

CHAPTER 11  
LICENSES AND PERMITS

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## 11.01 REGULATION OF BUSINESSES DEALING IN THE SALE AND DISPENSING OF INTOXICATING LIQUOR AND/OR FERMENTED MALT BEVERAGES. (Rep. & Rec. 12-08)

### (1) STATE STATUTES ADOPTED.

The current and future provisions of Chapter 125 of the Wisconsin Statutes, defining and regulating the types, sale, procurement, dispensing, consumption and transfer of alcohol beverages, including provisions relating to the penalty to be imposed or the punishment for violation of such statutes, are adopted and made part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein, are intended to be made part of this Ordinance in order to secure uniform statewide regulations of alcohol beverages in this State.

### (2) DEFINITIONS.

All definitions as set forth in ss125.02 of Wisconsin statutes plus the following:

#### (a) Licensed Premise/Establishment

A building or a part of a building and accompanying land parcel on which the owner or lessee has obtained permission from the City to conduct a permanent or temporary business to sell intoxicating liquor and fermented malt beverages for consumption on or off the premises.

#### (b) Business Plan of Operation (BPO)

A written 'plan' prepared by a business operator (licensee/seller) on forms provided by the City Clerk setting forth the location, type and scope of the business operation.

#### (c) Licensee/Seller

A person who has obtained a license to operate a licensed business/establishment selling intoxicating liquor and fermented malt beverages.

#### (d) Operator

A person holding a license to operate a licensed premise selling intoxicating liquor and/or fermented malt beverages. (See (c), above)

#### (e) Sellers Permit

A permit issued to and that must be held by any person who intends to sell goods and services within the state as set forth in ss77.52 of Wisconsin statutes, including the operator of a licensed premise to sell intoxicating liquor and fermented malt beverages.

### (3) BASIC REQUIREMENTS

#### (a) Approved Business Plan of Operation

No person on any licensed premise, as defined in this Ordinance, shall conduct any transactions or use the premises in any way regulated by this Ordinance unless a Licensee has filed a Business Plan of Operation (BPO) with the City Planner and has received approval by the City Planner and Zoning Administrator of such BPO. The BPO shall be specific in graphic delineation of what area(s) of the premises shall be licensed for the sale and/or consumption of alcoholic beverages. The City Planner or Zoning Administrator may request that the BPO be reviewed and approved by the City Plan Commission. Any violation of an approved BPO is grounds for suspension or revocation of any license or permit issued under this Chapter.

#### (b) Outdoor Sales and/or Consumption

Licensees who wish to sell or allow consumption of alcoholic beverages outside a structure or building must include with their application a site plan, drawn to scale, showing the areas of the site to be included in the license. **(See 11.02, below).**

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(c) Seller's Permit

No person on any licensed premise, as defined in this Ordinance, shall conduct any transactions regulated under this section unless a licensee holds and maintains a valid Sellers Permit as required under ss77.52 of Wisconsin statutes, issued to the premise and licensee described in the license during the period of licensing. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.

(4) APPLICATIONS

A written application for any license or permit by the provisions of this Ordinance shall be on the form(s) provided by the City Clerk. (Also see (3), above)

(a) Content

All applications other than operator's licenses shall contain all the information required under ss125.04(3) of Wisconsin statutes, and any other information required by the City Clerk. Applications which include outdoor premises shall include a site plan drawn to scale showing the outdoor areas of the site to be included in the license. Operator's license applications shall be on a forms provided by the City Clerk containing all information deemed necessary, including but not limited to name, residence, age, plus a written request of the holder of the alcohol beverage license hiring the applicant.

(b) Filing of Applications

All applications for licenses and permits to sell alcohol beverages shall be filed with the City Clerk of the City of Pewaukee as required by Wisconsin statutes. Operator's licenses and licenses issued under ss125.26(6) of Wisconsin statutes, for a picnic or other gathering lasting less than four (4) days must be filed with the City Clerk at least 30 days prior to granting of the license or permit by the City Common Council.

(5) ISSUANCE

Licenses and permits may be issued by the City Clerk under the authority of the City Common Council after payment of the appropriate fees and satisfaction of all conditions and subject to all City Codes and Ordinances, which when so issued shall permit the holder to sell, deal or traffic in alcohol beverages as provided in Chapter 125 of Wisconsin statutes.

(6) FEES

(a) Amount of Fees

Fees for the above-noted licenses and permits shall be in such amount as may be established by the City Common Council from time to time by separate resolution.

(b) Fee to be Submitted with Application

Any applicable publication fee shall be submitted with the license or permit application as may be established by the City Common Council from time to time by separate resolution.

(c) Refund of Fees

The fees for licenses or permits which are not granted shall be refunded after deducting the application fee and all actual publication and investigation costs.

(d) Prorating of Fees (Rep. & Rec. 06-17)

Fees for partial licensing years shall be prorated when required by statute and may be prorated at the discretion of the Common Council in other instances. In all cases when an alcohol beverage license is issued for a partial year, a minimum fee shall be as established from time to time by resolution of the Common Council and all actual publication fees and investigation fees must be paid.

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(e) No Refunds After Issuance

Once any license or permit is issued, no return of any payment shall be made whether or not the license or permit is used for the entire year.

(7) INVESTIGATION AND REVIEW.

Upon receipt of a license application under the provisions of this Ordinance, the City Clerk shall forward a copy of the application to the appropriate persons to conduct an investigation of the applicant(s) and proposed business as set forth below.

(a) Inspection of Premises and Personnel

Authorized employees within the City of Pewaukee Law Enforcement Department, Fire Department, Planning Department and Building Services Department and the Waukesha County Health Department, may conduct an investigation and inspection of the premises mentioned in the applications, to determine if the premises comply with all applicable regulations, ordinances and laws. The City Clerk's office shall investigate all persons included in the application to determine the suitability and character of the applicants. (Rep. & Recr. 09-21)

(b) Operator's License Applicants

The City Clerk or designee shall conduct an investigation of all applicants to determine the suitability and character of the applicant. (Rep. & Recr. 09-21)

(c) Reports

Upon completion of all investigations, reports shall be submitted in electronic or written form to the City Clerk who shall then forward the application to the City Common Council for action.

(d) Review.

The City Common Council may refer any and all licenses to the appropriate commission or committee for review and recommendation prior to action by the City Common Council.

(8) OPERATOR'S LICENSE.

(a) Operator's License

Operator's licenses may be granted to individuals by the City Common Council and thereafter issued by the City Clerk for the purposes of complying with ss125.32(2) and ss125.68(2), Wisconsin statutes, and this Chapter. The fee for said license shall be set by Common Council resolution. All operators licenses issued under this section shall expire on June 30 each year.

(b) Provisional Operator's License

The City Clerk upon authorization by the Mayor, may issue a provisional operator's license to an applicant in case of a bona fide emergency. An emergency shall be caused by such things as sickness, death or disability. The Mayor, before authorizing such issuance, shall determine that the applicant has a satisfactory record, and probably would be issued an operator's license under non-emergency conditions. The license shall be valid for a period of not to exceed 60 days unless sooner revoked by the City Common Council. The fee for said license shall be set by Common Council resolution. The City Common Council may issue a provisional operator's license to a person who is enrolled in a training course pursuant to ss 125.17(6), Wisconsin statutes, and has applied for an operator's license. The fee for said license shall be set by Common Council resolution. All operators licenses issued under this section entitle the licensee to be an operator in any licensed establishment in the City.

(c) Temporary Operator's Licenses

Temporary operator's licenses may be granted to individuals pursuant to ss125.17(4), Wisconsin statutes, by the City Common Council for the purpose of allowing said individuals to dispense and serve alcohol beverages under a license issued under ss125.26(6) or ss125.51(10), Wisconsin statutes, to a non-profit organization. No person may hold more than one license of this kind per

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year. Any temporary operator's license issued under this section shall be valid for any period from one day to 14 days, and the period for which it is valid shall be on the license. The fee for said license shall be set by Common Council resolution.

(9) RESTRICTIONS ON GRANTING LICENSES.

(a) Statutory Requirements

Licenses and permits shall be issued only to those persons eligible under Chapter 125 Wisconsin statutes. Licenses and permits granted in error shall be void.

(b) Health and Sanitation Requirements

No retail Class A or Class B alcohol beverage license shall be issued for any premises which does not conform to the sanitary, safety and health requirements of the State of Wisconsin, Department of Commerce pertaining to buildings electrical and plumbing, to the rules and regulations of the State Department of Health and Social Services applicable to restaurants, if the premise is licensed to serve food, and to all such rules and regulations as to building, health and sanitation adopted by the City, the County, the State or the Federal government.

(c) Delinquent Taxes, Assessments, Claims, et al

1. No initial or renewal alcohol beverage license shall be issued for any premises or property for which taxes, assessments, forfeitures, or claims for the City are delinquent and unpaid, or zoning regulations/requirements are not met.
2. No initial or renewal license or permit shall be issued under this Code to any person who is:
  - a. Delinquent in the payment of any taxes, assessments, or other claims owed the City.
  - b. Delinquent in the payment of a forfeiture resulting from the violation of any ordinance of the City.
  - c. Delinquent in the payment of any taxes to the State or County.
  - d. Who has any outstanding warrant or capias from any other municipality, state or federal court.

(10) CONDITIONS OF LICENSE.

(a) After Hours Consumption Prohibited.

Consumption of alcohol beverages by any person, including any employee, on licensed premises during hours when the premises are not open for business is prohibited. (Created 05-12)

(b) Consent to Inspect.

Every applicant obtaining a license thereby consents to the entry of law enforcement officers or other authorized representative of the City or the State at any reasonable time for the purpose of inspection and search, and consents to the removal from said premises all things found in violation of City Ordinances or State Law and consents to the introduction of such things as evidence in any prosecution that may be brought for such offenses. (Rep. & Recr. 09-21)

(c) Safety and Sanitation Requirements.

Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose being used. (Also see Waukesha County Health Department regulations).

(d) Orderly Conduct Required.

Every licensed premise shall be conducted in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed.

(e) Gambling Prohibited.

Gambling shall not be permitted on a licensed premise unless authorized by State statute. Slot machines or other devices of chance are prohibited and shall not be kept on the premises, unless

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authorized by State statute.

(f) Lewd and Obscene Activity and Performances Prohibited.

No licensee shall advertise, produce, perform or allow any lewd, obscene, pornographic or indecent activity, performance or images of any kind on the premises.

(g) Sale to Intoxicated Persons Prohibited.

No licensee, agent, operator or server shall sell, give, procure or otherwise furnish an alcohol beverage to any person perceived to be intoxicated.

(h) Underage Persons.

No licensee shall employ any underage person to serve, sell, dispense, or give away an alcohol beverage unless authorized by State statute or the Codes of the City. The current and future provisions of ss125.10(2); ss125.07 (4) (a), (b) or (bm); ss125.085(3)(b); and, ss125.09(2) of Wisconsin statutes are adopted and made a part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein are intended to be made part of this ordinance in order to secure uniform statewide regulations of alcohol beverages in this state.

(i) Controlled Substance Use Prohibited.

Any licensee, partner, agent, authorized representative or employee who is convicted of the use, possession, delivery or intent to deliver, any controlled substance defined and regulated under Chapter 961, Wisconsin statutes, may be considered grounds for the revocation or suspension of any license provided for in this ordinance.

(j) Regulation of Entertainment and Entertainers.

All entertainers shall be fully clothed in such a manner as to be acceptable in any and all public places. No licensee shall allow any entertainment which makes an appeal to prurient interests.

(k) Solicitation of Drinks Prohibited.

No person shall solicit or be allowed to solicit alcohol beverages on a licensed premise.

(l) Music.

Licensees may have music anywhere within the licensed premise building, whether recorded or live, amplified or not, however, such music should not be audible beyond 50 feet from the building. Music may not be played or projected outside of a building on the premises unless the Licensee has obtained a separate permit under sub-section 11.02 of this code.

(m) Outdoor Entertainment.

No Licensee may permit or provide entertainment such as music, television, games, sports activities and other similar activities outside of an enclosed building unless the Licensee has obtained a separate permit under sub-section 11.02 of this code.

(11) MISCELLANEOUS GENERAL PROVISIONS.

(a) Transfer of Licenses.

1. The transfer of every alcohol beverage license shall be governed by ss125.04(12), Wisconsin statutes.
  2. No transfer of operator's license is permitted.
  3. If the transfer is approved by the City Common Council pursuant to ss125.04(12), all conditions set forth under this Code shall be complied with.
  4. Failure to conform with the terms of license transfer shall be grounds for denial, suspension or revocation of license.
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(b) Non-Use of License

If a license or permit issued under this ordinance is not used within sixty (60) days after its issuance or its usage is discontinued for a period of (60) days or more, such non-use shall be grounds for cancellation, suspension, revocation or non-renewal of the license or permit in accordance with the provisions of this ordinance and Wisconsin statutes.

(c) Non-Renewal of Licenses

Before renewal of any license or permit issued under this ordinance is refused, the licensee or permittee shall be given written notice of any charges or violations or reasons proposed for non-renewal, and shall have an opportunity to be heard before the City Common Council.

(d) Violations by Agents and Employees

A violation of this ordinance by an authorized agent or employee of the licensee shall constitute a violation by the licensee.

(e) Hours of Closing

Closing hours shall be as set by Wisconsin statute.

(f) Local Option – “Class B” License

The City elects to allow “Class B” premises to sell intoxicating liquors in the original packages or containers in multiples not to exceed four (4) liters at any one time, and any amount of wine, for consumption off the licensed premises.

(12) REVOCATION AND SUSPENSION OF LICENSE

(a) License Violation

Whenever the holder of any alcohol beverage license under this Ordinance violates any portion of this ordinance, proceedings for the revocation or suspension of the license may be instituted in the manner and under the provisions established under ss125.12, Wisconsin statutes. In addition, the City Common Council, by its own motion by adoption of a resolution may begin proceedings for the revocation or suspension of such license.

(b) Violation of Ancillary Requirements

Whenever the City Common Council or the City Clerk, as agent thereof, is made aware of an incompatibility in the operation of a licensed premises in relation to its surrounding or nearby environment, or a licensed premises is in violation of any condition established or required at the issuance of the license or of this Code or of the Wisconsin statutes, including all requirements regarding the duty to supervise employees, proceedings for the purpose of revoking and/or establishing new conditions, or continuing the license under previous conditions will be initiated under the same procedures as provided in sub-section (10)(a), above.

(c) Suspension or revocation of operator's licenses granted pursuant to this ordinance shall be governed, as follows:

1. Any committee as established by the City Common Council may revoke or suspend an operator's license following a hearing held by the Committee. Notice shall be transmitted by mail to the licensee not less than ten (10) days prior to the hearing or upon personal service of notice not less than five (5) days prior to the hearing.
  2. Appeal from the decision of the Committee may be made by the licensee upon filing a petition for review by the full Common Council by presenting the petition and paying a fee, as shall be established from time to time by resolution of the Common Council, to the City Clerk. The Common Council shall schedule a hearing not more than (30) days from the date the appeal is filed. (Rep. & Rec. 06-17)
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(d) Revocation

Any license or permit issued under this ordinance may be revoked without further proceedings upon the conviction of the licensee, agent employee or representative thereof, pursuant to Section 125.11, Wis. Stats.

(13) PENALTIES

Any person, firm, corporation or the employee or agent of any licensee under this ordinance or Chapter 125, Wisconsin statutes shall be subject to a penalty as provided in section 25.04 of City Codes and Ordinances.

**11.02 OUTDOOR ENTERTAINMENT PERMIT.** (Cr. 12-08)

(1) OUTDOOR ENTERTAINMENT

No commercial establishment may provide entertainment such as music, whether recorded or live, amplified or not; television; games or sporting activities, outside an enclosed structure without obtaining one of the following permits from the City Common Council:

(a) Annual Permit: Allows the permittee to provide activities during specified hours outside an enclosed structure. The Common Council may impose restrictions on the permit. The permit period is July 1 through June 30.

(b) Temporary permit: Allows the permittee to provide activities outside an enclosed structure during a specified period approved by the Common Council. Temporary permits are for special, limited occurrences. The Common Council may impose restrictions on the permit.

(2) APPLICATION PROCESS

(a) Application Filing Dates

Applications for annual permits must be submitted to the City Clerk no later than the First Monday in April. Applications for temporary permits must be submitted to the City Clerk no less than 75 days before the desired date to provide music or other activity, in order for the permit to be processed. (Rep. & Rec. 13-19)

(b) Permit fees shall be set from time to time by resolution of the Common Council.

(c) Permit applications must be accompanied by a scaled drawing or map showing the location of all speakers or other means of providing music, television, sporting activities; a site plan and a Business Plan of Operation, as defined in §11.01(2)(b), for all outdoor activities; and, the name and address of owners of all properties located within 1,000 feet of the property lines.

(d) The Clerk will mail notice of the Plan Commission meeting at which the application will be reviewed to the owners of all properties located within 1,000 feet of the applicant's property lines at least 15 days prior to the Plan Commission meeting.

(e) The City Common Council, after review and recommendation by the Plan Commission, shall approve, approve with conditions, change or deny any permit application.

(3) VIOLATIONS

Any person providing music, entertainment or activities without a permit or in violation of the terms of the permit issued under this section is guilty of violating this section and is subject to the penalties found in Chapter 25 of the City of Pewaukee Codes.

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### 11.03 AMUSEMENT DEVICES.

#### 1. DEFINITION

The term "amusement device" when used in this Section shall mean a coin-operated machine used for amusement, but shall not include slot machines or any other gambling devices prohibited by state law.

#### 2. LICENSE REQUIRED

No person shall own or have in his possession any amusement device in the City of Pewaukee or maintain or permit the maintenance of any such amusement device on premises owned, leased, or under the control of such person without first obtaining a license therefore in the manner hereinafter provided.

#### 3. APPLICATION

Application therefore shall be made to the City Clerk upon forms furnished by him and shall be sworn to by the applicant before a notary public or other officer authorized to administer oath. The City Clerk, when so authorized so to do by the City Common Council, and after payment of the license fee as hereinafter provided, shall issue the license to the licensee in such form as to permit its secure attachment to the amusement device licensed.

#### 4. LICENSE FEE

License fee shall be as established from time to time by resolution of the Common Council for each amusement device. Licenses shall expire on June 30 following their issuance, and the full license fee shall be charged for a fraction of the year. (Rep. & Rec. 06-17)

#### 5. LICENSES TO BE POSTED

All licenses when issued shall be securely attached to the amusement device licensed and it shall be unlawful to own or possess any such amusement device in the City of Pewaukee without having such a license securely attached thereto.

#### 6. SEIZURE OF UNLICENSED AMUSEMENT DEVICES

The Mayor, any Sheriff or Deputy Sheriff, or special investigator of the City of Pewaukee may seize or cause to be seized any unlicensed amusement device, as required by this Section. The ownership or possession of any unlicensed amusement device is declared to be in violation of this Section.

### 11.04 MOTELS TOURIST CABINS & ETC.

#### 1. PUBLIC WELFARE

It is hereby declared necessary in the interest of public health, morals and safety that the use of hotels, tourists' rooming houses, cabins or cottages by transients in the City of Pewaukee is regulated.

#### 2. DEFINITIONS

a. "Hotel" means all places wherein sleeping accommodations are offered for pay to transients as a part of a single building of five (5) or more rooms and all places used in connection therewith. The terms motel, tourist court, inn and similar phrases shall be construed as synonymous with hotel.

b. "Tourist cabins" means and includes all other lodging places and tourist cabins and cottages other than hotels as herein defined wherein sleeping accommodations are offered for pay to tourists or transients.

c. Nothing herein contained shall be construed to include private boarding or rooming houses ordinarily conducted as such in accommodating tourists or transients.

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3. TOURIST CABINS PROHIBITED

No premises in the City of Pewaukee shall be used for the purpose of operating tourist cabins.

4. HOTELS REGULATED

No hotels as herein defined shall be permitted to be erected or used for habitation of humans within the City of Pewaukee without first obtaining a permit therefore from the City Clerk as hereinafter provided.

5. HOTEL PERMITS

Applications for hotel permits shall be made to the City Clerk upon forms to be provided for that purpose. No permit shall be issued unless such building complies in every respect with the statutes of the State of Wisconsin relating to hotels and restaurants and also complies with the rules and regulations of the Wisconsin State Department of Health and Social Services relating to hotels and tourists rooming houses. A license fee as shall be established from time to time by resolution of the Common Council shall be paid at the time of making the application, said fee to run from July 1 of each year to June 30 of the succeeding year. A fee for any fraction of the license year shall likewise be as established from time to time by resolution of the Common Council. (Rep. & Rec. 06-17)

6. REGULATION BY THE CITY COMMON COUNCIL

a. The owner and operator of any hotel within the City of Pewaukee shall at the time of registration of each guest require the driver of any motor vehicle using such premises to produce for inspection his driver's license. Permanent record shall be kept by the operator of each hotel of the registration of each guest assigned accommodations upon said premises and the license number of each motor vehicle used by such guest in connection with such accommodations.

b. The records of each such hotel relating to registration and use of said premises shall be open for inspection to members of the City Common Council the City Clerk and the City Building Inspector at all reasonable times.

## 11.05 DOG LICENSES, KENNELS AND REGULATION OF ANIMALS.

(Rep. & Recr. 09-20, 13-08)

(1) - ADOPTION OF STATE STATUTES.

Except as otherwise specifically provided in this Code, the current and future statutory provisions of Chapter 174, Wisconsin Statutes describing and defining regulations with respect to dogs, exclusive of any provisions therein relating to penalties to be imposed are adopted and by reference made a part of this Code as if fully set forth herein. Any act required to be performed or prohibited by any current or future statute incorporated herein by reference is required or prohibited by this Section. Any further additions, amendments, revisions or modifications of the current or future statutes incorporated herein are intended to be made part of this Code in order to secure uniform statewide regulation of dogs.

(2) - DEFINITIONS

In this section the following terms mean:

“Boarding” means the care and housing of an animal whether on a temporary, short-term basis such as during the day, or for longer periods of time.

“Commercial Kennel” means any premises used for raising, breeding, boarding, training, grooming or foster care of animals for remuneration or other commercial purposes, including raising and selling of three (3) or more litters of animals per year.

“Farm Animals” means animals that are commonly raised or kept in an agricultural enterprise for purposes of breeding, animal by-products or beasts of burden.

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“Foster Care” means temporarily boarding animals until they can be permanently placed with an owner, whether for compensation or not. Typically these animals have been injured, rescued or are overflow from a shelter.

“Hobby Kennel” means any premises with four (4) or more dogs five (5) or more months of age, 6 or more other animals, or a combination of 6 or more dogs and animals, as household pets or for non-commercial purposes such as raising, breeding, boarding, training, grooming, foster care and the occasional raising and selling of not more than two (2) litters of animals per year.

“Other Animals” means animals, insects or arachnids kept for companionship rather than food or utility.

(3) - ANIMAL REGULATIONS

(a) It shall be unlawful to keep farm animals in any zoning district except the A-1 and A-2 Districts or the Rs-1 District, which requires a conditional use permit, as set forth in sections 17.0403, 17.0404 & 17.0405 of the City Zoning Ordinance.

(b) Prohibited Animals:

1. Poisonous Animals, Arachnids or Insects.

It shall be unlawful to keep any animal, arachnid or insect that is known to have a bite, sting, secretion or other physical action that may cause sickness, injury or death to humans or other animals, with the exception of honey bees which may be kept in the A-1 or A-2 Zoning Districts.

2. Vicious animals.

It shall be unlawful to keep a vicious animal within the City. A visual confirmation or written documentation that an animal has bitten, attacked, killed or injured any person, killed or maimed other animals or is a wild animal known for its potential viciousness shall constitute a prima facie showing that such an animal is vicious.

3. Wild or exotic animals.

No person shall keep, maintain or have in possession or control any alligators, bears, cheetas, coyotes, crocodiles, cougars, elephants, gamecocks or other fighting birds, hippopotami, hyenas, jaguars, leopards, lions, lynx, non-human primates, ocelots, tigers, wolves, or any hybrid of these animals.

(c) Animals Running at Large

It shall be unlawful for animals to run at-large any place within the City. An animal will be considered running at-large if it is on property without the consent of the owner or occupant of that property and not under the control of the owner or some other person. Any animal running at-large shall be confined at any pound designated by the City Common Council upon capture by the Humane Welfare Animal Society or law enforcement personnel.

(d) Animal Excrement and Food Waste Disposal.

1. Animal Waste Removal “off premises”

The person having physical possession of animals shall immediately remove and properly dispose in a sanitary manner all excrement deposited by any animal on any property not under the control of the person having physical possession of the animal at the time.

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2. Animal and Food Waste Removal “on-premises”

It is unlawful to allow animal excrement and/or food waste to accumulate on private property to a level which is detrimental to the health, safety or welfare of persons, animals or property and is declared to be a public nuisance. The accumulation of animal excrement and/or food waste shall be deemed detrimental to health, safety or welfare when there is sufficient quantity on the subject private property to generate detectible odors off the subject private property, or has accumulated in such proportion as to be visually offensive or be attractive to insects and vermin.

(e) Barking or Howling Dogs or Loud Noises Made by Other Animals.

No person shall allow a dog or other animal to make loud noises or excessive sound to such an extent or at unusual hours that the noise unreasonably disturbs any neighbor.

(4) DOG AND KENNEL LICENSES REQUIRED. Except as in (b)1. below, licenses are required and will be granted by the Common Council or the Clerk and issued by the Clerk as follows:

(a) Dog License Tax. The owner of every dog which is five (5) months of age on January 1 of any year, or five (5) months of age within the license year, shall annually on or before the date the dog becomes five (5) months of age pay the dog license tax and obtain a license, except as provided in §174.054, Wis. Stats. The license and tag can be obtained from the City Clerk, after presenting proof of rabies immunization, unless exempt as allowed under §95.21(9)(d), Wis. Stats. Tags shall be attached to a collar which shall be kept on the dog at all times, except during competition, training, hunting, actively herding or controlling livestock if the dog is under control of the owner, or if the dog is securely confined indoors. Multiple dog licenses can be obtain per §174.053, Wis. Stats.

(b) Kennel Licenses

1. No license is required for six (6) or fewer animals.

2. Hobby Kennel. A hobby kennel license is required for:

- four (4) or more dogs five (five) months of age or older kept on a premises within the City as household pets or for non-commercial purposes including raising, breeding, boarding, training, grooming, foster care and the occasional raising and selling of not more than two (2) litters of animals per year; or

- six (6) or more animals, or a combination of dogs five months of age or older and other animals kept outside on a premises within the City or with constant access to the outside.

Hobby kennels are allowed only in the A-1, A-2, Rs-1, Rs-2, Rs-3, Rs-4, Rs-5, Rs-6, Rs-7, Rd-1, Rd-2 and B-3 zoning districts.

3. Commercial Kennel. A commercial kennel license is required when one (1) or more animals are kept on a premises within the City for commercial purpose of raising, breeding, boarding, training, or grooming, including raising and selling of three (3) or more litters of animals, “day care” facilities, and foster care. Commercial kennels are allowed only in the A-1, A-2, B-3, B-5, B-6, M-1, M-2, M-3, M-4 & M-6 zoning districts.

(c) Kennel License Application. Application forms are available from and must be filed with the Clerk containing the following information:

1. Type of kennel license requested (Hobby or Commercial).
  2. Address of property on which the kennel is to be located.
  3. Size and zoning of premises.
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4. Type of animals
5. Maximum number of animals to be kept at the kennel at any time.
6. Type and size of principal buildings.
7. The type of kennel enclosure(s), if any, including:
  - i. Size of enclosure(s).
  - ii. Fenced area location and size, if any
  - iii. Source and location of water supply.
  - vi. Place for keeping of food/medicine.
  - v. Sanitary maintenance plan, including provision for collection, storage and disposal of excrement, food waste and other liquid or solid waste.
8. Noise suppression.
9. Methods of security.
10. Hours of operation, if commercial kennel.

(d) License fees and late fees shall be established from time to time by resolution of the Common Council.

(e) Kennels are subject to site plan review as well as architectural and business plan of operation review, as necessary, by the Plan Commission per §17.0207 of the Pewaukee Code.

#### (5) KENNEL REGULATIONS.

In order to keep the dogs/animals in a healthful and sanitary condition and the minimum requirements shall be as follows:

(a) An enclosed, insulated shelter at least three (3) feet in height shall be made accessible to every animal on the premises no less than eight (8) square feet in floor area for each animal. Such shelters shall be kept clean and free of vermin and shall be ventilated to allow movement of air and heated during cold weather. In addition, such enclosure shall be provided with a window or skylight. Such shelter, if separate from the principle or accessory buildings on the premises, shall be placed so as to meet the yard setback requirements of the zoning ordinance.

(b) Fenced 'runs' or enclosures. Fenced enclosures, if erected, shall be constructed so that the animals cannot escape and shall be visually screened from the general public and, specifically, from the direction of neighboring residences and businesses. Such screening may include a permanent wood or fabric screening in combination with the fence material, or may be composed of dense evergreen planting, adjacent to and outside the fenced enclosure. The fence shall meet the maximum fence height requirements of the City zoning ordinance and may not be placed in the street yard setback areas of the premises as set forth in the City zoning ordinance. The fenced enclosure shall be large enough to accommodate the number of animals licensed for the premises without crowding.

(c) Food and waste. Leftover food and animal waste shall be removed each day from the kennel or fenced enclosures and stored in sealed containers, which are located a minimum of 50 feet from any neighboring residence, surface water and water supply until such time as it can be disposed of properly.

(d) For an animal foster care home, there shall be a building a minimum of 1,800 square feet in area.

(e) Animal-to-premises area ratio.

1. Minimum of 15,000 square feet for 4 animals plus 10,000 square feet for each additional animal.
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2. More than 8 animals – minimum of 60,000 square feet plus 12,000 square feet for each additional animal over 8.
3. Day care. Minimum parcel size as noted in (e)1. plus a building having a minimum of 1,000 square feet of area plus 90 square feet of building area for each prospective animal to be cared for.

## **11.06 PEDDLERS, CANVASSERS, SOLICITORS AND TRANSIENT MERCHANTS.**

### 1. LICENSE REQUIRED (Rep. & Rec. 09-05)

No direct seller shall engage in direct sales with the City without first obtaining a license from the Clerk in compliance with the provisions of this Section. (Rep. & Rec. 09-21)

### 1.5 DEFINITIONS

For the purposes of this Section, the following terms shall have the following meanings:

- a. "Direct Seller." Any individual who, for himself or herself, or for a partnership, association, corporation or other entity, sells or takes sales orders for the later delivery of goods or services at any location other than the permanent business place or residence of such individual, partnership, association, corporation or other entity, and shall include, but not be limited to, peddlers, solicitors, canvassers, and transient merchants. The sale of goods or services includes transactions in which donations are required or anticipated by the direct seller for the retention of goods, services or any item by a donor or prospective customer.
- b. "Permanent Merchant." A direct seller who, for at least one twelve (12) month period immediately prior to the consideration of the application of this Section to such merchant, has continuously operated an established place of business in the City or has continuously resided in the City and now does business from his or her residence.
- c. "Goods." Includes, but is not limited to, personal property of any kind and shall include goods or items provided incidental to services offered or sold.
- d. "Charitable Organization." Includes, but is not limited to, a benevolent, philanthropic, patriotic or eleemosynary person, partnership, association, corporation, or other entity, or one purporting to be such.

### 2. EXEMPTIONS (Rep. & Rec. 09-05)

The following shall be exempt from the provisions of this Section relative to the requirement of first obtaining a license:

- a. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
  - b. Any person selling goods at wholesale to dealers in such goods.
  - c. Any person selling agricultural products which such person has grown.
  - d. Any permanent merchant or employee thereof who takes orders away from the established place of
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business for goods or services regularly offered for sale by such merchant within the City and who delivers such goods in their regular course of business.

- e. Any person who has an established place of business where the goods or services being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with and specifically requested a home visit by such person.
- f. Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- g. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- h. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of such organization, provided that there is submitted to the City Clerk proof that such charitable organization is registered under §440.41, Wis. Stats. Any charitable organization not registered under §440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to comply with this Section.
- i. Any person who claims to be a permanent merchant, but against whom complaint has been made to the City Clerk that such person is a transient merchant; provided that there is submitted to the Clerk proof that such person has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in the City for at least twelve (12) continuous months immediately prior to the date complaint was made.

### 3. APPLICATION (Rep. & Rec. 06-17)

At the time of filing application an investigation fee as shall be established from time to time by resolution of the Common Council shall be paid to the City Clerk to cover the cost of investigation of the facts stated in the application. The application shall be sworn to by the applicant and filed with the City Clerk and shall contain such information as the Clerk shall require for the effective enforcement of this Section and the safeguarding of the residents of the City from fraud, misconduct or abuse.

### 4. INVESTIGATION; ISSUANCE

Upon receipt of each such application, a law enforcement officer shall immediately institute such investigation of applicant's business and moral character as he deems necessary for the protection of the public good, and shall endorse his approval or disapproval upon said application within seventy-two (72) hours after it has been filed with the City Clerk, and the City Clerk shall issue or deny the license in accordance with the standards set forth in this Code and upon payment of the license fee. (Rep. & Rec. 09-21)

### 5. FEE (Rep. & Rec. 06-17, 09-05)

The fee for a license as herein provided shall be as established from time to time by resolution of the Common Council. Annual licenses issued on or after July 1 shall be issued for half (1/2) the required annual fee. No fee shall be required for a canvasser or other person simply seeking information for a recognized public purpose. A direct seller may employ one assistant without payment of and additional license fee, but such persons must comply with the other provisions of this Section.

### 6. BOND (Rep. & Rec. 09-05)

If the Chief determines from his investigation of said application that the interests of the City or of inhabitants of the City require protection against possible misconduct of the licensee or that the applicant is otherwise qualified but due to causes beyond his control is unable to supply all of the information required by Section 11.06, Subsection (3), he may require the applicant to file with the City Clerk a bond in the sum of \$500.00 with surety acceptable to the Mayor running to the City conditioned that he will fully comply with the Ordinances of the City and laws of the State relating to

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direct sellers and guaranteeing to any citizen of the City doing business with him that the property purchased will be delivered according to the representations of applicant, provided that action to recover on any such bond shall be commenced within six (6) months after the expiration of the license of the principal.

**7. EXPIRATION; RENEWAL; TRANSFER**

The Clerk shall date all licenses issued hereunder and shall specify thereon the fee paid and date of expiration. Annual licenses shall be issued on a calendar year basis and expire December 31 of the year of issue. Applications for renewals shall be handled in the same manner as original applications. Licenses issued under this Section are personal and may not be transferred.

**8. REGULATIONS AND RESTRICTIONS (Rep. & Rec. 09-05)**

**a. Consent required**

No direct seller as herein defined shall go in or upon any private residence, business establishment or office in the City for the purpose of soliciting orders for goods, wares and merchandise or peddling or hawking the same or soliciting subscriptions for magazines or other periodicals without having been requested or invited to do so by the owner or owners, occupant or occupants of said place.

**b. Display of license**

Persons licensed under this Section shall carry their licenses with them while engaged in licensed activities and shall display such licenses to any law enforcement officer or citizen upon request. (Rep. & Rec. 09-21)

**c. Misrepresentation prohibited**

No licensee shall intentionally misrepresent to any prospective customer the purpose of his visit or solicitation, nor the name or business of his principal, if any, nor the source of supply of the goods, wares or merchandise which he sells or offers for sale nor the disposition of the proceeds or profits of his sales.

**d. Loud noises and speaking devices**

No licensee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device upon any of the streets, alleys, parks or other public places of the City or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

**e. Use of streets**

No licensee shall have any exclusive right to any location in the public streets, nor shall any licensee be permitted a stationary location thereon nor be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. For the purpose of this Ordinance, the judgment of a law enforcement officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced. (Rep. & Rec. 09-21)

**f. Prohibited Practices (Cr. 09-05)**

A direct seller shall be prohibited from calling at any dwelling or other place between the hours of 7 p.m. and 9 a.m., except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

**9. SUSPENSION OR REVOCATION OF LICENSE**

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Licenses issued hereunder may be revoked or suspended by the Mayor for not to exceed five (5) days pending hearing by the City Common Council for fraud, misrepresentation or incorrect statement contained in the application or made in the course of carrying on business; conviction of licensee of any crime or misdemeanor or conducting the licensed business in an unlawful or disorderly manner or in such a manner as to menace the health, safety or general welfare of the public.

#### 10. CITY COMMON COUNCIL MAY REDUCE FEES

Notwithstanding anything herein to the contrary, the City Common Council may, upon application made to it and upon a showing of cause, reduce, to an amount not less than \$10.00, any of the fees called for herein. In exercising its discretion under this Section, the City Common Council shall consider the purposes for which this Ordinance was adopted, and shall take into account the risk of injury, economic or otherwise, to the general public arising out of the conducting of the applicant's business, the fact of whether or not the applicant's goods and services are delivered at the time payment is made for them, the contemplated duration of the business activity of the applicant and such other factors as the City Common Council may deem relevant. In exercising its discretion under this Section, the City Common Council may impose and/or set such restrictions and conditions as it deems appropriate to effectuate the intent of this Ordinance.

### 11.07 SPECIAL EVENTS PERMIT. (Rep. & Rec. 12-09) Effective 1/1/2013

#### (1) DEFINITIONS:

(a) **CLASS I** – A Special Event in which more than one-hundred fifty (150) people attend and any of the following occurs: alcohol is sold or served; outdoor entertainment/amplified music is involved; tent(s) larger than four hundred (400) square feet are utilized; or the event lasts more than one (1) day.

(b) **CLASS II** – A Special Event with more than one-hundred fifty (150) people and no alcohol is sold or served or no outdoor entertainment/amplified music is provided.

(c) "Event Coordinator" is the individual identified by the Special Event sponsor that will be on-site at all times during the Special Event to address problems as well as implement directions from City officials during the Special Event.

(d) "Special Event" is any activity that uses public streets, rights-of-way, sidewalks, or private property or may require increased levels of City services. This includes, but is not limited to, fairs, festivals, sporting events, foot runs, walk-a-thons, bike-a-thons, bike races, markets, outdoor merchandise sale, parades, parade of homes, exhibitions, auctions, dances, motion picture filming, and other similar events.

#### (2) PERMITS REQUIRED

(a) No person or organization shall conduct a Special Event as defined herein within the City of Pewaukee without first having obtained a Special Event Permit. Permits are valid only for the dates, time and location specified in the Permit. This provision shall apply to all events proposed after the date of the adoption whether or not the event in question has been a reoccurring event within the City.

(b) A Park Rental permit may be required depending on the location of the Special Event and **is not** provided for in this permit process.

(c) Other Permits Required. All vendors operating as part of a Special Event permit obtained under this code section shall obtain and display any and all required City, County, or State permits for the duration of the event (i.e. food, vendor, temporary beer, etc.). If serving beer and/or alcohol there must be either a licensee or a person holding an operator's license onsite in accordance with Sections 125.17(1), 125.32(2), and 125.68(2), Wisconsin Statutes.

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(d) Special Events with more than fifty (50) people but less than one-hundred fifty (150) people, are not required to obtain a permit, but are encouraged to contact police services in advance of the event.

### (3) APPLICATION

(a) Application Requirements.

1. Application for a Special Event Permit shall be filed with the City Clerk **at least 90 days** prior to the proposed event.

2. Permit fees are required with submission of application. Permit fees shall be set from time to time by resolution of the Common Council.

3. The application shall include the following:

a. The name, address and phone number of the Special Event sponsor(s). If more than one person, entity or organization is the sponsor, all must be listed. In the case of a corporation, limited liability corporation, limited liability partnership, or partnership, the name and mailing address of each person holding ten percent (10%) or more of the ownership.

b. The name, address and phone number for the Special Event sponsor's contact or agent.

c. The name, address and phone number of the Event Coordinator and the method by which the City can contact the Event Coordinator during the Special Event.

d. Special Event on private property.

i. The address of all private property upon which the Special Event is to be held, together with the name, and mailing address of the owners of record.

ii. Notarized authorization from the property owner(s) that the applicant has permission to use property for a Special Event.

e. The nature of the assembly.

f. The dates and hours during the Special Event. Applicant should include dates and hours for set up and clean up in the information provided.

g. The maximum number of persons allowed at any given point at any time.

h. Plans and description for the following, as necessary for the event:

1. Fencing and gates as necessary to control access to or within the Special Event;

2. Potable water locations;

3. Toilet and lavatory facility locations and number;

4. Solid waste collection locations and disposal;

5. First aid station, or additional medical care facilities as required upon City review;

6. Lighting plan, including location, hours of use and power source;

7. Parking size and location;

8. Access to event and to parking, if located separately;

9. Camping facilities;

10. Crowd control/security personnel including number and responsibilities;

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11. Sound control and amplification, location, size and number of speakers and amplifiers;
12. Access for emergency vehicles and personnel.

k. Certification that by signing the application, the applicant is authorized to act on behalf of the event sponsor(s).

L. Applicant's acknowledgement that by signing and submitting the application they accept and comply with the provisions of §(4)(a) and (b).

m. Proof of insurance as described in subsection (4) (a) below.

n. Park Rental approval, if applicable.

(b) Application Process.

1. Upon receipt of an application for a permit, the City Clerk shall immediately distribute the complete application to Police Services, Fire Department, Administrator, Public Works Department, Inspection Services, and Park and Recreation Department for review and comment. Department review and comments shall be returned to the Clerk within 30 days of distribution of the application.

The City, in reviewing the application, shall consult any other state, county or local body as necessary for assistance in evaluating the application in order to promote the safety, health, welfare and security of the residents of the City of Pewaukee and the persons attending the Special Event.

2. Permit Review.

a. The Clerk shall review Class II applications for conformity with the provisions of this section and the comments from the Departments and if the applicable requirements are met, shall issue a permit.

b. The Common Council shall review all Class I permit applications and Department recommendations and either deny the permit, approve the permit or approve the permit with conditions. The permit shall be issued by the Clerk.

**(4) PERMIT CONDITIONS**

(a) Liability Insurance. The Special Event sponsor is required to obtain insurance for Special Events that include alcohol, have more than 150 people per day or involve a road closure. Proof of comprehensive general liability insurance with coverage of not less than \$1,000,000.00 which names and endorses the City, its officers, agents, employees, and contractors as an additional insured party shall be submitted to the City no later than twenty (20) days before the event. The applicant shall notify the City in the event there is a modification of any of the terms of the insurance coverage. Such notification shall be provided not less than two weeks prior to the effective date of that change. Any change to coverage requires City approval.

(b) Indemnification. The applicant and Event Sponsor(s) shall agree to hold the City, its officers, employees, agents, and contractors, harmless against all claims, liability, loss, damage or expense (including but not limited to actual attorney's fees) incurred by the City for any damage or injury to person or property caused by or resulting directly or indirectly from the activities for which the permit is granted.

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(c) City Services. All requests by applicants for City services must be made at time of application. The applicant shall be responsible for reimbursement to the City for any city personnel, services, equipment, and facilities provided for the Special Event. Reimbursable costs shall be calculated to include wages, overtime, and fringe benefits. An invoice shall be sent to the applicant, within fifteen (15) days following the event. Payment is due within thirty (30) days of invoice. The City reserves the right to require full or partial payment of estimated costs in advance. Requests for use of a hydrant meter shall be processed separately through the Pewaukee Water Utility.

(d) Cleaning/Damage Deposit. The applicant may be required to submit to the City a cleaning/damage deposit of \$200 per day for each scheduled day of the event (or a portion thereof), two weeks prior to the starting date of the event. The deposit shall be refunded to applicant, if, upon inspection, all is in order, or a prorated portion thereof as may be necessary to reimburse the City for loss or cleaning costs. The City reserves the right to retain the entire deposit if cleanup is not completed satisfactorily in the time frame as specified in the permit. Unless otherwise stated in the permit, the applicant shall be fully responsible for all necessary cleanup associated with the permitted event to be completed within twelve (12) hours after the conclusion of the event.

(e) Event Coordinator. The Special Event sponsor shall have at least one representative on site during the event at all times, as identified on the permit application.

(f) The Special Event Sponsor shall provide sufficient staffing to provide assistance with crowd control, parking, sanitation, and medical services. A determination as to these needs will be made by the Departments as part of the review process.

(g) Site Requirements.

1. All tents must be installed under the International Fire Code Chapter 24 or the National Fire Protection Association 1, Chapter 34.
2. Wiring shall be installed by a licensed electrician. All persons requiring electricity at a Special Event shall follow NEC and SPS Ch. 316, Wis. Administrative Code.
3. Attendees and staffing shall not exceed the maximum number which can reasonably attend at the location of the Special Event, in consideration of the nature of the Special Event.
4. Responsibility for arranging any inspections required to meet these standards or any other requirements prior to the Special Event is the sponsor's. Any fees for such inspections shall be paid by the Special Event Sponsor.

(h) Notification. The City may require that the permit holder give written notice 15 days in advance of the Common Council meeting where action is scheduled to be taken regarding the proposed event to any property owners or tenants as determined during the City Departments' review. Notice shall, at a minimum, include the type of event, name of the Special Event sponsor(s), date, time and location, Event Coordinator's name and contact information during the event.

#### **(5) TERMINATION OF SPECIAL EVENT**

The City reserves the right to shut down a Special Event if it is deemed to be a public safety hazard by Police Services or the Fire Department, or there is a violation of City or County Ordinances, State Statutes or the terms of the Applicant's permit. The City Administrator or designee may revoke an approved Special Event Permit if the applicant fails to comply with the provisions of the permit prior to the event date.

#### **(6) DENIAL OF PERMIT**

Reasons for denial of a Special Event Permit include, but are not limited to:

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- (a) The event will disrupt traffic within the City beyond practical solution.
- (b) The event will create a likelihood of endangering the public.
- (c) The event will interfere with access to emergency services.
- (d) The location or time of the Special Event will cause undue hardship or excessive noise levels to adjacent businesses or residents.
- (e) The event will require the diversion of City resources(s) that would unreasonably affect the maintenance of regular City service levels.
- (f) The application contains incomplete or false information.
- (g) The applicant fails to provide proof of insurance.
- (h) Inadequate provision for garbage or debris removal.
- (i) Inadequate provision of temporary restroom facilities.
- (j) Inadequate provisions for parking.
- (k) Denial of a permit by the Joint Park and Recreation Department.
- (l) Applicant fails to submit the required fees and/or deposits.

### **11.08 REPEALED (16-07)**

### **11.09 SECONDHAND ARTICLE DEALER, JEWELRY DEALER AND PAWNBROKER ESTABLISHMENTS.**

#### **1. PUBLIC WELFARE**

It is hereby determined necessary in the interest of public health, safety and welfare that the conduct of both transient dealers of or establishments for the sale or resale of secondhand articles or jewelry and pawn brokering in the City of Pewaukee shall be regulated.

#### **2. BASIC REGULATION**

Section 134.71 of Wisconsin Statutes, as amended is hereby adopted, in its entirety, as the basic regulation of the use and operation of second hand dealers, pawnbrokers and jewelry dealers in the City of Pewaukee.

#### **3. ADDITIONAL REGULATIONS**

In addition to the "articles" defined in Section 134.71(1), Wis. Stats., which are made a part of this Section, the following articles are specifically included as articles to be regulated under this Section:

- a. Secondhand or used sport and recreation equipment and apparel.
- b. Secondhand or used home furnishings such as appliances, dining and living room furniture/equipment.
- c. Old coins or stamps.
- d. Other tangible personal property not included in s. 134.71 of Wis. Stats.

### **11.10 ESCORT AND ESCORT SERVICE LICENSES. (Cr. 06-15)**

(1) Definitions. The terms used in this section shall be defined as follows:

**“Escort”**: includes any person who, for a fee, commission, salary, hire, profit, payment or other monetary consideration accompanies or offers to accompany another person to or about social

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affairs, entertainments or places of amusement or consorts with another person about any place of public resort or within any private quarters.

**“Escort service”**: includes service provided by any person who, for a fee, commission, salary, hire, profit, payment or other monetary consideration, furnishes or offers to furnish names of persons, or who introduces, furnishes or arranges for persons who may accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort or within any private quarters.

**“Operator”**: means any person, partnership, corporation or other organization operating, conducting, maintaining or owning any escort service.

(2) License required.

- A. No person may engage in, conduct or carry on the operation or maintenance of an escort service or act as an escort without first obtaining a valid license issued under this section.
- B. A license may be issued only for one escort service located at a fixed and certain place. Any person desiring to operate more than one escort service office or location must have a license for each escort service office or location.
- C. All escorts or escort services existing or operating in the city at the time of the adoption of this section must submit an application for a license within 60 days of the adoption of this section.
- D. Exemptions.  
This section does not apply to businesses, agencies and persons licensed by the state or the city pursuant to a specific statute or ordinance, and employees employed by a business so licensed, and which perform an escort or an escort service function as a service merely incidental to the primary function of such profession, employment or business and which do not hold themselves out to the public as an escort or an escort service.

(3) License application.

- A. Any person desiring an escort or escort service license shall file a written application on a form provided by the clerk's office and pay the application fee to defray the cost of investigation and administration to the city clerk. The information provided to the clerk shall be provided under oath. An application will not be processed until the application fee is paid.
- B. Required Application Information
  - 1. Escort Services
    - a. Corporations. If the applicant is a corporation, the name of the corporation shall be set forth exactly as set forth in its articles of incorporation, together with the date and state of incorporation, the name and residence address of each of its officers, directors and each stockholder holding five percent or more of the stock or beneficial ownership of the corporation. The application shall also be verified by an officer of the corporation.
    - b. Partnership. If the applicant is a partnership, the application shall set forth the name of the partnership and the name and residence address of each of the partners, including limited partners, and shall be verified by each partner. If one or more of the partners is a corporation, the

provisions of this section pertaining to a corporate applicant shall apply to the corporate partner.

- c. Others. If the applicant is neither a corporation nor a partnership, the application shall set forth the true full name and residence address of the applicant and shall be verified by the applicant. The application shall also include any other name by which the applicant has been known during the previous five years.
- d. The application also shall set forth the proposed place of business of the escort service by physical address, including suite number, and mailing address if different. The application shall contain a description of the nature and scope of the proposed business operation.
- e. The following information shall be furnished concerning the applicant if an individual; concerning each officer and director and all stockholders who own five percent or more of the stock or beneficial ownership if the applicant is a corporation; concerning each partner, including limited partners, if the applicant is a partnership:
  2. The previous residence address, if any, for a period of three years immediately prior to the date of application and the dates of such residence;
  3. Written proof that the individual is at least eighteen (18) years of age;
  4. A complete set of fingerprints;
  5. The business, occupation or employment history for three years immediately preceding the date of application, including, but not limited to, whether such person previously operated under any permit or license in another city in this or another state and whether any such permit or license had ever been suspended or revoked;
  6. All convictions in any state or federal court within the past five years, including municipal ordinance violations, exclusive of traffic convictions, with a brief statement of the nature of the convictions and the jurisdiction in which the convictions occurred;
  7. All pending criminal charges in any state or federal court, with a brief statement of the nature of the pending charges and the jurisdiction in which the charges are pending;
  8. The names of persons who will have custody of the business records at the business location;
  9. The name and address of the person who will be the agent for service of process.

2. Escorts

Applicants for an escort license shall provide the applicable information in subdivision 1., above, as well as the applicant's height, weight, color of eyes and color of hair. The applicant shall provide two passport-size color photographs at least one inch by one inch taken within 3 months of the date of application. In addition, the applicant shall identify by name and address the escort service at which the applicant is currently working, if any, or at which the applicant expects to be employed.

(4) Application Review Process.

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- A. The City Clerk shall notify the head of law enforcement services, the chief of the fire department, the building inspector and the council or its designee of any escort service license application and these officials shall inspect or cause to be inspected each such application and the premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto. These officials shall furnish to the City Clerk, in writing, the information derived from such investigation and a statement as to whether the applicant and the premises meet the requirements of the departments for whom the officer is certifying within 10 days of receipt of notice from the city clerk. No license shall be renewed without a reinspection of the premises. Applications for an escort license shall be referred to law enforcement officers only. (Rep. & Recr. 09-21)
- B. Within 30 days of receiving an application for a license, the Common Council shall grant or deny a license to the applicant upon a recommendation of the Clerk. The City Clerk shall notify the applicant whether the application is granted or denied. The City Clerk shall issue the licenses if granted. An escort license shall contain the applicant's true first name, surname and middle initial, if any; the picture of the applicant; and the license number and the expiration date of the license. The license shall be in such form as to avoid alteration.
- C. Whenever an application is denied, the City Clerk shall advise the applicant, in writing, of the reasons for such action. If the applicant requests a hearing in writing within 10 days of receipt of notification of denial, a public hearing shall be held within 10 days thereafter before the council or its designee.

(5) Licensing Standards.

- A. The council shall issue an escort or escort service license if, upon recommendation by the Clerk, it finds that:
    - 1. The required fee has been paid;
    - 2. The application conforms in all respects to this section;
    - 3. The applicant has not knowingly made a material misstatement in the application;
    - 4. The applicant has fully cooperated in the investigation of his application;
    - 5. The applicant, would comply with all applicable laws, including, but not limited to, the city's building and zoning codes;
    - 6. The applicant has not had an escort or escort service license or permit or other similar license or permit revoked or suspended in this state or any other state within three years prior to the date of application;
    - 7. The applicant, if an individual; any of the stockholders holding five percent or more of the stock or beneficial ownership of the corporation; and any officers, agents or directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership, does not, at the time of application, have pending any criminal charge for, or within five years prior to the date of application has not been convicted of any offense involving dishonesty, fraud, deceit, robbery, the use or threatened use of force or violence upon the person of another, or sexual immorality under Ch. 944, Wisconsin Statutes, as amended, or other offenses subject to §111.335, Wisconsin Statutes, as amended;
    - 8. The applicant, if a corporation, is licensed to do business and is in good standing in the state;
    - 9. All individual applicants; all stockholders holding five percent or more of the stock or beneficial ownership, directors and officers, if the application is a corporation; and all partners, including limited partners, if the applicant is a partnership, are at least eighteen (18) years of age.
  - B. Failure or refusal of the applicant to give any information relevant to the application, failure or refusal to appear at any reasonable time and place for examination under oath regarding the
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application or refusal to submit to or cooperate with regard to any information required by this section shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial.

(6) Display of Licenses.

The escort service license shall be displayed in a conspicuous public place in the escort service's place of business. Escort licenses shall be carried on the person of the escort and shall be exhibited to any person, including law enforcement personnel, requesting to see it at any time while the person is engaged in acting as an escort.

(7) Changes regarding ownership of escort Service.

- A. Any corporation holding an escort service license under this section shall report to the city clerk, in writing, within fifteen (15) days of the event described herein, any of the following:
  - 1. Any change of officers of the corporation;
  - 2. Any change in the membership of the board of directors of the corporation.
- B. Sale or transfer of interest in escort service. Upon the sale or transfer of any interest in an escort service, the license shall be void. Any person desiring to continue to operate an escort service following sale or transfer shall apply for a license.

(8) Responsibilities of licensees.

- A. Every act or omission by an employee constituting a violation of the provisions of this section shall be deemed the act or omission of the escort service operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct. The operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- B. Every act or omission by an escort, regardless of whether the escorts are employees, agents or independent contractors, shall be deemed the act or omission of the escort service operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the escort's conduct. The operator shall be punishable for such act or omission in the same manner as if the operator caused such act or omission.
- C. No escort service operator may allow or permit any person to work as an escort for such escort service unless the person so employed has a valid escort license issued by the city.
- D. No escort may work for any escort service operator unless the escort service operator has a valid escort service license issued by the city.
- E. No escort service may conduct any business without maintaining on its premises a daily register containing the name of each escort currently employed or otherwise working for the escort service on the date in question, a duplicate of the escort license certificate required under this Section and the actual hours of employment of each escort for each day. The daily register shall be available during all business hours for inspection by law enforcement personnel.
- F. No person licensed as an escort or escort service may in any manner advertise its services as licensed by the city.

(9) License renewal.

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- A. Every license issued pursuant to this section shall terminate at the expiration of one year from date of issuance unless sooner revoked and must be renewed before operation is allowed in the following year. All applications for the renewal of escort service and escort licenses issued by the city shall be filed with the city clerk's office on a form to be provided by the clerk no later than 60 days prior to the expiration of the license. The renewal application shall contain such information and data, given under oath or affirmation, as is required for an application for a new license. Applications to renew licenses shall be processed by the city in the same fashion as new applications.
  - B. Renewal applications shall be accompanied by a renewal fee as set from time to time by resolution of the Common Council. In addition to the renewal fee, a late penalty fee shall be assessed against any applicant who files for renewal less than 60 days before the license expires. Renewal applications will not be processed until the fee is paid.
- (10) Suspension or revocation of license.
- A. Any escort service or escort license may be suspended for not more than 90 days or revoked by the council for any of the following reasons:
    - 1. Any of the grounds that would warrant the denial of the original application for the license;
    - 2. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application;
    - 3. The operator or any employee of the operator or any escort employed by the operator violates any provision of this section or any rules or regulations adopted by the council pursuant to this section; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee or escort, the penalty shall not exceed a suspension of 30 days if the Common Council finds that the operator had no actual or constructive knowledge of such violation and could not, by the exercise of due diligence, have had such actual or constructive knowledge;
    - 4. The licensee becomes ineligible to obtain a license or permit;
  - B. An escort service or escort license may be suspended or revoked after notice and hearing before the Common Council to determine if grounds for such suspension or revocation exist. Notice of the hearing shall be in writing and sent by certified mail addressed to the licensee at the current address of the licensee on file with the city clerk's office. The notice shall be served at least ten days prior to the date of hearing. The notice shall state the grounds of the complaint against the licensee and shall designate the time and place where the hearing will be held.
  - C. Any licensee whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an escort service for six months from the date of revocation of the license.

## **11.11 PRIVATE BUSINESS EMPLOYEE WAGE AND BENEFIT NON-REGULATION. (Cr. 09-08)**

- 1. Limitation of Municipal Wage and Benefit Regulation for Private Employers  
Except to the extent required by state or federal law, no ordinance of the City of Pewaukee nor
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any other City rule, resolution or regulation shall require that any private employer provide particular wages or benefits to its employees or set forth the amount or type of an employee wage or benefit provided an employee by any private employer within the City or doing business within the City.

## 11.12 ADULT-ORIENTED ESTABLISHMENT LICENSE AND REGULATIONS. (Cr. 13-05)

### (1) FINDINGS OF FACT.

(a) The Common Council finds that Adult-Oriented Establishments operating in the City require special licensing by the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City.

(b) Based on the review of a summary of studies conducted in Phoenix AZ, Garden Grove CA, Los Angeles CA, Whittier CA, Indianapolis IN, Minneapolis MN, St. Paul MN, Cleveland OH, Oklahoma City OK, Amarillo TX, Austin TX, Beaumont TX, Houston TX, Seattle WA, and other municipalities the findings incorporated in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976), the City finds that Adult-Oriented Establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities including prostitution.

(c) It has been documented that entertainers in Adult-Oriented Establishments offer to perform sexual acts for patrons, and that sexual contact occurs between patrons and other employees of Adult-Oriented Establishments.

(d) There is convincing documented evidence that booths, rooms or cubicles in Adult-Oriented Establishments have been used by patrons for the purpose of engaging in Specified Sexual Activities or in high-risk sexual behavior and configuration of the interior of the premises is an important factor in combating such activities.

(e) The State of Wisconsin Division of Health has published reports that have been considered by the City relating to the subject of sexually-transmitted diseases and the concern over sexually-transmitted diseases is a legitimate concern of the City in order to protect the health and well-being of its citizens.

(f) The State of Wisconsin has seen a steady increase in several types of sexually-transmitted diseases since 1986. In each year, 2007 through 2010 over 25,000 people in Wisconsin have been diagnosed with three sexually transmitted diseases: chlamydia, gonorrhea and syphilis.

(g) Researchers have found that contracting sexually-transmitted diseases may increase a person's vulnerability to Human Immuno-Deficiency Virus (HIV), the virus that causes AIDS (Acquired Immune Deficiency Syndrome) and some types of cancer.

(h) AIDS is a sexually-transmitted disease which destroys the body's immune system.

(i) The State of Wisconsin Division of Health reports that as of July 31, 2012, there have been 8,889 cases of AIDS reported in the State, and new cases of HIV infection continue to be reported in Wisconsin each year since 1981. Furthermore since 1983 through to 2009 more than 4,000 people have died of HIV. High-risk heterosexual contact and injected drug use account for 26% of risk exposure for HIV.

(j) The City is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses.

(k) Licensing is a legitimate and reasonable means of accountability to ensure that the operators and employees of Adult-Oriented Establishments comply with reasonable regulations and to ensure that operators and employees do not knowingly allow their

establishments to be used as places of illegal sexual activity or solicitation.

(L) Information relating to pending charges and convictions of the applicants is desired to further the City's interest in controlling the secondary effects of Adult-Oriented Establishments.

(m) There is convincing documented evidence that Adult-Oriented Establishments, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

(n) The Common Council has reviewed studies of the secondary effects of Adult-Oriented Establishments and has concluded that if unregulated, they present an increased risk of prostitution, high-risk sexual behavior and crime, deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.

(o) The Common Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods.

(p) It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Adult-Oriented Establishments.

(q) It is not the intent of the Common Council to condone or legitimize the promotion of obscene material, and the Common Council recognizes that the law prohibits the promotion of obscene materials. The Common Council expects and encourages law enforcement officials to enforce anti-obscenity laws against any such illegal activities in the City.

(r) Restricted hours of operation will allow law enforcement personnel to concentrate on crime prevention during high crime hours and/or low staffing hours by relieving them of enforcement duties relative to prostitution, loitering, and criminal activity associated with Adult-Oriented Establishments.

(s) Prohibition of alcohol beverages on the premises will reduce the need for law enforcement resources to respond to alcohol related problems upon the premises, will reduce high-risk sexual activity and will contribute to the reduction of secondary effects of Adult-Oriented Establishments.

## **(2) PURPOSE AND INTENT.**

Based upon the findings stated above, it is the intended purpose of the City to regulate Adult-Oriented Establishments to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations for the operation thereof so as to minimize secondary effects of these establishments on the community. The provisions of this section have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative materials, including Adult-Oriented materials protected by the First Amendment to the Constitution of the United States. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to Adult-Oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of Adult-Oriented entertainment to their intended market. The promotion of obscene materials, which is not protected by the First Amendment, is subject to criminal sanctions under the State's penal code.

## **(3) DEFINITIONS.**

The following terms have the meanings indicated:

"Adult Arcade" means any place to which the public is permitted or invited, wherein coin, slug, electronically, or mechanically controlled or operated still or motion picture machines, projectors, computers, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas".

"Adult Bathhouse" means a commercial establishment which provides a bath as a service and which provides to its patrons an opportunity for engaging in "Specified Sexual Activities."

"Adult Body Painting Studio" means a commercial establishment wherein patrons are afforded an opportunity to be painted or to paint images on Specified Anatomical Areas. An Adult Body Painting Studio does not include a tattoo parlor.

"Adult Bookstore" means any commercial establishment having as its stock in trade the sale, rental or lease for any form of consideration, any one or more of the following:

- (a) Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are distinguished or characterized by their emphasis on "Specified Sexual Activities" or "Specified Anatomical Areas";
- (b) Instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities";
- (c) Facilities for the presentation of "Adult Entertainment" as defined herein, including Adult-Oriented films, motion pictures, video cassettes, video reproductions, slides or other visual representations for observation by patrons therein.

"Adult Cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which features:

- (a) Live performances which are characterized or distinguished by the exposure of "Specified Anatomical Areas" or the removal of articles of clothing; or,
- (b) Films, motion pictures, video cassettes, video reproductions, slides or other visual representations which are distinguished or characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."

"Adult Entertainment" means any exhibition of any motion picture, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by any one or more of the following:

- (a) "Specified Sexual Activities";
- (b) "Specified Anatomical Areas";
- (c) removal of articles of clothing;

"Adult Massage Parlor" means a commercial establishment with or without sleeping accommodations which provides the service of massage or body manipulation, including exercise, heat and light treatment of the body, and any form or method of physiotherapy, which also provides its patrons with the opportunity to engage in "Specified Sexual Activities".

"Adult Motel" means a hotel, motel or other similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, film, motion pictures, video cassettes, video reproductions, slides, or other visual reproductions characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas"; and, has a sign

visible from the public right of way which advertises the availability of this type of adult entertainment; or

(b) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(c) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.

"Adult-Oriented Establishment" includes: Adult Arcade, Adult Bathhouse, Adult Body Painting Studio, Adult Bookstore, Adult Cabaret, Adult Massage Parlor, Adult Motel, Adult Theater, and any commercial establishment presenting Adult Entertainment, whether or not such establishment is operated or maintained for a profit.

"Adult Theater" means an enclosed building such as a theater, concert hall, auditorium or other similar commercial establishment which is used for presenting "Adult Entertainment."

"Applicant" means the individual or business entity that seeks to secure a license under this section of the City municipal code.

"Employee" means any and all Persons, including but not limited to "Operators", "Entertainers", clerks, managers, janitors or other Persons who work in or at, or render any services directly related to the day-to-day operation of an Adult-Oriented Establishment. Employee, as used in this ordinance, specifically excludes independent contractors who are responsible for the improvement or repair of the physical premises or who provide supplies to the establishment, provided that these Persons are not also in the position of providing any other day-to-day services for the Adult-Oriented Establishment.

"Entertainer" means any Person who provides entertainment within an Adult-Oriented Establishment whether or not a fee is charged or accepted for the entertainment and whether or not the entertainment is provided by the Person as an Employee of the Adult-Oriented Establishment or as an independent contractor.

"Operator" means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Adult-Oriented Establishment's contact Person for the municipality.

"Person" means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

"Public Area" includes all areas of an Adult-Oriented Establishment except: a public restroom to the extent it is used for its proper purpose, individual rooms rented in an Adult Motel, or areas to which patrons have no physical or visual access.

"Specified Anatomical Areas" means:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if opaquely covered.

"Specified Sexual Activities" means and includes any of the following, simulated or actual:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, cunnilingus, anilingus.
- (c) Showing of human genitals in a state of sexual stimulation or arousal.
- (d) Excretory functions during a live performance, display or dance of any type.

"Transfer of Ownership or Control" of an Adult-Oriented Establishment means and includes any of the following:

- (a) the sale, lease, or sublease of the business;
- (b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or other means; or
- (c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the death of the Person possessing the ownership or control.

"Youth-facility" means any facility where minors gather for educational or recreational activities including but not limited to playgrounds, swimming pools, libraries, licensed child-care facilities, or youth clubs.

(4) LICENSING.

(a) LICENSES REQUIRED.

1. License Required for All Adult-Oriented Establishments. From and after the effective date of this section except as provided in par. (c) below, no Adult-Oriented Establishment shall be operated or maintained in the City without first obtaining a license to operate issued by the City. A license may be issued only for one Adult-Oriented Establishment located at a fixed and certain place. Any Person desiring to operate more than one Adult-Oriented Establishment must have a license for each.

2. License Required for All Employees of Adult-Oriented Establishments. In addition to the license required by the establishment, all Employees of an Adult-Oriented Establishment must also be licensed.

3. Licenses for Existing Adult-Oriented Establishments. All Adult-Oriented Establishments existing at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any establishment that submits an application within the 90 day period shall be allowed to continue to operate until the license application is acted upon by the Common Council. Any establishment which fails to submit an application within the 90 day period, must cease operation upon expiration of the 90 day period unless and until a valid license is timely issued by the Common Council. The City shall act upon any such license application in accordance with the provisions of this Section.

4. Licenses for Employees of Existing Adult-Oriented Establishments. All Employees already working in an Adult-Oriented Establishment existing at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any Employee that submits an application within the 90 day period shall be allowed to continue his or her employment until the license application is acted upon by the Common Council. Any Employee who fails to submit an application within the 90 day period must cease employment upon expiration of the 90 day period unless and until a valid license is issued by the Common Council. The City shall act upon any such license application in accordance with the provisions of this Section.

5. Change of Name Form. Any licensed Adult-Oriented Establishment which desires to change its name from that as listed on the original license application must file a change of name form with the City Clerk and pay a fee in the amount set from time to time by resolution of the Common Council at least 30 days prior to effectuating the name change.

6. Effect of Other Licenses. The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining an Adult-Oriented Establishment license under this Section.

7. Non-transferability of Licenses. No license or interest in a license may be transferred to any Person. Any change in location for an Adult-Oriented Establishment shall require a new license application for that location.

(b) LICENSE APPLICATION PROCEDURE FOR ADULT-ORIENTED ESTABLISHMENTS.

1. Any Person desiring to secure an Adult-Oriented Establishment license shall file an application together with two additional copies of the application with the City Clerk.

2. The application shall be on a form provided by the City Clerk.

3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:

a. Name, including any aliases, address, and phone number.

b. If the Applicant is a corporation, partnership, limited liability corporation or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address of the registered agent where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners; members or managers, whichever is applicable for the particular form of business entity.

c. If the Applicant is an individual, written proof that the Applicant is at least 18 years of age and two copies of a recent photo.

d. If the Applicant is a business entity, a statement that no officer, director, partner, general partner, owner or manager is less than 18 years of age.

e. Name, address and phone number of the Adult-Oriented Establishment for which a license is being secured.

f. Name and address of any other current or past Adult-Oriented Establishments operated by the Applicant whether in this State or any other State or District within the United States.

g. For any current Adult-Oriented Establishments operated by the Applicant, the Applicant shall describe the status of any required license for the establishment.

h. Nature and date of offense if the Applicant has charges pending or has been convicted of violating any of the terms of this ordinance.

i. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

Prostitution (§ 944.30, Stats.)

Patronizing Prostitutes (§ 944.31, Stats.)

Soliciting Prostitutes (§ 944.32, Stats.)

Pandering (§ 944.33, Stats.)

Keeping a Place of Prostitution (§ 944.34, Stats.)

Sexual Assault (§940.225, Stats.)

Sexual Gratification (§ 944.17, Stats.)

Lewd and Lascivious Behavior (§ 944.20, Stats.)

Obscene Material or Performance (§ 944.21, Stats.)

Sexual Assault of a Child (§ 948.02, Stats.).  
Engaging in repeated acts of sexual assault of the same child. (§ 948.025, Stats.)  
Sexual Exploitation of a Child (§ 948.05, Stats.).  
Causing a Child to view or listen to Sexual Activity. (§ 948.055, Stats.)  
Incest with a child (§ 948.06, Stats.)  
Child Enticement (§ 948.07, Stats.)  
Soliciting a Child for Prostitution (§ 948.08, Stats.)  
Exposing a child to harmful material (§ 948.11, Stats.)  
Possession of Child Pornography (§ 948.12, Stats.)  
Child Sex Offender Working with Children (§ 948.13, Stats.)

The statute numbers listed above are for reference purposes only. In the event one or more of the crimes listed above are renumbered or categorized differently by an act of the legislature, the Applicant shall list those crimes for which the Applicant has been convicted that are similar in nature to those listed above.

j. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in i., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.

k. Name, address and phone number of an individual who is responsible for the day-to-day operation of the establishment, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.

L. A statement that the Applicant is familiar and in compliance with the provisions of this section of the City's municipal code.

m. When the Applicant is a business entity the information requested of the Applicant shall include the information required in this section for each of the officers and directors, partners and general partners, or other owners, and managers of the business entity applying for the license. This provision shall not apply to any owner of any kind who hold an ownership interest of less than 10.0 percent.

4. Each application shall be accompanied by:

a. A building plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any building plan requirements in addition to those in this Section. Each application shall be accompanied by a sketch or diagram showing the floor plan of the interior of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a 1/4 inch scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

b. A written plan of operation which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any plan of operation requirements in addition to those in this Section.

c. A written site plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any site plan requirements in addition to those in this Section.

d. Each application shall be signed by the Applicant.

e. Each application shall be accompanied by payment of the license fee in an amount set from time to time by resolution of the Common Council. Filing of the application does not occur until this fee has been paid.

f. The City Clerk shall date the filing of the application on the face of the application.

g. Upon filing of the application, each Applicant shall place a sign at the proposed business location providing notification of the application. Each sign shall be at least 24 inches by 36 inches in size. The sign shall state "ADULT-ORIENTED ESTABLISHMENT LICENSE APPLICATION PENDING" AND "APPLICATION FILED ON (fill in the date)." The letters on the sign shall be no less than 1 and ½ inches high by 2 inches wide. The sign must be placed in a conspicuous location so that it is clearly visible to all passersby whether on the public road, highway, sidewalk or parking lot.

h. Upon receipt of the application, the City Clerk shall immediately distribute a copy of the application to the Building Inspector, Law Enforcement, and the Common Council.

i. Law enforcement shall notify the Common Council in writing of any information bearing on the Applicant's qualifications, within 20 business days of the filing of the application.

j. The Building Inspector shall notify the Common Council in writing as to whether or not the Applicant's building plan, site plan, and plan of operation comply with this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any requirements in addition to those in this section, within 20 business days of the filing of the application.

k. The Common Council shall within 45 days of the filing of the application with the City Clerk, either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Council fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.

L. If the license is granted by the Common Council, then the City Clerk shall issue the license on the next business day.

m. If the Common Council decides to deny the application for a license, the Council shall notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.

n. Any Applicant aggrieved by such a decision of the Common Council, shall be entitled to immediately appeal the Council's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Council. The City explicitly elects not to be governed by Chapter 68, Wisconsin Statutes or Chapter 24 of its Code, and to provide the review procedures described in this Section.

o. Each license issued for an Adult-Oriented Establishment shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

(c) License Procedures for Employees of Adult-Oriented Establishments.

1. Any individual desiring to secure an Employee license shall file an application together with two additional copies of the application with the City Clerk.
2. The application shall be on a form provided by the City Clerk.
3. The following information shall be required of each Applicant, and must be

provided under oath or affirmation:

a. Name, including any aliases, and address. Pursuant to Sec. 19.35(1)(a)2.a., Wisconsin Statutes, the name and address of any entertainer shall be considered as exempt from disclosure under the public records law of the State of Wisconsin because of potential danger to the life and safety of such individuals from such disclosure.

b. Written proof that the individual is at least 18 years of age and two copies of a recent photo.

c. Nature and date of offense and date if the Applicant has charges pending or has been convicted of any violations of any of the terms of this ordinance.

d. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

- Prostitution (§ 944.30, Stats.)
- Patronizing Prostitutes (§ 944.31, Stats.)
- Soliciting Prostitutes (§ 944.32, Stats.)
- Pandering (§ 944.33, Stats.)
- Keeping a Place of Prostitution (§ 944.34, Stats.)
- Sexual Assault (§940.225, Stats.)
- Sexual Gratification (§ 944.17, Stats.)
- Lewd and Lascivious Behavior (§ 944.20, Stats.)
- Obscene Material or Performance (§ 944.21, Stats.)
- Sexual Assault of a Child (§ 948.02, Stats.)
- Engaging in repeated acts of sexual assault of the same child (§ 948.025, Stats.)
- Sexual Exploitation of a Child (§ 948.05, Stats.)
- Child Enticement (§ 948.07, Stats.)
- Soliciting a Child for Prostitution (§ 948.08, Stats.)
- Causing a Child to view or listen to Sexual Activity. (§ 948.055, Stats.)
- Incest with a child. (§ 948.06, Stats.)
- Exposing a child to harmful material (§ 948.11, Stats.)
- Possession of Child Pornography (§ 948.12, Stats.)
- Child Sex Offender Working with Children (§ 948.13, Stats.)

The statute numbers listed above are for reference purposes only. In the event one or more of the crimes listed above are renumbered or categorized differently by an act of the legislature, the Applicant shall list those crimes for which the Applicant has been convicted that are similar in nature to those listed above.

e. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in d., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.

f. A statement that the Applicant is familiar with the provisions of this Section and is in compliance with them.

g. A list of other similar or analogous Adult Entertainer or Employee licenses issued by any other municipalities, the name and state of the municipality and the status of the license.

4. Each application shall be signed by the Applicant.

5. Each application shall be accompanied by payment of the license fee in an amount set from time to time by resolution of the Common Council. Filing of the application does not occur until this fee has been paid.

6. The City Clerk shall date the filing of the application upon the face of the application.
  7. Upon receipt of the application, the City Clerk shall immediately distribute a copy of the application to the Law Enforcement and the Common Council.
  8. Law enforcement shall notify the Common Council in writing of any information bearing on the Applicant's qualifications as required herein, within 20 business days of the filing of the application.
  9. The Common Council shall within 45 days of the filing of the application with the City Clerk, either issue the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Council fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
  10. If the license is granted by the Common Council, then the City Clerk shall issue the license on the next business day.
  11. If the Common Council decides to deny the application for a license, the Council shall notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
  12. Any Applicant aggrieved by such a decision of the Common Council shall be entitled to immediately appeal the Council's decision in circuit court. Such an appeal must be made within 30 days of the receipt by the Applicant of the written decision of the Council. The City explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, or Chapter 24 of its Code and to provide the review procedures described in this Section.
- (d) Procedures for Alterations of Licensed Premises. Following the granting of a license any licensee who wishes to alter any aspect of the licensed premises which was required to be described in the building plan, site plan or plan of operations required under this Section, shall be required to apply for a new license.
- (e) Licensing Standards for Initial Licenses. The Common Council shall grant an initial license to an Applicant unless it finds one or more of the following to be true:
1. The Applicant is less than 18 years of age.
  2. The Applicant has charges pending or has been convicted of violating a provision of this Section or an analogous ordinance of another municipality within the 5 years immediately preceding the date of application.
  3. The Applicant has charges pending or has been convicted of a crime specified in subsections (4)(b)3.i. or (4)(c)3.d.; and if convicted, for which:
    - a. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense.
    - b. less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a felony offense;
    - c. less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses, or combination of misdemeanor offenses, occurring within any 24 month period.

The fact that an appeal has been taken from any of the above-mentioned convictions shall have no effect.

4. The Applicant provides false information on the application.
5. The Applicant fails to provide information, to post the required notice, or to pay any fee required by this Section.
6. The Adult-Oriented Establishment does not submit plans which meet the requirements of subsection (4)(b)4.

(f) License Expiration and Renewal.

1. Transfer of Ownership or Control of an Adult-Oriented Establishment shall result in automatic expiration of the existing license. Upon transfer of Ownership or Control, the procedures for a new license application must be followed. In order to ensure continuous operation, such procedures may also be commenced by a new Applicant prior to the expiration of the prior license.

2. Every license issued pursuant to this Section will terminate upon the expiration of one year from the date of issuance unless sooner revoked. Any licensee desiring to renew an initial license shall make application to the City Clerk. The application procedures governing new licenses shall be followed by an Applicant for a renewal license except for those found in subsection (4)(b)8., and 12-15., for Adult-Oriented Establishment licenses, and subsection (4)(c) 9.-12., for Employee licenses. The application fee for a renewal license shall in an amount set from time to time by resolution of the Common Council for an Adult-Oriented Establishment license and for an Employee license.

3. Any licensee desiring to renew an initial license shall file the application for renewal no later than 60 days before the license expires. Any licensee who fails to apply for a renewal license at least 60 days before the license expires shall pay the same fee as if the licensee were applying for an initial license.

4. An existing license shall be allowed to continue until such time as the Common Council acts upon the renewal license application. If the Council fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.

5. The Common Council will not expedite the renewal procedure to ensure that a license will not expire when the expiration of the license is due to the licensee's untimely filing of a renewal application. Upon expiration of a license under these circumstances, the licensee is prohibited from operating or serving as an employee until the new license is granted.

6. A license may not be renewed if the Council, following the procedures found in this Section, finds that a violation of this Section has occurred or that the applicant is not qualified to hold the license.

7. If the license is granted by the Common Council, then the City Clerk shall issue the license on the next business day.

(5) LOCATION OF ADULT-ORIENTED ESTABLISHMENTS.

If all the requirements for a license as stated in this regulation are met, an Adult-Oriented Establishment shall only be allowed to locate in the zoning district(s) provided for by the City and shall not be allowed to locate in any other district.

**(6) OPERATION OF ADULT-ORIENTED ESTABLISHMENTS.**

(a) No Adult-Oriented Establishment is permitted to operate between the hours of 2 a.m. and 8 a.m. Further, no Adult-Oriented Establishment is permitted to operate between the hours of 8 a.m. and midnight on any Sunday or legal holiday as defined in §895.20, Wis. Stats.

(b) No Operator or Employee of an Adult-Oriented Establishment shall permit to be performed, offer to perform, perform or allow patrons to perform any Specified Sexual Activity in the establishment or on the site. This provision does not apply to Adult Motels, to the extent that such Specified Sexual Activity is not prohibited by law.

(c) No Operator or Employee of an Adult-Oriented Establishment shall allow any minor to enter into, loiter around or to frequent an Adult-Oriented Establishment or to view Adult Entertainment.

(d) The Operator shall maintain the premises in a clean and sanitary manner at all times.

(e) The Operator shall maintain at least 10 foot candles of illumination in the Public Areas of the establishment with the following exceptions:

1. in a booth, room, or cubicle, if a lesser level of illumination is necessary to enable a patron to view the Adult Entertainment but at no time shall there be less than .01 foot candle of illumination as measured 30" from the floor;

2. in an aisle adjacent to a booth, room, or cubicle, if a lesser amount of illumination is necessary to allow the occupant to view the Adult Entertainment, but at no time shall there be less than one and ½ foot candle of illumination as measured 30" from the floor.

3. Adult Theaters must maintain 5 foot candles of illumination in the auditorium during intermission and no less than .01 foot candles during a picture as measured at the aisle floor level.

(f) All Employees while engaged in the display or exposure of any Specified Anatomical Area, shall maintain a three-foot distance from any patron or other Employee.

(g) No restroom shall be designed, operated or maintained so that a patron can view Adult Entertainment therein.

(h) No Employee or patron in an Adult Cabaret shall be permitted to have physical contact with any Employee or patron on the premises.

(i) All performances in an Adult Cabaret shall be conducted upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest Employee or patron.

(j) The selling, serving, possession, or consumption of alcohol beverages is strictly prohibited at all times in all Adult-Oriented Establishments.

(k) No Employee or Operator shall knowingly work in or about, or knowingly perform any service directly related to the operation of any unlicensed Adult-Oriented Establishment.

(L) All Employees shall carry their license upon their person at all times while working in the Adult-Oriented Establishment and shall produce said license upon demand for inspection by any law enforcement authority. Entertainers are exempt from carrying their license upon their person while providing entertainment, but shall be readily able to produce said license upon demand for inspection by any law enforcement authority.

(m) The license for the Adult-Oriented Establishment shall be displayed in a conspicuous

public place in the Adult-Oriented Establishment.

(n) No Employee, Operator, or owner may refuse law enforcement officials entry in to an Adult-Oriented Establishment for purposes of inspecting the Adult-Oriented Establishment for compliance with these operational standards during business hours, or at other times at a reasonable hour, with reasonable notice.

(o) The Operator shall be responsible for compliance with the provisions of this section by the Adult-Oriented Establishment, its Employees and patrons.

(p) Every act or omission by any Employee constituting a violation of the provisions of this section shall be deemed the act or omission of the Operator if such act or omission occurs, either with the authorization, knowledge or approval of the Operator, or as a result of the Operator's negligent failure to supervise the Employee's conduct, and the Operator shall be accountable for such act or omission in the same manner as if Operator committed the act or caused the omission.

(7) DESIGN AND LAYOUT.

(a) External Visibility. At no time shall any Adult Entertainment inside the premises be visible to any persons who are outside the premises.

(b) Booths. Any Adult-Oriented Establishment having available for patrons any booth, room or cubicle for the private viewing of Adult Entertainment must comply with the following requirements:

1. Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and Public Areas of the Adult-Oriented Establishment and shall be unobstructed by any door, lock or other control type devices.

2. Construction. Every booth, room or cubicle shall meet the following construction requirements:

a. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-Public Areas by a wall.

b. All walls shall be solid and without any openings, extended from the floor to a height of not less than 6' and be light colored.

c. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth.

d. Booths must be separated at least twelve (12) inches from the exterior walls of any other viewing booths by open space.

3. Visibility. The interior of the booth, room or cubicle shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever.

4. Lighting. Lighting for booth, room or cubicle shall comply with the provisions of subsection (6)(e) of this ordinance.

5. Occupants. Only one individual shall be permitted to occupy a booth, room or cubicle at any time. No occupant of the booth, room or cubicle, shall be permitted to engage in any Specified Sexual Activity, cause any bodily discharge or litter while in the booth. No individual shall be permitted to damage or deface any portion of the booth.

6. Exception. This subsection does not apply to the individual rooms located in Adult Motels.

(8) EXCLUSIONS.

All private and public schools as defined in Ch. 115, Wis. Stats., located within the City are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

(9) ENFORCEMENT.

(a) License Non-Renewal, Suspension or Revocation

1. Causes for License Non-Renewal, Suspension or Revocation.

The Common Council may refuse to renew, suspend or revoke a license for any violations of this Section or if the applicant is not qualified to hold the license.

2. License Non-Renewal, Suspension And Revocation Procedures.

a. In order to commence the procedure for a license non-renewal, suspension or revocation, the City shall notify the licensee in writing by certified mail, return receipt requested, of the alleged violation or cause and the intent of the City to seek a non-renewal, suspension or revocation of the license.

b. The licensee shall be entitled to a public hearing before the Common Council regarding the license non-renewal, suspension or revocation, upon written request to the City Clerk within 10 days of receipt of the notification required in sub. a.

c. Any public hearing requested pursuant to sub. b., shall take place within 10 days of the filing of such written request unless otherwise agreed to in writing by the City and the licensee.

d. At the hearing both the City and the aggrieved party may be represented by an attorney, present evidence, call and examine witnesses, cross-examine witnesses of the other party, and make opening and closing statements. Such witnesses shall be sworn. The Mayor shall be the presiding officer at the hearing.

e. Attorneys may issue subpoenas to compel attendance of witnesses or the production of evidence. Subpoenas issued must be in substantially the same form as provide in §805.07(4), Wis. Stats., and must be served in the manner provided in §805.07(5), Wis. Stats. Copies of the subpoenas must be served on the opposing party.

f. The Council shall cause the proceedings to be recorded by a stenographer, the expense thereof to be paid by the City. Costs for copies of any transcripts or transcription of a recording shall be paid by the party requesting the transcript or transcription. All exhibits shall be marked and preserved.

g. Within 10 days of the completion of any hearing the Common Council shall determine if cause for non-renewal, suspension or revocation exists. If no public hearing is requested, the Common Council shall make a determination within 20 days of the notification date.

h. The Common Council shall issue its determination in writing and provide it within 5 days to the licensee by certified mail, return receipt requested.

i. If a license period expires while a non-renewal, suspension or revocation procedure is pending, then the non-renewal, suspension or revocation of any license shall be stayed pending the issuance of a determination by the Common Council. The non-renewal, suspension or revocation of a license shall become effective thirty days following the issuance of a decision by the Common Council,

if judicial review is not commenced as provided in this Section.

j. If judicial review of such determination by the Common Council is timely commenced, then license non-renewal, suspension or revocation shall not become effective until judgment is entered.

k. Any Person aggrieved by such a decision of the Common Council shall be entitled to immediately appeal the Council's decision in circuit court. Such an appeal must be made within 30 days of the licensee's receipt of the written decision by the Council. The City explicitly elects not to be governed by Chapter 68, Wisconsin Statutes or Chapter 24 of the City Code, and to provide the review procedures described in this Section.

L. Any Person whose license is non-renewed, suspended or revoked shall not be eligible to receive a license for a period of five years from the effective date of the suspension or revocation.

(b) Violations

1. Penalties. Any Person who violates this Section will be subject to a monetary forfeiture in an amount set from time to time by resolution of the Common Council for each violation. Each day that a violation exists shall constitute a separate violation and be punishable as such.

2. Injunction. Compliance with the provisions of this Section may also be enforced by an injunction properly issued by a court of competent jurisdiction upon the request of the City.

3. Non-Exclusivity. The imposition of any penalty under this Section or the seeking of an injunction shall not impair the right of the City to seek a non-renewal, suspension or revocation of a license as provided in this Section.

## 11.13 CIGARETTE AND TOBACCO PRODUCTS (Cr. 16-06)

### (1) LICENSE REQUIRED

No person shall sell cigarettes or tobacco products in the City without first obtaining a license from the City Clerk. The provisions of Section 134.65 Wisconsin Statutes are hereby adopted and made a part of this section by reference.

### (2) APPLICATION

The application shall be sworn to by the applicant and filed with the City Clerk and shall contain such information as the Clerk shall require for the effective enforcement of this Section and the safeguarding of the residents of the City from fraud, misconduct or abuse.

### (3) LICENSE FEE

The fee for a license as herein provided shall be as established from time to time by resolution of the Common Council.

### (4) EXPIRATION; RENEWAL; TRANSFER

The Clerk shall date all licenses issued hereunder and shall specify thereon the fee paid and date of expiration. Applications for renewals shall be handled in the same manner as original applications. Licenses issued under this Section are personal and may not be transferred.

### (5) PENALTIES

Any person, firm, corporation or the employee or agent of any licensee under this ordinance shall be subject to a penalty as provided in section 25.04 of City Codes and Ordinances.

**11.15 PENALTIES.**

Any person who shall violate any provision of this Chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in Section 25.04 of this Municipal Code unless otherwise specifically specified.