

TOWN OF CLAYTON ORDINANCE 2019-002

AN ORDINANCE RESCINDING AND RECREATING THE TOWN'S ORDINANCE # 5.2 REGULATING THE LICENSING AND PERMITTING THE SALE AND SERVICE OF INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

WHEREAS, The Town Board for the Town of Clayton, County of Winnebago has enacted Town Ordinance # 5.2 Regulating and Permitting the Sale and Service of Intoxicating Liquor and Fermented Malt Beverages; and

WHEREAS, The Town Board for the Town of Clayton, County of Winnebago understands that Town Ordinance # 5.2 Regulating and Permitting the Sale and Service of Intoxicating Liquor and Fermented Malt Beverages, Section, (4) Operators Licenses sets the standards and process for issuing Operator's Licenses; and

WHEREAS, The Town Board for the Town of Clayton, County of Winnebago believes that in order to better serve businesses within the community the Town of Clayton should amend Ordinance #5.2 Regulating and Permitting the Sale and Service of Intoxicating Liquor and Fermented Malt Beverages, Section (4) Operator's Licenses to allow for two categories of Operator's Licenses; and

NOW, THEREFORE BE IT ORDAINED THAT, the Town Board of the Town of Clayton, County of Winnebago, State of Wisconsin, does hereby rescind Ordinance #5.2 Regulating and Permitting the Sale and Service of Intoxicating Liquor and Fermented Malt Beverages in its entirety and recreates Ordinance #5.2 Regulating and Permitting the Sale and Service of Intoxicating Liquor and Fermented Malt Beverages as shown on Attachment A to this Ordinance.


Adopted on this 6th day of MARCH, 2019.

Vote: Yes: 4 No: 0 Abstain: 0 ABSENT: 1



Scott Reif, Town Vice Chair

ATTEST:



Richard Johnston, Town Administrator

**Town of Clayton
County of Winnebago
State of Wisconsin**

**Intoxicating Liquor and Fermented Malt Beverages Ordinance
Ordinance #5.2**

An ordinance regulating the licensing and permitting of the sale and service of
intoxicating liquor and fermented malt beverages.

The Town Board of the Town of Clayton, Winnebago County, do ordain as follows:

5.2 Intoxicating Liquor and Fermented Malt Beverages Ordinance

Section 1) **State Statutes Adopted.** The provisions of the WI Statutes, Chapter 125 relating to the sale of intoxicating liquor and fermented malt beverages, exclusive of any provisions thereof relating to the penalty to be imposed or the punishment for violation of said statutes, are hereby adopted and made a part of this ordinance by reference.

Section 2) **Licenses When Required.** No person, except as provided by subsection (1) of this ordinance, shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in, or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage, or cause the same to be done, without having procured a license or permit as provided in this ordinance, nor without complying with all the provisions of this ordinance and all statutes, ordinances and regulation of the State and Town applicable.

Section 3) **Retail and Service Licenses.** There shall be the following classes of license which, when issued by the Town Clerk/Treasurer under the authority of the Town Board, and after payment of the non-prorated fee set forth in Section 9 Fee Schedule and Penalties, referenced by code section, shall permit the holder to sell, deal, or traffic in intoxicating liquor and/or fermented malt beverages as provided in Chapter 125 of the WI Statutes. Sections 125.25, 125.26, 125.27, 125.28, and 125.51.

1) Business Licenses

 a) **Class "A"** licensees may sell beer to consumers in original

packages or containers for off-premises consumption only.
§125.25.

- b) **Class “B”** licensees may sell beer to consumers for on-premises or off-premises consumption. § 125.26(1)

A Six-Month Class “B” License may be issued for a period of 6 months in any calendar year which runs from Jan. 1st to Dec. 31st and is thus different from a license year which runs from July 1st to June 30th. The fee for a six-month license is half of the annual license fee as defined in Section 9 Fee Schedule and Penalties- §125.26(5). Such licenses are not renewable during the calendar year in which issued. A six-month license issued from Jan. 1 through June 30 or for the balance for the year would not prohibit the applicant from obtaining an annual license as of July 1 of that same year.

- c) **Temporary Class “B”** (picnic) beer licenses may sell beer and other fermented malt beverages (e.g. wine coolers with a fermented malt beverage base) to consumers at a picnic or similar gathering of limited duration. Such licenses may only be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six months and to veterans' organizations. Applications must be filed with the Town Clerk at least 15 days prior to presentation before the Town Board. §125.26(6)

Temporary “Class B”, (picnic) licenses may sell wine to consumers as provided in subparagraph (c) above.

An applicant would be exempt from the fee if at the same time the applicant has applied for a Temporary Class “B” beer-license (above) for the same event. Not more than two (2) licenses may be issued under this subsection in any twelve (12) month period. Background checks may be waived by the Town Clerk.

- d) **“Class A”** licensees may sell intoxicating liquor to consumers only in original packages or containers for off-premises consumption. Wine taste samples are allowed of not more than 3 fl. oz. each, free of charge, to customers and visitors for consumption on the premises only between the hours of 10 am and 6 pm. No licensee may provide more than 2 taste samples per day to any one person. §125.51(2)

- e) **"Class B"** licensees may sell intoxicating liquor to consumers by the glass for on-premises consumption. However, wine may be sold for consumption off-premises in the original package or container in any quantity.

- f) **Class A Beer/Liquor License**

Restrictions on Dispensing. The holders of Class "A" and "Class A" licenses as issued by the Town of Clayton as it relates to the sale of intoxicating liquor, shall not permit the selling, dispensing, giving away or furnishing, directly or indirectly, of said intoxicating liquor for consumption off premises between the hours of 9:00 pm and 8:00 am, Central Standard Time.

The holders of Class "A" and "Class A" licenses as issued by the Town of Clayton as it relates to the sale of fermented malt beverages, shall not permit the selling, dispensing, giving away or furnishing, directly or indirectly, of said fermented malt beverages for consumption off premises between the hours of 12:00 midnight and 8:00 am, Central Standard Time.

During that portion of the year when standard time is advanced under WI Stats., Section 175.095, then also said licenses will not be permitted to sell, dispense, give away or furnish directly or indirectly intoxicating liquor and fermented malt beverages between the aforementioned times from Central Standard Day Light Time.

It is the intention of this ordinance to prevent the sale, dispensing, giving away or furnishing, of intoxicating liquor and fermented malt beverages, for consumption off premises, during the above prohibited times. Any violations of this ordinance shall be subject to the penalties as contained within the penalty clause of the chapter to which this ordinance is added.

- g) **Class "B" Beer/Liquor License**

- h) **Reserve Class "B" License.** Licenses available under the quota system, which existed before December 1, 1997 and were not granted or issued by the municipality as of December 1, 1997. The number of Reserve Class "B" Licenses available to a municipality is determined by a series of calculations described in Sections 125.51(4)(br)(l) and 125.51(4)(a)(4(v)(1), (2) of the WI Statutes.

- i. On December 1, 1997, pursuant to §Sec.125.51(4)(bm),

the Town of Clayton of 2,548 residents thus allowing the Town Clerk to issue 8 Regular non-reserve Class "B" liquor licenses.

- ii. Initial Retail Reserve Class "B" License Fee. There shall be an initial fee set forth in the Section 9 Fee Schedule and Penalties, reference this code section, to be paid in addition to the regular license fee.
- i) **Retail "Class C" licensees** may sell wine by the glass, or in an opened original container for consumption on premises. Licenses may be granted to an applicant only if (1) the applicant meets the qualifications set out in Section 125.04(s) for other retail licensees; (2) the license is for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts; and (3) wine is the only intoxicating liquor sold in the barroom. § 125.51(3m).
- j) **Wholesaler's Fermented Malt Beverage License.** The amount of license fee shall be determined by the municipality, but may not exceed \$25.00 per year, or fraction thereof. §125.28(4). Fee set forth in Section 9 Fee Schedule and Penalties, reference this code section.

2) **Beer Gardens Regulated.**

- a) **Required for Outdoor Consumption.** No permit shall be given for the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under permit granted by the Town Board of Supervisors. The permits are a privilege in which no rights vest; and therefore, may be revoked by the Town Board of Supervisors at its pleasure at any time or shall expire on June 30 of each year. No person shall consume or have in his/her possession alcohol beverages on any unenclosed part of licensed premises which is not described in a valid Beer Garden Permit. It is the purpose of proper fencing in the beer garden area to prohibit or significantly restrict the ease in which alcoholic beverages may be passed from within the beer garden area to anyone outside the beer garden.
- b) **Limitations on Issuance of Beer Garden Permits.**
 - i. No permit shall be issued for a beer garden if any part of the beer garden is within fifty (50) feet of any property used for residential purposes, measured

from the property line.

- ii. There shall be a licensed operator within the beer garden when alcohol beverages are dispensed in the beer garden.
 - iii. No open flames may be displayed unless approved by the Clayton Fire Department.
 - iv. Outdoor premises shall be completely surrounded by an attractive wall, fence, or barrier at least four (4) feet in height. The outdoor premises shall be attached to the main business premises and access to the outdoor premises shall only be allowed through the main building.
 - v. The outdoor premises shall only be used for serving food and alcohol beverages and no part of said area shall be used for recreational activities, including, but not limited to, volleyball, horseshoes, darts, and softball.
 - vi. Noise from any source that is emitted from the outdoor area and measured at any border of the real property on which licensed premises is located shall not exceed 85 db from 8:00 am to 10:00 pm and 75 db from 10:00 pm to close of the outdoor premises.
 - vii. Lighting of the area must be shielded and not be of intensity or brilliance to create glare which is distracting to adjoining property owners or can become a hazard or danger to vehicular traffic.
 - viii. Service in the outdoor premises shall be limited to persons seated at tables and or a bar.
 - ix. The outdoor premises shall be allowed to be open during the following hours:
 - Sunday through Thursday: 8:00am to 11:00 pm
 - Friday and Saturday: 8:00am to 12:00 midnight
- c) **Site Plan.** All applicable permits required shall be obtained and submitted along with a site plan that complies with Chapter 7.3, Site Plan Ordinance.
- d) **State Statutes Enforced Within Beer Gardens.** Every

permittee under this section shall comply with and enforce all provisions of Chapter 125, WI Stats., applicable to Class "B" licensed premises, except where such provisions are clearly inapplicable. Violation of the provisions of Chapter 125 of the WI Statutes shall be grounds for immediate revocation of the Beer Garden Permit by the Town Board of Supervisors.

- e) **Inspections.** The Beer Garden shall be inspected annually by the Town of Clayton Building Inspector and the Clayton Fire Inspection Staff.
 - f) **Permit Fee.** Fee for a beer garden permit is required at time of application as set forth in Section 9 Fee Schedule and Penalties, reference this code section, and the permit shall have a term of one (1) year commencing on July 1 and expiring on June 30 of each year. If granted subsequent to July 1 in any given year, the permit shall expire on June 30 after issuance. The fee is non-refundable.
- 3) **License Restrictions.** In addition to the requirements imposed by provisions of the Wis. Stats. adopted by reference in subsection (1) of this section, the following restrictions shall apply to the issuance of licenses or permits pursuant to this section.
- a) **Qualifications.** Individuals; all partners (including limited partners); the officers, directors and agents of corporations; the members, managers and agents of limited liability companies; and the officers, directors and agents of non-profit organizations shall meet the following requirements: (1) must be of legal drinking age; (2) may not have been convicted of a felony which substantially relates to the alcohol beverage licensing activity; (3) may not be a "habitual law offender" (multiple convictions or pending charges which substantially relate to the alcohol beverage licensing activity); (4) must be a resident of Wisconsin for 90 continuous days prior to the date of application (applies to all individuals, all natural persons in a partnership, and the agents of corporations and limited liability companies, but not to officers and directors of corporations, or managers of limited liability companies); and (5) must have successfully completed a responsible server training course within the last 2 years.
 - b) **Effect of Revocation of License.** No license shall be issued for any premises if a license covering such premises has been revoked within six (6) months prior to application. No license shall be issued to any person who has had a

license issued pursuant to this ordinance revoked within twelve months prior to application.

- c) **Location.** No Class "A", "B", or "C" license shall be granted for any premises within three hundred (300) feet of any school, hospital, or church.
- d) **Issuance for Residential Premises.** No license shall be issued to any person for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling house, flat, or residential apartment.
- e) **Inspection of Application and Premises.** The Town Clerk/Treasurer shall notify the Winnebago County Sheriff's Department and Fire Department Inspector of all licenses and permit applications, and these officials shall inspect each application and premise to determine whether the applicant and the premises comply with the regulations, ordinances, and laws applicable and the applicant's fitness for the trust to be imposed. No license or permit provided for in this ordinance shall be issued without the approval of a majority of the Town Board.
- f) **Health and Sanitation.** No license shall be issued for any premises, which do not conform to the sanitary, safety, and health requirements of the State Industrial Commission and the State Board of Health, and to all such ordinances and regulations adopted by the Town.
- g) **Tax Delinquencies.** No license shall be granted for operation on any premises upon which taxes or assessments or other financial obligations to the Town are delinquent.
 - i. **Premises.** No initial or renewal alcohol beverage license shall be granted for any premises for which taxes, assessments, or other claims of the Town are delinquent.
 - ii. **Persons.** No initial or renewal alcohol license shall be granted to any person:
 - 1) Delinquent in payment of any taxes, assessments, or other charges levied by the Town.
 - 2) Delinquent in payment of a forfeiture resulting

from a violation of any ordinance in the Town.

h) Non-Renewals. Renewal of a license may be denied where any of the following has occurred:

- i. Providing false information on an application.
- ii. Violation of the provisions of Chapter 125 Wisconsin Statutes or Town Ordinance 5.2.
- iii. Failure to pay supplier of liquor or beer as required by Sections 125.33(7) or 125.69(4) Wisconsin Statutes.

i) Surrender of License Due to Non-use

- i. A licensee may hold a license until its expiration date or request approval of the Town Board to transfer the license to another qualified location in the municipality. The license may also be surrendered to the Town Clerk/Treasurer. (NOTE: An alcohol beverage license is not "tied" to a particular location. The license is issued to a particular person for a specific premise, but it is the person that holds the license not the place.)
- ii. If a licensed premise is leased or sold, the new owner or tenant may receive an available retail license for the premises, if, prior to granting the license, control of the premises can be shown by purchase or lease agreement.
- iii. An agreement between a landowner and tenant regarding the premises, is not binding on the Town Board. The Town Board decides whether licenses are granted and to whom they are granted. A landowner or previous licensee cannot force the Town Board to grant a license to the applicant of the landowner's choice or force revocation of the license at a later date.
- iv. The Town Board requires that no licensee shall close down an establishment for more than 90 days. To do so may result in a revocation or suspension of the license.

4) Search of Licensed Premises. It shall be a condition of any license issued that the licensed premises may be entered and

inspected at any reasonable hour by any Winnebago County Sheriff's Department Deputy or Town Officer without any warrant, and the application for a license shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued and shall be deemed a violation of this section.

- 5) **Posting Licenses.** Licenses or permits, issued under this section, shall be posted and displayed as proved in Chapter 125 of the WI Stats. and any licensee or permittee who fails to post his/her license(s) or permit as required shall be presumed to be operating without a license.
- 6) **Safety and Sanitation Requirements.** Each licensed premise shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used.
- 7) **Advertisement and Signage.** All signage used for advertisement on the exterior of the premises that is not otherwise regulated by Winnebago County Zoning is hereby prohibited.
- 8) **Drive Through Window.** All Class "A" applicants are required to provide a site plan of any proposed drive through window for the sale of fermented malt beverages and intoxicating liquor for Town Board approval. The applicant will be required to provide adequate lighting and visibility into all vehicles using the drive through. Proper traffic flow and safety will also need to be maintained.
- 9) **Transfer of Premises.** Any person desiring to transfer his or her license from any building in the Town to any building in the Town shall file a written application with the Town Clerk/Treasurer stating:
 - a) The place he/she desires to move to.
 - b) Whether he/she is to be the owner or lessee.
 - c) The nature of any other business carried on concurrently at the location proposed to be licensed.
 - d) And such other information as may be required time to time by the Town Board.

Such applications shall be filed for at least fifteen (15) days with the Town Clerk or treasurer before acted upon by the Town Board. The Town Clerk/Treasurer shall promptly notify

the necessary agencies to inspect the premises the applicant is transferring to and these agencies shall inspect or cause to be inspected the premises sought to be licensed. They shall make such other investigation as the Town Board shall order to determine whether the application complies with the regulations, orders and laws applicable and the premises are in a proper physical condition and a suitable location.

As far as applicable, provisions of Section 3 of this ordinance shall apply to further proceedings in regard to the granting or refusal by the Town Board of the applicant's request to transfer the license.

Section 4) **Operator's Licenses**

1. **Operator's License.** Operator's license shall be issued to individuals by the Town Board for the purpose of complying with Sections 125.32(2) and 125.68(2), Wisconsin Statutes by issuing an Operator's license for Class "A" or Class "B" permitted premises. Operator's licenses shall be issued only upon written application provided by the Town Clerk/Treasurer and following Town Board approval. Such application shall require the applicant to designate whether the application is for a Class "A" or Class "B" operator license. The applicant is responsible to selecting the correct type of license for the position sought. The Town shall take into the account the differences between the setting and circumstances of a Class "A" premises versus a Class "B" premises when evaluating the eligibility criteria under (1)(c). The standard fee shall apply to each type of licenses. Licenses are issued for a two-year term that expires June 30th of the second term year. Included in the license fee, is the current cost of obtaining a background check.

a) **Operator's License Required.** All of the provisions of Section 125.68(2), of the WI Stats., and any future amendments or changes to this statute, are hereby incorporated herein. Operator's licenses issued under this section are valid only within the Town of Clayton.

b) **Application.** An operator's license may not be issued unless applicant fulfills one of the following requirements: 1) Person renewing an operator's license has held a current manager's, retailer's or operator's license, either Class "A" or "B," within the past two (2) years or 2) Within the past two (2) years has completed a State mandated Server's Training Course and must show proof. New applicants must at least be registered for the course and shall present

a schedule at the time of application.

A written application shall be filed with the Town Clerk/Treasurer which shall include the name, residence, age, and gender of applicant, and the prescribed fee shall be paid according to the Town of Clayton Fee Schedule. A background check shall be performed to determine whether applicant has a satisfactory history. All applications shall be accompanied by a recommendation for approval/denial by the Town Clerk/Treasurer or his/her designee.

c) **Issuance of Operator's License.** Licenses and permits related to alcoholic beverages issued to natural persons under this Chapter may be issued only to persons who fulfill all of the following requirements:

- i. The person must be at least 18 years of age.
- ii. All applicants for an operator's license shall successfully pass a responsible beverage server course as required in Section 125.04(5), Wisconsin Statutes, or hold a current operator's license from another Wisconsin municipality. All applicants will provide necessary documentation to satisfy this requirement.
- iii. All applicants will present the Town with proper picture identification including a driver's license or other acceptable form of identification.
- iv. The individual requesting a license may be denied a license based upon his/her arrest or conviction record subject to the Fair Employment Act Sections 111.32, 111.322, and 111.335 and Section 125.04(5)(a)1. It is not employment discrimination because of a pending arrest record or a conviction record to deny a license if the circumstances of the charge substantially relate to the alcohol beverage licensing activity.
- v. The individual requesting a license may not be issued a license if they are a "habitual law offender," Section 125.04(5)(b), Wisconsin Statutes. The term "habitual" refers to multiple convictions or pending charges. The term "offender" refers to a person with civil violations such as ordinance convictions and/or misdemeanor convictions (or pending charges) which substantially relate to the alcohol beverage licensing

activity.

- vi. An individual requesting a license shall not be issued a license if he or she has been convicted of a felony which substantially related to the alcohol beverage licensing activity.
- vii. Arrests or convictions 5 years or older will not be considered in the operator's license review.
- viii. Applicants who are denied an operator's license by the Town Board, will be allowed to appeal that decision through a public hearing before the Town Board.

Upon the approval of an application by the Town Board, the Town Clerk/Treasurer or his designee shall, upon proof of payment of a license fee as determined in Section 9 Fee Schedule and Penalties, issue to the applicant a Class "A" or "B" license to expire on the 30th day of June within the second term year following the issuance thereof.

2) **Provisional Operator's License.** This ordinance allows for the issuance of a provisional operator's license to those applying for a regular Class "A" or Class "B" operator's license under section 5.2(3)(3)(a) who wish to commence work as an operator for the service or sale of alcoholic beverages before the board will be able to meet to decide their application. The Town Clerk/Treasurer or his designee shall have the authority to grant or deny the issuance of a provisional operator's license. The provisional operator's license will be issued as a Class "A" or Class "B" license pursuant to the applicant's selection.

- a) Fee shall be paid upon application as set in Section 9 Fee Schedule and Penalties.
- b) A provisional operator's license may not be issued by any person who has been denied a beverage operator's license.
- c) The provisional operator's license expires 60 days after its issuance or when a license under 5.2(3)(3)(a) is issued to the applicant, whichever is sooner.
- d) Applicants are limited to one provisional license, either Class "A" or "B," per calendar year.
- e) At the time of application, the applicant for a provisional operator's license must present proof that the applicant is

enrolled or completed a training course under§125.17(6), WI Stat.; or present a current copy of a valid operator's license issued by another Wisconsin municipality.

- f) **Revocation.** The provisional operator's license shall be revoked by the Town Clerk/Treasurer if it is discovered the holder of the provisional operator's license made a false statement on their application, or holder fails to complete the Responsible Beverage Server Training Course, or is in non-compliance of WI Stats.

3) **Temporary Operator's License.** The Town Clerk/Treasurer or designee may issue a temporary operator's license subject to the following conditions:

- a) A written application shall be filed with the Town Clerk giving the name, residence, age, and gender of the applicant, together with other such pertinent information as to determine whether applicant has a satisfactory background check.
- b) Fee shall be paid upon application as set in Section 9 Fee Schedule and Penalties.
- c) A temporary operator's license shall be valid for the duration of the event defined on the application and shall be issued only to holders of Temporary Class "B" license holders pursuant to Section 5.2(3)(1)(c) or to operators employed by or donating their services to not for profit organizations.
- d) No person may hold more than one temporary license per calendar year.

Section 5.) **Replacements of License.** A fee per Section 9 Fee Schedule and Penalties, reference this code section, shall be charged for a duplicate license of permit.

Section 6.) **Revocation, Suspension and Non-Renewal of Licenses.**

- 1) **Procedure.** The Town may revoke, suspend or refuse to renew any license authorized under this ordinance and Chapter 125 Wis. Stats., pursuant to the provisions of Section 125, 12 Wis. Stats.
- 2) **Repossession of License or Permit.** Whenever any license or permit under this ordinance shall be revoked or suspended by the

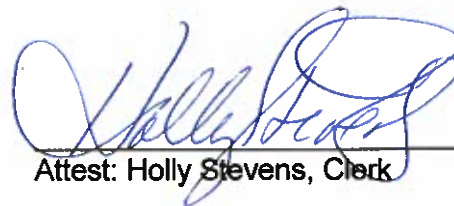
Town Board or Town Chairperson or action of any court on par. (c), it shall be the duty of the Town Clerk/Treasurer to notify the licensee or permittee or such suspension or revocation and to take physical possession of the license or permit where it may be found and file it in the Town Clerk's office.

- Section 7) **Publication of Licenses.** Fee shall be set forth in Section 9 Fee Schedule and Penalties, reference this code section, and is non-refundable.
- Section 8) **Change of Agent.** The corporation or limited liability company shall, following the approval of each successor agent or another qualified agent by the licensing authority, pay a fee set forth in the Section 9 Fee Schedule and Penalties, reference this code section.
- Section 9) **Fee Schedule and Penalties.** Fees and penalties as prescribed by independent resolution approved by the Town Board. All fees and penalties are non-refundable.
- Section 10) **Appeals.** Any person, firm, association, partnership, trust, or corporation aggrieved by any decision or determination of the Town Board, may within 30 days after the decision or determination, commence an action seeking review by certiorari.
- Section 11) **Effective Date.** This ordinance of the Town of Clayton code of ordinances shall be effective upon passage and publication as required by law. Furthermore, the effective date is established as:

Adopted this 6th day of March, 2019 by the Town Board of the Town of Clayton



Scott Reif, Vice Chairman



Attest: Holly Stevens, Clerk