

Chapter 123
ENTERTAINMENT, MUSICAL

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§ 123-1. Purpose.

To establish a maximum threshold of the volume of musical entertainment that originates from an establishment that holds a valid liquor license issued by the Village of Iola taking into consideration the interest of the entity that is providing the musical entertainment and the nature, character and interest of the property owners and occupants of the property that are not present on premises from which the musical entertainment originates.

§ 123-2 Permit Required.

No person, firm, or corporation shall hold, sponsor, or conduct musical entertainment outside of a building in which musical entertainment projects outside where alcoholic beverages are served except in compliance without first having received an annual permit issued by the Village of Iola. The annual permit term shall be from July 1 through June 30 of the following year.

A. The application for the annual musical entertainment permit shall be made with the Village Clerk/Treasurer and authorized by the Village Board or its designee.

- B. The annual non-refundable musical entertainment permit fee shall be \$250.00 and shall be paid at the time the application for the musical entertainment permit is submitted to the Village Clerk/Treasurer.

§ 123-3 Regulations.

The holder of a musical entertainment permit shall be the acceptor of the grant of a musical entertainment permit and ensures that all musical entertainment be in compliance with the following regulations:

1. Musical entertainment shall be Fridays and/or Saturdays of each week between the hours of 3:00 PM and 11:00 PM.
2. Musical entertainment shall be permitted on Sundays Noon until 6:30 PM.
3. All performances shall only be allowed commencing the Friday of Memorial Day Weekend of any given year through Labor Day except as otherwise provided by this Ordinance.
4. The maximum volume of noise shall not exceed at any time 90 decibels. The measured reading of decibels shall be at the property line of the permit holder's premises.
5. The entrance and exit of the premises shall have either a temporary or permanent barricade along any public sidewalk, except that a four (4) foot opening in the barrier shall be allowed for handicapped access.
6. The method for measuring noise shall be a sound level meter.
7. Noise measurement shall be at the nearest lot line of the premises from which the musical entertainment originates. The noise meter shall be placed at least three feet above the ground and at least three feet from walls, barriers, and obstructions and all other sound reflective surfaces.

§ 123-4 Nontransferability.

- A. Each permit issued pursuant to this chapter shall be separate and distinct from all others and shall not be transferable from the owner/operator to whom it was issued to any other owner/operator.
- B. Whenever an owner/operator sells or transfers title to, or assigns the lease of or subleases, a business establishment, the owner/operator shall notify the Village Clerk, in writing, within five business days of such transfer.
- C. A prospective new owner/operator shall apply for a permit 30 business days in advance of a change in ownership.

§ 123-5 Complaints seeking suspension, revocation and nonrenewal of permit.

- A. The Zoning Liaison or Chief of Police may file with the Village Clerk a written complaint against any owner/operator holding a permit in the Village at any time that said permit is in existence, seeking suspension, revocation or nonrenewal of the permit.
- B. The complaint shall set forth the factual grounds for seeking suspension, revocation, or nonrenewal, including, but not necessarily limited to, the grounds set forth in §123-6 below. A copy of the complaint shall be served by certified mail, return receipt requested, or personal service on the owner/operator at the owner's/operator's address shown on the most recent application for permit on file pursuant to this chapter.
- C. The owner/operator shall file, by mail or personally deliver, a written response to the complaint with the Village Clerk within 14 days of receipt. Failure to file an answer shall render the allegations in the complaint deemed true for purposes of imposition of penalties.
- D. The Zoning Liaison or Chief of Police that initiated the complaint (the "complainant") shall make a written recommendation regarding suspension, revocation, or nonrenewal to the Village Planning commission. The Village Planning commission shall make a decision regarding suspension, revocation, or nonrenewal, and issue written notice of the decision to the owner/operator (the "initial decision"). This initial decision shall be made based upon the parties' written submissions. The Village Planning commission may, but is not required to, conduct a hearing when making its initial decision.
- E. The owner/operator may appeal the initial decision under §123-7 below, and imposition of the penalty determined by the initial decision shall be stayed pending completion of the appeal process.

§ 123-6 Grounds for denial, suspension, revocation, or nonrenewal of permit.

- A. A permit may be denied, suspended for an amount of time ranging from five to 30 days, revoked, or nonrenewed for any of the following reasons:
 - (1) Any violation of this chapter.
 - (2) The owner/operator or manager/agent has multiple criminal misdemeanor convictions that relate to the business establishment or has been convicted of a felony that relates to business operation. This subsection shall not apply to corporations, limited liability companies, or partnerships, but shall apply to all officers, directors of such corporations and members of any such limited liability companies, and partners of any such partnerships.
 - (3) The owner/operator or manager/agent provides incomplete, false, or misleading information on the permit application or in response to questions, if any, submitted by the village to either the owner/operator or the manager/agent.
 - (4) The owner/operator has an outstanding debt to the Village or has delinquent taxes, delinquent assessments, or other delinquent payments. Delinquent taxes, delinquent assessments, or other delinquent payments includes, but is not limited to, any delinquency for (unpaid) special

assessments, personal property taxes, real estate taxes, failure to pay any adjudicated fines or penalties and delinquent (unpaid) fees or charges originally payable to the Village.

(5) The owner/operator, manager/agent, or the property has an unabated notice of violation of any other provision of the Village Municipal Code in excess of 30 days, excepting only to the extent that said Village ordinances are preempted by the Wis. Stats., and state agency regulations issued pursuant hereto, all in accordance with the provisions of this chapter.

(6) Such other relevant facts as the Zoning Liaison or Chief of Police may discover or deem applicable or necessary in the course of the review of the application of, or complaint against, the owner/operator, manager/agent, or business establishment, such as:

(a) Incidence of noise complaints in violation of operating outside of permitted days and/or times.

(7) The owner/operator, manager/agent, or the permitted premises is noncompliant with any federal law, State law, or Village ordinance.

(8) Good cause, in the discretion of the Village Board, showing that the operation of the outside entertainment has, is, or will negatively impact the health, safety and/or welfare of its guests, the residents or businesses of the surrounding community, or the Village due to any of the foregoing factors listed above.

B. In processing a complaint for revocation, suspension, or nonrenewal, a representative of the Village Police Department and/or Zoning Liaison shall prepare an investigative report that details the circumstances that led to the recommendation for suspension, revocation, or nonrenewal. It may include any or all of the foregoing factors, or following factors that are applicable:

(1) Frequency of violations of the Village ordinances;

(2) Seriousness of violations, arrests in relation to the impact upon public health, safety or welfare;

(3) History of the violations and/or arrests;

(4) Good-faith efforts taken by the responsible party to correct, reduce, and/or alleviate violations and/or arrests;

(5) Any activity, action or effort taken by the responsible party to obstruct or interfere with correction of the problem;

(6) The impact of the violations and/or arrests on the surrounding property and community;

(7) The financial impact to the Village.

§ 123-7 Appeal process; notice of hearing.

A. Pursuant to §68.16, Wis. Stats., the Village expressly opts out of the administrative review procedures contained in Ch. 68, Wis. Stats., and expressly opts out of Chapter 3 of the Village Code of Ordinances. The Village hereafter provides its own alternative due process procedure for administrative review.

- B. If a permit is denied, suspended, revoked, or nonrenewed by the initial decision of the Village Planning Commission Liaison, the Village clerk, within 15 days, shall provide the owner/operator a letter stating the reasons for denial, suspension, revocation, or nonrenewal. Said letter shall be delivered in person or sent by certified mail to the owner/operator as identified on the most-recent permit application and shall be mailed to the owner's/operator's address listed on the most-recent permit application. If served by certified mail, service is deemed complete upon mailing.
- C. Any owner/operator may appeal the Village Planning Commission Liaison's initial decision by submitting to the Village clerk, within 14 days of service of the denial letter, a written letter requesting an appeal. The letter should state in detail the grounds for requesting reversal of the initial decision of denial, suspension, revocation or nonrenewal, and shall be signed by the owner/operator.
- D. If an appeal is timely requested, the Village Board shall schedule and hold a hearing. The Village Clerk shall serve the appellant with notice of said hearing by mail or personal service at least 10 days before the date that said hearing is scheduled to occur.
- E. If an appeal is not timely requested, the initial decision shall become the final decision after 14 days have elapsed from service of the initial decision on the owner/operator.
- F. In the event of an appeal, the Village Board has the ultimate authority to affirm or reverse the initial decision to deny, suspend, revoke, or nonrenew the permit following the hearing (the "final decision").
- G. Said hearing shall be conducted in accordance with the following:
 - (1) The Village board shall serve as an impartial decisionmaker to oversee the hearing and make any decisions on appeal and no members may participate that participated in making the initial decision.
 - (2) The appellant and the complainant may be represented by an attorney, may present evidence, may call and examine witnesses, and may cross-examine witnesses of the other party. All witnesses shall be sworn by the person conducting the hearing.
 - (3) The complainant and/or the complainant's designees shall testify under oath in support of his or her recommendation. The appellant, or his or her attorney, may cross-examine the complainant.
 - (4) The appellant may testify under oath in support of his/her position. The complainant, or his or her attorney, may cross-examine the appellant if the appellant chooses not to testify on his or her own behalf.
 - (5) The Village board may issue subpoenas. The appellant, through his or her attorney, and the complainant, through his or her attorney, may also issue subpoenas to compel the attendance of witnesses for the production of documents. All subpoenas must be in substantially the same form as provided in §805.07(4), Wis. Stats., and must be served in accordance with §805.07(5), Wis. Stats. If any subpoenas are issued, a copy must be sent to all parties and the Village Board at the time of issuance.
 - (6) Unless extended by order of the Village President, or other presiding member of the Village Board, the complainant, or his or her attorney, and the appellant, or his or her attorney, may provide a ten-minute (or less) closing statement to the Village board.

- (7) The Village Board may make an oral final decision from the bench or may issue a written final decision within 10 days of said hearing.
 - (8) The Village President, or other presiding member of the Village board, shall be in control of said hearing, shall maintain order at all times, and may place reasonable limitations on the parties, including, but not limited to, time limits, limits on the number of witnesses, hearing decorum, and the prohibition of repetitive or irrelevant testimony.
 - (9) The Village President, or other presiding member of the Village Board, or his or her designee, shall take notes of the testimony and shall mark and preserve all exhibits. The Village President, or other presiding member of the Village Board, or his or her designee, may cause the proceedings to be taken by a stenographer or a recording device, the expense of which shall be borne by the Village.
- H. The party aggrieved by the final decision may appeal the final decision to the Waupaca County Circuit Court by certiorari within 30 days of service of the final decision. Service of the final decision is complete upon the issuance of a final decision from the bench or upon the Clerk mailing a written final decision by certified mail to the owner/operator identified on the most-recent permit application at the address contained within the most recent permit application.

§ 123-8. Violations and penalties; attempt; parties to acts.

- A. Penalty. In addition to the general penalty provisions of this Code in Chapter 1, General Provisions, § 1-17, or any other penalty imposed for violation of any section of this chapter; nothing in this Code of Ordinances shall prevent the Police Department from referring violations of the provisions of this chapter to the District Attorney's office in the interest of justice.
- B. Attempt.
- (1) Whoever attempts to commit an act prohibited by this chapter of the Code of Ordinances of the Village of Iola may be required to forfeit amounts not to exceed $\frac{1}{2}$ the maximum penalty for the completed act.
 - (2) An attempt to commit an act prohibited by the ordinances in this Code requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he or she does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he or she formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.
- C. Parties to acts prohibited in this chapter.
- (1) Whoever is concerned in the commission of an act prohibited by this chapter of this Code or Ordinances is a principal and may be charged with and convicted of the commission of said act although he or she did not directly commit it and although the person who directly committed it has not been convicted of some other act prohibited by these ordinances.

(2) A person is concerned in the commission of an act prohibited by these ordinances if he:

(a) Directly commits the act; or

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels, or otherwise procures another to commit it. Such party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This paragraph does not apply to a person who voluntarily changes his/her mind and no longer desires that the act be committed and notifies the other parties concerned of his/her withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.

§ 123-9. Exceptions.

The Village reserves the right to grant an exception to any one or more provisions of this ordinance if the Village determines it is in the best interest of the Village to grant the exception(s) which are requested by the holder of a musical entertainment permit.

- A. In the event that the Village grants an exception to any one or more terms of the provision of this ordinance, the applicant shall be required to make an application for a special event use permit consistent with the terms of the Village Ordinances.
- B. Under the terms of this Ordinance, the fee for the special event permit shall be \$250.00 per event.

§ 123-10. Review.

- A. The terms of this ordinance shall be reviewed by the Village Board immediately following the 2023 Labor Day weekend.

**RESOLUTION TO ADOPT AN ORDINANCE
AND ORDINANCE**

RECITALS

WHEREAS the Village of Iola is a municipal corporation organized under the laws of the State of Wisconsin and whose corporate limits are located in Waupaca County, Wisconsin.

and

WHEREAS the Village Board of the Village of Iola has the authority under the laws of the State of Wisconsin to take such action as is determined to be in the best interests of the residents of the Village of Iola.

and

WHEREAS the existing ordinances do not adequately address issues that arise out of the consequences of the performance of musical entertainment conducted on the premises which also serves alcohol beverages.

NOW WHEREFORE the Village Board of the Village of Iola hereby ordains that the Chapter 123 entitled Musical Entertainment which is attached and whose provisions are incorporated by reference be adopted

LET IT BE FURTHER RESOLVED that Musical Entertainment ordinance shall be adopted and shall take effect following the proper passage and publication or posting as required by law

Dated this 10th day of May, 2023

Village of Iola

AYES 7

NO'S 0

ABSTAIN 0

By Jennifer Schustek, President

Attest: Betty Aanstad, Clerk