

CITY OF CEDARBURG
ORDINANCE NO. 2016-23

**An Ordinance Amending Section 7-2-18
Of the City of Cedarburg Code of Ordinances**

WHEREAS, the City of Cedarburg, like every municipality, has a quota of “Class B” alcohol beverage licenses pursuant to Wis. Stat. § 125.51(4) which may not be exceeded; and

WHEREAS, tourism to the City is a critical generator of economic activity within the City; and

WHEREAS, it is in the best interest of the City’s economic well-being that “Class B” alcohol beverage licenses be held by active, going concerns that are open to the public for business on a regular basis, and

WHEREAS, it contravenes this purpose for “Class B” alcohol beverage licenses to be held by businesses which are held for speculative purposes or to enhance the value of non-operating premises; and

WHEREAS, Wis Stat. § 125.10(1) gives municipalities the power to prescribe additional regulations for the sale of alcohol beverages, not in conflict with Chapter 125 of the Wisconsin Statutes; and

WHEREAS, the City desires to require alcohol licensees to be open at least 15 days each calendar month and at least 4 consecutive hours on each such day; and

WHEREAS, the City finds that nonprofit tax-exempt organizations and nonprofit tax-exempt veteran’s organizations are of a different character such that these entities are properly exempted from these minimum open hours requirements;

THEREFORE, the Common Council of the City of Cedarburg, Wisconsin do ordain as follows:

1. Section 7-2-18(b) of the City of Cedarburg Code of Ordinances is hereby amended and recreated as follows:

(b) Minimum Open Hours Required.

(1) Definitions.

In this section:

- a. “Open to the public for business” means that any member of the public is able to enter the licensed premises and engage in the licensee’s principal activity or activities, including but not limited to the purchase of alcohol beverages. Factors to consider in determining whether a

licensee is “open to the public for business” include, but are not limited to:

- i. Whether the licensee’s doors are unlocked;
 - ii. Whether the licensee’s interior lights are on;
 - iii. Whether the licensee’s exterior lights are on during hours of darkness;
 - iv. Whether the licensee publishes open hours in any form of public communication, including but not limited to websites and advertisements;
 - v. Whether the licensee has the necessary staff on site to operate the licensee’s advertised business.
- b. “Day” means the period from 6:00 a.m. on one calendar day to the next statutory closing hour as set forth in Wis. Stat. s. 125 68(4)(c). A day which falls within two calendar months shall be deemed to fall within the calendar month of the month preceding 12:00 midnight. For example, the time period of 6:00 a.m. on Thursday, March 31 to 2.00 a.m. on Friday, April 1 shall be counted as one “day” under this section, and shall be deemed to fall within the calendar month of March.
- c. “Extraordinary circumstances” means an unforeseen and undesired event which completely precludes the business from being open to the public at any time, including but not limited to fire, flooding, other weather-related damage, or utility interruption. Staffing shortages or economic difficulty are not “extraordinary circumstances.”

(2) Minimum Open Hours Required.

- a. Each licensee holding a “Class B” license shall be open to the public for business for not less than 15 days each calendar month. On each of such 15 days each calendar month, each licensee holding a “Class B” license shall be open to the public for business for not less than 240 consecutive minutes.

(3) Enforcement.

- a. Upon a report that a licensee is not in compliance with section (2)(a), the City Clerk shall send the licensee a warning letter via certified mail reminding the licensee of the requirements of this subsection and directing the licensee to submit a response within 14 days setting forth the licensee’s reasons for noncompliance with section (2)(a) and the licensee’s plans for becoming compliant.

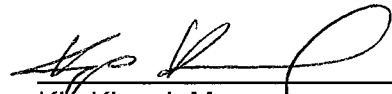
- b. After the 14 day warning period set forth in section (3)(a), a licensee's continued noncompliance with section (2)(a) is grounds for suspension, revocation, or non-renewal of the "Class B" license.

(4) Exemptions.


- a. Notwithstanding the foregoing, any licensee which is a tax-exempt nonprofit organization under section 501(c)(3) of the Internal Revenue Code shall be exempt from section (2)(a)
- b. Notwithstanding the foregoing, any licensee which is a tax-exempt veteran's organization under Section 501(c)(19) of the Internal Revenue Code shall be exempt from section (2)(a)
- c. A licensee may file a petition with the City Clerk requesting a 60-day exemption from section (2)(a) due to extraordinary circumstances. The City Clerk shall require the licensee to appear before the Common Council in support of the petition. If the licensee fails to appear, the petition shall be denied. If the licensee appears, the Common Council may take testimony and/or other evidence from the licensee on the petition. The Common Council shall find whether the licensee has shown good cause for a 60-day exemption due to extraordinary circumstances and grant or deny the petition. If an extraordinary circumstance continues, the licensee must file a new petition seeking an additional 60-day exemption.

- 2. This ordinance shall take effect upon its passage and publication as provided by law.

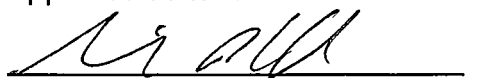
Passed and adopted this 12th day of December, 2016


Kip Kinzel, Mayor

ATTEST:


Constance K. McHugh, City Clerk

Approved as to form:


Michael P. Herbrand, City Attorney