermented malt beverage license.* The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
 - a. *Six months.* A license may be issued at any time for six months in any calendar year, for which one-half of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which it was issued.
 - b. *Picnic.* A license may be issued for a picnic or similar gathering of limited duration for a per day fee which shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
 - c. *Bona fide clubs or lodges and Chamber of Commerce.* Pursuant to Section 125.26(6), Wis. Stats., any bona fide club or lodge situated in the village and chartered or incorporated in the state for at least six months may be issued a license for a yearly fee.
- (3) *Wholesale fermented malt beverage license.* The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
- (4) *Retail "Class A" liquor license.* The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
- (5) *Retail "Class B" liquor license.*
 - a. This license shall permit its holder to sell liquor by the glass to be consumed on the licensed premises or off the premises if the licensee seals the container of liquor with a tamper-evident seal before the liquor is removed from the premises, and in original packages or containers in multiples to be consumed off the licensed premises. Wine may be sold in original packages or otherwise in any quantity to be consumed off the licensed premises. The village elects to come under the provisions of Section 125.51(3)(b), Wis. Stats. The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
 - b. A Retail "Class B" liquor license shall be issued only to holders of a retail Class "B" fermented malt beverage license.
- (6) *Reserve "Class B" liquor license.* \$10,000.00 for the initial issuance thereof. Its holder is permitted to sell liquor by the glass to be consumed on the licensed premises or off the premises if the licensee seals the container of liquor with a tamper-evident seal before the liquor is removed from the premises, and in original packages or containers in multiples to be consumed off the licensed premises. Wine may be sold in original packages or otherwise in any quantity to be consumed off the licensed premises.
- (7) *Temporary Class "B" (beer) license.*
 - a. This license shall permit its holder to sell beer by the glass to be consumed at multiple locations during a single-day event on a specific date and time. This license shall be issued to the same qualified organization, who is the licensee and sponsor of the multiple-location, single-day event. The single-day event can take place in a location where another type of business is conducted. This event must charge an admission fee and cannot charge a fee for service of the beer. There is no limit on the number of this license issued per year to the same organization.

- b. The village elects to come under the provisions of Section 125.26(6) Wis. Stats. The amount of the temporary license fee shall be established by the village board from time to time but may not exceed \$10.00.
- (8) *Temporary "Class B" wine license.*;
- a. This license shall permit its holder to sell wine by the glass to be consumed at multiple locations during a single-day event on a specific date and time. This license shall be issued to the same qualified organization, who is the licensee and sponsor of the multiple-location single-day event. The single-day event can take place in a location where another type of business is conducted. This event must charge an admission fee and cannot charge a fee for service of the wine. The village may not issue more than two single-day, multiple-location events during a 12-month period to any qualified organization.
 - b. The village elects to come under the provisions of Section 125.51(10)(b) Wis. Stats. The village may issue up to 20 Temporary "Class B" wine licenses to an eligible organization provided all of the following apply: each license is issued for the same date and times and the licensee is the sponsor of an event held at multiple locations on this date and at these times, an admission fee is charged for participation in the event and no additional fee is charged for service of alcohol at the event, and within the immediately preceding 12-month period, the village has issued licenses under Section 125.51(10)(b) for fewer than 2 events. The amount of the temporary license fee shall be established by the village board from time to time but may not exceed \$10.00, except no fee may be charged to an organization who at the same time applies for a temporary Class "B" (beer) license. The village may charge this fee or each location.
- (9) *Retail "Class C" wine license.* Issuance of this license shall permit its holder to sell wine by the glass to be consumed on the licensed premises. A "Class C" license may be issued independent from a Class "B" fermented malt beverage license or a "Class B" liquor license. Issuing a "Class C" license to businesses that are not restaurants as defined in SE. 125.02(19) Wis. Stats. Is prohibited. The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
- (10) *Operator's license.* The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
- a. An operator's license may be granted to individuals by the village board, the village clerk or deputy clerk in accordance with Sec 125.17 Wis. Stats. for the purposes of complying with Wisconsin Statutes 125.32(2) and 125.68(2).
 - b. An operator's license may be issued only on written application on forms provided by the village clerk.
- (11) *Provisional operator's license.* \$15.00 each. The village clerk-treasurer or deputy clerk-treasurer may issue provisional operator's licenses in accordance with Sec. 125.17, Wis. Stats. The provisional operator's license shall expire 60 days after its issuance or when an operator's license is issued to the holder, whichever is sooner. The clerk-treasurer shall check the applicant's conviction history. The applicant for such provisional license must present evidence to the clerk-treasurer establishing that the applicant is enrolled in an alcohol awareness training program established pursuant to Sec 125.17(6)(a), Wis. Stats. The village clerk-treasurer may, upon receiving an application for a provisional license, issue such license without requiring the successful completion of the approved program as described herein. However, such license shall be used only for the purpose of allowing such applicant the privilege of being licensed as a beverage operator pending his successful completion of the approved program, and the applicant shall also apply for a regular operator's license. A provisional license may not be issued to any person who has been denied an operator's license by the village, who has had his operator's license revoked or suspended within the preceding 12 months, or who previously held an operator's license and who failed to complete the alcohol awareness training. The village clerk-

treasurer may revoke the provisional license issued if he discovers that the holder of the license made a false statement on the application. A provisional license shall not be renewed.

- (12) *Retail non-intoxicating and soda water beverage license.* Except for those persons holding a retail Class "B" fermented malt beverage license, the license shall entitle the holder to sell, deal or traffic in non-intoxicating and soda water beverages for consumption on or off the licensed premises by the general public. The amount of the annual license fee shall be established by the village board, from time to time, and made available for public examination in the office of the village clerk.
- (13) *Nonrefundable fees.* No refund of any fee paid shall be made once the license has been issued.

(Ord. of 2-8-1999, § 27.03; Ord. of 6-11-2007; Ord. of 11-19-2012)

Sec. 4-4. - License application.

- (a) *Form.* Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the state department of revenue. All other license applications required hereunder shall be made in writing on forms prescribed by the village. All applications shall be filed with the village clerk and shall, with the exception of an operator's license, physically describe the premises to be licensed, including every room and storage space to be covered by the license and all rooms joined by connecting entrances or not separated by a solid wall.
- (b) *Application to be signed.* Applications shall be signed by the applicant as provided by statute 887.01, Wis. Stats.
- (c) *License investigation:* The village clerk may notify the police department, the fire chief, and building inspector of each application for any license provided under this section and these officials shall inspect or cause to be inspected each application and the premises together with such other investigation as shall be necessary to comply with the regulations, ordinances, and the laws applicable thereto, and to determine whether the applicant is a proper recipient of the license requested. These officials shall furnish to the village clerk, in writing, the information derived from such investigations accompanied by a recommendation as to whether the license shall be granted or refused.
 - (1) No license shall be renewed without a re-inspection of the premises.
 - (2) In determining the suitability of an applicant, consideration shall be given to the moral character and financial responsibility of the applicant, the appropriateness of the location and premises proposed, and generally, the benefits, if any, the village will realize from the issuance of the license.
 - (3) Copies of the application and all inspections shall be forwarded to the village board for review and approval.
- (d) *Filing.* As required under Chap. 125, Wis. Stats., by July 15 annually, a list containing the name, address and trade names of each person holding a license, other than a manager's or operator's license or temporary license, the type of license held, if the person holding the license is a corporation or LLC, and the name of the agent, shall be forwarded by the village clerk to the state department of revenue.
- (e) *Granting and issuance.* The granting and issuance of licenses authorized under this section shall be governed by the following:
 - (1) All license applications submitted hereunder shall be granted or denied no later than by the date of the first regular village board meeting subsequent to the 45-calendar day period following the date of application. A granted license shall be issued at the office of the village clerk within 45 calendar days of such granting. Failure by the applicant to appear and take receipt of a granted license during this 45-day period shall be treated as a voluntary withdrawal of the application, subject to the provisions on nonrefundable fees set forth in this section.

- (2) Subject to the limits set forth in subsection (e)(1) of this section, the village clerk shall hold the license after the same has been granted by the village board until the applicant has complied with all state laws and local ordinance violations as determined by the above investigation and all conditions associated with the issuance as may be imposed by the village board.

(Ord. of 2-8-1999, § 27.04)

Sec. 4-5. - License restrictions.

- (a) *Statutory requirements.* Licenses shall be issued only to persons eligible therefore under Sections 66.0433, 125.04 and 125.32 and 125.68, Wis. Stats.
- (b) *Location.* No retail "Class A" liquor license, retail "Class B" liquor license or retail Class "B" fermented malt beverage license (except picnic) shall be issued for premises the main entrance of which is less than 300 feet from the main entrance of any established public or parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, hospital or church to the main entrance of the premises covered by the license application. This subsection shall not apply to premises licensed as such on June 30, 1947, any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school, hospital or church building, nor shall it apply to any restaurant located within 300 feet of a church or school, where the sale of alcohol beverages in the restaurant accounts for less than 50 percent of their gross receipts.
- (c) *Violators of liquor or beer laws or ordinances.* No retail Class "A" or "B" liquor or fermented malt beverage license shall be issued to any person who has an arrest or conviction record subject to the Wisconsin Fair Employment Act (secs. 111.321 111.322 and 111.335), is a habitual law offender, or convicted of a felony which substantially relates to the alcohol beverage licensing activity. This qualification also applies to corporations and partnerships. However, a corporation may be issued a license if the corporation has terminated its relationship with the individual whose actions directly contributed to the conviction.
- (d) *Health and sanitation requirements.* No retail "Class B" or "Class C" license shall be issued for any premises which does not conform to the sanitary, safety and health requirements of the department of agriculture, trade and consumer protection pertaining to sanitation in restaurants, to the rules and regulations of the state department of health services applicable to restaurants and to all such ordinances and regulations adopted by the village.
- (e) *License quota.* The number of retail "Class A" and "B" liquor licenses that may be issued under this section is as follows:
 - (1) Only one retail "Class A" liquor license shall be issued for every 500 village inhabitants or portion thereof. The total number of village inhabitants shall be determined as of the most recent federal decennial census.
 - (2) The number of persons and places that may be issued a retail "Class B" liquor license or a reserve "Class B" liquor license is limited as provided in Wis. Stats. §§ 125.51(4) and 125.51(4)(br)1.
- (f) *Age requirement.* No license, with the exception of an operator's license, shall be issued to any person under the legal drinking age. An operator's license may be issued to any person 18 years of age or older.
- (g) *Effect of revocation of license.* Whenever any license issued under this section has been revoked, at least 12 months shall elapse from the time of said revocation before another license shall be issued under this section to the person whose license was revoked.
- (h) *Delinquent taxes, assessments and claims.* No license or license renewal shall be issued under this section for any premises or person for which taxes, assessments, forfeitures or other claims of the village or of the state are delinquent and unpaid.

- (i) *Issuance for sales in dwellings prohibited.* No license shall be issued or transferred to any person for the purposes of possessing, selling or offering for sale any alcohol beverages in any dwelling house, flat or residential apartment.
- (j) *Good moral character.* No operator's license, retail "Class B" fermented malt beverage license, or retail "Class B" liquor license shall be granted to any person who is not of good moral character.
 - (1) Only the following will be considered grounds for a determination that an applicant for a retail "Class B" fermented malt beverage license or retail "Class B" liquor license lacks good moral character:
 - a. Two or more convictions within the past three years of driving a motor vehicle while under influence of alcohol or other intoxicant or drug in violation of Subchapter X of Chapter 346 of the Wisconsin Statutes; or
 - b. Use of alcohol or other intoxicant or drug to an extent that such use would impair his ability to competently tend bar.
 - (2) If a retail "Class B" fermented malt beverage license or retail "Class B" liquor license is denied or suspended on the basis of subsection (k)(1)a of this section, the person denied or suspended may not apply for a license under this chapter for period of ten years from the date of the most recent violation under subsection (k)(1)a of this section.
 - (3) A lack of good moral character may not be the basis on which an operator's license is denied unless there is evidence that the applicant would pose a threat to the safety or welfare of patrons of the establishment in which he would be employed. Only the following will be considered grounds for a determination that an applicant for an operator's license lacks good moral character:
 - a. Suspension or revocation of a Class A, Class B, or operator's license, or dismissal from a bartending job if:
 - 1. 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 such bar; and
 - 2. 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 three years of the date of the application.
 - b. Conduct exhibiting the use (within the past three years of the date of the application) of alcoholic beverages, to an extent or in a manner dangerous to any other persons, including, but not limited to, two or more convictions within the past three years of driving a motor vehicle while under influence of alcohol or other intoxicant or drug in violation of Subchapter X of Chapter 346 of the Wisconsin Statutes, or to an extent that such use would impair his ability to competently tend bar.
 - c. A misdemeanor or criminal conviction for which the applicant has not received a full or conditional pardon, if:
 - 1. There is a relationship between the nature of the crime involved and the applicant's ability to competently tend bar without endangering the safety and welfare of the patrons of such bar;
 - 2. The applicant was convicted, fined or confined in a correctional institution, within two years of the date of the application, or the applicant was convicted on more than one occasion within three years of the date of the application; and
 - 3. The applicant was convicted of selling a controlled substance within one year of the date of application.
 - (4) Before the village board denies an operator's license, retail "Class B" fermented malt beverage license or retail "Class B" liquor license on the basis provided herein, 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 the license is denied, the applicant shall have the right to file an appeal with the village board within 30 days, and appear and be represented before the village board, to be heard, to present evidence in favor of the granting of the license, and to rebut the evidence presented in opposition to the granting of the license.

(Ord. of 2-8-1999, § 27.05; Ord. of 2-9-2004)

Sec. 4-6. - Form and expiration of licenses.

All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee and, unless sooner revoked, shall expire on June 30 thereafter, except as otherwise provided. The village clerk shall affix his affidavit as may be required by Wis. Stats. § 125.04(4).

(Ord. of 2-8-1999, § 27.06)

Sec. 4-7. - Transfer of licenses.

- (a) *As to person.* No license shall be transferable as to licensee except as provided by Wis. Stats. § 125.04(12).
- (b) *As to place.* Licenses issued pursuant to this section may be transferred as provided in Wis. Stats. § 125.04(12). Application for such transfer shall be made on blanks furnished by the state department of revenue. Proceedings for transfer shall be had in the same manner and form as the original application.

(Ord. of 2-8-1999, § 27.07)

Sec. 4-8. - Posting and care of licenses.

Every license or permit required under this section shall be framed and posted and at all times displayed as provided in Wis. Stats. § 125.04(10). No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application, or knowingly deface or destroy such license.

(Ord. of 2-8-1999, § 27.08)

Sec. 4-9. - Regulation of licensed premises and licensees.

- (a) *Gambling and disorderly conduct prohibited.* Each licensed or permitted premises shall at all times be conducted in an orderly manner, and no unlawful, disorderly, riotous or indecent conduct shall be allowed at any time on any such premises. Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this chapter of the laws of the state.
- (b) *Employment of minors.* No licensee shall employ any person under the legal drinking age to serve, sell, dispense or give away any alcohol beverage.
- (c) *Sales by clubs.* No club shall sell any alcohol beverage except to members and guests invited by members.

- (d) *Safety and sanitation requirements.* Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.

(Ord. of 2-8-1999, § 27.09)

Sec. 4-10. - Closing hours.

- (a) *Hours.* No premises for which an alcohol beverage license or permit has been issued shall remain open for the sale of alcohol beverages during the following hours:
- (1) Wholesale license: Between 5:00 p.m. and 8:00 a.m., except on Saturday when the closing hour shall be no later than 9:00 p.m.
 - (2) Retail "Class A" liquor license: Between 9:00 p.m. and 6:00 a.m.
 - (3) Retail Class "A" fermented malt beverage license: Between 12:00 midnight and 6:00 a.m.
 - (4) Retail Class "B" and "Class B" licenses and permits: Between 2:00 a.m. and 6:00 a.m., Monday through Friday and 2:30 a.m. and 6:00 a.m. Saturday and Sunday, except on each day of the year when the standard of time is advanced under Wis. Stats. § 175.095. No package, container or bottle sales may be made between 12:00 midnight and 6:00 a.m.
- (b) *Exceptions.* Hotels, restaurants and other commercial establishments whose principal business is the sale or furnishing of food or lodging, and bowling alleys, movie theaters, painting studios, indoor golf and baseball facilities, racetrack grounds, indoor horseshoe-pitching facilities, curling clubs, and golf courses and golf clubhouses, may remain open for the conduct of their regular business, but no intoxicating liquors or fermented malt beverages shall be sold during the applicable above stated hours.
- (c) *Definition.* For the purpose of this section "shall remain open" does not apply to the licensee and his authorized agents or employees remaining on the premises after closing hours specifically to clean or repair the premises; however, the general public or individuals not specifically so authorized or employed by the licensee shall not be permitted to remain on the premises after closing hours, and the doors to the premises shall be locked to prevent access by such persons.

(Ord. of 2-8-1999, § 27.10)

Sec. 4-11. - Revocation and suspension of licenses.

- (a) *Procedure.* Whenever the holder of any license issued under this chapter violates any portion of this section, proceeding for the revocation or suspension of such license may be instituted in the manner and under the procedures established by Wis. Stats. §§ 125.11 and 125.12, and the provisions therein relating to issuing a new license shall likewise be applicable.
- (b) *Suspension.* In addition to the procedures and penalties set forth in this section:
- (1) Any wholesale or retail license issued under this section shall be suspended by the municipal court or other court of competent jurisdiction for a period not less than ~~one~~ 10 days and not more than ~~45~~ 90 days upon the conviction in municipal court or other court of competent jurisdiction of a licensee or employee, agent or representative thereof for a first offense under this section or for a violation of Chap. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented malt beverage law.
 - (2) Any operator's license issued under this section shall be suspended by the municipal court or other court of competent jurisdiction for a period not less than 10 days and not more than 90 days upon the conviction in municipal court or other court of competent jurisdiction of the licensee for a first offense under this section or for a violation of Chap. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented malt beverage law.

- (c) *Automatic revocation.* Any license issued under this section shall stand revoked without further proceedings upon any conviction in municipal court or any other court of competent jurisdiction of a licensee or employee, agent or representative thereof for a second offense under this section or for a violation of Chap. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented malt beverage law.

(Ord. of 2-8-1999, § 27.11)

Sec. 4-12. - Non-renewal of licenses.

Before renewal of any license issued under this section is refused, the licensee shall be given written notice of any charges of violations or the reasons proposed for non-renewal and a copy of any proposed motion for non-renewal, and the licensee shall have an opportunity to be heard before the village board.

(Ord. of 2-8-1999, § 27.12)

Sec. 4-13. - Violations by agents and employees.

A violation of this chapter by an employee, agent or representative of a licensee shall constitute a violation by the licensee.

(Ord. of 2-8-1999, § 27.13)

Sec. 4-14. - Underage and intoxicated persons.

The provisions of Sections 125.07, 125.075, 125.085, 125.09, 125.10 and 125.11, Wis. Stats., defining underage and intoxicated persons, their presence on licensed premises, possession, injury or death by providing alcohol beverages to a minor, proof of age, including provisions relating to the penalty to be imposed on the punishment for violation of such statutes, are adopted and made a part of this section by reference. A violation of any such provisions shall constitute a violation of this section.

(Ord. of 2-8-1999, § 27.14)

Sec. 4-15. - Prohibiting certain adult entertainment.

- (a) *Purpose.* The purpose of this section is to regulate certain adult entertainment in order to promote the health, safety, morals and general welfare of the citizens of the village. The village board declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene erotic dancing in bars and taverns. The following provisions have neither the purpose nor the effect of imposing a limitation or restriction on the content of any form of communication or communicative materials or of suppressing or censoring any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 3 of the Wisconsin Constitution. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize sexually oriented entertainment.
- (b) *Findings.* Based on evidence concerning the adverse secondary effects of sexually oriented entertainment on communities presented in reports made available to the board, and on findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), *Barnes v. Glen Theatres, Inc.*, 501 U.S. 560 (1991), and *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003), on a report by the Attorney General of the State of Minnesota, and on studies in other communities, including, but not limited to,

St. Croix County, Wisconsin; Phoenix, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; Seattle, Washington; Ellicottville, New York; and Islip, New York, the village board finds:

- (1) Bars and taverns featuring live, totally nude, non-obscene erotic dancing have in other communities tended to increase ancillary unlawful and unhealthy activities. Bars and taverns featuring live, totally nude, non-obscene erotic 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. Among these secondary effects are:
 - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
 - b. The potential depreciation of property values in neighborhoods where bars and taverns featuring adult entertainment exist;
 - c. Health risks associated with the spread of sexually transmitted diseases; and
 - d. The potential for infiltration by organized crime for the purpose of unlawful conduct.

Further, there is presently no mechanism to make the owners of these establishments responsible for such activities that occur on their premises.

- (2) The village board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the village; protect the citizens from increased crime; preserve the quality of life; preserve the property value and character of surrounding neighborhoods; and deter the spread of urban blight.
- (3) The village board recognizes it lacks authority to regulate obscenity in like of 66.0107(2), (3), Wis. Stats., does not intend by adopting this section to regulate obscenity, since nudity in and of itself is not obscene, and declares its intent to enact a section addressing the secondary effects of live, totally nude, non-obscene erotic dancing in bars and taverns.
- (4) The village board has determined that enactment of a section prohibiting live, totally nude, non-obscene erotic dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the adverse secondary effects associated with such activity.
- (5) A reasonable regulation of live, totally nude, non-obscene erotic dancing will provide for the protection of the image of the community and its property values and protect the residents of the community from the adverse secondary effects of such activity.
- (6) The general welfare, health, morals and safety of the citizens of the village will be promoted by the enactment of this section.

(c) *Prohibited conduct in licensed establishments.*

- (1) It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee pursuant to this chapter, 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 genitals, pubic area, vulva, anus, anal clef or cleavage with less than a fully opaque covering;
 - b. Shows any portion of the female breast below a point immediately above the top of the areola; or
 - c. Shows the covered male genitals in a discernibly turgid state.

- (2) It is unlawful for any person who is an entertainer, employee or patron to knowingly or intentionally, and no licensee, operator, manager, agent, principal or other person in charge of a premises or establishment may knowingly or intentionally permit any entertainer, employee, patron or other person to, touch or come in contact with the genitals, perineum, anus, anal region, pubic area, vulva, natal or anal cleft of any other person, or the breasts, nipples or areola or of any female, upon the premises, property or establishment that is or should be licensed under this section.
 - (3) It is unlawful for any person, with or without consideration, to perform or engage in, and no operator, licensee, manager, agent, principle or person in charge of a premises of the licensee may permit any entertainer, employee, patron or other person to perform or engage in, any act of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus upon the premises or property of an establishment that is or should be licensed under this section.
 - (4) It is unlawful for any nude or semi-nude entertainer or employee to be visible from outside the licensed premises.
 - (5) It is unlawful for any employee or entertainer of the licensed premises to, in any manner, orally encourage or solicit any other person to come into the premises on the basis of the entertainment or service policies of the establishment.
- (d) *Exemptions.* The provisions of this section do not apply to the following licensed establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of seriously 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, employees engaging in nude erotic dancing.
- (e) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Genitals means the visible and related human sex organs, including, but not limited to, the penis, testicles and vulva.

Licensed establishment means any establishment licensed by the village to sell alcohol beverages pursuant to Ch. 125, Wis. Stats.

Licensee means the holder of a retail Class "A" or Class "B" fermented malt beverage license, a wholesale fermented malt beverage license, a retail "Class A" or "Class B" liquor license, or a reserve "Class B" liquor license, granted by the village pursuant to this chapter and Ch. 125, Wis. Stats.

Nude means the intentional or knowingly showing or revealing of a human bare buttock, anus, perineum, anal region, anal or natal cleft or cleavage, pubic area, male genitals, testicle, female genitals, or vulva, or female nipple, female areola, or female breast below the point immediately above the top of the areola, whether or not in a state of sexual stimulation or arousal, with less than a fully opaque covering; or the showing or revealing of human male genitals in a discernible erect or turgid state, even if completely and opaquely covered.

Turgid means swollen, in a state of distension, or erect.

- (f) *Penalties.* Any person, partnership, or corporation who violates any provisions of this section shall be subject to suspension or revocation of license as provided in section 4-11. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues.

(Ord. of 2-8-1999, § 27.15; Ord. of 8-8-2005)

Adopted by the Board of Trustees of the Village of Brooklyn, Wisconsin, this
26th day of July, 2021.

APPROVED:

Mark Bruner, Village President

Ayes: 7
Nays: 0

ATTEST:

Linda Kuhlman, Clerk-Treasurer

AFFIDAVIT OF POSTING

STATE OF WISCONSIN)
 :SS
COUNTY OF GREEN)

I, Linda Kuhlman, Village Clerk/Treasurer for the Village of Brooklyn, County of Dane, State of Wisconsin, do solemnly swear that on July 27, 2021, Chapter 4, Alcoholic Beverages, was posted at the following locations:

- 1. Village Hall
 210 Commercial Street
 Brooklyn WI 53521
- 2. U S Post Office
 218 Commercial Street
 Brooklyn WI 53521
- 3. Village of Brooklyn website
 www.brooklynwi.gov
- 4. Brooklyn Community Building
 102 N. Rutland Avenue
 Brooklyn, WI 53521

Further affiant saith naught.
Dated this 27th Day of July, 2021

Linda Kuhlman
Village Clerk-Treasurer

SUBSCRIBED AND SWORN to before
me on this 27th day of July, 2021

Notary Public, _____ WI
My Commission expires: