

ORDINANCE NO. 97-11

AN ORDINANCE ESTABLISHING A LIQUOR CONTROL COMMISSION AND  
PROVIDING FOR THE CONTROL AND REGULATION OF THE SALE AND  
CONSUMPTION OF ALCOHOLIC LIQUORS IN THE VILLAGE OF  
WINNEBAGO, ILLINOIS

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WHEREAS, the Village of Winnebago, Illinois, is a "dry" community such that the sale of alcoholic liquors within the limits of said Village is generally prohibited; and

WHEREAS, on or about April 17, 1997, approximately 72.244 acres were annexed to the Village of Winnebago, Illinois, located generally as the southwest corner of the intersection of Winnebago Road and U.S. Route 20 in Winnebago County, Illinois, as legally described in Annexation Ordinance 93-5, listing the owner of said premises as Bank One, Rockford, N.A., a national banking association, as Trustee of Trust No. 7976, and the developer as Winnebago Corners, L.L.C., an Illinois limited liability company, d/b/a Winnebago Crossings; and

WHEREAS, the aforesaid approximate 72.244 acres had previously been within the jurisdictional limits of the County of Winnebago, and when annexed to the Village of Winnebago said property retains its "wet" status pursuant to Chapter 235 ILCS 5/9-8 until such time after annexation, if ever, that a referendum would be again passed in the Village to prohibit the sale of alcoholic liquors within the Village limits; and

WHEREAS, with such property so duly annexed, it was necessary for the Village of Winnebago Board of Trustees pursuant to statutory mandates to establish a liquor control commission

and provide for the control and regulation of the sale and consumption of alcoholic liquors in the Village of Winnebago, Illinois.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WINNEBAGO, ILLINOIS:

#### ARTICLE I--GENERAL PROVISIONS

##### Section 1. Title.

The provisions of this ordinance may be cited and referred to as the Village of Winnebago Liquor Control Ordinance.

##### Section 2. Purpose and Policy.

The purpose of this ordinance is to provide comprehensive, reasonable provisions to control and regulate the sale and consumption of alcoholic liquors so as to protect the health, safety, and welfare of the people of the Village of Winnebago. It is the policy of the Village of Winnebago to limit the sale of alcoholic liquor at retail primarily to the sale in its original package, or by restaurants, recreational facilities, or hotels as defined in this ordinance. It is not deemed conducive to the promotion of this public policy to allow the sale of alcoholic liquor at retail for the consumption on the premises where such sale is the sole or primary business to be conducted. Further, it is the policy of the Village to limit the purchase, consumption, or possession of alcoholic liquor to persons of the age of twenty-one (21) years or older in order to prevent intoxication, disorderly conduct, trespass, unruly disturbances

at public or private assemblies, traffic accidents, and similar conduct which often results from the purchase, consumption, or possession of alcoholic liquor by persons under the lawful age.

Section 3. Definitions.

The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes but is not limited to synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

Alcoholic liquor includes alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed by a human being. The provisions of this ordinance shall not apply to alcohol used in the manufacture of denatured alcohol produced in accordance with Acts of Congress and regulations promulgated thereunder, nor to any liquid or solid containing one-half of one percent, or less, or alcohol by volume.

Bar means any counter at which alcoholic beverages may be stored, displayed, prepared, or served, and at which patrons are permitted to sit or stand and consume alcoholic beverages.

Beer means a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and

hops in water, and includes among other things, beer, ale, stout, lager beer, porter, and the like.

Closing hours means the time period that a given licensee is not allowed to sell or otherwise dispense alcoholic liquor.

Convenience store means any establishment in which the primary business includes, but is not limited to, the sale of petroleum products, food, beverages, household products, cosmetic items, reading materials, and other goods for the convenience of the public.

Courtyard means a seasonal open-air area used for the service of food and alcohol. A courtyard shall be a permanent part of the improvement constructed with at least a three-foot solid barrier such as a wall or fence. Additional screening or solid barrier up to six feet in height may be required by the liquor control commission, depending upon the nature and use of the surrounding properties. Primary access to the courtyard shall be through the dining area of the licensed facility. Fire exits shall be provided as required by the Village Building and Zoning Ordinance and any other applicable laws. Courtyard seating may not be counted toward any minimum seating standard required by this ordinance.

Eating counter means any counter at which patrons may consume alcohol and food in the same manner as patrons at a table.

Fast food restaurant. Indicia of a fast food restaurant shall include, but not be limited to:

- 1) patrons ordering food from a counter area or service window;
- 2) patrons picking up food or beverages from a counter area or service window;
- 3) payment for food or beverages at the time they are ordered;
- 4) menus limited to food items requiring minimal preparation;
- 5) menus not offering a wide variety of foods from all major food groups;
- 6) food and beverages being available for carryout;
- 7) the presence of drive-up facilities;
- 8) patrons not paying gratuities;
- 9) restaurants not having waiters or waitresses;
- 10) food and beverages not being served with permanent utensils;
- 11) not having individual menus for each patron;
- 12) patrons bussing their own tables;
- 13) food being prepared in an area not entirely separated from patrons by full walls; and
- 14) trash container being contained within the restaurant eating area.

The foregoing factors may be considered by the liquor commission in determining whether a business is a fast food restaurant. The determination of the commission shall be based upon the totality of the circumstances. A convenience store shall not be considered a fast food restaurant provided there is limited sale of the types of items typically served in a fast food restaurant.

He or him references herein are intended to be gender neutral and shall include males, females, and entities.

**Holding area** means any room or area in a restaurant in which patrons may sit or stand and wait for seats in the dining area.

**Hotel or motel** means every building or other structure with fifteen (15) or more guest rooms kept, used, maintained, advertised, and held out to the public to be a place offering temporary lodging for compensation to travelers and guests, whether transient, permanent, or residential for a period of one day or more, with or without restaurants, shops and meeting rooms, open to the public. Such building or group of buildings may also include a cocktail lounge, room service facilities, or rooms providing dancing or live entertainment.

**Improvement** means the enclosed portion of a building, including any courtyard.

**Liquor commissioner** means the Village President of the Village of Winnebago, Illinois.

**Liquor commission** means the Village President and such person or persons appointed by the Village President to assist him pursuant to law.

**Lounge** means any room in a restaurant in which patrons may order and consume alcohol with or without the purchase of food. A lounge may include bars with chairs, stools, or other seating for the use of patrons.

**Minor** means any person under twenty-one (21) years of age.

**Original package** means any bottle, flask, jug, can, barrel, keg, hogshead or other receptacle or container whatsoever, used,

corked or capped, sealed and labeled by the manufacturer of alcoholic liquor to contain and convey any alcoholic liquor.

Physical separation means a partial wall, screen, partition or suitable enclosure of sufficient height, or conspicuous signage subject to approval by the liquor control commissioner, to identify an area of a restaurant or store from the rest of the facility to discourage unintended access.

Restaurant means any public place kept, used, maintained, advertised or held out to the public as a place where the primary business is the service of meals, and where meals are actually and regularly served, without sleeping accommodations, and where adequate provision is made for sanitary kitchen and dining room equipment and capacity and a sufficient number of employees to prepare, cook, and serve a reasonable variety of meals for its customers. The mere availability and service at any premises of cold sandwiches, hors d'oeuvres or other similar foods will not, standing alone, be deemed sufficient to constitute such premises as a restaurant within the meaning of this definition, it being the intent of this definition that the primary business conducted on premises to be licensed as restaurants under this ordinance shall be the service of meals. However, this definition is intended to specifically exclude fast food restaurants, as the same are deemed ineligible for a liquor license.

Retail sale means the sale for use or consumption, and not for resale.



**Retailer** means the individual(s) or entity that sells, or offers for sale, alcoholic liquor for use or consumption and not for resale in any form.

**Sale** means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration and not for resale, including all sales made by any person, or other governmental subdivisions or districts, which shall include, but which is not limited to, park districts and forest preserve districts, where the property upon which the transfer, exchange, or barter, in any manner or by means whatsoever, for a consideration and not for resale, is within the municipal boundaries of the Village, except a person acting in the privacy of his home, or as part of a religious ceremony, whether as principal, proprietor, agent, servant or employee, and including, but not limited to, all of the following acts when done for consideration:

- 1) The selling of liquor;
- 2) The delivery of liquor, without additional charge, with a meal or with entertainment, or the providing of samples of liquor as part of a promotion or sale device of any kind;
- 3) The dispensing of liquor;
- 4) The providing of mix, ice, water, or glasses for the purposes of mixing drinks containing alcoholic liquor for consumption on the same premises;
- 5) The pouring of liquor; and
- 6) The providing of set-ups containing alcoholic liquor.

**Service counter** means any counter at which alcoholic beverages may be prepared. No service of beverages or food to

patrons is permitted at a service counter. The use of chairs, stools, or other seating is not permitted at a service counter.

Wine means any alcoholic beverage obtained by the fermentation of natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

Section 4. Application of Other Provisions and Adoption of State Law.

Nothing in this ordinance shall excuse or relieve the licensee, owner, proprietor, or person in charge of any place in the Village where alcoholic liquor is sold from the restrictions and requirements of any other provision of this Code, other ordinances of the Village or of the statutes of the state.

Further, all provisions of the Liquor Control Act of 1934 (235 ILCS 5/1-1 et seq.), shall be hereby made part of this ordinance insofar as the provisions of such law pertain to a municipality the size of the Village of Winnebago, even though such provisions are not specifically enumerated or described in this ordinance. Notwithstanding the aforesaid, in the event any provision in this ordinance is more restrictive than the applicable state law, such provision in this ordinance shall control.

Section 5. Underage Persons--Unlawful possession and Consumption By.

A) No person under the age of twenty-one (21) years shall possess, consume, purchase, or accept delivery of alcoholic liquor within the Village; provided, that the possession and dispensing, or consumption, by a person under the age of

twenty-one (21) years of alcoholic liquor in performance of a religious service or ceremony, the consumption by a person under the age of twenty-one (21) years under the direct supervision and approval of the parent or guardian of such underage person in the privacy of the parent's or guardian's home, or the possession and delivery of alcoholic liquors in pursuance of a person's lawful employment is not prohibited and shall not be construed as a violation of this section.

B) No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give, or deliver such alcoholic liquor to another person under the age of twenty-one (21) years, except as allowed under subsection (a) of this section.

Section 6. Persons Under Age Twenty-One (21)--Loitering.

It shall be unlawful for any person under the age of twenty-one (21) years to enter or loiter about any premises or place where alcoholic liquor is sold or consumed; provided, however, that the terms of this section shall not restrict a person under the age of twenty-one (21) years properly employed by the licensee from entering and remaining on the premises to fulfill the legitimate duties of his or her employment, and shall not restrict a person under the age of twenty-one (21) years from entering upon the premises of a liquor license holder to exercise his or her legitimate business or trade provided such individuals do not loiter in the area of the premises devoted to liquor sales as defined in Article V, Section 6(A).

Section 7. Persons Under Age Twenty-One (21)--Permitting to Loiter.

No person shall permit any person under the age of twenty-one (21) years to loiter in any place where alcoholic liquor is sold; provided however, that this section shall not apply when a minor is accompanied by his legal parent or guardian and when a minor is properly employed.

Section 8. Parental Responsibility.

It shall be unlawful for any person to knowingly allow or permit any child under the age of twenty-one (21) years of whom his is the parent or guardian to violate any provision of this ordinance.

Section 9. Responsibility of Owner or Occupant of Premises.

It shall be unlawful of any owner or occupant of any premises located within the Village to knowingly allow any person under the age of (twenty-one) 21 years and not his child to remain on such premises while in the possession of alcoholic liquor or while consuming alcoholic liquors.

Section 10. Penalty.

Any person who violates any provision of sections 5 through 9 above shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 11. Certain Sales Prohibited.

A) It shall be unlawful for any licensee, their employer or agent, on licensed premises where alcoholic liquor is sold or

offered for sale for consumption thereon, to engage in any of the following conduct:

- 1) Deliver to any person or group of persons any unlimited number of drinks during any period of time for a fixed price, except at private banquets not open to the public;
- 2) Deliver drinks to any person or group of persons on any day at prices less than those charged the general public on that entire day, except at private banquets not open to the public;
- 3) Increase the volume of alcoholic liquor contained in a drink without a proportionate increase in the price charged for such drink as compared to the prices charged during the same calendar week;
- 4) Permit any game, contest, or similar activity involving the consumption of alcoholic liquor or the award of alcoholic liquor as prizes; and
- 5) Deliver to any person not accompanied by another person of legal drinking age a pitcher or carafe of drink.
- 6) Furnish any alcoholic liquor at retail to any person on credit other than via a bona fide widely recognized credit card (i.e. master Card, Visa, American Express, etc.), or in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and any debt thereby attempted to be created shall not be recoverable by process of law in any court or proceeding thereon; however, nothing herein contained shall be construed to prevent any hotel from permitting checks or statements for liquor to be signed by regular guests residing at said hotel and charged to the accounts of said guests.

B) For purposes of this section "drink" shall be defined as any object containing alcoholic liquor, including but not limited to glasses, mugs, bottles, pitchers, or carafes.

C) Further, no curb service or outdoor sale of alcoholic liquor other than in a permitted courtyard shall be carried on in

connection with premises for which a license has been granted for the sale of alcoholic liquor for consumption upon the premises, either upon the public street or private property contiguous to such premises so licensed.

Section 12. Sales to Certain Persons Prohibited.

A) No licensee nor any officer, associate, member, representative, agent or employee of such licensee shall sell, give, or deliver alcoholic liquor to any person under the age of twenty-one (21) years, or to any intoxicated person or to any person known by him to be an habitual drunkard, spendthrift, insane, mentally ill, mentally deficient, or in need of mental treatment. No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give or deliver such alcoholic liquor to another person under the age of twenty-one (21) years except in the performance of a religious ceremony or service.

B) If a person under the age of twenty-one (21) years is in possession of alcoholic liquor on premises licensed to sell alcoholic liquor for consumption on such premises, it shall be a rebuttable presumption that the licensee sold, gave, or delivered such alcoholic liquor to the minor in possession thereof.

C) For the purpose of preventing the violation of this section, any licensee, or his agent or employee, may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence of identity and of the fact that he or she is over the age of twenty-one (21) years.



Section 13. Evidence of Age of Person Attempting to Purchase or Receive Alcoholic Liquor.

A) If a licensee, its agent or employee believes, has reason to believe, or should have reason to believe, that a sale or delivery of alcoholic liquor is prohibited because the prospective recipient is underage, then, before making such sale or delivery, the licensee, its agent, or employee shall demand presentation of one positive form of identification containing proof of age and a picture of the holder thereof. Positive form of identification of person and identity is a document issued by a federal, state, county or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces. A traffic citation shall not be accepted as identification or evidence of age. Proof that the defendant-licensee, or his employee or agent, demanded, was shown such acceptable positive form of identification enumerated above and reasonably relied upon the same in any transaction forbidden by this section is competent evidence and may be considered in any criminal prosecution therefor or in any proceedings for the suspension or revocation of any license based thereon.

B) No person under the age of twenty-one (21) years shall present or offer to any licensee, his agent, or employee any written, printed, or photostatic evidence of age and identity which is false, fraudulent, or not actually his own for the purpose of ordering, purchasing, attempting to purchase, or

otherwise procuring or attempting to procure the serving of any alcoholic beverage, nor shall such person have in his possession any false or fraudulent written, printed, or photostatic evidence of age and identity, nor shall he in any other manner misrepresent his age for such purpose.

C) No person shall transfer, alter, or deface an identification card issued by a federal, state, country or municipal government or subdivision or agency thereof, use the identification card of another, carry or use a false or forged identification card, or obtain an identification card by means of false identification.

D) No person shall purchase, accept delivery, or have possession of alcoholic liquor in violation of this section.

E) No person shall misrepresent his age for the purpose of purchasing or obtaining alcoholic liquor in any place in the Village where alcoholic liquor is sold at retail.

F) It shall be unlawful for any person under the age of twenty-one (21) years to be under the influence of alcoholic liquor.

G) The possession and dispensing, or consumption by a minor of alcoholic liquor in the performance of a religious service or ceremony, or the consumption by a minor under the direct supervision and approval of the parents or parent of such minor in the privacy of a home, is not prohibited by this section.

#### Section 14. Required Warning Sign.

In every place in the Village of Winnebago where alcoholic



liquor is sold, there shall be displayed at all times in a prominent place a printed card which shall read substantially as follows:

WARNING: If you are under 21 years of age, you are subject to a fine of up to \$1,000.00 under the Village of Winnebago Liquor Ordinance if you purchase alcoholic liquor or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor. Official photo identification will be required to prove age before purchase.

#### ARTICLE II--PENALTIES

Except as stated in Article I, Section 10 hereinabove, any person violating any provision of this ordinance shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each violation, with each day on which a violation continues constituting a separate offense. However, not more than ten thousand dollars (\$10,000.00) in fines under this article may be imposed against any licensee during the period of his license. The costs of any proceeding before the local liquor control commission shall be paid forthwith by the licensee upon a finding by the commission of a violation of any provisions of this ordinance, and the costs shall include any clerical or court stenographic costs which the Village must pay as well as the costs of any subpoenas and wage, salary, and commission expenses directly related to the hearing. The levy

and/or payment of any penalty herein provided shall not be deemed a waiver of the power of the local commission to revoke any license.

State law reference: 235 ILCS Section 5/4-4 and 5/7-5.

### ARTICLE III--ADMINISTRATION

#### DIVISION 1. GENERALLY

##### Section 1. Local Liquor Commissioner.

A) The Village President shall serve as the local liquor commissioner and shall be charged with the administration of this ordinance and of such other ordinances relating to alcoholic liquor as may be from time to time enacted by the Village Board.

B) The local liquor commissioner shall have the following powers and duties with respect to local liquor licenses:

- 1) To grant or to suspend for not more than thirty (30) days or to revoke for cause all local licenses issued to persons or entities for premises within the Village;
- 2) To enter or to authorize any law enforcement officer or other village employee designated by the local liquor commissioner to enter, at any time, upon the premises licensed under this ordinance to determine whether any of the provisions of the state law or Village ordinance or any rules or regulations adopted by the Village or by the state liquor commission have been, or are being, violated, and at such time to examine the premises of the licensee in connection therewith;
- 3) To receive complaints from any citizen that any provision of the state law or of this ordinance has been or is being, violated and to act upon any such complaints in the manner provided by law;
- 4) To examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof, or any licensee upon whom notice of revocation has been served, or any licensee against whom a citation proceeding has been instituted by the state liquor

control commission; to examine, or cause to be examined, the books and records of any of the commissioner's duties, and for the information of the commissioner to issue subpoenas which shall be effective in any part of this state. Other persons may be designated by the commissioner to take action for the purpose of obtaining any of the information desired by the commissioner under this section;

- 5) To appoint any other member of the Village Board to serve as deputy local liquor control commissioner, which person shall have full authority to exercise, in the absence of the local liquor control commissioner, any of the powers and duties enumerated in this section, except as the commissioner may specifically exclude by such appointment;
- 6) To appoint, subject to the approval of the Village Board of Trustees, the members of the liquor commission to advise and assist in the performance of the aforementioned powers and duties; to designate a chairman for the commission; to attend all disciplinary hearings conducted by the commission, and such other meetings of the commission as the commissioner may deem necessary or appropriate;
- 7) To report to the Village Board from time to time actions which have been taken to grant or deny liquor licenses or to penalize licensees; and
- 8) To make and adopt such reasonable rules and regulations governing hearings as he reasonably deems necessary in the performance of his duties.

State law reference: 235 ILCS 5/4-2, 5/4-4, and 5/4-5.

Section 2. Compensation of Local Liquor Control Commissioner and Assistants

The President and Board of Trustees of the Village by majority vote shall be authorized to fix and pay compensation to the local liquor control commissioner of the Village, as well as compensation to such deputies, assistants, or employees as may be deemed necessary for the proper performance of the duties vested in the local liquor control commissioner.

State law reference: 235 ILCS Section 5/4-3.

## DIVISION 2. LIQUOR COMMISSION

### Section 1. Created; Composition; Appointment and Terms of Members; Chairman; Powers and Duties.

A) A local liquor commission is created, which shall be composed of three members appointed by the local liquor commissioner, subject to the simple majority approval of the Village Board of Trustees, for terms to coincide with the term of the appointing Village President. Members shall hold office for their designated terms and until their successors have been appointed.

B) A chairman shall be designated by the local liquor commissioner for the purpose of presiding over meetings conducted at the direction of the commissioner.

C) The local liquor commission shall have and exercise the following powers and duties:

- 1) To review applications and the investigation of applicants for liquor licenses, and to submit findings and recommendations to the local liquor commissioner setting forth its conclusions regarding such applications;
- 2) To conduct disciplinary hearings at the request of the local liquor commissioner and to submit findings and recommendations to the commissioner setting forth its conclusions respecting the existence and nature of any violation of this ordinance and the appropriate disciplinary action to be taken, if any.
- 3) To keep written records of its meetings and proceedings, which shall be open for public inspection in accordance with the Freedom of Information Act (5 ILCS 140/1 et seq.); and
- 4) To review and recommend changes in this ordinance to the liquor commissioner and the Village Board.

## Section 2. Scope of Authority to Promulgate and Amend Rules.

The local liquor commission shall have the authority to promulgate and amend rules regulating procedures to be followed by the commission, liquor license applicants, and licensees:

- 1) When filing liquor license applications with the Village Clerk and liquor commission;
- 2) During liquor license application hearings conducted by the commission;
- 3) For communicating any and all recommendations from the liquor commission to the liquor commissioner and/or Village Board; and
- 4) During the hearings for alleged violations of this ordinance.

## Section 3. Compliance With Rules.

The liquor commission, all applicants, and all licensees shall be bound to follow the procedural rules adopted pursuant to this division.

## Section 4. Copy of Rules to be Maintained by Village Clerk.

The Village Clerk shall maintain a copy of the rules established pursuant to the division and shall provide a copy of such rules to applicants or licensees upon request.

## Section 5. Conflict of Rules With Other Provisions.

The rules promulgated pursuant to this division shall not be inconsistent or conflict with any provision of this ordinance. Any inconsistency or conflict between such rules and this ordinance shall be resolved in favor of this ordinance.

## Section 6. Limitation of Authority.

This division shall not be construed to grant any substantive authority to the local liquor commission, as the

function of said commission is solely to act as an advisory and hearing commission only for the liquor commissioner.

#### ARTICLE IV--LICENSE REQUIREMENTS

##### Section 1. License Required.

It shall be unlawful for any person, firm or corporation to engage in the business or occupation of the retail sale of alcoholic liquor within the Village without first having obtained a license therefor, in accordance with the terms and provision of this ordinance. No person shall be deemed fully licensed until a license has been actually issued and delivered to the applicant. A separate license shall be required for each location, place, or premises where such business or occupation is proposed to be carried on, whether or not under the same roof or at the same street address, except that one license may be granted for an entire premises where the rooms, suite of rooms, or enclosures are in direct connection or communication or contiguous to each other, and under the control and in the possession of licensee, and operated by the licensee as one premises.

##### Section 2. Number of Licenses.

It is the desire and intent of the Village Board of Trustees that as of the date of this ordinance, the total number of liquor licenses, including all classes, shall not exceed seven (7) in number, and after the effective date of this section, any license increase over the above seven (7) total, shall require a two-thirds (2/3) Village Board of Trustees vote for passage.



Section 3. Applications--Generally.

A) This section applies to applications for all license categories under this ordinance.

B) A person wishing to file an application for a retail liquor dealer's license may obtain an application form from the Village for the purpose of providing reasonable information about the applicant. Such application shall be filed with the local liquor commissioner, together with a manual outlining the applicant's program for training its employees to properly handle the sale of alcoholic liquor, and with a non-refundable application fee of five hundred dollars (\$500.00). The application shall be signed by the applicant, if the applicant is an individual; by the president and secretary, if the applicant is a club or corporation; or by a general partner, if the applicant is a partnership. A copy of the lease or title insurance policy for the premises for which a license is sought shall be attached to the application.

C) Applications for a retail liquor dealer's license shall be made to the local liquor commissioner in writing, signed by the applicant or an individual by a duly authorized agent thereof, if a club or corporation. The application shall be verified by oath or affidavit, and shall contain the following statements and information:

- 1) The name, age, mailing and residence addresses, and telephone number of the applicant; in the case of a partnership, the persons entitled to share in the profits thereof, and in the case of a corporation for profit, the date of incorporation, the objects for which it was organized, the name and address of the officers and directors, and if a majority in interest of

the stock of such corporation is owned by one person or his nominees, the name and address of such person;

- 2) The name and address of the applicant's business;
- 3) If applicable, the assumed name of the business and the date of the filing of the assumed name with the county clerk;
- 4) In the case of a corporation, if an Illinois corporation, the date of its incorporation, or if a foreign corporation, the state where it was incorporated and the date of its becoming qualified under the Illinois Business Corporation Act of 1983 (805 ILCS 5/1.01 et seq.) to transact business in this state, and in either case, a statement of the objects for which the corporation was organized, the full name, age, address, and telephone number of all officers, directors, and shareholders with an aggregate of more than five percent (5%) of the capital stock of the corporation or of any persons receiving a direct or indirect benefit from the profits of the sale of alcoholic liquor in the Village;
- 5) The name, age, address, and telephone number of the persons who will manage the business of the applicant in the Village;
- 6) The character of the business of the applicant or in the case of a corporation the object(s) for which it was formed;
- 7) The length of time that the applicant has been in business of that character, or in the case of a corporation, the date on which its charter was issued;
- 8) The location or description of the premises or place of business which is to be operated under such license, together with all the entrances thereto, and the following information:
  - a. If a leased premises, a copy of the lease shall be provided, and the lease shall be for a term of sufficient length to encompass the term of the license sought; and
  - b. The name and address of the owner or owners of the premises and the names and addresses of all of the owners of beneficial interest of any trust if such premises are held in trust;



- 9) A statement of whether the applicant has made similar application for another similar license on premises other than as described in this application, and the disposition of such application;
- 10) The number, the date of issuance, and the date of expiration of the applicant's current liquor license;
- 11) The name and address of the landlord if the premises are leased;
- 12) A statement signed by or on behalf of the applicant and by all individuals required to be identified therein, that each of them has never been convicted of a felony or a class A misdemeanor, and is not disqualified to receive a license by reason of any matter or thing contained in the laws of the state or the ordinances of the Village;
- 13) Whether a previous license by any state or subdivision thereof, or by the federal government, has been issued, and if so, where and when, or if any such license has been revoked, stating the reasons therefor.
- 14) A statement that the applicant and all individuals required to be identified in the application have not in the past and will not in the future violate any of the laws of the state or of the United States, or any ordinance of the Village controlling the retail sale of alcoholic liquor in the conduct of his place of business;
- 15) The applicant's retailer's occupation tax registration number and a statement as to whether the applicant is delinquent in the payment of the retailer's occupation tax (sales tax), and if so, the reasons therefor;
- 16) A statement as to whether the applicant is delinquent under the cash beer law, and if so, the reasons therefor.
- 17) A statement as to whether the applicant is delinquent under the thirty (30) day credit law, and if so the reasons therefor;
- 18) Whether the applicant, any individual identified in the application, or any other person directly or indirectly interested in the place of business possesses a current federal wagering and gaming device stamp, and if so the reasons therefor;
- 19) Whether the applicant, any individual identified in the application, or any other person directly or

indirectly interested in the place of business is a public official, and if so the particulars thereof;

- 20) A statement as to whether the applicant is in violation of section 123 of the Liquor Control Act (235 ILCS 5/6-6), and if so the reasons therefor;
- 21) A statement that the applicant and all individuals required to be identified in the application have not sold, delivered, or given away alcoholic liquor in violation of any state law or Village ordinance to a person under the minimum age required to purchase or possess liquor;
- 22) A floor plan, diagram, or drawing illustrating the premises in which alcoholic liquor is to be sold;
- 23) The current zoning of the property at which the applicant's place of business is to be operated;
- 24) The address of the applicant's warehouse if he warehouses liquor.
- 25) If said application is made on behalf of a partnership, firm, association, club, or corporation, then the same shall be signed and sworn to be at least two (2) members of such partnership or the president and secretary of such corporation; and
- 26) A statement that the applicant has not received or borrowed money or anything else of value, and that he will not receive or borrow money or anything else of value other than merchandising credit in the ordinary course of business for a period not to exceed ninety (90) days directly or indirectly from any liquor manufacturer, importing distributor, or distributor representative of any such manufacturer, importing distributor, or distributor, nor be a party in any way, directly or indirectly, to any violation by a manufacturer, distributor, or importing distributor of Illinois Revised Statutes, chapter 43, section 123 (now 235 ILCS 5/123).

D) No retail liquor dealer's license shall be issued until the applications shall have been investigated by the liquor control commissioner and a report filed in the records of such commissioner approving the new applicants. New applicants shall not be licensed until record searches are made of the files of

the county sheriff, the state police, and Federal Bureau of Investigation, and any other record agency that the chief of police shall deem necessary. While the Village of Winnebago waives the requirement of fingerprinting and photographing by the Village police department and record searches of the county sheriff, the state police, the Federal Bureau of Investigation, and/or any other record agency as regards any managers or employees of the applicant licensee, such applicant licensee shall be held responsible for conducting any investigations necessary on prospective managers and employees to ensure that such prospective managers and employees comply with the background qualifications mandated by this ordinance and state law.

Any false, inaccurate, or fraudulent statement or information given in the application, or failure to properly investigate the background of any manager or employee hired to ensure that such manager or employee complies with the background qualifications mandated by this ordinance and state law, shall constitute a violation of this article, and shall permit the denial of any issuance of any license, or revocation of any license already issued in addition to any other penalties provided in this article.

State law reference: 235 ILCS Section 5/4-5, 5/4-7.

Section 4. Bond/Insurance Required.

A) An application for a license shall be accompanied by a joint and several bond executed by the applicant and secured by cash, U.S. negotiable bonds, a first mortgage on improved real

estate in the Village of value of at least One hundred thousand dollars (\$100,000.00) with the title opinion or title guarantee policy, or by corporate surety licensed to do business in the State of Illinois. Such bond shall be in the sum of One hundred thousand dollars (\$100,000.00) conditioned upon the prompt payment of judgments levied against licensee for offenses and liabilities arising out of the unlawful sale of alcoholic liquors; provided, however, that said applicant may substitute for said bond a policy or certificate of insurance in the amount of at least Thirty thousand dollars (\$30,000.00) for injury to the person or property of any person, and Forty thousand dollars (\$40,000.00) for loss of means of support resulting from the death or injury of any person issued by an insurance company approved by the liquor commissioner in the form commonly known as "dram shop" insurance, or for such higher minimum amount as state law may prescribe at the time the application is made. Such policy shall provide that it cannot be cancelled until ten (10) days written notice of such cancellation has been filed with the local liquor commissioner.

Further, the applicant shall at all times have in full force and effect a policy of liability insurance in the minimum amount of Three hundred thousand dollars (\$300,000.00) for the injury or death of any number of persons per occurrence, and One hundred thousand dollars (\$100,000.00) for property damage per occurrence. This insurance shall be kept in effect at all times by the licensee, shall be issued by companies authorized to do

business in Illinois, and shall be approved as to form by the Village Attorney before the commencement of such use. Each licensee shall be responsible for providing the liquor control commissioner with evidence of updated insurance as the same is renewed. Any termination or lapse of such insurance without proof of adequate replacement thereof shall automatically revoke any permit issued pursuant to this ordinance.

Section 5. Processing of Applications.

A) Upon receipt of an application for any license authorized to be issued pursuant to this ordinance, the local liquor commissioner shall forward such application to the local liquor commission for its review and recommendation. The local liquor commission shall consider the application at its next regularly scheduled meeting, and submit any and all documentation of proceedings before the liquor commission along with any other materials and recommendations deemed pertinent by the liquor commission to the local liquor commissioner within a reasonable period of time, but in no event more than forty-five (45) days after receipt of the application from the local liquor control commissioner. Within fifteen (15) days of receipt of the recommendations from the liquor commission, the local liquor commissioner shall render, in writing, a decision denying or granting such license.

B) Upon making a determination on the grant or denial of a license under this ordinance, the local liquor commissioner may state the reasons such license has been refused or granted and

may specify in particular the findings as to the expected effect of granting such license on:

- 1) The neighborhood in which such licenses establishment is to be operated;
- 2) The geographical distribution of licenses in the Village;
- 3) Other pending or proposed applications for licenses in the Village; and
- 4) The welfare of the Village as a whole.

C) Any decision of the local liquor commissioner to grant or deny a license authorized to be issued under this ordinance shall be conclusive.

Section 6. Issuance of License.

All retail liquor dealer's licenses shall be issued only upon or after the approval of the local liquor commissioner. Such issuance shall be made by the Village Clerk and when so issued it shall bear the signature of the Village President as local liquor control commissioner, the certification of the Village Clerk, and the seal of the Village of Winnebago.

Section 7. License Fee Non-refundable.

No refund shall be made on any retail liquor dealer licenses issued pursuant to this ordinance.

Section 8. Duplicate License.

In the event of loss or destruction of any license issued pursuant to this article, the licensee shall obtain a duplicate thereof and shall pay the Village Clerk a fee of Five dollars (\$5.00) therefor.



Section 9. Term of license; prorating fee.

Each license required by this ordinance shall terminate on the thirtieth (30th) day of April following its issuance. The fee to be paid shall be reduced in proportion to the full calendar months which have expired in the year prior to the issuance of the license.

Section 10. Renewal; Effect of Failure to Renew.

Any licensee under this ordinance may renew his license at the expiration thereof, provided he is then entitled to receive a license and the premises for which such renewal license is sought are suitable for such purpose. Each licensee thirty (30) days prior to the expiration date of the liquor license, shall in writing, file a request for renewal on a form provided by the liquor commissioner. The form shall indicate the class of license held and that the class requested is the same. Said application must be accompanied with a license fee for the ensuing year. Said request form shall be a permanent public record to be maintained by the local liquor commissioner for at least three (3) years.

Any license issued pursuant to this ordinance shall terminate by operation of law if not renewed within ten (10) days after the date of its expiration. Thereafter, the licensee may apply for reissuance, consideration of which application shall be made pursuant to the procedures established by this ordinance. Further, the renewal privilege herein provided shall not be construed as a vested right which shall in any case prevent the Village Board of Trustees from decreasing the number of licenses

to be issued within its jurisdiction provided that the maximum total number of liquor licenses of all classes allowed to be issued shall never be fewer than seven (7).

Section 11. Records.

The Village Clerk shall cause to be kept a complete record of all liquor licenses issued, which records shall be open to the public in accordance with the Freedom of Information Act (5 ILCS 140/1 et seq.). Upon the issuance of any new license or the revocation of any old license, the Village Clerk shall give written notice of such action to the Village Chief of Police within forty-eight (48) hours of such action.

Section 12. Persons Ineligible.

No retail liquor dealer's license shall be issued to:

- 1) A person who is not a resident of the County of Winnebago;
- 2) A person who is not of good character and reputation in the community in which he resides;
- 3) A person who is not a citizen of the United States;
- 4) A person who has been convicted of a felony under any federal or state law, if the commission determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;
- 5) A person who has been convicted of being the keeper or is keeping a house of ill fame;
- 6) A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality;
- 7) A person whose license issued under this chapter has been revoked for cause;
- 8) A person who, at the time of application for renewal of any license issued under this ordinance, would not be eligible for such license upon a first application;
- 9) A co-partnership, if any general partnership thereof, or any limited partnership thereof, owning more than five percent (5%) of the aggregate limited partner



interest in such co-partnership would not be eligible to receive a license under this chapter;

- 10) A corporation, if any officer, manager, or director thereof, or any stockholder owning in the aggregate more than five percent (5%) of the stock of such corporation, would not be eligible to receive a license under this ordinance for any reason other than citizenship and residence within the political subdivision;
- 11) A corporation, unless it is incorporated in the state, or unless it is a foreign corporation which is qualified under the Business Corporation Act of 1983 (805 ILCS 5/1.01 et seq.) to transact business in the state;
- 12) A person who complies with all licensing requirements of this ordinance and whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required by the licensee. A manager or agent who is ineligible by the provisions of subsection (13) of this section may be eligible if the commission determines after investigation that such manager or agent has been rehabilitated to the degree necessary to warrant the public trust;
- 13) A person who has been convicted of a violation of any federal or state law concerning the manufacture, possession, or sale of alcoholic liquor or has forfeited his bond to appear in court to answer charges for any such violation;
- 14) A person who does not beneficially own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is to be issued;
- 15) Any law enforcing public official of this Village, including members of the Village's liquor control commission, the Village President, or member of the Village Board; and no such official shall be interested directly or indirectly in the manufacture, sale, or distribution of alcoholic liquor;
- 16) A person who is not a beneficial owner of the business to be operated by the license;
- 17) A person who has been convicted of a gambling offense as proscribed by any of subsections (a)(3) through (a)(10) of section 28-1 (720 ILCS 28-1) of, or as proscribed by section 28-3 (720 ILCS 5/28-3) of, the Criminal Code of 1961, approved July 28, 1961, as amended, or as proscribed by statute replaced by any of the aforesaid statutory provisions;

- 18) A person to whom a federal wagering stamp has been issued by the federal government for the current tax period;
- 19) A co-partnership to which a federal wagering stamp has been issued by the federal government for the current tax period, or if any of the partners have been issued a federal gaming device stamp or federal wagering stamp by the federal government for the current tax period;
- 20) A corporation, if any officer, manager, or director thereof, or any stockholder owning in the aggregate more than twenty percent (20%) of the stock of such corporation, has been issued a federal wagering stamp for the current tax period; and
- 21) Any premises for which a federal wagering stamp has been issued by the federal government for the current tax period.

#### Section 13. Restrictions to License Issuance.

A) No liquor license shall be issued for the sale at retail of any alcoholic liquor within two hundred (200) feet of any church, school, hospital, home for the aged or indigent persons, veterans, their wives or children, or any military or naval station. The distance of two hundred (200) feet shall be measured between the nearest part of any such building and the building which is the subject of any application for a liquor license;

B) No license shall be issued under this ordinance for premises which are not properly zoned for the commercial use outlined in the application.

### ARTICLE V--LICENSE CLASSIFICATION/FEES/HOURS OF SALE

#### Section 1. Classification of Licenses and Fees.

Alcoholic liquor licenses authorized to be issued under this ordinance shall be, and are hereby, divided into the following classes:

1) Class A license shall authorize the retail sale in restaurants only of alcoholic liquor for consumption on the restaurant premises provided the dollar value of food sales of any such restaurant exceeds seventy percent (70%) of the total sales of food and liquor. Alcoholic liquor may be sold under a Class A license only during the period when patrons of the licensee are offered a complete meal.

Any such restaurant may include a holding area, subject to the following restrictions.

A) The service of alcoholic beverages in the holding area is permitted without a meal provided the customer or patron is waiting to be seated in the restaurant.

B) The service of alcoholic beverages in the holding area is not made directly from behind any service counter but, rather, is made by waiters, waitresses, or employees of the licensee in the same manner as service is made to tables in the restaurant.

C) There shall be a single entrance for both the restaurant and holding area and access to the holding area shall require passage through the restaurant.

D) There shall be a physical separation between the restaurant and the holding area in consideration of those patrons who wish to remain apart from the holding area.

E) The opening and closing hours of the holding area shall be the same as those of the restaurant.

A Class A licensee may also maintain and operate a lounge within the same premises, provided that such lounge area shall only contain a maximum of one square foot of floor space for every five square feet of floor space in the non-lounge areas of the restaurant. A lounge shall be subject to the following

additional restrictions:

- a) There shall be a single entrance for both the restaurant and lounge. The single entrance shall not permit patrons direct ingress to the lounge;
- b) A complete meal must be offered for and available to the patrons of the lounge; and
- c) The lounge may not be opened beyond the hours specified in Article V, Section 2, nor at any time when the dining area is closed.

The annual fee for a Class A license shall be One thousand five hundred dollars (\$1,500.00).

2) Class B license shall authorize the retail sale in restaurants only of beer and wine for consumption on the restaurant premises provided the dollar value of food sales of any such restaurant exceeds seventy percent (70%) of the total sales of food and liquor. Beer and wine may be sold under a Class B license only during the period when patrons of the licensee are offered a complete meal. Further, a Class B license holder shall be entitled to operate a holding area and lounge subject to the same conditions and restrictions listed for the Class A license holder, except that only the service of beer and wine shall be authorized. The annual fee for a Class B license shall be One thousand dollars (\$1,000.00).

3) Class C license shall authorize the retail sale of alcoholic liquor for consumption on the premises only in hotels or motels as follows:

A) In restaurants in the hotel or motel, but only at tables during that period when patrons are offered a complete meal. A lounge may be provided in conjunction with a full service restaurant. Alcoholic liquor may be served in the lounge with or without food at any time subject to required closing hours;

B) By the glass or bottle in rooms which contain sleeping accommodations which are contemporaneously occupied by guests when served by room service but not from locked stock in the room; or

C) In meeting rooms and reception rooms, but only during scheduled meetings or receptions.

The annual fee for a Class C license shall be One thousand five hundred dollars (\$1,500.00).

4) Class D license shall authorize the retail sale, on the premises specified in the license, of alcoholic liquor in its original package and not for consumption on the premises (package sales). Package sales on premises primarily devoted to the sale at retail of grocery food, commonly known as supermarkets, and drugs and sundries, commonly known as drugstores, shall be subject to the following conditions and restrictions:

A) That portion of the premises devoted to the sale of alcoholic liquor shall be confined to an area which is separated from the other retail portions of the supermarket and/or drugstore premises by physical separation as approved by the liquor control commissioner.

B) That portion of the premises devoted to the sale of alcoholic liquor shall be no larger than thirty-five percent (35%) of the gross above-grade square footage of the entire premises which is the subject of the application and license.

C) Cash registers must be used which are capable of registering an accounting for all alcoholic liquor sales separate from other non-alcoholic sales.

D) Beer in containers of not more than sixteen ounces (16 oz.) shall not be sold in quantities of less than six (6) cans or bottles to any customer.

E) That portion of the premises devoted to the sale of alcoholic liquor shall not have ingress and egress separate from the ingress and egress of the non-alcoholic portions of the premises.

F) Any display for purchase or samples of alcoholic liquor must be maintained to the confined area referenced in subsection A immediately hereinabove.

The annual fee for a Class D license shall be One thousand five hundred dollars (\$1,500.00).

5) Class E license shall authorize the retail sale, on the premises specified in the license, of beer and wine only in its original package and not for consumption on the premises (package sales). Package sales shall be limited to premises primarily devoted to the sale at retail of grocery food, commonly known as supermarkets, or premises primarily devoted to the sale at retail of drugs and sundries, commonly known as drugstores or convenience stores. The following conditions shall apply to Class E licenses:

A) That portion of the premises devoted to the sale of beer or wine shall be confined to an area which is separated from the other retail portions of the premises by physical separation as approved by the liquor control commissioner.

B) That portion of the premises devoted to the sale of beer or wine shall be no larger than thirty-five percent (35%) of the



gross above-grade square footage of the entire premises which is the subject of the application and license.

C) Cash registers must be used which are capable of registering an accounting for all beer or wine sales separate from other non-alcoholic sales.

D) Beer in containers of not more than sixteen ounces (16 oz.) shall not be sold in quantities of less than six (6) cans or bottles to any customer.

E) Any display for purchase or samples of alcoholic liquor must be maintained to the confined area referenced in subsection A) hereinabove.

The annual fee for a Class E license shall be One thousand dollars (\$1,000.00).

For holders of Class A or Class B licenses, the license holder shall submit to the liquor commissioner a statement reflecting the gross revenue in dollars and percentages collected by the licensee for non-alcoholic beverages and food consumed on the premises, and the total gross revenue in dollars and percentages collected by the licensee. A certified public accountant or public accountant shall prepare the statement and indicate the scope of his examination, if any, and the degree of responsibility he is taking. The statement shall be submitted semiannually on or before April first, which shall cover the six-month period ending the last day of February, and October first, which shall cover the six-month period ending the last day of August. If the commissioner wishes to challenge the statements so provided, he may call the holder of said license to submit whatever additional proof necessary to support the



statements of the license holder.

Section 2. Hours of Sale.

A) No alcoholic liquor shall be sold, offered for sale, given away, carried out of or consumed by anyone, including the owners and employees thereof, on or in any premises licensed under this ordinance at hours other than the following designated hours:

FOR CLASS A, CLASS B, AND CLASS C LICENSE HOLDERS:

Monday through Thursday and Sunday	Between 11:00 a.m. and 1:00 a.m. of the following day
Friday through Saturday	Between 11:00 a.m. and 2:00 a.m. of the following day.

FOR CLASS D AND CLASS E LICENSE HOLDERS:

Monday through Sunday	Between 6:00 a.m. and 2:00 a.m. of the following day
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B) All licensees shall make it a policy that all alcoholic liquor in glasses or cans or bottles be removed from bar tops, counters, tables, and any other location open to the public at time of closing.

C) All premises licensed under this ordinance shall be subject to inspection by the Village President, as liquor commissioner, and/or his designated agents at any hour deemed necessary to ensure compliance with this section.

State law reference: 235 ILCS Section 5/6-14.

ARTICLE VI--CHANGES AFFECTING LICENSURE

Section 1. Sale of Business

On the sale of any business licensed under this ordinance the local liquor commissioner may, upon surrender of the original

license, issue a new license to the vendee thereof for the unexpired period of the original license, provided, however, that such vendee shall first comply with all the laws of this state and the ordinances of the Village relating to the sale of alcoholic liquor.

Section 2. Cessation of Business.

Any licensee under this ordinance who has ceased to do business or closes his place of business for a period of more than ninety (90) successive days without written permission from the local liquor commissioner shall be subject to having its license declared forfeited and lapsed by order of the commissioner.

Section 3. Change in Personnel.

A) The occurrence of any one or more of the following events shall be deemed to constitute a change in the identity of the holder of a license issued under this ordinance, for which a new license shall be required;

- 1) With respect to any licensee that is a corporation, the replacement or addition of any officer or director of such corporation or any shareholder owning directly or indirectly, including ownership by members of the same household, five percent (5%) or more of the outstanding shares of any class of the capital stock of such corporation;
- 2) With respect to any licensee that is a general partnership, the replacement or addition of any general partner; and
- 3) With respect to any licensee that is a limited partnership, the replacement or addition of any general partner or of any limited partner holding directly or indirectly, including ownership by members of the same household, more than a five percent (5%) interest in the earnings of such limited partnership.

B) Upon the occurrence of any of the events described in subsection (A) of this section, the licensee shall, as promptly as practicable, and in any event within five (5) regular business days after the occurrence of such event, give the local liquor control commissioner notice describing such event, in reasonable detail. Failure to give the notice required by the provisions of this subsection (B) shall constitute a violation of this ordinance, subjecting the licensee to revocation or suspension of the license. No additional license fee shall be payable for a new license required by virtue of the occurrence of any of the events described in subsection (A) of this section, and so long as an application therefor is pending and not yet acted upon by the local liquor commissioner, the applicant may continue to conduct its business and operations under the license in effect immediately prior to such occurrence.

C) Within ten (10) days of any change of manager or agent conducting business for the licensee, the licensee shall report such change to the local liquor commissioner.

#### Section 4. Change of Location.

A retail liquor dealer's license shall permit the sale of alcoholic liquor only in the premises described in the application for the license and the license. Such location may be changed only upon written permission to make such change issued by the liquor control commissioner. No change of location shall be permitted unless the proposed new location is a proper one for the retail sale of alcoholic liquor under the laws of the state and under the ordinances of the Village of Winnebago.

Section 5. License a Personal Privilege; Not to be Subject to Attachment, Transfer, Devolution.

A license issued under this ordinance shall be purely a personal privilege, good for not to exceed one (1) year after issuance, unless sooner revoked as provided in this ordinance, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such license shall not descend by the laws of testate or intestate devolution, but it shall cease upon the death of the licensee and shall not descend to any heirs of the licensee; provided, that executors or administrators of the estate of any deceased licensee, and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court, and may exercise the privileges of the deceased or insolvent or bankrupt licensee after the death of such decedent or such insolvency or bankruptcy until the expiration of such license, but not longer than six (6) months after the death, bankruptcy, or insolvency of such licensee.

State law reference: 235 ILCS Section 5/6-1.

ARTICLE VII--LICENSE SUSPENSION AND REVOCATION GENERALLY/APPEALS

Section 1. License, Suspension and Revocation Generally.

A) The local liquor commissioner may, in accordance with the Liquor Control Act (235 ILCS 5/1-1 et seq.), revoke or

suspend any license issued under the provisions of this ordinance and/or levy a fine on the licensee if it is determined that the licensee has violated any of the provisions of the Liquor Control Act (235 ILCS 5/101 et seq.), this ordinance, or any other ordinance or resolution enacted by the corporate authorities of the Village, or any applicable rules or regulations established by the local liquor commissioner or the state liquor control commission, or any state and/or federal statute which is not inconsistent with the law. However, except as otherwise stated herein, no such license shall be revoked or suspended and no fine may be levied except after a public hearing by the local liquor commissioner with a three-day written notice to the licensee affording the licensee an opportunity to appear and defend the charges contained in such notice. The three-day notice provisions shall begin the day following delivery by certified or registered mail or by personal service. All such hearings shall be open to the public and the local liquor control commissioner shall reduce all evidence to writing and shall maintain an official record of the proceedings.

B) The local liquor control commissioner shall within five (5) days after such hearing, if he determines after such hearing that the license should be revoked or suspended or that the licensee should be fined, state the reason or reasons for such determination in a written order, and either the amount of the fine, the period of suspension, or that the license has been revoked, and shall serve a copy of such order within the five (5) days upon the licensee.

C) Order to close business; hearings:

- 1) If the local liquor commissioner has reason to believe that any continued operation of a particular licensed premises will immediately and gravely threaten the welfare of the community he may, upon the issuance of a written order stating the reason for such conclusion and without notice or hearing, order the licensed premises closed for not more than seven (7) days, giving the licensee an opportunity to be heard during that period; except that if the licensee is also engaged in another business on the licensed premises, such order shall not be applicable to such other business.
- 2) The local liquor commissioner shall, within five (5) days after such hearing, if it is determined after such hearing that the license should be revoked or suspended, state the reason for such determination in a written order of revocation or suspension and serve a copy of such order within a reasonable time upon the licensee.
- 3) The licensee shall pay such costs to the Village within thirty (30) days of notification of the costs by the local liquor commissioner. Failure to pay such costs within thirty (30) days of notification is a violation of this section and may be cause for license suspension or revocation.

D) When any license issued under this ordinance shall have been revoked for any cause, no new license shall be granted to such licensee for a period of one (1) year thereafter for the conduct of the business of selling alcoholic liquor at retail in the premises described in such revoked license.

Section 2. License Revocation or Suspension Triggered by Specific Incidents.

A) Revocation upon conviction of violation. Whenever any licensee shall have been convicted by any court of a violation of any of the provisions of the liquor control act, or of this ordinance or any other ordinance of the Village controlling or regulating the sale of alcoholic liquors, the licensee may, in addition to all other penalties for such offense, incur a



forfeiture of any local retail liquor dealer's license issued pursuant to this ordinance and all moneys that have been paid therefor. The liquor commission is further empowered to suspend the local liquor license of any licensee for a period of not to exceed thirty (30) days and/or to fine the licensee an amount not to exceed Five hundred dollars (\$500.00) for each violation, in any instance when the members of the commission find that the licensee or the agents or employees of the licensee have violated any of the provisions of this section or law of the state relating to liquor control. Each day on which the violation occurs shall be considered a separate violation.

B) Denial of Issuance or Renewal, or Revocation or Suspension for Violation of Retailer's Occupation Tax Act. In addition to other grounds specified in this ordinance, the local liquor commissioner shall refuse the issuance or renewal of a retail liquor dealer's license, or suspend or revoke such license, for any of the following violations of the Retailer's Occupation Tax Act, 65 ILCS 5/8-11-1 et seq., as amended:

- 1) Failure to make a tax return;
- 2) The filing of a fraudulent tax return;
- 3) Failure to pay all or part of any tax or penalty finally determined to be due;
- 4) Failure to keep books and records;
- 5) Failure to secure and display a certificate or subcertificates of registrations; and
- 6) Willful violation of any rule or regulation of the department relating to the administration and enforcement of tax liability.

State law reference: 235 ILCS Section 5/6-3.



Section 3. Appeals.

A) Review of all decisions of the local liquor commissioner shall be as provided for in section 153 of the Liquor Control Act (235 ILCS 5/7-9) and shall be limited to a review of the official record of the local liquor commissioner, and, if applicable, the state liquor commission. Any licensee determined by the local liquor commissioner to have violated any of the provisions of the Liquor Control Act, or any ordinance or resolution of the Village, or any rule or regulation established by the local liquor commissioner or the state liquor control commission shall pay to the Village the costs of the hearing before the local liquor commissioner on such violation. The local liquor commissioner shall determine the costs incurred by the Village for the hearings, including, but not limited to: court reporter's fees, the costs of transcripts of records, Village attorney's fees, liquor commission's attorney's fees, prosecuting attorney's fees, cost of preparing and mailing notices and orders, and all other miscellaneous expenses incurred by the Village, or such lesser sum as the local liquor commissioner may allow.

B) In the event of an appeal to the state liquor commission, and in cases where appeal is taken pursuant to 235 ILCS 5/3-101 et seq., payment is due forty (40) days after the entry of an order finally affirming the determination of the local liquor commission.

C) It shall be the duty of the Village Attorney to attend all trials before the state commission involving appeals from the local commission.

## ARTICLE VIII--EMPLOYEE CERTIFICATION REQUIREMENTS

### Section 1. Employer's Responsibility for Certifying Employees.

At the time of submission of an initial application by the licensee or request for renewal thereof, the licensee shall provide a written verification to the local liquor control commissioner that all current managers and other employees meet any and all state, federal, or other legal requirements for employment as a manager or employee, as the case may be, on the licensed premises, and that all future managers and other employees hired will meet any and all state, federal, or other legal requirements for employment as a manager or employee, as the case may be, on the licensed premises. A violation of this section shall be grounds for suspension or revocation of any liquor license or renewal thereof issued to a given licensee.

## ARTICLE IX--CONDUCT ON LICENSED PREMISES

### Section 1. Display of License.

Any license issued under this ordinance shall be displayed by the licensee at all times in a conspicuous place where it is readily visible to an inspecting officer.

### Section 2. Responsibility for Agents and Employees.

Every act or omission, of whatsoever nature, constituting a violation of any of the provisions of this ordinance by an officer, director, manager, or other agent or employee of any licensee, if such act is committed or omission is made within the scope of such agency or employment or with the authorization,

knowledge, or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and such employer or licensee shall be punishable in the same manner as if such act or omission has been done or omitted by him personally.

Section 3. Employment of Underage Persons.

A) It shall be unlawful for any licensee under this ordinance, or any officer, associate, member, representative, agent, or employee of such licensee, to engage, employ, or permit any person under the age of twenty-one (21) years to tend bar or to draw, pour, or mix any alcoholic liquor; provided, that the provisions of this section shall not be construed to prevent the employment of persons who are at least eighteen (18) years of age as waiters or waitresses in restaurants, hotels, and motels for the purpose of serving food and alcoholic liquor in the licensed retail premises. Further, a person employed by licensee who is at least eighteen (18) years of age shall be allowed to take the initial order for each patron for any alcoholic liquor in the licensed premises. All licensees operating restaurants or hotels shall have present upon the premises at any time alcoholic liquor is being served a person who will be responsible for the direction, management, or supervision of the business and/or its employees. Further, all employees must be suitably attired in a modest manner.

B) It shall be unlawful for any licensee or any agent or employee of any licensee holding a retail license authorizing the sale of alcoholic liquor not for consumption on the premises to permit any employee under the age of twenty-one (21) years or any

customer of any age to register, by mechanical or electronic means, the sale of any alcoholic liquor, including beer and wine.

Section 4. Diseased Employees.

It shall be unlawful to employ in any premises used for the retail sale of alcoholic liquor any person who is afflicted or who is a carrier of any contagious, infectious, or venereal disease, and it shall be unlawful for any person who is afflicted with or a carrier of any such disease to work in or about any premises or to engage in any way in the handling, preparation, or distribution of such liquor.

Section 5. Sanitation Generally.

It shall be the duty of every licensee hereunder to keep the premises where such business is carried on clean and in proper sanitary condition. All persons employed or working in such premises shall be clean and cleanly clothed. All utensils, appliances, vessels, receptacles, refrigerators or any other places or things whatsoever which are used for the purpose of storing, must be at all times kept in a clean, wholesome, and sanitary condition.

Section 6. Inspections.

It shall be the duty of the liquor commissioner, or anyone whom he may designate to inspect and examine all premises wherein a business licensed hereunder is conducted to ascertain whether there is proper compliance with the provisions of all the ordinances of the Village relating to the carrying on of such business. It shall be the duty of every licensee hereunder to permit such inspections to be made, and when required, to furnish

samples of any carbonated, fruit or extract drinks or beverages, or any malted, cereal, vinous, distilled or synthetic intoxicating and non-intoxicating beverages, and of wash water, glasses, and sterilization compound, which samples shall be examined by said commissioner or his delegate, and a record of such examination or analysis shall be made and kept on file.

The failure or refusal of any licensee, his agent, or employee, to permit and allow such entry and inspection shall result in an automatic suspension, without a hearing, of the license and the rights and privileges granted therewith to the licensee for the premises so sought to be entered and inspected. Such a suspension may only be terminated by the commission after a public hearing, which must be held within ten (10) days of such suspension, and after public notice has been given at least three (3) days in advance thereof. After such hearing, the suspension may be terminated, continued indefinitely, or the license may be revoked.

Section 7. Outdoor Consumption.

It shall be unlawful for any person, and for any licensee under this ordinance to allow any person to consume alcoholic liquor outside of the improvement located on any licensed premises other than in a permitted courtyard.

Section 8. Reporting of Incidents to Police; Telephone Required on Premises.

Each licensee and each of his agents and employees shall promptly report to the police department of the Village of Winnebago any incident occurring in, on, or about the licensed

premises and in his knowledge or view relating to the commission of any crime including violation of this ordinance, and shall truthfully and fully answer all questions and investigations of any identified police officer who makes inquiry concerning any persons in or about the licensed premises and any events taking place in and about the licensed premises, and cooperate fully in any such investigation including the giving of any oral or written statements at such reasonable times and in such reasonable locations to any police officer engaged in said investigation.

Each licensee shall maintain on each licensed premises not less than one telephone in operating order, which telephone must be within the easy access of the bartender or other responsible person in charge of the premises at all times for the purpose of reporting to the police department incidents occurring on or about the licensed premises.

Section 9. Public Drinking and Possession of Alcoholic Beverages With a Broken Seal.

No person shall transport, carry, possess, have, or consume any alcoholic liquor in any street, alley, Village parking lot, privately owned parking lot opened to the public in a commercial area, or in or upon any vehicle commonly used for transportation of passengers, or in and upon and depot or waiting room area of any public carrier within the Village except in the original container and with the seal unbroken.

Section 10. Carrying of Alcoholic Liquor in Unsealed or Opened Container From Premises.

It shall be unlawful for any person to carry any alcoholic liquors in an unsealed or opened container from the licensed

premises where such alcoholic liquor was purchased.

No licensee or person as proprietor, agent, servant, or employee of such licensee shall knowingly permit any patron to violate this section nor continue to sell alcoholic liquors to such person knowing that such person intends to carry the alcoholic liquor from the premises in an open or unsealed container.

Section 11. Prohibited Activities on Licensed Premises.

A) **Gambling.** It shall be unlawful to permit any gambling on any premises licensed to sell alcoholic liquor.

B) **Solicitation.** It shall be unlawful for any licensee, its manager, or other person in charge of any licensed premises where alcoholic liquor is sold or offered for sale for consumption thereon to engage, employ, or permit the engagement or employment of any person who shall solicit any patron or customer thereof to purchase alcoholic or non-alcoholic liquor for such person, or any other person therein; nor shall any person solicit any patron or customer therein to purchase alcoholic or non-alcoholic liquor for himself or any other person therein; provided, however, that nothing contained in this subsection shall prohibit any adult manager, bartender, or waitress who shall be regularly employed therein from accepting and serving the order of a patron or customer in the regular course of employment as such manager, bartender, or waitress.

C) **Sexually explicit conduct.** It shall be unlawful for any licensee, its manager, or other person in charge of premises licensed to sell alcoholic liquor to permit the following kinds



of conduct, or books, magazines, coin-operated motion picture devices, films, or movies depicting, describing, or relating to the following kinds of conduct on such premises:

- 1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law.
- 2) The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus, or genitals.
- 3) The actual or simulated displaying of the breasts, buttocks, pubic hair, anus, vulva, or genitals.

Any person or entity licensed under the provisions of this ordinance, or any agent, officer, or employee of any such person or entity who is convicted of a violation of this section shall have his license suspended or revoked.

#### ARTICLE X--MISCELLANEOUS PROVISIONS

##### Section 1. Sales on Elections Days.

Pursuant to Chapter 43, paragraph 129, Illinois Compiled Statutes, all licensed establishments for the sale of alcoholic liquor may sell at retail any alcoholic liquor on the day of any national, state, county or municipal election, including the primary elections.

##### Section 2. Drinking During Restricted Hours.

It shall be unlawful for any person to drink any alcoholic liquor in any public place, whether licensed under this ordinance or not, during the hours when alcoholic liquor is prohibited from being sold.

Section 3. Permitting Persons on Premises During Closing Hours.

It shall be unlawful for any person to permit any person other than the licensee, his employees, or members of their families to be on licensed premises under this ordinance during the closing hours. All such persons other than those enumerated above shall vacate the licensed premises within fifteen (15) minutes of the closing hour established in Article V, Section 2, hereinabove. However, a licensee under the appropriate liquor class licensure may remain open for restaurant business, hotel, or other retail business, over and above the hours for liquor sales if the bar and service area is closed at the required time.

Section 4. Repeal of Any Prior or Conflicting Ordinances.

Any and all ordinances or parts of ordinance provisions passed by the Board of Trustees of the Village of Winnebago, Illinois, which are in conflict with this Ordinance No. 97-11, are hereby repealed.

Section 5. Ordinance Effective Date.

This ordinance shall be in full force and effect from the date of and after its passage and approval.

APPROVED:

David S. Hassel  
David S. Hassel, President of the Board of  
Trustees of the Village of Winnebago, Illinois

ATTEST:

Sally Jo Huggins  
Sally Jo Huggins, Village Clerk

PASSED: 10/13/97

APPROVED: 10/13/97

FILED: \_\_\_\_\_