

Ordinance 249-2018

City of Juneau Common Council

An Ordinance to Create Section 5.08.045 - Revocation and Suspension of Licenses

Section I. Purpose.

The purpose of this ordinance is to regulate and control the process and procedure for revocation and suspension of licenses issued under chap. 125, Wis. Stats.

Section II. Authority.

The common council has the authority under § 125.10, Wis. Stat. to regulate the licensing of retail and wholesale sale of alcoholic beverages at premises in the City of Juneau to the extent that such regulations are not in conflict with state statute.

Section III. Creation of City of Juneau Code of Ordinances § 5.08.045 – Revocation and suspension of licenses and refusals to renew licenses.

The Common Council of the City of Juneau, Wisconsin, upon a roll call vote with a quorum present and voting and upon proper notice having been given, ordains as follows:

5.08.045 - Revocation and suspension of licenses.

A. Procedure.

1. Whenever the holder of any license issued under this chapter is subject to the sanctions imposed under this chapter:

(a) Proceedings for the revocation or suspension of such license shall be instituted in the manner and under the procedures established by § 125.12, Wis. Stats., before the City of Juneau Common Council as specified herein below.

(b) The provisions relating to transfer of any license suspended or revoked under this chapter shall not be applicable unless the transfer is to an unrelated party pursuant to a bona fide sale for value.

2. Whenever any license issued under this chapter has been revoked, at least 12 months from the time of such revocation shall elapse before another license shall be issued under this chapter to the person whose license was revoked.

B. Suspension. In addition to the procedures and penalties set forth in this chapter and in addition to any other penalty imposed by law:

1. Any retail license issued under this chapter may be suspended by the Common Council for a period not less than five days and not more than 30 days upon the conviction of a licensee for an offense under this chapter or for a violation of Ch. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented malt beverage law, or pursuant to the point system as set forth at Subsection D below.

2. Any operator's license issued under this chapter may be suspended by the Common Council for a period not less than 10 days and not more than 60 days upon the conviction of the licensee for an offense under this chapter or for a violation of Ch. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented malt beverage law or pursuant to the point system as set forth at Subsection D below. The holder of such operator's license shall be prohibited from selling alcohol beverages anywhere in the City of Juneau during such period of suspension.

3. Any employee, agent or representative of a retail licensee, whether or not compensated by the licensee, who is not a holder of an operator's license and who is convicted for an offense under this chapter or for a violation of Ch. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented malt beverage law or pursuant to the point system as set forth at Subsection D below may be prohibited from selling alcohol beverages in the City of Juneau for a period of not less than 10 days and not more than 60 days.

C. Revocation. In addition to the procedures and penalties set forth in this chapter and in addition to any other penalty imposed by law, any license issued under this chapter may be revoked by the Common Council upon a second violation committed within 12 months after a previous violation, both of which resulted in a conviction of the same licensee under this chapter or for a violation of Ch. 125 or 139, Wis. Stats., or any other federal or state liquor or fermented beverage law.

D. System created. There is hereby established a point system for the purpose of guiding the Common Council in making recommendations on the possible suspension or revocation of alcohol beverage licenses. The number of demerit points shall be assigned according to the type of violation. This system is intended to identify habitually troublesome alcohol licensees whose actions or those of his/her employees repeatedly violate state statutes and/or City of Juneau ordinances and to take consistent action against such licensees.

1. Assignment of points. There is hereby assigned the following maximum demerit points for each type of violation:

Types of Violation	Demerit Points (per incident)
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Refusal to allow police to search premises or refusal to cooperate with lawful police investigation	150
Refusal to allow Fire Department to conduct inspection	100
Failure to maintain exits in an unobstructed manner	50
Failure to maintain sufficient fire extinguishers	50
Unlawful employment of minors	75
Operation of adult entertainment establishment or sexually oriented business on licensed premises unless otherwise permitted by law	150
Owner/employee possessing controlled substances on licensed premises	150
Owner/employee possessing illegal drug paraphernalia on premises	100
Unauthorized transfer/use of license	90
Exceeding posted occupancy/capacity	50
Sale of alcohol to person under age 21 without parent, guardian or spouse of legal drinking age	80
Person under age 21, who is not on-duty employee or authorized vendor, on premises without parent, guardian or spouse of legal drinking age	80
Sale to intoxicated person	80
False statement on application	150
Failure to maintain order fights/disorderly conduct, Police Department not notified by bar	50
Failure to maintain order fights/disorderly conduct, Police Department notified by bar	10
Failure to call law enforcement or emergency services after report or observation of injury to person on or near premises or after report or observation of suspected criminal behavior on or near premises	75
Loud and unnecessary noise	45
Public consumption of alcohol outside licensed premises	10
Open after hours	45
No licensed bartender on premises	40
Fail to properly supervise sales	40
After hours carry-outs	30
Failure to frame and display license	25
Violation of any municipal and state health code provision	25
Failure to correct fire code violations after notification given to owner/employee by Fire Chief or assigned designee	50
Violation of other municipal regulation or state law	Up to 150 additional points based on severity of offense

Penalty enhancer for severe offenses: enhanced penalty for conduct which results in bodily harm to any individual; creates a substantial risk of death or bodily harm; involves the use of a firearm or other dangerous weapon; or demonstrates an ongoing disregard for the requirements of state law or municipal ordinances	Up to 150 additional points based on severity of offense
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2. Method of determination. In determining the accumulated points, the date of the violation is used as the basis for assigning the demerit points per incident. A conviction for a violation is not necessary to assign points. That decision is made by the Chief of Police or his designee based on his analysis of the violation.

3. Alcohol licensing point notification. The Police Department shall notify the Common Council and the licensee and the property owner of any incidents which result in the assessment of demerit points. The Common Council shall have the authority to adjust any points assessed by the Police Chief, either up or down.

4. Point reduction courses. During any demerit point counting period, a licensee may regain up to 50 demerit points for that period by successfully completing courses sanctioned for that purpose by the City of Juneau Police Department. The number of demerit points returned for each successfully completed course shall also be determined by the Police Department.

E. Disciplinary procedures.

1. Hearings. The Common Council shall hold hearings as prescribed in § 125.12, Wis. Stats. The Common Council shall use the demerit point system established in this Chapter for the purpose of guiding its decision on possible suspensions or revocations, but such system shall not limit the discretion of the Common Council or prohibit the Common Council from evaluating other factors and circumstances, both aggravating and mitigating in nature, in making its determination on possible suspensions or revocations. It is intended that the point system be a useful guide for the Common Council to aid it in taking consistent action against licensees.

a. For demerit points totaling 50 to 149 within a rolling twelve-month period, the licensee should be warned of the consequences of additional violations.

b. For demerit points totaling 150 to 199 within a rolling twelve-month period, a licensee should be warned or a suspension of the license should be issued for a period of not less than 10 days and up to 90 days.

c. For demerit points totaling 200 or more within a rolling twelve-month period, a license should be issued a suspension for a period of not less than 10 days and up to 90 days, or the Common Council should revoke the license.

d. It shall not be a defense to any adverse action taken against the licensee under this demerit point system that the licensee did not receive a warning nor that less severe action was not taken against the licensee for previous point accumulations.

2. Transfer/sale of licensed business.

a. Upon the transfer or sale of the licensed business, all accumulated demerit points shall be cancelled unless any of the following apply:

i. The new licensee is related to the former owner by blood, adoption or marriage.

ii. The new licensee held a business interest in the previous licensed business, real estate or equipment.

iii. The former licensee retains an interest in the previous licensed business, real estate or equipment.

iv. The new licensee's acquisition of the business did not involve an arm's length transaction consisting of an open market sale in which the owner is willing but not obligated to sell and the buyer is willing but not obligated to buy.

b. If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to the penalties prescribed by law.

3. Scope. Nothing in this section shall be construed to conflict with, abridge or modify the rights or procedures established for revocation or suspension of licenses in § 125.12, Wis. Stats. The Common Council shall have the right to suspend or revoke a license for any reason set forth in § 125.12, Wis. Stat. without regard to the established demerit point system or in concert with the demerit point system.

F. Revocation and refusal to renew inactive licenses. It shall be deemed a ground for nonrenewal or revocation of any license issued under this chapter, in addition to those grounds specified in § 125.12, Wis. Stats., if any of the following conditions shall at any time exist:

1. If the licensee is not routinely conducting the business of the sale or offering for sale of alcohol beverages on the licensed premises during the month immediately preceding the close of the license year.

2. If the licensee has not sold or offered for sale alcohol beverages on the licensed premises for a minimum of 180 days during the license year immediately preceding the license year for which application for a renewal license is made, provided that the licensee has been licensed for the full license year immediately preceding the license year for which application for a renewal license is made.

3. If the licensee loses physical possession or occupation of the licensed premises through a judgment of foreclosure, seizure under a writ or execution or attachment to satisfy a judgment of record, assignment for the benefit of creditors, adjudication of the United States Bankruptcy Court, termination of a lease or rental agreement, or abandonment by the licensee.

First Reading: August 14th, 2018
Second Reading: September 11th, 2018
Publication Date: September 20th, 2018

Adopted by the Common Council this 20th, day of September, 2018.

Dan Wegener, Mayor

ATTEST:

Valerie Knetzger, Clerk/Treasurer

Ordinance 250-2018

City of Juneau Common Council

An Ordinance to Repeal from The City of Juneau Ordinances Chapter 8.12 – Nudity/Sexual Conduct

The Common Council of the City of Juneau ordains:

Chapter 8.12 - Nudity/Sexual Conduct of the Juneau Code of Ordinances is hereby amended to repeal the following:

8.12.010 - Nudity or sexual conduct prohibited.

- A. It is unlawful for any licensee, agent of the licensee or person holding an operator's license under Chapter 125 of the Wisconsin Statutes or this chapter to knowingly permit or knowingly allow any person to perform or to engage in the display or exposure of any specified anatomical areas upon the licensed premises.
- B. It is unlawful for any licensee, agent of the licensee, or person holding an operator's license under Chapter 125 of the Wisconsin Statutes or this chapter to knowingly permit or knowingly allow any person to engage in any specified sexual activity upon the licensed premises.
- C. It is unlawful for any licensee, agent of the licensee, or person holding an operator's license under Chapter 125 of the Wisconsin Statutes or this chapter to knowingly permit or knowingly allow any person to simulate, perform or depict, with or without artificial devices or inanimate objects, any specified sexual activity with any other person upon the licensed premises, including with another employee or independent contractor.
- D. It is unlawful for any licensee, agent of the licensee, or person holding an operator's license under Chapter 125 of the Wisconsin Statutes or this chapter to knowingly permit or knowingly allow any person to show, display or exhibit, on the licensed premises, any film, video, still picture, electronic reproduction or any other visual reproduction or image of any specified sexual activities or specified anatomical areas.
- E. It is unlawful for any licensee, agent of the licensee, or person holding an operator's license under Chapter 125 of the Wisconsin Statutes or this chapter to knowingly permit or knowingly allow any person engaged in any semi-nude or erotic dancing, upon the licensed premises so as to intentionally touch any patron, guest or customer of the licensed premises, either directly or through a medium, for purposes of passing a gratuity from the patron, guest or customer to the person, entertainer or performer, unless the patron, guest or customer maintains a distance of at least three feet from the person, entertainer or performer.
- F. It is unlawful for any licensee, agent of the licensee, or person holding an operator's license under Chapter 125 of the Wisconsin Statutes or this chapter to knowingly permit or knowingly allow any person to intentionally straddle the legs of another

employee or independent contractor or any patron, guest or customer at the licensed premises, regardless of whether there is a touch or touching.

- G. It is unlawful for any person, patron, guest, customer, employee or independent contractor of a licensed premises under Chapter 125 of the Wisconsin Statutes or this chapter to engage in any of the activities described in subsections A through F of this section.

8.12.020 - Definitions.

For purposes of this chapter, the term "licensed establishment" means any establishment licensed by the common council of the city of Juneau to sell alcohol beverages pursuant to Chapter 125, Wisconsin Statutes. The term "licensee" means the holder of a retail Class "A," Class "B," or Class "C" license granted by the common council of the city of Juneau pursuant to Chapter 125, Wisconsin Statutes.

"Specified anatomical areas" means:

1. Less than completely and opaquely covered human genitals, pubic region, and cleavage of the nates of the buttocks;
2. Human male genitals in a discernible turgid state, even if completely and opaquely covered;
3. That portion of the human female breast directly or laterally below a point immediately above the top of the areola, which shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not so exposed;
4. Any covering, tape, pastie, latex spray, or paint or other device which simulates or otherwise gives the appearance of the display or exposure of any of the specified anatomical areas listed above in this definition.

"Specified sexual activities" means simulated or actual:

1. Showing of human genitals in a state of sexual stimulation or arousal;
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, cunnilingus, or excretory functions;
3. Fondling or erotic touching of human genitals, pubic region, anus, buttocks, or female breasts.

8.12.030 - Closing 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:

- A. Wholesale License. Between five p.m. and eight a.m., except on Saturday when the closing hour shall be no later than nine p.m.;
- B. Retail Class "A" Liquor License. Between nine p.m. and eight a.m.;
- C. Retail Class "A" Fermented Malt Beverage License. Between twelve midnight and eight a.m.;
- D. Retail Class "B" Licenses and Permits. Between two a.m. and six a.m., Monday through Friday, and between two-thirty a.m. and six a.m. on Saturday and Sunday,

except on January 1 when there shall be no limit on the hours which the licensee may remain open. No package, container or bottle sales in unopened original containers for consumption off the premises may be made between the hours of twelve midnight and eight a.m.

8.12.040 - Exceptions.

The provisions of this chapter 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 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, employees engaging in nude erotic dancing.

8.12.050 - Penalties.

Any person, partnership or corporation who violates any of the provisions of this chapter shall be subject to a forfeiture of not less than one hundred dollars (\$100.00), and not more than five hundred dollars (\$500.00) per violation, plus costs. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this chapter constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under Section 125.12, Wisconsin Statutes.

8.12.060 - Severability.

If any section of the ordinance codified in this chapter is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

8.12.070 - Effective date.

This chapter shall take effect upon passage and publication as required by law.

First Reading: August 14th, 2018
Second Reading: September 11th, 2018
Publication Date: September 20th, 2018

Adopted by the Common Council this 20th, day of September, 2018.

Dan Wegener, Mayor

ATTEST:

Valerie Knetzger, Clerk/Treasurer