

## 9.112 Licensee and Employee Intoxication Prohibited (Sober Server)

- (1) **Statement of Policy.** Alcohol beverage licensees and their employees are responsible for enforcing state statutes and City ordinances relating to the sale and consumption of alcohol beverages, including preventing underage persons from entering the establishment and consuming alcohol beverages, not serving intoxicated persons, and maintaining orderly conduct within the establishments. In order to do this effectively, licensees and their employees cannot be under the influence of intoxicants to any degree, and therefore, to protect the health and welfare of the City, its citizens and the patrons of alcohol beverage establishments, the City establishes these restrictions on Licensees and their Employees.
- (2) **Definitions.**
  - (a) Alcohol Beverage means fermented malt beverages and intoxicating liquors, as those terms are defined in Wis. Stats. §125.02, or its successor.
  - (b) Employee means any person, while engaged in any of the following activities for, or at the direction of, a Licensee, whether acting as an employee, independent contractor or agent: Tending bar, waiting on customers, serving Alcohol Beverages to customers, verifying the ages of customers, selling alcohol beverages, providing security, or supervising Employees who are engaged in any of these activities.
  - (c) Intoxicant means any Alcohol Beverage, hazardous inhalant, controlled substance, controlled substance analog, or other drug, or any combination thereof.
  - (d) Licensee means the holder of a retail license or permit issued by the City of Waukesha under Wis. Stats. Chapter 125; or the holder of an operator's license issued under Municipal Code §9.08, or its successor; while engaged in any of the following activities: Tending bar, waiting on customers, serving Alcohol Beverages to customers, verifying the ages of customers, selling alcohol beverages, providing security, or supervising Employees or Agents who are engaged in any of these activities.
  - (e) Under the Influence means manifesting the known physical, physiological, mental or psychological effects of the presence of Intoxicants in a person's bloodstream, which tend to alter the perception, self-control or judgment of the person.
- (3) **Rule.** No Licensee, Employee or Agent shall be under the influence of an Intoxicant while on or within a Licensed Premises.
- (4) **Presumption of Influence.** A test of a person's breath, blood, or urine, including a preliminary breath test, which indicates a blood alcohol concentration of 0.04% or greater, is prima facie evidence, but is not required to establish, that the person is Under the Influence. Law enforcement officials may request a preliminary breath test upon reasonable suspicion of a violation of this Section. Refusal by a Licensee, Employee or Agent to submit to a requested test may be considered by the Common Council as grounds for revocation, non-issuance, or non-renewal of the Licensee's operator's license.
- (5) **Penalties.**
  - (a) **Closure.** If a violation of this Section 9.112 occurs, and the principal business of the licensed premises is the sale of Alcohol Beverages, law enforcement officials shall order it closed until an individual legally authorized to operate the premises, who is not Under the Influence, is available to take charge of the premises. It is a violation of this section for any licensed premises to remain open after law-enforcement officials have ordered it closed.
  - (b) **Forfeiture.** Any person violating this Section 9.112 shall be subject to the provisions of Municipal Code §25.05.