

**TITLE 7**  
**LICENSING AND REGULATION**

**CHAPTER 1**

**Licensing of Dogs and Regulation of Animals**

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**SEC. 7-1-1 DOG LICENSE REQUIRED; DEFINITIONS.**

- a) **License Required.** It shall be unlawful for any person in the Town to own, harbor or keep any dog for more than five (5) months of age after July 1 of the license year without complying with the provisions of this Chapter relating to the listing, licensing and tagging of the same.
- b) **Definitions.** In this Chapter, unless the context or subject matter otherwise require:
- 1) “Owner” shall mean any person owning, harboring or keeping a dog or cat and the occupant of any premises on which a dog or cat remains or to which it customarily returns daily for a period of ten (10) days; such person is presumed to be harboring or keeping the dog or cat within the meaning of this Section.
  - 2) “At large” means to be off the premises of the owner and not under the control of some person either by leash or otherwise, but a dog or cat within an automobile of its owner, or in an automobile of any other person with the consent of the owner of said dog or cat, shall be deemed to be upon the owner’s premises.
  - 3) “Dog” shall mean any canine, regardless of age or sex.

- (4) “Cat” shall mean any feline, regardless of age or sex.
- (5) “Neutered” as used herein as describing a dog or cat shall mean a dog or cat having nonfunctional reproductive organs.
- (6) “Animal” means mammals, reptiles and birds.
- (7) “Cruel” means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
- (8) “Law Enforcement Officer” has that meaning as appears in Sec. 967.02(5), Wis. Stats., and includes a humane officer under Sec. 58.07, Wis. Stats., but does not include a conservation warden appointed under Sec. 23.10, Wis. Stats.
- (9) “Farm Animal” means any warm-blooded animal normally raised on farms in the United States and used for food or fiber.
- (10) “Pet” means an animal kept and treated as a pet.

#### **SEC. 7-1-2 RABIES VACCINATION REQUIRED FOR LICENSE.**

- a) **Rabies Vaccination.** The owner of a dog shall have the dog vaccinated against rabies by a veterinarian within thirty (30) days after the dog reaches four (4) months of age and revaccinated within one (1) year after the initial vaccination. If the owner obtains the dog or brings the dog into the Town of Fond du Lac after the dog has reached four (4) months of age, the owner shall have the dog vaccinated against rabies within thirty (30) days after the dog is brought into the Town unless the dog has been vaccinated as evidenced by a current certificate of rabies vaccination. The owner of a dog shall have the dog revaccinated against rabies by a veterinarian before the date of that immunization expires as stated on the certificate of vaccination or, if no date is specified, within three (3) years after the previous vaccination. The certificate of vaccination shall meet the requirements of Sec. 95.21(2), Wis. Stats.
- b) **Issuance of Certificate of Rabies Vaccination.** A veterinarian who vaccinates a dog against rabies shall complete and issue to the owner a certificate of rabies vaccination bearing a serial number and in the form approved by the Town stating the owner’s name and address, the name, sex, spayed or unspayed, neutered or unneutered, breed and color of the dog, the date of the vaccination, the type of rabies vaccination administered and the manufacturer’s serial number, the date that the immunization expires as specified for that type of vaccine by the Center for Disease Control of the U.S. Department of Health and Human Services and the Town.
- c) **Copies of Certificate.** The veterinarian shall keep a copy of each certificate of rabies vaccination in a file maintained for this purpose until the date that the immunization expires or until the dog is revaccinated, whichever occurs first.
- d) **Rabies Vaccination Tag.** After issuing the certificate of rabies vaccination, the veterinarian shall deliver to the owner a rabies vaccination tag of durable material bearing the same serial number as the certificate, the year the vaccination was given and the name, address and telephone number of the veterinarian.
- e) **Tag to be Attached.** The owner shall attach the rabies vaccination tag or a substitute tag to a collar and a collar with the tag attached shall be kept on the dog at all times, but this

requirement does not apply to a dog during competition or training, to a dog while hunting, to a dog securely confined indoors or to a dog securely confined in a fenced area. The substitute tag shall be of a durable material and contain the same information as the rabies vaccination tag. The requirements of this paragraph do not apply to a dog which is not required to be vaccinated under Subsection (a).

- a) **Duplicate Tag.** The veterinarian may furnish a new rabies vaccination tag with a new serial number to an owner in place of the original tag upon presentation of the certificate of rabies vaccination. The veterinarian shall then indicate the new tag number on the certificate and keep a record in the file.
- b) **Cost.** The owner shall pay the cost of the rabies vaccination and the cost associated with the issuance of a certificate of rabies vaccination and the delivery of a rabies vaccination tag.

### **SEC. 7-1-3 ISSUANCE OF DOG AND KENNEL LICENSES.**

#### **a) Dog Licenses.**

- 1) It shall be unlawful for any person in the Town to own, harbor or keep any dog more than five (5) months of age without complying with the provisions of Sec. 174.05 through Sec. 174.10, Wisconsin Statutes, relating to the listing, licensing and tagging of the same.
- 2) The owner of any dog more than five (5) months of age on January 1 of any year, or five (5) months of age within the license year, shall annually, or on or before the date the dog becomes five (5) months of age, pay a license tax and obtain a license.
- 3) The minimum license tax under this Section shall be in accordance with the Board's current fee schedule.
- 4) Upon payment of the required license tax and upon presentation of evidence that the dog is currently immunized against rabies, as required by Section 7-1-2 of this Chapter, the Town Treasurer or his/her deputy shall complete and issue to the owner a license for such dog containing all information required by state law. The Treasurer or his/her deputy shall also deliver to the owner, at the time of issuance of the license, a tag of durable material bearing the same serial number as the license, the name of the county in which issued and the license year.
- 5) The owner shall securely attach the tag to a collar and the collar with the tag attached shall be kept on the dog for which the license is issued at all times, except as provided in Section 7-1-2(e).
- 6) The fact that a dog is without a tag attached to the dog by means of a collar shall be presumptive evidence that the dog is unlicensed. Any Town law enforcement or humane officer shall seize, impound or restrain any dog for which a dog license is required which is found without such tag attached. Each day that any dog within the Town continues to be unlicensed constitutes a separate offense for which a separate penalty applies.
- 7) Notwithstanding the foregoing, every dog specifically trained to lead blind or deaf persons is exempt from the dog license tax, and every person owning such a dog shall receive annually a free dog license from the Town Treasurer or his/her deputy upon application therefor.

b) **Kennel Licenses.**

- 1) Any person who keeps or operates a kennel may, instead of the license tax for each dog required by this Chapter, apply for a kennel license for the keeping or operating of the kennel. Such person shall pay for the license year a license tax in accordance with the Board's current fee schedule for a kennel. Upon payment of the required kennel license tax and, if required by the Board, upon presentation of evidence that all dogs over five (5) months of age are currently immunized against rabies, the Treasurer or his deputy shall issue the kennel license and a number of tags equal to the number of dogs authorized to be kept in the kennel.
- 2) The owner or keeper of a kennel shall keep at all times a kennel license tag attached to the collar of each dog over five (5) months old kept by the owner or keeper under a kennel license but this requirement does not apply to a show dog during competition, to a dog securely confined indoors or to a dog securely confined in a fenced area. These tags may be transferred from one dog to another within the kennel whenever any dog is removed from the kennel. The rabies vaccination tag or substitute tag shall remain attached to the dog for which it is issued at all times but this requirement does not apply to a show dog during competition, to a dog securely confined indoors or to a dog securely confined in a fenced area. No dog bearing a kennel tag shall be permitted to stray or to be taken anywhere outside the limits of the kennel unless the dog is in leash or temporarily for the purposes of hunting, breeding, trial, training or competition.

**SEC. 7-1-4 LATE FEES.**

The Town Treasurer shall assess and collect a late fee of Five Dollars (\$5.00) from every owner of a dog five (5) months of age or over if the owner failed to obtain a license prior to April 1 of each year, or within thirty (30) days of acquiring ownership of a licensable dog or if the owner failed to obtain a license on or before the dog reached licensable age. Said late fee shall be charged in addition to the required license fee.

**SEC. 7-1-5 RABIES QUARANTINE.**

- a) **Dogs and Cats Confined.** If a district or neighborhood is quarantined for rabies, all dogs and cats within the Town shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is declared a public nuisance and may be impounded. All officers shall cooperate in the enforcement of the quarantine. The Town Clerk shall promptly post in at least three (3) public places in the Town notices of quarantine.
- b) **Exemption of Vaccinated Dog or Cat from Town Quarantine.** A dog or cat which is immunized currently against rabies, as evidenced by a valid certificate of rabies vaccination or other evidence, is exempt from the Town quarantine provisions of Subsection (a) if a rabies vaccination tag or substitute tag is attached to the dog's or cat's collar.
- c) **Quarantine or Sacrifice of an Animal Suspected of Biting a Person or Being Infected or Exposed to Rabies.**
  - 1) Quarantine or sacrifice of dog or cat. A law enforcement, humane or animal control officer shall order a dog or cat quarantined if the officer has reason to believe that the animal bit a person, is infected with rabies or has been in contact with a rabid animal. If a quarantine cannot be imposed because the dog or cat cannot be captured, the officer may

kill the animal. The officer may kill a dog or cat only as a last resort if the owner agrees. The officer shall attempt to kill the animal in a humane manner and in a manner which avoids damage to the animal's head.

- 2) Sacrifice of other animals. A law enforcement, humane or animal control officer may order killed or may kill an animal other than a dog or cat if the officer has reason to believe that the animal bit a person or is infected with rabies.

d) **Quarantine of Dog or Cat.**

- 1) Delivery to isolation facility or quarantine on premises of owner. A law enforcement, humane or animal control officer who orders a dog or cat to be quarantined shall deliver the animal or shall order the animal delivered to an isolation facility as soon as possible but no later than twenty-four (24) hours after the original order is issued or the officer may order the animal to be quarantined on the premises of the owner if the animal is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence.

- 2) Health risk to humans. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal bit a person, the custodian of an isolation facility or the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least ten (10) days after the incident occurred. In this paragraph, "supervision of a veterinarian" includes, at a minimum, examination of the animal on the first day of isolation, on the last day of isolation and on one (1) intervening day. If the observation period is not extended and if the veterinarian certifies that the dog or cat has not exhibited any signs of rabies, the animal may be released from quarantine at the end of the observation period.

- 3) Risk to animal health.

- a. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal and if the dog or cat is not currently immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for one hundred eighty (180) days. The owner shall have the animal vaccinated against rabies between one hundred fifty-five (155) and one hundred sixty-five (165) days after the exposure to a rabid animal.
- b. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal but if the dog or cat is immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for sixty (60) days. The owner shall have the animal revaccinated against rabies as soon as possible after exposure to a rabid animal.

- 4) Sacrifice of a dog or cat exhibiting symptoms of rabies. If a veterinarian determines that a dog or cat exhibits symptoms of rabies during the original or extended observation period, the veterinarian shall notify the owner and the officer who ordered the animal quarantined and the officer or veterinarian shall kill the animal in a humane manner and in a manner which avoids damage to the animal's head. If the dog or cat is suspected to have bitten a person, the veterinarian shall notify the person or the person's physician.

- e) **Delivery of Carcass; Preparation; Examination by Laboratory of Hygiene.** An officer who kills an animal shall deliver the carcass to a veterinarian or local health department. The veterinarian or local health department shall prepare the carcass, properly prepare and package the head of the animal in a manner to minimize deterioration, arrange for delivery by

the most expeditious means feasible of the head of the animal to the State Laboratory of Hygiene and dispose of or arrange for the disposal of the remainder of the carcass in a manner which minimizes the risk or exposure to any rabies virus. The Laboratory of Hygiene shall examine the specimen and determine if the animal was infected with rabies. The State Laboratory of Hygiene shall notify the Town, the veterinarian or local health department which prepared the carcass and, if the animal is suspected to have bitten a person, that person or the person's physician.

- f) **Cooperation of Veterinarian.** Any practicing veterinarian who is requested to be involved in the rabies control program by an officer is encouraged to cooperate in a professional capacity with the Town, the Laboratory of Hygiene, the local health department, the officer involved and, if the animal is suspected to have bitten a person, the person's physician.
- g) **Responsibility for Quarantine and Laboratory Expenses.** The owner of an animal is responsible for any expenses incurred in connection with keeping the animal in an isolation facility, supervision and examination of the animal by a veterinarian, preparation of the carcass for laboratory examination and the fee for the laboratory examination. If the owner is unknown, the county is responsible for these expenses.

#### **SEC. 7-1-6 RESTRICTIONS ON KEEPING OF DOGS, CATS, FOWL AND OTHER ANIMALS.**

- a) **Restrictions.** It shall be unlawful for any person within the Town to own, harbor or keep any dog, cat, fowl or other animal which:
  - 1) Habitually pursues any vehicle upon any public street, alley or highway in the Town.
  - 2) Assaults or attacks any person or destroys property.
  - 3) Is at large within the limits of the Town.
  - 4) Habitually barks or howls to the annoyance of any person or persons. (See Section 7-1-11.)
  - 5) Kills, wounds or worries any domestic animal.
  - 6) Is known by such person to be infected with rabies or to have been bitten by an animal known to have been infected with rabies.
  - 7) In the case of a dog, is unlicensed.
- b) **Vicious Dogs and Animals.**
  - 1) For purposes of enforcing this Section, a dog shall be deemed as being of a vicious disposition if, within any twelve (12) month period it bites two (2) or more persons or inflicts serious injury to one (1) person in unprovoked circumstances off the owner's premises. Any vicious dog which is found off the premises of its owner other than as hereinabove provided may be seized by any person and, upon delivery to the proper authorities, may, upon establishment to the satisfaction of a court of competent jurisdiction of the vicious character of said dog, by testimony under oath reduced to writing, be killed by the law enforcement authorities.
  - 2) No person shall harbor or permit to remain on his/her premises any animal that is

habitually inclined toward attacking persons or animals, destroying property, barking excessively or making excessive noises or running after automobiles.

c) **Animals Running at Large.**

1) No person having in his/her possession or ownership any animal or fowl shall allow the same to run at large within the Town. The owner of any animal, whether licensed or unlicensed, shall keep his animal tied or enclosed in a proper enclosure so as not to allow said animal to interfere with the passing public or neighbors. Any animal running at large unlicensed and required by state law or Town Ordinance to be licensed shall be seized and impounded by a humane or law enforcement officer.

2) A dog shall not be considered to be running at large if it is on a leash and under control of a person physically able to control it.

d) **Owner's Liability for Damage Caused by Dogs; Penalties.** The provisions of Sec. 174.02, Wis. Stats., relating to the owner's liability for damage caused by dogs together with the penalties therein set forth are hereby adopted and incorporated herein by reference.

e) **Animal Feces.** The owner or person in charge of any dog or other animal shall not permit solid fecal matter of such animal to deposit on any street, alley or other public or private property, unless such matter is immediately removed therefrom by said owner or person in charge. This Section shall not apply to a person who is visually or physically handicapped.

**SEC. 7-1-7 IMPOUNDMENT OF ANIMALS.**

a) **Animal Control Agency.**

1) The Town may contract with or enter into an agreement with such person, persons, organization or corporation to provide for the operation of an animal shelter, impoundment of stray animals, confinement of certain animals, disposition of impoundment animals and for assisting in the administration of rabies vaccination programs.

2) The Town does hereby delegate any such animal control agency the authority to act pursuant to the provisions of this Section.

b) **Impounding of Animals.** In addition to any penalty hereinafter provided for a violation of this Chapter, any law enforcement or humane officer may impound any dog, cat or other animal which habitually pursues any vehicle upon any street, alley or highway of this Town, assaults or attacks any person, is at large within the Town, habitually barks, cries or howls, kills, wounds or worries any domestic animal or is infected with rabies. In order for an animal to be impounded, the impounding office must see or hear the violation of this Section or have in his/her possession a signed statement of a complaining witness made under oath alleging the facts regarding the violation and containing an agreement to reimburse the Town for any damages it sustains for improper or illegal seizure.

c) **Claiming Animal; Disposal of Unclaimed Animals.** After seizure of animals under this Section by a law enforcement or humane officer, the animal shall be impounded. The officer shall notify the owner, personally or through the U.S. Mail, if such owner be known to the officer or can be ascertained with reasonable effort, but if such owner be unknown or unascertainable, the officer shall post written notice in three (3) public places in the Town, giving a description of the animal, stating where it is impounded and the conditions for its

release, after the officer has taken such animal into his/her possession. If within seven (7) days after such notice the owner does not claim such animal, the officer may dispose of the animal in a proper and humane manner; provided, if an animal before being impounded has bitten a person, the animal shall be retained in the Animal Shelter for fourteen (14) days for observation purposes. Within such times, the owner may reclaim the animal upon payment of impoundment fees, such fees to be established by resolution of the Town Board. No animal shall be released from the pound without being properly licensed if so required by state law or Town Ordinance.

- d) **Sale of Impounded Animals.** If the owner doesn't reclaim the animal within seven (7) days, the animal warden may sell the animal to any willing buyer.
- e) **Town Not Liable for Impounding Animals.** The Town and/or its animal control agency shall not be liable for the death of any animal which has been impounded or disposed of pursuant to this Section.

#### **SEC. 7-1-8 DOGS AND CATS RESTRICTED IN CEMETERIES.**

No dog or cat shall be permitted in any public cemetery. Every dog specially trained to lead blind or hearing impaired persons shall be exempt from this Section.

#### **SEC. 7-1-9 DUTY OF OWNER IN CASE OF DOG OR CAT BITE.**

Every owner or person harboring or keeping a dog or cat who knows that such dog or cat has bitten any person shall immediately report such fact to a law enforcement, humane or animal control officer and shall keep such dog or cat confined for not less than fourteen (14) days or for such period of time as a law enforcement, humane or animal control officer shall direct. The owner or keeper of any such dog or cat shall surrender the dog or cat to a law enforcement or humane officer upon demand for examination.

#### **SEC. 7-1-10 INJURY TO PROPERTY BY ANIMALS.**

It shall be unlawful for any person owning or possessing an animal, dog or cat to permit such animal, dog or cat to go upon any parkway or private lands or premises without the permission of the owner of such premises and break, bruise, tear up, crush or injure any lawn, flower bed, plant, shrub, tree or garden in any manner whatsoever, or to defecate thereon.

#### **SEC. 7-1-11 BARKING DOGS OR CRYING CATS.**

It shall be unlawful for any person knowingly to keep or harbor any dog which habitually barks, howls or yelps, or any cat which habitually cries or howls to the great discomfort of the peace and quiet of the neighborhood or in such manner as to materially disturb or annoy persons in the neighborhood who are of ordinary sensibilities. Such dogs and cats are hereby declared to be a public nuisance. A dog or cat is considered to be in violation of this Section when two (2) formal, written complaints are filed with the Town within a six (6) week period.



**SEC. 7-1-12 SALE OF RABBITS, CHICKS OR ARTIFICIALLY COLORED ANIMALS.**

- a) No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living checks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.
- b) 1) No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl without providing proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in such person's care, custody or control.  
2) No retailer, as defined in Sec. 100.30(2)(e), Wis. Stats., may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under two (2) months of age, in any quantity less than six (6), unless the purpose of selling these animals is for agricultural, wildlife or scientific purposes.

**SEC. 7-1-13 PROVIDING PROPER FOOD AND DRINK TO CONFINED ANIMALS.**

- a) No person owning or responsible for confining or impounding any animal may refuse or neglect to supply the animal with a sufficient supply of food and water as prescribed in this Section.
- b) The food shall be sufficient to maintain all animals in good health.
- c) If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

**SEC. 7-1-14 PROVIDING PROPER SHELTER.**

- a) **Proper Shelter.** No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this Section. In the case of farm animals, nothing in this Section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the county where the animal or shelter is located.
- b) **Indoor Standards.** Minimum indoor standards of shelter shall include:
  - 1) Ambient temperatures. The ambient temperature shall be compatible with the health of the animal.
  - 2) Ventilation. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.
- c) **Outdoor Standards.** Minimum outdoor standards of shelter shall include:
  - 1) Shelter from sunlight. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, "caged" does not include farm fencing used to confine farm animals.
  - 2) Shelter from inclement weather.

- a. Animals generally. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.
  - b. Dogs. If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.
- d) **Space Standards.** Minimum space requirements for both indoor and outdoor enclosures shall include:
- 1) Structural strength. The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.
  - 2) Space requirements. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.
- e) **Sanitation Standards.** Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

**SEC. 7-1-15 NEGLECTED OR ABANDONED ANIMALS.**

a) **Neglected or Abandoned Animals.**

- 1) No person may abandon any animal.
- 2) Any law enforcement or humane officer may take an animal into custody pursuant to the provisions of Chapter 173, Wis. Stats., which is hereby adopted by reference and made a part of this Chapter.

- b) **Injured Animals.** No person who owns, harbors or keeps any animal shall fail to provide proper medical attention to such animal when and if such animal becomes sick or injured. In the event the owner of such animal cannot be located, the Town or any animal control agency with whom the Town has an agreement or contract shall have the authority to take custody of such animal for the purpose of providing medical treatment, and the owner thereof shall reimburse the person or organization for the costs of such treatment.

**SEC. 7-1-16 CRUELTY TO ANIMALS AND BIRDS PROHIBITED.**

- a) **Acts of Cruelty Prohibited.** No person except a law enforcement, health or humane officer in the pursuit of his duties shall, within the Town, commit an act of cruelty to any animal or bird or disturb any bird's nests or bird's eggs.
- b) **Leading Animal From Motor Vehicle.** No person shall lead any animal upon a Town street from a motor vehicle or from a trailer or semi-trailer drawn by a motor vehicle.
- c) **Use of Poisonous and Controlled Substances.** No person may expose any pet animal owned by another to any known poisonous substance or controlled substance listed in Sec. 961.01, Wis. Stats., whether mixed with meat or other food or not, where it is reasonable to

anticipate the substance may be eaten by such animal or for the purpose of harming the animal. This Subsection shall not apply to poison used on one's own premises and designed for the purpose of rodent and pest extermination, nor the use of a controlled substance used in accepted veterinarian practice or in research by persons or organizations regularly engaged in such research.

- d) **Use of Certain Devices Prohibited.** No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof either put, place, fasten, use or fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.
- e) **Shooting at Caged or Staked Animals.** No person may instigate, promote, aid or abet as a principal, agent, employee, participant or spectator, or participate in the earnings from or intentionally maintain or allow any place to be used for the shooting, killing or wounding with a firearm or any deadly weapon any animal that is tied, staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size.

#### **SEC. 7-1-17 PENALTIES.**

- a) Any person violating Sections 7-1-13, 7-1-14, 7-1-15 and 7-1-16, shall be subject to a forfeiture of not less than Fifty Dollars (\$50.00) and not more than Two Hundred Dollars (\$200.00). This Section shall also permit the Town Attorney to apply to the court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any aspect of this Chapter.
- b)
  - 1) Anyone who violates Sections 7-1-1, 7-1-2, 7-1-3, 7-1-4 or 7-1-5 of this Code of Ordinances or Chapter 174, Wis. Stats., shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) and not more than Two Hundred Dollars (\$200.00) for the first offense and not less than One Hundred Dollars (\$100.00) and not more than Four Hundred Dollars (\$400.00) for any subsequent offenses.
  - 2) An owner who refuses to comply with an order issued under Section 7-1-5 to deliver an animal to an officer, isolation facility or veterinarian or who does not comply with the conditions of an order that an animal be quarantined shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned not more than sixty (60) days or both.
- c) Any person who violates Sections 7-1-6 through 7-1-12 of this Code of Ordinances shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) and not more than One Hundred Dollars (\$100.00) for the first violation and not less than Fifty Dollars (\$50.00) and not more than Two Hundred Dollars (\$200.00) for subsequent violations.

## CHAPTER 2

### Fermented Malt Beverages and Intoxicating Liquor

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## ARTICLE A

### Fermented Malt Beverages and Intoxicating Liquor

#### SEC. 7-2-1 STATE STATUTES ADOPTED.

The provisions of Chapter 125 of the Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Chapter. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Chapter in order to secure uniform statewide regulation of alcohol beverage control.

#### SEC. 7-2-2 DEFINITIONS.

As used in this Chapter the terms “Alcoholic Beverages,” “Intoxicating Liquors,” “Principal Business,” “Legal Drinking Age”, “Premises,” “Sell,” “Sold,” “Sale,” “Restaurant,” “Club,” “Retailer,” “Person,” “Fermented Malt Beverages,” “Wholesalers,” “Retailers,” “Operators,” and “Non-Intoxicating Beverages” shall have the meaning given them by Chapter 125, Wisconsin Statutes.

#### SEC. 7-2-3 LICENSE REQUIRED.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, or cause the same to be done, without having procured a license as provided in this Chapter nor without complying with all the provisions of this Chapter, and all statutes and regulations applicable thereto

#### SEC. 7-2-4 CLASSES OF LICENSES.

- a) **Retail “Class A” Intoxicating Liquor License.** A retail “Class A” intoxicating liquor license, when issued by the Town Clerk under the authority of the Town Board, shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers and to be consumed off the premises so licensed.
- b) **Retail “Class B” Intoxicating Liquor License.** A retail “Class B” intoxicating liquor license, when issued by the Town Clerk under authority of the Town Board, shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and in the original package or container in multiples not to exceed four (4) liters at any one (1) time, to be consumed off the premises, except that wine may be sold in the original package or otherwise in any other quantity to be consumed off the premises.
- c) **Class “A” Fermented Malt Beverage Retailer’s License.** A Class “A” retailer’s fermented malt beverage license, when issued by the Town Clerk under the authority of the Town Board, shall entitle the holder thereof to possess, sell or offer for sale fermented

malt beverages only for consumption away from the premises where sold and in the original packages, containers or bottles. Such license may be issued after July 1st. The license shall expire on the following June 30th.

**d) Class “B” Fermented Malt Beverage Retailer’s License.**

- 1) License. A Class “B” fermented malt beverage retailer’s license, when issued by the Town Clerk under the authority of the Board, shall entitle the holder thereof to possess, sell or offer for sale, fermented malt beverages, either to be consumed upon the premises where sold or away from such premises. The holder may also sell beverages containing less than one-half (1/2) of a percentum of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1st. The license shall expire on the following June 30th.
- 2) Application. Class “B” licenses may be issued to any person qualified under Sec. 125.04(5), Wis. Stats. Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six (6) months before the date of application. A Class “B” license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this Chapter. Except as provided in Sec. 125.31, Wis. Stats., Class “B” licenses may not be issued to brewers or fermented malt beverages wholesalers.

**e) Temporary Class “B” Fermented Malt Beverage license.**

- 1) License. As provided in Sec. 125.26(1) and (6), Wis. Stats., temporary Class “B” fermented malt beverage licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans’ organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. Such license is valid for dates as approved by the Town Board.
  - 2) Application. Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the Town Clerk together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary Class “B” license for one (1) year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of fifteen (15) days prior to the meeting of the Town Board at which the application will be considered for events of more than three (3) consecutive days. If the application is for a license to be used in a Town park, the applicant shall specify the main point of sale facility.
- f) **Wholesaler’s License**. A wholesaler’s fermented malt beverage license, when issued by the Town Clerk under authority of the Town Board, shall entitle the holder thereof to possess,

sell or offer for sale fermented malt beverages only in original packages or containers to dealers, not to be consumed in or about the premises of said wholesaler.

g) **Retail “Class C Licenses.**

- 1) In this Subsection, “barroom” means a room that is primarily used for the sale or consumption of alcohol beverages.
- 2) A “Class C” license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
- 3) A “Class C” license may be issued to a person qualified under Sec. 125.04(5), Wis. Stats., for a restaurant in which the sale of alcohol beverages accounts for less than fifty percent (50%) of gross receipts and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than fifty percent (50%) of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. A “Class C” license may not be issued to a foreign corporation or a person acting as agent for or in the employ of another.
- 4) A “Class C” license shall particularly describe the premises for which it is issued.

Cross Reference: Section 7-2-17.

**SEC. 7-2-5 LICENSE FEES.**

There shall be the following classes of licenses which, when issued by the Town Clerk under the authority of the Town Board after payment of the license fee and publication costs hereinafter specified shall permit the holder to sell, deal or traffic in intoxicating liquors or fermented malt beverages as provided in Section 7-2-4 of this Code of Ordinances and Chapter 125, Wis. Stats.:

- a) **Class “A” Fermented Malt Beverages Retailer’s License.** The annual fee for this license shall be in accordance with the Town Board’s current fee schedule. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- b) **Class “B” Fermented Malt Beverage License.**
  - 1) The annual fee for this license shall be in accordance with the Town Board’s current fee schedule. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued. The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
  - 2) A Class “B” fermented malt beverages license may also be issued to bona fide clubs, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans’ organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering and at a meeting of the post. The fee for the license shall be as prescribed by the Town’s Fee Schedule.
- (c) **Temporary Class “B” Fermented Malt Beverage license.** The fee for this license shall be per event in accordance with the Town Board’s current fee schedule.

- (d) **Fermented Malt Beverage Wholesalers' License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule.
- (e) **"Class A" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule.
- (f) **"Class B" Intoxicating liquor Retailer's License.** The annual fee for this license shall be in accordance with the Town Board's current fee schedule, except that the fee for Reserve Class B licenses under Sec. 125.51 (4) 4., Wis. Stats. shall be as set forth in that statute. This license may be issued at any time for six (6) months in any calendar year, for which fifty percent (50%) of the applicable license fee shall be paid, but such license shall not be renewable during the calendar year in which issued.

**SEC. 7-2-6 APPLICATION FOR LICENSE.**

- a) **Contents.** Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on the form prescribed by the Wisconsin Department of Revenue and shall be sworn to by the applicant as provided by Secs. 887.01 to 887.04, Wis. Stats., and shall be filed with the Town Clerk not less than fifteen (15) days prior to the granting of such license. The premises shall be physically described to include every room and storage space to be covered by the license, including all rooms not separated by a solid wall or joined by connecting entrances.
- b) **Corporations.** The application shall be filed and sworn to by the applicant if an individual and by the president and secretary, if a corporation.
- c) **Publication.** The Clerk shall publish each application for a Class "A", Class "B", "Class A" or "Class B" or "Class C" license. There is no publication requirement for temporary Class "B" picnic beer licenses under Sec. 125.26, Wis. Stats. The application shall be published once in the official Town newspaper, and the costs of publication shall be paid by the applicant at the time the application is filed, as determined under Sec. 985.08, Wis. Stats.
- d) **Amending Application.** Whenever anything occurs to change any fact set out in the application of any licensee, such licensee shall file with the issuing authority a notice in writing of such change within ten (10) days after the occurrence thereof.
- e) **License Quotas.** Retail intoxicating liquor licenses issued by the Town Board shall be limited in number to the quota prescribed by state law.

**SEC. 7-2-7 QUALIFICATIONS OF APPLICANTS AND PREMISES.**

- a) **Residence Requirements.** A retail Class "A" or Class "B" fermented malt beverage or "Class A" or "Class B" intoxicating liquor license shall be granted only to persons who have been residents of the State of Wisconsin continuously for at least ninety (90) days prior to the date of the application.
- b) **Applicant to have Malt Beverage License.** No retail "Class B" intoxicating liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages, unless the "Class B" license is the type described under Sec. 125.51(3)(am) (winery license).



- c) **Right to Premises.** No applicant will be considered unless he has the right to possession of the premises described in the application for the license period, by lease or by deed.
- d) **Age of Applicant.** Licenses related to alcohol beverages shall only be granted to persons who have attained the legal drinking age.
- e) **Corporate Restrictions.**
  - 1) No license or permit may be issued to any corporation unless the corporation meets the qualifications under Sec. 125.04(6), Wis. Stats.
  - 2) Each corporate applicant shall file with its application for such license a statement by its officers showing the names and addresses of the persons who are stockholders together with the amount of stock held by such person or persons. It shall be the duty of each corporate applicant and licensee to file with the Town Clerk a statement of transfers of stock within forty-eight (48) hours after such transfer of stock.
  - 3) Any license issued to a corporation may be revoked in the manner and under the procedure established in Sec. 125.12, Wis. Stats., when more than fifty percent (50%) of the stock interest, legal or beneficial, in such corporation is held by any person or persons not eligible for a license under this Chapter or under the state law.
- (f) **Sales Tax Qualification.** All applicants for retail licenses shall provide proof, as required by Sec. 77.61(11), Wis. Stats., that they are in good standing for sales tax purposes (i.e., hold a seller's permit) before they may be issued a license.
- (g) **Separate license Required for Each Place of Sale.** A separate license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are in a direct connection or communication where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale; and no license shall be issued to any person, firm, partnership, corporation or association for the purpose of possession, selling or offering for sale any intoxicating liquors or fermented malt beverages in any dwelling house, flat or residential apartment.
- (h) **Residential Areas.** No "Class B" fermented malt beverage license may be issued for any premises where forty percent (40%) or more of the property fronting on both sides of the same street in the same block whereon the premises is located is used for residence purposes if a written objection is filed with the Town Clerk signed by owners of more than eighty percent (80%) of such residence property.
- i) **Off-Street Parking Facilities.** No "Class B" intoxicating liquor license shall be issued for any premises unless said premises provides off-street parking stalls equal in number to fifty percent (50%) of the number of patrons which said premises may lawfully accommodate. This restriction shall not apply in the case of renewal licenses issued for premises licensed as of the date of the enactment of this Subsection.
- j) **Connecting Premises.** Except in the case of hotels, no person may hold both a "Class A" license and either a "Class B" license or permit, a Class "B" license or permit, or a "Class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.

- k) **Limitations on Other Business; Class “B” Premises.** No Class “B” license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class “B” license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class “B” premises. No other business may be conducted on premises operating under a Class “B” license or permit. These restrictions do not apply to any of the following:
- 1) A hotel.
  - 2) A restaurant whether or not it is a part of or located in any mercantile establishment.
  - 3) A combination grocery store and tavern.
  - 4) A combination sporting goods store and tavern in towns, villages and 4th class cities.
  - 5) A combination novelty store and tavern.
  - 6) A bowling alley or recreation premises.
  - 7) A club, society or lodge that has been in existence for six (6) months or more prior to the date of filing application for the Class “B” license or permit.

#### **SEC. 7-2-8 INVESTIGATION.**

The Town Clerk shall notify the Town Constable, Fire Inspector and Building Inspector of each new application, and these officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the applicant is a proper recipient of a license. A records check may also be requested from the Sheriff’s Department. These officials shall furnish to the Town Clerk in writing, who shall forward to the Town Board, the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused.

#### **SEC. 7-2-9 APPROVAL OF APPLICATION.**

- a) No license shall be granted for operation on any premises or with any equipment for which taxes, assessments, forfeitures or other financial claims of the Town are delinquent and unpaid.
- b) No license shall be issued unless the premises conform to the sanitary, safety and health requirements of the State Building Code, and the regulations of the State Board of Health and local Board of Health applicable to restaurants. The premises must be properly lighted and ventilated, must be equipped with separate sanitary toilet and lavatory facilities equipped with running water for each sex and must conform to all Ordinances of the Town.
- c) Consideration for the granting or denial of a license will be based on:

- 1) Arrest and conviction record of the applicant, subject to the limitations imposed by Secs. 111.321, 111.322, 111.335, and 125.12(1)(b), Wis. Stats.;
  - 2) The financial responsibility of the applicant;
  - 3) The appropriateness of the location and the premises where the licensed business is to be conducted; and
  - 4) Generally, the applicant's fitness for the trust to be reposed.
- d) An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Town Board, the Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Board, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the five years immediately preceding, act to suspend such license for a period of one (1) year or more.

#### **SEC. 7-2-10 GRANTING OF LICENSE.**

- a) In the event the application is for a "Class A" or a "Class B" intoxicating liquor license at a site not previously licensed under this Chapter, the Clerk shall schedule public hearings before the Board on the granting of the licenses and shall notify all property owners situated in the block of the site for which the license is sought and all property owners within a radius of three hundred (300) feet of the proposed site of the dates of the hearings. The notice shall be given at least ten (10) days before the hearing and may be given by mail.
- b) Opportunity shall be given by the governing body to any person to be heard for or against the granting of any license. Upon the approval of the applicant by the Board, the Clerk shall issue to the applicant a license, upon payment by the applicant of the license fee to the Town. The full license fee shall be charged for the whole or fraction of any year.
- c) If the Board denies the license, the applicant shall be notified in writing, by registered mail or personal service, of the reasons for the denial. The notice shall also inform the applicant of the opportunity to appear before the Board and to provide evidence as to why the denial should be reversed. In addition, the notice shall inform the applicant that the reconsideration of the application shall be held in closed session, pursuant to Sec. 19.85(1)(b), Wis. Stats., unless the applicant requests such reconsideration be held in open session and the Board consents to the request. Such written notice shall be mailed or served upon the applicant at least ten (10) days prior to the Board meeting at which the application is to be reconsidered.

#### **SEC. 7-2-11 TRANSFER AND LAPSE OF LICENSE.**

- a) In accordance with the provisions of Sec. 125.04(12), Wis. Stats., a license shall be transferable from one premises to another if such transfer is first approved by the Town Board. An application for transfer shall be made on a form furnished by the Town Clerk. Proceedings for such transfer shall be had in the same form and manner as the original

application. The fee for such transfer is Ten Dollars (\$10.00). Whenever a license is transferred, the Clerk shall notify the Wisconsin Department of Revenue of the transfer. In the event of the sale of a business or business premises of the licensee, the purchaser of the business or business premises must apply to the Town for reissuance of the license and the Town, as the licensing authority, shall in no way be bound to reissue said license to the subsequent purchaser.

- b) Whenever the agent of a corporate holder of a license is for any reason replaced, the licensee shall give the Clerk written notice of the replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Town Board, the successor agent shall have the authority to perform the functions and be charged with the duties of the original agent. However, said license shall cease to be in effect upon receipt by the Clerk of notice of disapproval of the successor agent by the Wisconsin Department of Revenue or other peace officer of the municipality in which the license was issued. The corporation's license shall not be in force after receipt of such notice or after a regular or special meeting of the Board until the successor agent or another qualified agent is appointed and approved by the Town.

#### **SEC. 7-2-12 NUMBERING OF LICENSE.**

All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee. The Town Clerk shall affix to the license his affidavit as provided by Sec. 125.04(4) of the Wisconsin Statutes.

#### **SEC. 7-2-13 POSTING LICENSES; DEFAACEMENT.**

- a) Every person licensed in accordance with the provisions of this Chapter shall immediately post such license and keep the same posted while in force in a conspicuous place in the room or place where said beverages are drawn or removed for service or sale.
- b) It shall be unlawful for any person to post such license or to be permitted to post it upon premises other than those mentioned in the application or knowingly to deface or destroy such license.

#### **SEC. 7-2-14 CONDITIONS OF LICENSE.**

All retail Class "A", Class "B", "Class A" and "Class B" licenses granted hereunder shall be granted subject to the following conditions, and all other conditions of this Section, and subject to all other Ordinances and regulations of the Town applicable thereto.

- a) **Consent to Entry.** Every applicant procuring a license thereby consents to the entry of police or other duly authorized representatives of the Town at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of Town Ordinances or state laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.
- b) **Employment of Minors.** No retail "Class B" or Class "B" licenses shall employ any underage person, as defined in the Wisconsin Statutes, but this shall not apply to hotels and

restaurants. Family members may work on the licensed premises but are not permitted to sell or dispense alcoholic beverages.

- c) **Disorderly Conduct Prohibited.** Each licensed premises shall, at all times, be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.
- d) **Licensed Operator on Premises.** There shall be upon premises operated under a “Class B” or Class “B” or “Class C” license, at all times, the licensee, members of the licensee’s immediate family who have attained the legal drinking age, and/or some person who shall have an operator’s license and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a “Class B”, Class “B” or “Class C” license unless he/she possesses an operator’s license, or there is a person with an operator’s license upon said premises at the time of such service.
- e) **Health and Sanitation Regulations.** The rules and regulations of the Department of Health and Family Services governing sanitation in restaurants shall apply to all “Class B” liquor or “Class C” licenses issued under this Chapter. No “Class B” or “Class C” license shall be issued unless the premises to be licensed conform to such rules and regulations.
- f) **Restrictions Near Schools and Churches.** Unless this restriction is waived by the majority vote of the Town Board, no retail Class “A”, Class “B”, “Class A” or “Class B” license shall be issued for premises, the main entrance of which is less than three hundred (300) feet from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the maintenance entrance of such school, church or hospital to the main entrance to such premises. This Subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within three hundred (300) feet thereof by any school building, hospital building or church building.
- g) **Clubs.** No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- h) **Gambling Prohibited.** Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this Chapter or the laws of the State of Wisconsin.
- i) **Credit Prohibited.** No retail Class “A”, Class “B”, “Class A” or “Class B” liquor or fermented malt beverage or “Class C” wine licensee shall sell or offer for sale any alcohol beverage to any person or persons by extending credit, except hotel credit extended to a resident guest or a club to a bona fide member. It shall be unlawful for such licensee or permittee to sell alcohol beverages to any person on a passbook or store order or to receive from any person any goods, ware, merchandise or other articles in exchange for alcohol beverages.
- j) **Licensee or Permittee Responsible for Acts of Help.** A violation of this Chapter by a duly authorized agent or employee of a licensee or permittee under this Chapter shall constitute a violation by the licensee or permittee. Whenever any licensee or permittee under this Chapter shall violate any portion of this Chapter, proceedings for the suspension or revocation of the license or permit of the holder thereof may be instituted in the manner prescribed in this Chapter.

## **SEC. 7-2-15 CLOSING HOURS.**

Closing hours shall be established in conformance with Sec. 125.32(3), Wis. Stats., and further restricted as follows:

a) **Class “B” licenses.**

- 1) No premises for which a retail “Class B” liquor or Class “B” fermented malt beverage license or “Class C” wine license has been issued shall be permitted to remain open for the sale of liquor or fermented malt beverages or for any other purpose between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, and 2:30 a.m. and 6:00 a.m., Saturday and Sunday. There shall be no closing hours on January 1st.
- 2) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but shall not sell liquor or malt beverages during the closing hours of Subsection (a)(1) above.

- b) **Carryout Hours.** Between 12:00 Midnight and 6:00 a.m., no person may sell, remove, carry out or permit to be removed or carried out from any premises having a “Class A” or Class “A” license, fermented malt beverages or intoxicating liquor in original unopened packages, containers or bottles or for consumption away from the premises.

## **SEC. 7-2-16 RESTRICTIONS ON TEMPORARY FERMENTED MALT BEVERAGE OR WINE LICENSES.**

It shall be unlawful for any person or organization on a temporary basis to sell or offer to sell any alcohol beverage upon any Town-owned property or privately-owned property within the Town, except through the issuance of a Temporary Class “B” Fermented Malt Beverage License issued by the Town Board in accordance with Wisconsin Statutes and as set forth in this Section. A Temporary Class “B” Fermented Malt Beverage License authorizing the sale and consumption of beer on Town-owned property or privately-owned property may be authorized by the Town Board provided the following requirements are met:

- a) **Compliance with Eligibility Standards.** The organization shall meet the eligibility requirements of a bona fide club, association, lodge or society as set forth in Sec. 125.26(6), Wis. Stats., and shall fully comply with the requirements of this Section and Section 11-4-1. Members of an organization which is issued a temporary license and who are issued operator’s licenses for the event shall attend a pre-event informational meeting to learn what rules and regulations apply and what the responsibilities of the bartenders and organization will be.
- b) **Posting of Signs and Licenses.** All organizations issued a temporary license shall post a sufficient number of signs in a conspicuous location at the main point of sale and at all remote points of sale stating that no fermented malt beverage shall be served to any under-age person without proper identification.
- c) **Fencing.** If necessary due to the physical characteristics of the site, the Town may require that the organization install a double fence around the main point of sale to control ingress and egress and continually station a licensed operator, security guard or other competent person at the entrance for the purpose of checking age identification. Where possible, there

shall be only one (1) point of ingress and egress. When required, the double fence shall be a minimum of four (4) feet high and a minimum of six (6) feet between fences.

- d) **Underage Persons Prohibited.** No underage persons shall be allowed to assist in the sale of fermented malt beverages at any point of sale, nor shall they be allowed to loiter or linger in the area of any point of sale.
- e) **Licensed Operators Requirement.** A licensed operator shall be stationed at all points of sales at all times.
- f) **Waiver.** The Board may waive or modify the requirements of this Section due to the physical characteristics of the licensed site.
- g) **Insurance.** The applicant for a temporary fermented malt beverage license may be required to indemnify, defend and hold the Town and its employees and agents harmless against all claims, death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the license, the applicant may be required to furnish a Certificate of Comprehensive General Liability insurance with the Town. The applicant may be required to furnish a performance bond prior to being granted the license.

Cross Reference: Section 11-4-1.

#### **SEC. 7-2-17 REVOCATION AND SUSPENSION OF LICENSES; NON-RENEWAL**

- a) **Procedure.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 4, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this Section.
- b) **Abandonment of Premises.** Any licensee holding a license to sell alcohol beverages who abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be sufficient grounds for revocation of any alcohol beverage license. The loss of the licensed premises for at least six (6) months shall be prima facie evidence of the abandonment, unless extended by the Town Board. All persons issued a license to sell alcohol beverages in the Town for which a quota exists limiting the number of such licenses that may be issued by the Town shall cause such business described in such license to be operated on the premises described in such license for at least one hundred fifty (150) days during the term of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this Subsection shall not apply.
- c) **License Revocation or Suspension.** License revocation or suspension procedures shall be as prescribed by Chapter 125, Wis. Stats.

#### **SEC. 7-2-18 NON-ALCOHOL EVENTS FOR UNDERAGE PERSONS ON LICENSED PREMISES.**

The presence of underage persons on a licensed premises as provided under Sec. 125.07(3)(a)10, Wis. Stats., shall be subject to the following:

- a) The licensee or agent of a corporate licensee shall notify the Town Clerk at least forty-eight (48) hours in advance of the date of any event at which underage persons will be present on the licensed premises. Each such non-alcohol event notice shall specify the date(s) on which the event is to occur and the time(s) of commencement. All notices shall be filed with the Clerk during normal working hours. After a non-alcohol event notice has been given, the licensee may cancel an event(s) only by giving like notice to the Town in accordance with the provisions of this Subsection. Regardless of the date given, all notices shall expire and be deemed cancelled no later than the date of expiration or revocation of the applicable retail Class “B” or “Class B” license.
- b) During the period of any non-alcohol event a notice card prescribed by the Town shall be posted at all public entrances to the licensed premises notifying the general public that no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises during the event. The notice cards shall be made available by the Town to a requesting licensee.
- c) Once a non-alcohol event has commenced, no alcohol beverages may be consumed, sold or given away on or carried into the licensed premises until the next day following the closing hours of the licensed premises.
- d) During the period of any non-alcohol event all alcohol beverages shall be stored in a locked portion of the licensed premises in a secure place out of the sight and physical reach of any patron present and shall be under the direct and immediate control and supervision of the licensee or a licensed bartender in the employ of the licensee. All beer taps and automatic dispensers of alcohol beverages (“speed guns”) shall be either disconnected, disabled or made inoperable.

**SEC. 7-2-19 THROUGH SEC. 7-2-29      RESERVED FOR FUTURE USE.**



## ARTICLE B

### Operator's License

#### SEC. 7-2-30 OPERATOR'S LICENSE REQUIRED.

- a) **Operator's Licenses; Class "A", Class "B" or "Class C" Premises.** Except as provided under Sec. 125.32(3)(b) and Sec. 125.07(3)(a)10, Wis. Stats., no premises operated under a Class "A", Class "B" or "Class C" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under Sec. 125.27(2), Wis. Stats., is valid outside the municipality that issues it. For the purpose of this Section, any person holding a manager's license under Sec. 125.18, Wis. Stats., or any member of the licensee's or permittee's immediate family who has attained the age of eighteen (18), shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent, may serve fermented malt beverages in any place operated under a Class "A", Class "B" or "Class C" license or permit unless he or she has an operator's license or is at least eighteen (18) years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.
- b) **Use by Another Prohibited.**
- 1) No person may allow another to use his or her Class "A" or Class "B" license or permit to sell alcohol beverages.
  - 2) The license or permit of a person who violates Subsection (b)(1) above shall be revoked.

#### SEC. 7-2-31 PROCEDURE UPON APPLICATION.

- a) The Town Board may issue an operator's license, which shall be granted only upon application in writing on forms to be obtained from the Town Clerk only to persons eighteen (18) years of age or older. Operator's licenses shall be operative only within the limits of the Town.
- b) All applications are subject to an investigation by law enforcement authorities and/or other appropriate authority to determine whether the applicant and/or premises to be licensed complies with all regulations, ordinances and laws applicable thereto. These authorities may conduct an investigation of the applicant including, but not limited to, requesting information from the State, surrounding municipalities, and/or any community where the applicant has previously resided concerning the applicant's arrest and conviction record. Based upon such investigation, the authorities may recommend, in writing, to the Town Board approval or denial of the application. If the authorities recommend denial, the authorities shall provide, in writing, the reasons for such recommendation.

#### SEC. 7-2-32 DURATION.

Licenses issued under the provisions of this Chapter shall be valid for a period of one (1) year and shall expire on the thirtieth (30th) day of June of each even year.

**SEC. 7-2-33 OPERATOR'S LICENSE FEE; PROVISIONAL LICENSE; TEMPORARY LICENSE.**

- a) **Fee.** The annual fee for an operator's license or provisional license shall be in accordance with the Board's current fee schedule for the term or part thereof, plus actual records check costs. The fee for a provisional license shall be in accordance with the Board's current fee schedule.
- b) **Provisional license.** The Clerk may issue provisional operator's licenses in accordance with Sec. 125.17(5), Wis. Stats. The provisional operator's license shall expire sixty (60) days after its issuance or when an operator's license is issued to the holder, whichever is sooner. The Clerk may, upon receiving an application for a temporary provisional license, issue such a license without requiring the successful completion of the approved program as described herein. However, such temporary license shall be used only for the purpose of allowing such applicant the privilege of being licensed as a beverage operator pending his successful completion of the approved program. A provisional license may not be issued to any person who has been denied an operator's license by the Board or who has had his operator's license revoked or suspended within the preceding twelve (12) months. The Clerk shall provide an appropriate application form to be completed in full by the applicant. The Town Clerk may revoke the provisional license issued if he discovers that the holder of the license made a false statement on the application.
- c) **Temporary license.** The Town Clerk may issue a temporary operator's license, at no fee, provided that:
  - 1) This license may only be issued to operators employed by, or donating their services to, nonprofit corporations and organizations.
  - 2) No person may hold more than one (1) license of this kind per year.
  - 3) The license is valid for any period from one (1) day to fourteen (14) days, and the period for which it is valid shall be stated on the license.

**SEC. 7-2-34 ISSUANCE OR DENIAL OF OPERATOR'S LICENSES.**

- a) After the Town Board approves the granting of an operator's license, the Clerk shall issue the license. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- b)
  - 1) If the application is denied by the Board, the Clerk shall, in writing, inform the applicant of the denial, the reasons therefore, and of the opportunity to request a reconsideration of the application by the Board in a closed session. The notice must be sent by registered mail to, or served upon, the applicant at least ten (10) days prior to the Board's reconsideration of the matter. At such reconsideration hearing, the applicant may present evidence and testimony as to why the license should be granted.
  - 2) If, upon reconsideration, the Board again denies the application, the Town Clerk shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license upon reconsideration of the matter, may apply to Circuit Court pursuant to Sec. 125.12(2)(d), Wis. Stats., for review.

- c) 1) Consideration for the granting or denial of a license will be based on:
  - a. Arrest and conviction record of the applicant, subject to the limitations imposed by Secs. 111.321, 111.322, 111.335 and 125.12(1)(b), Wis. Stats.;
  - b. The financial responsibility of the applicant;
  - c. The appropriateness of the location and the premises where the licensed business is to be conducted; and
  - d. Generally, the applicant's fitness for the trust to be reposed.
- 2) If a licensee is convicted of an offense substantially related to the licensed activity, the Town Board may act to revoke or suspend the license.
- d) An application may be denied based upon the applicant's arrest and conviction record if the applicant has been convicted of a felony (unless duly pardoned) or if the applicant has habitually been a law offender. For purposes of this licensing procedure, "habitually been a law offender" is generally considered to be an arrest or conviction of at least two (2) offenses which are substantially related to the licensed activity within the five (5) years immediately preceding the license application. Because a license is a privilege, the issuance of which is a right granted solely to the Town Board, the Town Board reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant, deny or not renew a license. Further, the Town Board, at its discretion, may, based upon an arrest or conviction record of two (2) or more offenses which are substantially related to the licensed activity within the five (5) years immediately preceding, act to suspend such license for a period of one (1) year or more.

#### **SEC. 7-2-35 TRAINING COURSE.**

- a) Except as provided in Subsection (b) below, the Board may not issue an operator's license unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a vocational, technical and adult education district and that conforms to curriculum guidelines specified by the board of vocational, technical and adult education or a comparable training course that is approved by the educational approval board or unless the applicant fulfills one of the following requirements:
  - 1) The person is renewing an operator's license.
  - 2) Within the past two (2) years, the person held a Class "A", Class "B", "Class A", "Class B" or "Class C" license or permit or a manager's or operator's license.
  - 3) Within the past two (2) years, the person has completed such a training course.
- b) The Board may issue a provisional operator's license to a person who is enrolled in a training course under Subsection (a) above and shall revoke that license if the applicant fails successfully to complete the course in which he or she enrolls.
- a) The Board may not require that applicants for operators' licenses undergo training in addition to that under Subsection (a), but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under Subsection (a).

**SEC. 7-2-36 DISPLAY OF LICENSE.**

Each license issued under the provisions of this Chapter premises whenever the operator dispenses beverages or carry a license card.

**SEC. 7-2-37 REVOCATION OF OPERATOR'S LICENSE**

Violation of any of the terms or provisions of the St. relating to operator's licenses by any person holding such cause for revocation of the license.

**SEC. 7-2-38 THROUGH SEC. 7-2-39 RESERVED FOR FUTURE USE**

## **ARTICLE C**

### **Penalties**

#### **SEC. 7-2-40 PENALTIES.**

- a) Forfeitures for violations of Secs. 125.07(1)-(5) and 125.09(2) of the Wisconsin Statutes, adopted by reference in Section 7-2-1 of the Code of Ordinances of the Town of Fond du Lac, shall conform to the forfeiture penalty permitted to be imposed for violations of the comparable State Statute, including any variations or increases for subsequent offenses.
- b) Any person who shall violate any provision of this Chapter of the Code of Ordinances of the Town of Fond du Lac, except as otherwise provided in Subsection (a) herein or who shall conduct any activity or make any sale for which a license is required without a license, shall be subject to a forfeiture as provided in the general penalty section of this Code of the Town of Fond du Lac.
- c) Nothing herein shall preclude or affect the power of the sentencing court to exercise additional authorities granted by the Wisconsin Statutes.

## CHAPTER 3

### Cigarette License

7-3-1 Cigarette License

#### SEC. 7-3-1 CIGARETTE LICENSE.

- a) **License Required.** No person or entity shall, in any manner, directly or indirectly, upon any premises, or by any device, sell, exchange, barter, dispose of or give away, or keep for sale, any cigarette, cigarette paper or cigarette wrappers, or any substitute therefor, without first obtaining a license as hereinafter provided.
- b) **Application for License; Fee.** Every person or entity desiring a license under this Section shall file with the Town Clerk a written application therefor, stating the name of the person and the place for which such license is desired. Each license shall be filed by the Clerk and shall name the licensee and the place wherein he/she is authorized to conduct such business, and the same shall not be delivered until the applicant shall pay to the Clerk a license fee in accordance with the Town Board's current fee schedule.
- c) **Issuance and Term of License.** Licenses for the sale, exchange, barter, disposition of, or giving away or keeping for sale of cigarette paper or cigarette wrappers or any substitute therefor shall be issued by the Clerk. Each license shall be issued on the first day of July in each year, or thereafter whenever applied for, and shall continue in force from date of issuance until the succeeding June 30th unless sooner revoked for any violation of this Section.

## CHAPTER 4

### Transient Merchants

7-4-1	Registration Required
7-4-2	Definitions
7-4-3	Exemptions
7-4-4	Registration
7-4-5	Investigation
7-4-6	Appeal
7-4-7	Regulation of Transient Merchants
7-4-8	Revocation of Registration

#### **SEC. 7-4-1 REGISTRATION REQUIRED.**

It shall be unlawful for any transient merchant to engage in direct sales within the Town without being registered for that purpose as provided herein.

#### **SEC. 7-4-2 DEFINITIONS.**

In this Chapter:

- a) Transient Merchant means any individual who engages in the retail sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. The term shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the transient merchant for the retention of goods by a donor or prospective customer. For purposes of this Section, sale of merchandise includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce or other perishable products at retail or wholesale by a resident of the State of Wisconsin.
- b) Permanent Merchant means any person who, for at least one (1) year prior to the consideration of the application of this Chapter to said merchant:
  - 1) Has continuously operated an established place of business in the Town; or
  - 2) Has continuously resided in the Town and now does business from his residence.
- c) Merchandise shall include personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of merchandise by a donor or prospective customer.
- d) Charitable Organization shall include any benevolent, philanthropic, religious, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such, including, for example, Boy Scouts, Girl Scouts, 4-H Clubs and school organizations.
- e) Clerk shall mean the Town Clerk of the Town of Fond du Lac, or his/her designee.

- f) Person shall mean all humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for the same purpose or objective.

### **SEC. 7-4-3 EXEMPTIONS.**

The following shall be exempt from all provisions of this Chapter:

- a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- b) Any person selling merchandise at wholesale to dealers in such merchandise;
- c) Any person selling Wisconsin agricultural products which the person has grown;
- d) Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business;
- e) Any person who has an established place of business where the merchandise being sold or is offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested, a home visit by, said 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 selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;
- h) 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;
- i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Town Clerk proof that such charitable organization is registered under Sec. 440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under Sec. 440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this Chapter.
- j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Town Clerk that such person is a transient merchant, provided that there is submitted to the Town Clerk proof that such person has leased for at least one (1) year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business within a five (5) mile radius of the Town for at least one (1) year prior to the date complaint was made.
- k) Any individual licensed by an examining board as defined in Sec. 15.01(7), Wis. Stats.
- l) This Chapter does not apply to transient merchants while doing business at special events authorized by the Town Board.
- m) Minors under eighteen (18) years of age who are residents of the School District(s) in the Town.



#### **SEC. 7-4-4 REGISTRATION.**

- a) Registration Information.. Applicants for registration must complete and return to the Town Clerk a registration form furnished by the Clerk which shall require the following information:
- 1) Name, permanent address and telephone number, and temporary address, if any;
  - 2) Height, weight, color of hair and eyes, and date of birth;
  - 3) Name, address and telephone number of the person or entity that the transient merchant represents or is employed by, or whose merchandise is being sold;
  - 4) Temporary address and telephone number from which business will be conducted, if any;
  - 5) Nature of business to be conducted and a brief description of the merchandise offered and any services offered;
  - 6) Proposed method of delivery of merchandise, if applicable;
  - 7) Make, model and license number of any vehicle to be used by applicant in the conduct of his business;
  - 8) Last cities, villages, towns, not to exceed three (3), where applicant conducted similar business just prior to making this registration.
  - 9) Place where applicant can be contacted for at least seven (7) days after leaving the Town;
  - 10) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five (5) years, the nature of the offence and the place of conviction.
- b) Identification and Certification. Applicants shall present to the Clerk for examination:
- 1) A driver's license or some other proof of identity as may be reasonably required;
  - 2) A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
  - 3) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety (90) days prior to the date the application for license is made.
- c) Registration and Investigation Fee.
- 1) At the time of filing applications, a registration fee in accordance with the Town Board's current fee schedule shall be paid to the Clerk to cover the cost of investigation of the facts stated in the applications and for processing said registration. Every member of a group must file a separate registration form.
  - 2) The applicant shall sign a statement appointing the Clerk his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service

performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.

- 3) Upon payment of said fees and the signing of said statement, the Clerk shall register the applicant as a transient merchant and date the entry. Said registration shall be valid for a period of one (1) year from the date of entry, subject to subsequent refusal as provided in Sec. 7-4-5(b) below.
- d) License; Fees. Except as provided by Section 7-4-3, no person shall conduct any activity as a transient merchant without a license. Every applicant for a license shall pay a license fee as follows:
  - 1) Annual License. The fee for an annual license shall be in accordance with the Town Board's current fee schedule which shall be paid to the Clerk. Such license shall be for a calendar year and shall expire on December 31 following its issuance, provided however, that the fee shall be one-half (1/2) of the amount stipulated for a calendar year if it is issued on or after July 1 of any year.
  - 2) Daily License. The daily license fee shall be in accordance with the Board's current fee schedule per day which shall be paid to the Clerk. The license shall set forth the exact days on which such business may be carried out.

#### **SEC. 7-4-5 INVESTIGATION.**

- a) Upon receipt of each application, the Clerk may refer it to the Sheriff's Department, or other appropriate law enforcement agency, for an investigation of the statements made in such registration, said investigation to be completed within seven (7) days from the time of referral.
- b) The Clerk shall refuse to register the applicant and issue a permit if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three (3), in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of Section 7-4-4(b) above.

#### **SEC. 7-4-6 APPEAL**

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the Board or, if none has been adopted, under the provisions of Secs. 68.07 through 68.16, Wis. Stats.

#### **SEC. 7-4-7 REGULATION OF TRANSIENT MERCHANTS.**

- a) Prohibited Practices.
  - 1) A transient merchant shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 8:00 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.

- 2) A transient merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any merchandise offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization transient merchant shall specifically disclose what portion of the sale price of merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.
- 3) No transient merchant shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
- 4) No transient merchant shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred (100) foot radius of the source.
- 5) No transient merchant shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

b) Disclosure Requirements.

- 1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of merchandise or services he offers to sell.
- 2) If any sale of merchandise is made by a transient merchant or any sales order for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than Twenty-five Dollars (\$25.00), in accordance with the procedure as set forth in Sec. 423.203, Wis. Stats.; the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats.
- 3) If the transient merchant takes a sales order for the later delivery of merchandise, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

**SEC. 7-4-8 REVOCATION OF REGISTRATION.**

- a) Registration may be revoked by the Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this Chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

- b) Written notice of the hearing shall be served personally or pursuant to Section 7-4-4(c) on the registrant at least seventy-two (72) hours prior to the time set for the hearing; the notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

## CHAPTER 5

### Use of Explosives; Blasting Activities

7-5-1	Authority and Purpose
7-5-2	Definitions
7-5-3	Regulation of Explosive Materials and Blasting
7-5-4	Temporary Permits
7-5-5	Regulation of Blasting Resultants
7-5-6	Applicability
7-5-7	Violations and Penalties

#### SEC. 7-5-1 AUTHORITY AND PURPOSE.

- a) Authority. This Chapter is adopted pursuant to the police powers granted to the Town under Chapter 60, Wis. Stats.
- b) Purpose. The purpose of this Chapter is to:
  - 1) Protect the health, welfare and safety of Town residents;
  - 2) Protect public and private property located within the Town;
  - 3) Regulate the use of explosive materials and establish uniform limits on the permissible levels of blasting resultants to reasonably assure that blasting resultants do not cause injury, damage or nuisance to persons or property.

#### SEC. 7-5-2 DEFINITIONS.

- a) The following definitions shall apply in this Chapter. Terms not herein defined shall be understood to have their usual and ordinary dictionary meaning:
  - 1) “Airblast”. An airborne shock wave resulting from the detonation of explosives.
  - 2) “Approves”. Approval granted by the Town of Fond du Lac.
  - 3) “Blaster”. Any individual holding a valid blaster’s license issued by the Wisconsin Department of Commerce.
  - 4) “Blasting”. Any method of loosening, moving or shattering means of solid matter by use of an explosive.
  - 5) “Blasting Operation”. Any operation, enterprise or activity involving the use of blasting.
  - 6) “Blasting Resultants”. The physical manifestations of forces released by blasting, including, but not limited to, projectile matter, vibration and concussion, which might cause injury, damage or unreasonable nuisance to persons or property located outside the controlled blasting site area.

- 7) "Community". A built-up inhabited area.
- 8) "Permitted Explosives Use Area". The area that surrounds a blasting site and:
  - a. Is owned by the operator; or
  - b. With respect to which, because of property ownership, employment, relationship or agreement with the property owner, the operator can take reasonably adequate measures to exclude or to assure the safety of persons and property.
- 9) "Detonator". Any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps.
- 10) "Department". The Wisconsin Department of Commerce.
- 11) "Electric Blasting Cap". A blasting cap designed for, and capable of, initiation by means of an electric current.
- 12) "Explosion". The substantially instantaneous release of both gas and heat.
- 13) "Explosive". Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion unless the compound, mixture or device is otherwise classified by the Department by rule.
- 14) "Explosive Materials". Explosives, blasting agents and detonators. The term includes, but is not limited to, dynamite and other high explosives, slurries, emulsions, water gels, blasting agents, black power, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.
- 15) "Flyrock". Rock that is propelled through the air from a blast.
- 16) "Ground Vibration". A shaking of the ground caused by the elastic wave emanating from a blast.
- 17) "Highway". Any public street, public alley or public road.
- 18) "Inhabited Building". A building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.
- 19) "Particle Velocity". Any measure of ground vibration describing the velocity at which a particle of ground vibrates when excited by a seismic wave.
- 20) "Person". Any individual, corporation, company, association, firm, partnership, society or joint stock company.
- 21) "Powder Factor". Any ratio between the amount of powder loaded and the amount of rock broken.

- 22) “Primer”. A capped fuse, electric detonator or any other detonating device inserted in or attached to a cartridge of explosive.
- 23) “Stemming”. The inert material, such as drill cutting, used in the collar portion or elsewhere of a blast hole to confine the gaseous products of detonation.
- 24) Nuisance. An injurious effect on the safety, health, or morals of the public, or use of property which works some substantial annoyance, inconvenience, or injury to the public and which causes hurt, inconvenience, or damage.
- 25) “Town”. The Town of Fond du Lac, Fond du Lac County, Wisconsin.

### **SEC. 7-5-3 REGULATION OF EXPLOSIVE MATERIALS AND BLASTING.**

#### a) General.

- 1) General Permit(s) Required. No person shall handle or use explosive materials in the Town unless he:
  - a. Possesses a valid State of Wisconsin blaster’s license with the proper classification or is supervised by a holder of a valid State of Wisconsin blaster’s license with the proper classification; and
- 2) Firearms Exception. For purposes of this Chapter, blasting does not include the discharge of firearms for hunting.

#### b) Town Permit Requirements. No person shall handle, use or cause explosives to be detonated within the Town without an explosives use permit issued by the Town, as hereafter set forth, to such person, his supervisor or employer:

- 1) Application. Applications for an explosives use permit shall be in writing upon forms provided by the Town Clerk. Applications shall be accompanied by a permit fee in accordance with the Town Board’s current fee schedule. Permits shall be issued on an annual basis commencing January 1 and ending on December 31. Applications may be made by and permits issued to the blasting business, provided that the person doing the blasting or responsible for such blasting shall hold a valid Wisconsin blaster’s license with proper classification. The application will identify the licensed blasters operating under the permit and the blasting locations within the Town.
- 2) Financial Assurance. Each application for an explosives use permit as herein stated, or a renewal thereof, shall be accompanied by a certificate of insurance evidencing comprehensive general public liability insurance against claims for bodily injury, death, or property damage arising out of the blasting operation; such insurance to afford protection to the Town and its residents of not less than One Million Dollars (\$1,000,000) with respect to bodily injury or death to any one (1) person, not less than Three Million Dollars (\$3,000,000) with respect to any one (1) accident, and not less than One Hundred Thousand Dollars (\$100,000) with respect to property damage. The certificate of insurance shall name the Town and its residents as additional insureds under the relevant policy. Any insurance which the blaster is obligated to carry under the terms of this Chapter may be carried under so-called “blanket” policies covering other properties or liabilities of the blaster, provided, that such blanket policies otherwise comply with the

provisions of this Subsection. Each insurance policy shall provide that it shall not be cancelled by the insurance company, except after not less than ninety (90) days' notice to the Town, in writing, by registered or certified mail. Not less than thirty (30) days prior to the expiration of the ninety (90) day notice of cancellation, the blaster must deliver to the Town a replacement insurance policy in absence of which all blasting shall cease. The liability insurance must be issued by a company licensed by the State of Wisconsin to issue the policy. The Town Board reserves the right to increase the amount of the insurance policy depending on the circumstances of the blasting activity.

- 3) Explosives Use Plan. Each application for an explosives use permit or a renewal thereof shall include a written description of the total area within which explosives are proposed to be used, blasting procedures to be employed, including types of explosives, initiating systems, and an aerial photograph or drawing acceptable to the Town Board with a scale of no less than one (1) inch equals one hundred (100) feet and having an overlaying grid of fifty (50) feet by fifty (50) feet which accurately includes all areas and inhabited buildings within five hundred (500) feet of all proposed blasting areas.
- 4) Hours of Operation. Blasting shall only be conducted between 9:00 a.m. and 4:00 p.m. on Monday through Friday, provided, however, that in the event an emergency has delayed a blast beyond 4:00 p.m., a loaded hole may be blown within a reasonable time thereafter. Blasting shall not be conducted at other times or on Sundays or legal holidays without written permission from the Town Board or its designee, which shall only be granted upon a showing of extreme need.
- 5) Blasting Log. An accurate blasting log shall be prepared and maintained for each blast fired, and a true and complete copy of said log shall be supplied to the Town Clerk within seven (7) working days of the initiation of the blast. The Town may require that the permittee furnish to the Town an analysis of any particular blasting log to be prepared by the permittee. In the event the permittee cannot or will not prepare a reliable analysis, the Town may obtain such analysis from an independent expert. The permittee shall be liable for the reasonable cost of such analysis if it is determined after an opportunity to be heard that this requirement was violated by the permittee. Each blasting log shall include, but not be restricted to, the following information:
  - a. Name and license number of blaster in charge of blast;
  - b. Blast location with grid coordinate references to the supplied aerial photograph or drawing of the explosives use area;
  - c. Date and time of blast;
  - d. Weather conditions at time of blast;
  - e. Diagram and cross-section of blast hole layout;
  - f. Number of blast holes;
  - g. Blast hole depth and diameter;
  - h. Spacing and burden of blast holes;
  - i. Maximum holes per delay;



- j. Maximum pounds of explosives per delay;
- k. Depth and type of stemming used;
- l. Total pounds of explosives used, including primers and initiating cord;
- m. Distance to nearest inhabited building not owned by permittee;
- n. Type of initiation system used;
- o. Seismographic and airblast information, which shall include:
  - 1. Type of instrument and last calibration date;
  - 2. Exact location of instrument and date, time and distance from the blast,
  - 3. Name and company affiliation of person taking reading;
  - 4. Name of the person and firm analyzing the seismographic and airblast data when required;
  - 5. Vibrations and airblast levels recorded; and
  - 6. Copy of the seismograph printout.

#### **SEC. 7-5-4 TEMPORARY PERMITS.**

- a) **Temporary Permit Requirements.** The Town Clerk or Building Permit Issuer upon receipt of a properly completed temporary permit application form, may issue a temporary permit to allow for special construction or demolition activities requiring the use of explosives. Temporary permits shall be issued for a duration of fourteen (14) consecutive working days. The Town Board, in its discretion, may grant one (1) fourteen (14) day extension. Only one (1) temporary permit [and one (1) renewal] can be issued for any given site within the year of permit issuance. Applicants for temporary permits are required to provide financial assurance as specified in Section 7-5-4(b) and provide notice to all neighbors within five hundred (500) feet of the special construction or demolition activity.
- b) **Temporary Permit Categories.** Permits shall be in the following categories:
  - 1) Road, Sewer, Heavy Construction. The fee shall not exceed Five Hundred Dollars (\$500.00) determined by the Town Board based on the explosive use plan submitted by contractor or blaster.
  - 2) Construction Authorized by Town Board. Construction authorized by the Town Board for town use is exempt from the fee. Applicants for these permits are required to file financial assurances as specified in Section 7-5-3(b) and provide notice to all neighbors within five hundred (500) feet.

- 3) **Construction.** This category includes home building, septic systems, swimming pools, etc. The fee is included in the building permit. If blasting becomes necessary after the issuance of a building permit, a fee in accordance with the Town Board's current fee schedule will be assessed for the blasting permit. No bond is required. However, proof of insurance and notice to all neighbors within five hundred (500 feet is required.

#### **SEC. 7-5-5 REGULATION OF BLASTING RESULTANTS.**

- a) **Purpose of Section.** It is the purpose of this Section to provide for the establishment of uniform limits on permissible levels of blasting resultants to reasonably assure that blasting within the Town does not cause injury, damage or a nuisance to persons or property outside and beyond the permitted explosives use area.
- b) **Instrumentation.** All blast-monitoring instruments used to produce data to support compliance with this Subsection shall meet the following minimum specifications:
  - 1) **Seismic frequency range.** Two (2) to two hundred (200) Hz ( $\pm 3$  Hz).
  - 2) **Acoustic frequency range.** Two (2) to two hundred (200) Hz ( $\pm 1$  dB).
  - 3) **Velocity range.** 0.02 to four (4.0) inches per second.
  - 4) **Sound range.** One hundred (100) to one hundred forty (140) dB linear.
  - 5) **Transducers.** Three (3) mutually perpendicular axes.
  - 6) **Recording.** Provide time-history of wave form.
  - 7) **Printout.** Direct printout showing time, date, peak air pressure, peak particle velocity and frequency in three (3) directions and a printed waveform graph of the event depicting measured air blast and particle velocity in the three (3) directions.
  - 8) **Calibration.** At least once every twelve (12) months according to manufacturer's recommendations.
- c) **Control of Adverse Effects Generally.** The permittee shall take necessary steps prescribed by the Town to control adverse effects from his activity.
- d) **General Requirements.** Blasting shall be conducted so as to prevent injury and unreasonable annoyance to persons and damage to public or private property outside the permitted explosives use area.
- e) **Airblast.**
  - 1) **Limits.** Airblast shall not exceed the maximum limits listed in Table A-1 at the location of any dwelling, public building, place of employment, school, church or community or institutional building outside and beyond the permitted explosives use area. Notwithstanding this general requirement, an annual permit holder subject to this limitation may exceed the limitation on up to five percent (5%) of the blasts it initiates during the period from January 1 to December 31 without violating this Ordinance, provided that the airblast produced by such blasts does not exceed the limitations on airblast imposed by the Wisconsin Department of Industry, Labor and Human Relations in Subsection ILHR 7.64(2), Wis. Adm. Code, as amended from time to time.

**Table A-1**

**Airblast Limits**

<b>Lower Frequent Limit of Measuring System in Hz</b>	<b>Maximum Level in dB</b>
2 Hz or lower – Flat response	123 peak
6 Hz or lower – Flat response	129 peak

2) Monitoring.

- a. The permittee shall monitor all blasts at the closest location to the blast of any dwelling, public building, place of employment, school, church or community or institutional building outside and beyond the permittee explosives use area, provided, however, that the permittee may monitor, at another location, approximately the same distance from the blast site, if the permittee is unable to obtain permission to conduct the monitoring from the owner of the preferred location. The Town Board or its designee may, at its discretion, require the relocation of monitoring equipment to a more suitable site and/or may conduct independent air-blast monitoring to spot-check data supplied by the permittee. If independent monitoring by the Town after hearing discloses that this Chapter was violated by the permittee, then in that event, the permittee shall pay the reasonable costs incurred by the Town for the independent monitoring. Upon receiving and approving billings for such expenses, the Town shall cause notice of the expenses to be mailed to the permittee, who shall reimburse the Town for such expenses within thirty (30) days after receipt of such notice.
  - b. The measuring equipment used shall have an upper end flat frequency response of at least two hundred (200) Hz.
  - c. All measuring equipment during monitoring shall be spiked to the ground or sandbagged.
- f) **Flyrock.** Flyrock produced as a result of explosives use shall be totally contained within the permitted explosives use area.

g) **Ground Vibration.**

1) General.

- a. The maximum ground vibration at the location of any dwelling, public building, place of employment, school, church or community or institutional building outside or beyond the permitted explosives use area shall have a maximum peak-particle-velocity limit as provided by the Department, the scaled-distance equation provided by the Department, or the blasting level chart provided by the Department, whichever is applicable hereunder.

- b. All structures in the vicinity of the permitted explosives use area, not listed in Subsection (g)(1), such as water towers, pipelines and other utilities, tunnels, dams, impoundments and underground mines shall be protected from damage by establishment by the permit holder of a maximum allowable limit on the ground vibration. The permit holder shall establish the limit after consulting with the owner of the structure.

2) Seismic Monitoring.

- a. The Town Board, in its discretion, may conduct independent seismic blast monitoring to spot-check data supplied by the permit holder. If the independent monitoring was done after good cause was shown therefore and after the permittee was given notice and an opportunity to be heard on the matter, the permittee shall be liable to the Town for all expenses incurred by the Town as a result of such independent monitoring. Upon receiving and approving billings for such expenses, the Town shall cause notice of the expenses to be mailed to the permittee, who shall reimburse the Town for such expenses within thirty (30) days after receipt of such notice.
- b. The Town Board, upon good cause shown and after giving the permittee notice and an opportunity to be heard, may request analysis of records and data for any or all blasts which occurred within the permitted explosives use area.

3) Preblasting Notification.

- a. Each explosives use permit application and all reapplications shall include the names and addresses of all residents or owners of dwellings or other structures located within an area affected by the permitted explosives use. The affected area shall be determined based on the maximum pounds of explosive per eight (8) MS delay from the previous three (3) years' high. This calculation's square root x one hundred (100) shall determine the affected in area in feet. This calculation shall be the maximum distance from the boundary of the quarry where a preblast survey may be requested. One thousand (1,000) feet shall be the minimum distance for which a preblast survey may be requested regardless of the above calculation. Residents outside of these boundaries may petition the Town Board for a preblast survey, with the survey to be at the quarry operator's expense. Residents denied this preblast survey may, at their own expenses, secure a survey by a company acceptable to the quarry operator. The quarry operator may not unreasonably reject the company proposed to perform the survey. The surveys performed in this paragraph will serve as the basis for damage claims against the quarry operator. The blasting logs used to determine the previous three (3) years' high, as references in this Subsection, are available for inspection from the Town Clerk. [See Section 7-5-3(b)(5)]
- b. At the time of permit application, the applicant shall have notified, in writing, all residents or owners of dwellings or other structures located within the affected area, previously defined in Subsection (g)(3)a immediately above, who may request a preblast survey. All preblast surveys shall include a water quality test for existing wells. The applicant shall cause a preblast survey to be conducted as to such

dwellings or structures, and extensive water quality testing for existing wells, provided, however, that the applicant shall not be required to conduct a preblast survey more than once every six (6) years and a well water quality test more than once every four (4) years. The applicant or permittee are responsible for the costs of all requested preblast surveys and water quality tests.

- c. The survey shall include a written report signed by the person who conducted the survey. Copies of the survey report shall be promptly provided to the Town Clerk, the owner or resident, and the applicant/permittee. The owner, resident or applicant/permittee shall promptly submit in writing to the Town any objections to the survey report, setting forth in detail such objections.
- d. The owner of a dwelling or structure that is within the affected area defined in Subsection (3)(a) above, who subsequent to the preblast survey has substantially modified or improved the dwelling or structure by fifty percent (50%) or more of the fair market value may request a new preblast survey. If it is found that a preblast survey is appropriate, the permittee may conduct such surveys within a reasonable period of time, but not exceeding twice a year for all such requested by all owners. These updated surveys shall be requested in writing submitted to the Town Board, which shall promptly notify the permittee of the request.
- e. All expenses incurred as a result of such independent surveys shall be the responsibility of the applicant/permittee. Upon receiving and approving billings for such expenses, the Town shall cause notice of the expenses to be mailed to the applicant/permittee, who shall reimburse the Town for such expenses within thirty (30) days after receipt of such notice.

#### **SEC. 7-5-6 APPLICABILITY.**

- a. **Effective Date.** All use of explosives and blasting activity conducted in the Town on or after the date of original adoption of this Chapter shall be subject to the provisions of this Chapter. Existing operations of whatever nature, including without limitation nonmetallic mining operations, shall comply with the terms of this Chapter.
- b. **Other Ordinances.** Where the provisions of this Chapter conflict with any provisions of any other Town Ordinance, the provisions of this Chapter, if more restrictive than those of the other ordinances, shall control and shall supersede the provisions of the other ordinances.
- c. **State and Federal Laws.** Where the provisions of this Chapter conflict with the provisions of any applicable State or Federal law or regulation, the provisions of the most restrictive Ordinance, Statute or Regulation shall control, to the extent permitted by State and Federal law.

#### **SEC. 7-5-7 VIOLATIONS AND PENALTIES.**

##### **a. Enforcement Provisions.**

- 1) Enforcement. The following are criteria that the Town Board may consider for issuance, re-issuance, suspension or revocation of a blasting permit:

- a. compliance with the blasting standards established by the Town of Fond du Lac as noted herein by this Chapter.
- b. Development and submittal to the Town Board of the Town of Fond du Lac the explosives use plan and fails upon operation to comply with the plan.
- c. Development and submittal to the Town Board of the Town of Fond du Lac the blasting log and fails upon operation to comply with the information called for by the blasting log.
- d. Maintaining the financial assurance requested by the Town Board of the Town of Fond du Lac.
- e. Compliance with the operational hours for blasting as noted herein by this Chapter.
- f. Compliance with airblast and ground vibration standards established by the Town of Fond du Lac as noted herein by this Chapter.
- g. Compliance with the pre-blasting notification requirements to residents and the Town Board as noted hereby by this Chapter.
- h. Attempts made by the permittee or party in interest to comply with the provisions of this Chapter.
- i. Consideration of atmospheric, unknown conditions including geophysical conditions, and other matters beyond the control of the permittee or party in interest.

2) Suspension/Revocation.

- a. Unless expressly provided herein or by other Town of Fond du Lac ordinance provisions, the explosive use permit may be suspended or revoked for cause for substantial noncompliance with this Chapter after the proper Town of Fond du Lac hearing noted below, unless in an emergency condition determined by a designated member of the Town Board and either the Town Clerk, the Town Constable, or the permit issue of the Town of Fond du Lac wherein the license, registration or permit can be suspended temporarily for a set time period. Prior to any action for suspension or revocation, the Town Board of the Town of Fond du Lac must, by the Town Clerk of the Town of Fond du Lac, receive a verified complaint concerning the licensee, registrant or permittee. The following persons may file a verified complaint with the Town Board of the Town of Fond du Lac:
  - 1. The Town Chair.
  - 2. The Town Clerk.
  - 3. The Town Supervisors.
  - 4. The Town Zoning Administrator/Building Inspector.
  - 5. The Town Constable or other law enforcement officer.
  - 6. Any Town of Fond du Lac resident.
  - 7. A landowner within one thousand (1,000) feet of the blasting site.
- b. The Town Board will make a determination if the allegations of the complaint are of sufficient magnitude, importance, or otherwise of such a nature as to require a formal evidentiary hearing.

- c. The person subject to charges for violation of any Town of Fond du Lac ordinance or any violation of a condition of the explosives use permit shall be provided a copy of the verified complaint and notice of hearing before the Town Board of the Town of Fond du Lac. The hearing shall be required to be not less than ten (10) days nor more than thirty (30) days after the receipt of notice, unless stipulated in writing by the Town Board of the Town of Fond du Lac and the person subject to charges.
  - d. The person subject to charges for violation of any Town of Fond du Lac ordinance or any violation of a condition of the explosive use permit shall be entitled to the following:
    - 1. Representation by legal counsel.
    - 2. Right to present and cross examine witnesses.
    - 3. Right to subpoena witnesses by the Town Chair of the Town of Fond du Lac issuing subpoenas to compel attendance of witnesses.
  - e. The Town Board of the Town of Fond du Lac may, after the hearing for any person previously issued an explosive use permit by the Town Board of the Town of Fond du Lac, act as follows:
    - 1. Revoke the permit as a final decision.
    - 2. Suspend the permit for a date certain as a final decision.
    - 3. Request additional information as an interim decision prior to taking future action.
    - 4. Take no action on the permit as a final decision.
  - f. The final decision of the Town Board of the Town of Fond du Lac to revoke or suspend the explosives use permit shall be subject to appeal to the Circuit Court.
- b. **Penalties for Violations.** In addition to the denial, suspension or revocation of a permit issued under this Chapter, any person who shall violate any provision of this Chapter or who shall fail to obtain a permit as required hereunder shall upon conviction of such violation, be subject to a penalty of a civil forfeiture as prescribed in Section 1-1-6 of this Code of Ordinances, together with the costs of prosecution. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Chapter shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Chapter. Any default of such forfeiture determined by a Court of competent jurisdiction shall be subject to any penalties as provided by Sections 66.115, 66.117, 66.119 and 66.12, Wis. Stats., as may be amended.

## CHAPTER 6

### Regulation and Licensing of Fireworks

7-6-1 Regulation of Fireworks

#### SEC. 7-6-1 REGULATION OF FIREWORKS

- a) **Statutory Authority.** This Section is adopted pursuant to the powers granted to Towns under Secs. 60.22, 66.052, and 167.10(5), Wis. Stats. The provisions of this Section are intended to supplement, not replace, the existing statutory requirements set forth in Ch. 167, Wis. Stats.
- b) **Definition.** This Section incorporates by reference the definition of “fireworks” as set forth in Sec. 167.10, Wis. Stats., as amended from time to time. In this Section, “fireworks” means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:
- 1) Fuel or a lubricant.
  - 2) A firearm cartridge or shotgun shell.
  - 3) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
  - 4) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
  - 5) A cap containing not more than one-quarter (1/4) grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
  - 6) A toy snake which contains no mercury.
  - 7) A model rocket engine.
  - 8) Tobacco and a tobacco product.
  - 9) A sparkler on a wire or wood stick not exceeding thirty-six (36) inches in length or 0.25 inch in outside diameter which does not contain magnesium, chlorate or perchlorate.
  - 10) A device designed to spray out paper confetti or streamers and which contains less than one-quarter (1/4) grain of explosive mixture.
  - 11) A device designed to produce an audible sound but not explode, spark, move or emit an external flame after ignition and which does not exceed three (3) grams in total weight.
  - 12) A device that emits smoke with no external flame and does not leave the ground.
  - 13) A cylindrical fountain not exceeding one hundred (100) grams in total weight with an inside tube diameter not exceeding 0.75 inch, designed to sit on the ground and emit only sparks and smoke.



14) A cone fountain not exceeding seventy-five (75) grams in total weight, designed to sit on the ground and emit only sparks and smoke.

c) **Sale.** No person may sell or possess with intent to sell fireworks, except:

- 1) To a person holding a permit under Subsection (d)(3);
- 2) To a municipality; or
- 3) For a purpose specified under Subsection (d)(2)b-f.

d) **Use.**

1) Permit Required. No person may possess or use fireworks without a user's permit from the Town Chairperson or from an official or employee of the Town as designated by the Town Board. No person may use fireworks or a device listed under Subsection (a)(5)-(7) and (9)-(14) while attending a fireworks display for which a permit has been issued to a person listed under Subparagraph (d)(3)a-e or under Subparagraph (d)(3)f if the display is open to the general public.

2) Permit Exceptions. Subparagraph (d)(1) above does not apply to:

- a. The Town, except that Town fire and law enforcement officials shall be notified of the proposed use of fireworks at least two (2) days in advance.
- b. The possession or use of explosives in accordance with rules or general orders of the Wisconsin Department of Industry, Labor and Human Relations.
- c. The disposal of hazardous substances in accordance with rules adopted by the Wisconsin Department of Natural Resources.
- d. The possession or use of explosive or combustible materials in any manufacturing process.
- e. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.

3) Who May Obtain Permit. A permit under this Subsection may be issued only to the following:

- a. A public authority;
- b. A fair association;
- c. A park board;
- d. A civic organization;
- e. An agricultural producer who uses fireworks for the protection of crops from predatory birds or animals.

- 4) Crop Protection Signs. A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.
  - 5) Indemnity Bond/Insurance. Any person or entity applying for a user's permit from the Town of Fond du Lac shall file an indemnity bond with good and sufficient sureties or a policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy shall be taken in the name of the Town and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy shall be in an amount of not less than One Hundred Thousand Dollars (\$100,000.00) for property damage, Five Hundred Thousand Dollars (\$500,000.00) for injury to or death of one (1) person and One Million Dollars (\$1,000,000.00) for all injuries or deaths arising out of or resulting from any occurrence. The Town shall be provided with a certificate of insurance issued by the applicant's insurance company showing such insurance to be in effect and naming the Town as an additional insured. The bond or policy shall require notice of cancellation to be sent to the Town at least thirty (30) days prior to any cancellation or modification.
  - 6) Required Information for Permit. A permit under this Subsection shall specify all of the following:
    - a. The name and address of the permit holder.
    - b. The date on and after which fireworks may be purchased.
    - c. The kind and quantity of fireworks which may be purchased.
    - d. The date and location of permitted use.
    - e. Other special conditions prescribed by ordinance.
  - 7) Copy of Permit. A copy of a permit under this Subsection shall be given to the Fire Chief at least two (2) days before the date of authorized use.
  - 8) Minors Prohibited. A permit under this Subsection may not be issued to a minor.
- e) **Storage and Handling.**
- 1) Fire Extinguishers Required. No wholesaler, dealer or jobber may store or handle fireworks on the premises unless the premises are equipped with fire extinguishers approved by the Fire Chief.
  - 2) Smoking Prohibited. No person may smoke where fireworks are stored or handled.
  - 3) Fire Chief to be Notified. A person who stores or handles fireworks shall notify the Fire Chief of the location of the fireworks.
  - 4) Storage Distance. No wholesaler, dealer or jobber may store fireworks within five hundred (500) feet of a dwelling.

- 5) Restrictions on Storage. No person may store fireworks within five hundred (500) feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one (1) gallon.
- f) **Parental Liability**. A parent or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks.
- g) **Enforcement**. Fireworks stored, handled, sold, possessed, or used by a person in violation of this Section may be seized by the Fond du Lac County Sheriff's Department. The fireworks shall be destroyed after conviction for a violation.
- h) **Continuing Applicability of State Statutes**. Nothing in this local ordinance is intended to modify or supersede the requirements of Ch. 167, Wis. Stats., unless expressly set forth herein.

Cross-Reference: Section 11-2-2, Sale and Discharge of Fireworks Restricted

## CHAPTER 7

### Street Use Permits

7-7-1 Street Use Permits

#### SEC. 7-7-1 STREET USE PERMITS.

- a) **Purpose.** The streets in possession of the Town are primarily for the use of the public in the ordinary way. However, under proper circumstances, the Town Clerk may grant a permit for Street use, subject to reasonable municipal regulation and control. Therefore, this Chapter is enacted to regulate and control the use of streets pursuant to a Street Use Permit to the end that the health, safety and general welfare of the public and the good order of the Town can be protected and maintained.
- b) **Application.** A written application for a Street Use Permit by persons or groups desiring the same shall be made on a form provided by the Town Clerk and shall be filed with the Clerk. The application shall set forth the following information regarding the proposed street use:
- 1) The name, address and telephone number of the applicant or applicants.
  - 2) If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorizing responsible heads of such organization.
  - 3) The name, address and telephone number of the person or persons who will be responsible for conducting the proposed use of the street.
  - 4) The date and duration of time for which the requested use of the street is proposed to occur.
  - 5) An accurate description of that portion of the street proposed to be used.
  - 6) The approximate number of persons for whom use of the proposed street area is requested.
  - 7) The proposed use, described in detail, for which the Street Use Permit is requested.
- c) **Representative at Meeting.** The person or representative of the group making application for a Street Use Permit shall be present when the Town Board gives consideration to the granting of said Street Use Permit to provide any additional information which is reasonably necessary to make a fair determination as to whether a permit should be granted.
- d) **Denial of Street Use Permit.** An application for a Street Use Permit may be denied if:
- 1) The proposed street use is primarily for private or commercial gain.
  - 2) The proposed street use would violate any federal or state law or any Ordinance of the Town.
  - 3) The proposed street use will substantially hinder the movement of police, fire or emergency vehicles, constituting a risk to persons or property.

- 4) The application for a Street Use Permit does not contain the information required above.
  - 5) The application requests a period for the use of the street in excess of eight (8) hours.
  - 6) The proposed use could equally be held in a public park or other location. In addition to the requirement that the application for a Street Use Permit shall be denied, as hereinabove set forth, the Board may deny a permit for any other reason or reasons if it concludes that the health, safety and general welfare of the public cannot adequately be protected and maintained if the permit is granted.
- e) **Permit Fee.** Each application for a Street Use Permit shall be accompanied by a fee in accordance with the Board's current fee schedule. The applicant shall be responsible for obtaining state-approved barricades from a private firm that supplies such equipment and pay the cost thereof.
- f) **Insurance.** The applicant for a Street Use Permit may be required to indemnify, defend and hold the Town and its employees and agents harmless against all claims, liability, loss, damage or expense incurred by the Town on account of any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, the applicant may be required to furnish a Certificate of Comprehensive General Liability Insurance with the Town. The applicant may be required to furnish a performance bond prior to being granted the permit.
- g) **Termination of a Street Use Permit.** A Street Use Permit for an event in progress may be terminated by law enforcement officers if the health, safety and welfare of the public appears to be endangered by activities generated as a result of the event or the event is in violation of any of the conditions of the permits or ordinances of the Town. Law enforcement officers have the authority to revoke a permit or terminate an event in progress if the event organizers fail to comply with any of the regulations in the street use policy or conditions stated in the permit.

## CHAPTER 8

### Regulation of Large Assemblies of Persons

7-8-1 Permits for Large Public Gatherings

#### SEC. 7-8-1 PERMITS FOR LARGE PUBLIC GATHERINGS.

a) **Intent.**

- 1) It is the purpose of the Town Board to regulate the assemblage of large numbers of people, in excess of those normally needing the health, sanitary, fire, police, transportation and utility services regularly provided in the Town, in order that the health, safety and welfare of all persons in the Town, residents and visitors alike, may be protected.
- 2) The purpose and intent of this Section is to establish site approval for locations in the Town used temporarily for large gatherings, as defined in Subsection (b) below, it being recognized that the character and type of such gatherings vary widely and the facilities required to carry out the general purpose and intent of this Section should be the subject of a Public Gathering Permit issued only after public hearing and a determination by the Board that there will be compliance with the standards set forth in this Section.

b) **Scope.** This Section shall apply to all public and private gatherings, rallies, assemblies or festivals at which attendance is greater than five hundred (500) persons for a one (1) day event and greater than two hundred fifty (250) persons for a two (2) day or more event. The requirement for a Public Gathering Permit shall not apply to events held in any regularly established permanent place of worship, stadium, school, athletic field, arena or other similar permanently established structure designed for assemblies or to church picnic events which do not exceed by more than two hundred fifty (250) people the maximum seating capacity of the structure where the assembly is held.

c) **Definitions.** The following definitions shall be applicable in this Section:

- 1) Person. Any individual, partnership, corporation, firm, organization, company, association, society or group.
- 2) Assembly. A company of persons gathered together at any location at any single time for any purpose, and may be considered a large public gathering if it falls within the definition in Subsection (b) above.
- 3) Public Gathering. Shall be as defined in Subsection (b) above.

d) **Permit Required.** No person shall permit, maintain, promote, conduct, advertise, act as entrepreneur, undertake, organize, manage or sell or give away tickets to an actual or reasonably anticipated large gathering, whether on public or private property, unless a Public Gathering Permit to hold the assembly has first been issued by the Town Board. A permit to hold an assembly issued to one person shall permit any person to engage in any lawful activity in connection with the holding of the licensed assembly.

e) **Application for Permit.**

- 1) Applicant. Applications for a Public Gathering Permit shall be made by the owner or a person having a contractual interest in lands proposed as the site for a public or private gathering, rally, assembly or festival as defined in this Section. The application shall contain a statement made upon oath or affirmation that the statements contained therein are true and correct to the best knowledge of the applicant and shall be signed and sworn to or affirmed by the individual making application in the case of an individual, natural human being, by all officers in the case of a corporation, by all partners in the case of a partnership or by all officers of an unincorporated association, organization, society or group or, if there be no officers, by all members of such association, organization, society or group.
  - 2) Filing Period. An application for a Public Gathering Permit shall be filed with the Town Clerk not less than forty-five (45) days nor more than one hundred twenty (120) days before the date on which it is proposed to conduct the event.
- f) **Required Application Information**. The application for a Public Gathering Permit shall contain and disclose all of the following information:
- 1) The name, residence and mailing address of all persons required to sign the application by Subsection (e)(1) above and, in the case of a corporation, a certified copy of the articles of incorporation together with the name, age, residence and mailing address of each person holding ten percent (10%) or more of the stock of such corporations.
  - 2) The name and mailing address of the promoter and/or sponsor of the gathering.
  - 3) The address and legal description of all property upon which the assembly is to be held, together with the name, residence and mailing address of the owner of record of all such property. This description shall be by plat of survey to a scale of one (1) inch equals one hundred (100) feet prepared by a registered land surveyor showing the location, boundaries, dimensions, type, elevations and size of the following: subject site, existing or proposed wells, buildings, fences, woods, streams, lakes or water courses, as well as the vertical contour interval two (2) feet above the ordinary high water level.
  - 4) Proof of ownership of all property upon which the assembly is to be held or a statement made upon oath or affirmation by the record owner of all such property that the applicant has permission to use such property for an assembly of two hundred fifty (250) or more persons.
  - 5) The nature or purpose of the assembly.
  - 6) The total number of days and/or hours during which the assembly is to last.
  - 7) The maximum number of persons which the applicant shall permit to assemble at any time, not to exceed the maximum number which can reasonably assemble at the location of the assembly, in consideration of the nature of the assembly, or the maximum number of persons allowed to sleep within the boundaries of the location of the assembly by the zoning ordinances of the county if the assembly is to continue overnight.
  - 8) The maximum number of tickets to be sold, if any.
  - 9) The plans of the applicant to limit the maximum number of people permitted to assemble.
  - 10) The plans for fencing the location of the assembly and the gates contained in such fence.

- 11) The plans for supplying potable water including the source, amount available and location of outlets.
  - 12) The plans for providing toilet and lavatory facilities including the source, number and location, type and the means of disposing of waste deposited.
  - 13) The plans for holding, collection and disposing of solid waste material.
  - 14) The plans to provide for medical facilities including the location and construction of a medical structure, the names and addresses and hours of availability of physicians and nurses, and provisions for emergency ambulance service.
  - 15) The plans, if any, to illuminate the location of the assembly including the source and amount of power and the location of lamps.
  - 16) The plans for parking vehicles including size and location of lots, points of highway access and interior roads including routes between highway access and parking lots.
  - 17) The plans for camping facilities, if any, including facilities available and their location.
  - 18) The plans for security including the number of guards, their deployment, command arrangements, and their names, addresses, credentials and hours of availability.
  - 19) The plans for fire protection including the number, type and location of all protective devices including alarms and extinguishers, and the number of emergency fire personnel available to operate the equipment.
  - 20) The plans for sound control and sound amplification, if any, including number, location and power of amplifiers and speakers.
  - 21) The plans for food concessions and concessionaires who will be allowed to operate on the grounds including the names and addresses of all concessionaires and their license or permit numbers.
  - 22) The application shall include the bond required in Subsection (g) and the permit fee.
- g) **Bond.** The Board shall have authority to require the applicant and site owners to file a cash bond or establish an escrow account in an amount to be determined by the Board, but not exceeding One Hundred Thousand Dollars (\$100,000.00), conditioned on complete compliance by the applicant and site owner with all provisions of this Section, the terms and conditions of the Public Gathering Permit, including cleaning up the site, and the payment of any damages, administrative and law enforcement costs, fines, forfeitures or penalties imposed by reason of violation thereof. Such bond or escrow account information shall be filed with the Clerk prior to the issuance of a permit.
- h) **Charge for Increased Costs.** Where the Board determines that the cost of municipal services incident to the staging of the usage will be significantly increased because of the usage, the Board may require the permittee to make an additional payment into the general fund of the Town in an amount equal to the increased costs.



- i) **Hearing; Determination.** Prior to considering an application for a Public Gathering Permit, the Board shall conduct a public hearing on the matter. Written notice of such hearing shall be mailed to the applicant and all property owners adjacent to the site of the proposed assembly. The Board shall, based on evidence presented at the hearing, make a finding of the number of persons expected to attend the event. Such finding shall be final and conclusive on the applicant for the purpose of determining the amount of the permit fee and the applicability of those standards set forth herein which are dependent upon the number of persons attending the event.
- j) **Standards.** A Public Gathering Permit shall not be issued unless it is determined, based on evidence produced at the hearing or submitted with application materials, that the following standards are or will be met; the applicant may be required to file with the Town Clerk copies of properly executed contracts establishing the ability to fully provide the services required under this Section:
- 1) For events scheduled for two (2) successive days or more, at least one (1) acre of land, exclusive of roads, parking lots and required yards shall be provided for each one hundred (100) persons attending.
  - 2) Every site proposed for a Public Gathering Permit shall be on generally well-drained ground and shall not be on ground on which storm or other waters accumulate or on ground which is wet or muddy due to subsoil moisture.
  - 3) Due to the physical characteristics of the site, the Board may require that the applicant shall provide proof that he will furnish, at his own expense, a minimum of two (2) days before the assembly commences, a snow-fence type fence completely enclosing the proposed location of sufficient height and strength to prevent people in excess of the maximum permissible number from gaining access to the assembly grounds, which shall have at least four (4) gates, at least one (1) at or near four (4) opposite points of the compass.
  - 4) The applicant shall provide proof that he has contracted for local EMS services to provide emergency ambulance and EMT services, at the applicant's expense, for events at which over one thousand (1,000) persons will be in attendance.
  - 5) The applicant shall provide proof that he will furnish, at his own expense before the assembly commences if the assembly is to continue during hours of darkness, illumination sufficient to light the entire area of the assembly at the rate of at least five (5) foot candles, but not to shine unreasonably beyond the boundaries of the enclosed location of the assembly.
  - 6) The applicant shall provide proof that he will furnish, at his own expense before the assembly commences, a free parking area inside of the assembly grounds sufficient to provide parking space for the maximum number of people to be assembled at the rate of at least one (1) parking space for every four (4) persons.

- 7) The applicant shall provide proof that he will furnish, at his own expense before the assembly commences, security guards, either regularly employed, duly sworn, off-duty Wisconsin peace officers or private guards, licensed in Wisconsin, sufficient to provide adequate security for the maximum number of people to be assembled at the rate of at least one (1) security guard for every five hundred (500) people. If it is determined by the Town Chairperson that additional police protection shall be required, he may contact the County Sheriffs Department; and all costs for the additional protection required shall be deducted from the posted cash bond.
  - 8) The applicant shall provide proof that he will furnish, at his own expense before the assembly commences, fire protection, including alarms, extinguishing devices and fire lanes and escapes, sufficient to meet all state and local standards for the location of the assembly as set forth in the Wisconsin Administrative Code and ordinances of the county and Town, and sufficient emergency personnel to efficiently operate the required equipment.
  - 9) The applicant shall provide an adequate source of pure water with sufficient supply outlets for drinking and other purposes to comfortably accommodate the number of persons expected to attend the event at the rate of one (1) gallon per person per day. Where a public water supply is not available, potable water, meeting all federal and state requirements for purity, may be used. Any well or wells supplying any such site shall comply with the Wisconsin Administrative Code.
  - 10) The applicant shall provide separate enclosed toilets for males and females, meeting all state and local specifications, conveniently located throughout the grounds, sufficient to provide facilities for the maximum number of people to be assembled at the rate of at least one (1) toilet for every one hundred (100) females and at least one (1) toilet for every two hundred (200) males together with an efficient, sanitary means of disposing of waste matter deposited, which is in compliance with all state and local laws and regulations; a lavatory with running water under pressure and a continuous supply of soap and paper towels shall be provided with each toilet.
  - 11) The applicant shall provide a sanitary method of disposing of solid waste, in compliance with state and local laws and regulations, sufficient to dispose of the solid waste production of the maximum number of people to be assembled at the rate of at least two and one-half (2.5) pounds of solid waste per person per day, together with a plan for holding and a plan for collection of all such waste at least once each day of the assembly and sufficient trash cans with tight fitting lids and personnel to perform the task.
  - 12) If the assembly is to continue overnight, camping facilities shall be provided in compliance with all state and local requirements as set forth in the Wisconsin Administrative Code and ordinances of the Town and county, sufficient to provide camping accommodations for the maximum number of people to be assembled.
- k) **Reasons for Denial.** Applicants may be denied for any of the following non-exclusive reasons:
- 1) It is for a use which would involve a violation of federal or state law or any Town or county ordinance.
  - 2) The granting of the permit would conflict with another permit already granted or for which application is already pending.

- 3) The application does not contain the information or does not properly satisfy the conditions required by this Section.
  - 4) The application is made less than the required days in advance of the proposed assembly.
  - 5) The policing of the assembly will require so large a number of persons and vehicles, including ambulances, as to prevent adequate service of the needs of the rest of the community.
  - 6) The assembly will substantially hinder the movement of police and fire and other emergency vehicles as to create a substantial risk to persons and property.
  - 7) The assembly will reasonably create a substantial risk of injury to persons or damage to property.
  - 8) The assembly use is so poorly organized that participants are likely to engage in aggressive or destructive activity.
- 1) **Class B Fermented Malt Beverage Licenses.** When fermented malt beverages are sold at any event authorized by this Section, a valid Temporary Fermented Malt Beverage license shall be obtained and applicable Town ordinances shall be fully complied with. Said license must be possessed by the person who filed for the license and shall be presented to any law enforcement officer upon request.
- m) **Recommendations of Governmental Agencies.** The Clerk may submit a copy of the application to the County Sheriffs Department and other governmental agencies for their recommendations.
- n) **Permit Revocation.** Any law enforcement officer, the Town Chairperson, or the Board may revoke a permit already issued if it is deemed that such action is justified by an actual or potential emergency due to weather, fire, riot, other catastrophe or likelihood of a breach of the peace or by a change in the conditions forming the basis of the standards of issuance. In lieu of revoking a permit, an above-named official may require the permittee to file evidence of good and sufficient sureties, insurance in force or other evidence of adequate financial responsibility, running to the Town and such third parties as may be injured or damaged, in an amount depending upon the likelihood of injury or damage as a direct and proximate result of the holding of the usage sufficient to indemnify the Town and such third parties as may be injured or damaged thereby, caused by the permittee, its agents or participants.
- o) **Fees.** The following fees shall be applicable under this Section:
- 1) Gatherings of Two Hundred Fifty (250) to Five Hundred (500) - Two (2) day or More Event). No fee.
  - 2) Gatherings of Five Hundred (500) to Two Thousand Five Hundred (2,500). A fee in accordance with the Town Board's current fee schedule.
  - 3) Gatherings of Two Thousand Five Hundred (2,500) to Five Thousand (5,000). A fee in accordance with the Town Board's current fee schedule.
  - 4) Gatherings of Over Five Thousand (5,000). A fee in accordance with the Town Board's current fee schedule.

## CHAPTER 9

### Adult-Oriented Establishments

7-9-1	Purpose
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#### **SEC. 7-9-1 PURPOSE.**

- a) Adult-oriented establishments require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such establishments as well as the citizens of the Town.
- b) The Town Board finds that adult-oriented establishments may be used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.
- c) It has been found in Milwaukee and Kenosha Counties, Wisconsin; Chattanooga, Tennessee; Newport News, Virginia; and Marion County, Indiana, to name a few locales, that the viewing booths in adult-oriented establishments have been and are being used by patrons for engaging in sexual acts, particularly between males, including but not limited to, intercourse, sodomy, oral copulation and masturbation, resulting in unsafe and unsanitary conditions in said booths.
- d) Acquired Immune Deficiency Syndrome (AIDS) is a sexually-transmitted disease that destroys the body's immune system, and has no known cure. Statistics from the State of Wisconsin have indicated an increase in the number of AIDS cases in the state. The concern over sexually-transmitted diseases is a legitimate health concern of the Town that demands reasonable regulation of adult-oriented establishments in order to protect the health and well-being of the Town.
- e) Licensing is a legitimate means of accountability to ensure that operators of adult-oriented establishments comply with reasonable regulations and to insure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
- f) Adult-oriented establishments, because of their very nature, have a deleterious effect on both the existing establishments around them and the surrounding residential areas adjacent to them.
- g) Adult-oriented establishments, due to their very nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to blight and downgrading the quality of life in the adjacent area.

- h) The Town Board wants to prevent these adverse effects and thereby protect the health, safety, and welfare of Town residents; protect residents from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods; and deter the spread of blight.
- i) It is not the intent of this Chapter to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of adult-oriented establishments as well as the health problems associated with such establishments.
- j) It is not the intent of the Town Board to condone or legitimize the distribution of obscene materials, and the Board recognizes that state and federal laws prohibit the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the Town.

### **SEC. 7-9-2 AUTHORITY.**

The Town Board has the specific authority, powers, and duties pursuant to adoption of its Village powers under Sec. 60.10, Wis. Stats., to regulate and control certain uses, activities, establishments and operations in the Town of Fond du Lac.

### **SEC. 7-9-3 DEFINITIONS.**

For purposes of this Chapter:

- a) **Adult Bookstore.** An establishment that has a facility or facilities, including but not limited to, booths, cubicles, rooms or stalls for the presentation of “adult entertainment,” including adult-oriented films, movies, or live performances for observation by patrons therein; or an establishment having a substantial or significant portion of its stock-in-trade for sale, rent, trade, lease, inspection, or viewing of books, films, video cassettes, magazines, or other periodicals, which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified anatomical areas or specified sexual activities as defined below.
- b) **Adult Entertainment.** 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 an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as defined below.
- c) **Adult Motion Picture Theater.** An enclosed building used for presenting material having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined below for observation by patrons of the building.
- d) **Adult-Oriented Establishment.** Any premises including, without limitation, “adult bookstores,” or “adult motion picture theaters.” It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, whether or such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. “Adult-Oriented Establishment” further includes, without limitation, any

premises physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.

- e) **Adult Cabaret.** Any commercial premises, including any cabaret premises, to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment to any member of the public. For the purposes of this Chapter, “cabaret” means any room, place or space whatsoever in the Town in which any music, signing, dancing, or other similar entertainment is permitted in connection with any hotel, restaurant, café, club, tavern, eating place, directly selling, serving, or providing the public, with or without charge, food or beverages (whether or not alcoholic beverages). “Employee” means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any Adult Cabaret.
- f) **Booths/Cubicles/Rooms/Compartments/Stalls.** Enclosures that are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure. This shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, “booth,” “cubicle,” “room,” “compartment,” or “stall” does not mean such enclosures that are private offices used by the owners, managers, or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, are not open to any person other than employees, nor shall this definition apply to hotels, motels, or other similar establishments licensed by the State of Wisconsin pursuant to Wisconsin law.
- g) **Operators.** Any person, partnership, or corporation operating, conducting, maintaining or owning any adult-oriented establishment.
- h) **Specified Anatomical Areas.** Less than completely and opaquely-covered human genitals, pubic region, buttocks, female breasts below the point immediately above the top of the areola; or, human male genitals in a discernible turgid state, even if opaquely covered.
- i) **Specified Sexual Activities.** Simulated or actual:
  - 1) Showing of human genitals in a state of sexual stimulation or arousal;
  - 2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado masochistic abuse, fellatio, or cunnilingus; or
  - 3) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

#### **SEC. 7-9-4 LICENSE.**

- a) **License.** Except as provided below, from and after the effective date of this Chapter, no adult-oriented establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Board. A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain location. Any person who desires to operate more than one (1) adult-oriented establishment must have a license for each. No license or interest in a license may be transferred to any person. All adult-oriented establishments existing at the time of the passage of this Chapter must submit an application for a license within ninety (90) days of the passage of this Chapter. A license fee in

accordance with the Board's current fee schedule shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned. A license renewal fee in accordance with the Town Board's current fee schedule shall be submitted with the application for renewal. A license must be renewed every year.

b) **Application for License.** Any person desiring to secure a license shall make application to the Town Clerk. The applicant for a license shall furnish the following information under oath:

- 1) The name and address of the intended operator;
- 2) The name and address of the owner of the premises if different from the operator;
- 3) The name and address of the adult-oriented establishment to be operated by the applicant;
- 4) Written proof that the individual is at least eighteen (18) years of age;
- 5) The address of the adult-oriented establishment to be operated by the applicant;
- 6) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents, and the name and address of all shareholders owning more than five percent (5%) of the stock in such corporation and all officers and directors of the corporation;
- 7) If the establishment is in operation, the date on which the owner acquired the establishment for which the license is sought. The date on which the establishment began operations as an adult-oriented business at the location for which the license is sought;
- 8) If the establishment is a corporation, a certified copy of the Articles of Incorporation and a certified copy of a certificate of good standing disclosing that the corporation is authorized to transact business in the State of Wisconsin;
- 9) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of a recorded deed; and
- 10) If the operator is not the fee owner of the tract of land, then the lease, purchase contract, purchase option contract, lease option contract, or other documents evidencing the legally-enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract of land for the establishment.

c) **Issuance of License.** The Town shall approve the issuance of a license to the applicant within forty-five (45) days after receipt of the application unless the Town finds one (1) or more of the following to be true:

- 1) The applicant is under eighteen (18) years of age;
- 2) The applicant or the applicant's spouse is overdue in the payment of Town taxes, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to an adult-oriented establishment;
- 3) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application;

- 4) The applicant is residing with a person who has been denied a license by the Town to operate an adult-oriented establishment within the preceding twelve (12) months, or residing with a person whose license to operate an adult-oriented establishment has been revoked within the preceding twelve (12) months;
  - 5) The premises to be used have not been approved by the Building Inspector, Fire Department, or any other local, state or federal official as being in compliance with applicable laws, regulations and ordinances;
  - 6) The fee required by this Chapter has not been paid; or
  - 7) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.
- b) **Hearing.** The Board, before revoking or suspending any license, shall give the operator at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Town Board or its designated committee.
- c) **Transfer.** The transfer of a license or any interest therein, shall automatically and immediately revoke the license.
- f) **Inspection.** Any applicant or licensee shall permit representatives of the County Sheriffs Department, County Health Department, Town Fire Department, Building Inspector, or other Town or state departments or agencies to inspect the premises of an adult-oriented establishment for the purpose of ensuring compliance with this Chapter and all relevant state and federal laws.

#### **SEC. 7-9-5 PHYSICAL LAYOUT AND OPERATION.**

- a) **Exterior.** It shall be unlawful for an owner or operator of an adult-oriented establishment:
- 1) To allow the merchandise or activities of the establishment to be visible from a point outside the establishment;
  - 2) To allow the exterior portion of the adult-oriented establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by this Chapter;
  - 3) To allow exterior portions of the establishment to be painted in a color other than a single color.
- b) **Signage.** The operator shall comply with the Town's Sign Ordinance. In addition, the display surfaces of the sign shall not contain any flashing lights or photographs, silhouettes, drawings, or pictorial representations of any manner, except for the name of the enterprise.
- c) **Booth/Room/Cubicle.** Any adult-oriented establishment having available for customers, patrons, or members, in a booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:
- 1) Each booth, room, or cubicle shall be totally accessible to and from isles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock, or other control-type devices;



- 2) 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. Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the same;
  - c. All walls shall be solid and without any openings, extended from floor to a height of not less than six (6) feet and be light-colored, non-absorbent, smooth textured and easily cleanable;
  - d. The floor must be light-colored, non-absorbent, smooth textured and easily cleanable;
  - e. The lighting level of each booth, room, or cubicle, when not in use shall be a minimum of ten (10) foot candles at all times, as measured from the floor.
- 3) Only one (1) individual shall occupy a booth, room, or cubicle at any time. No occupants shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth. No individual shall damage or deface any portion of the booth.

- d) **Responsibilities of the Operator.** Every act or omission by an employee constituting a violation of the provisions of this Chapter 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 punishable for such act or omission in the same manner as if the operator committed the act or caused by omission.
- e) **Minors.** It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an adult-oriented establishment at any time that the establishment is open for business. The operator must ensure that an attendant is stationed at each public entrance at all times during regular business hours. The attendant shall prohibit any person under the age of eighteen (18) from entering the establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished either a valid operator's drivers license or a valid personal identification certificate issued by a State reflecting that the person is eighteen (18) years of age or older.
- f) **Hours.** An adult-oriented establishment may remain open for business no longer than the hours from between 10:00 a.m. to 12 midnight, seven (7) days a week.

#### **SEC. 7-9-6 LOCATIONAL RESTRICTIONS.**

Adult-oriented establishments are permitted in any Business District provided that the establishment may not be operated within one thousand (1,000) feet of:

- a) A church, synagogue, or regular place of religious worship;
- b) A public or private elementary or secondary school;
- c) A boundary of any residential district;

- d) A public park;
- e) A license day-care center; or
- f) Another adult-oriented establishment.

**SEC. 7-9-7 STANDARDS OF CONDUCT AND OPERATION IN ADULT CABARETS**

- a) **Standards of Conduct.** The following standards of conduct must be adhered to by employees of any Adult Cabaret while in any area in which members of the public are allowed to be present:
  - 1) No employee or entertainer shall be unclothed or in such less-than-opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from the nearest member of the public.
  - 2) No employee or entertainer mingling with members of the public shall be unclothed or in less-than-opaque and complete attire, costume or clothing as described in subsection 7-9-7(a) above, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.
  - 3) No employee or entertainer shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.
  - 4) No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the nonstage area of the Adult Cabaret unless that dance, performance, or exhibition is performed at a distance of no less than six (6) feet from any member of the public.
  - 5) No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage area must be placed into a receptacle provided for receipt of gratuities by the Adult Cabaret or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance or exhibition in or about the nonstage area of the Adult Cabaret shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.
  - 6) No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the Adult Cabaret, which shall include but are not limited to the dressing

rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that person, who in the ordinary course of business, deliver goods, materials, food or beverages, or perform maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties.

b) **Premise-Specifications.** The following specifications shall apply to all Adult Cabarets located in the Town of Fond du Lac:

- 1) The performance area of the Adult Cabaret where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas of the premises to which members of the public have access. A continuous railing at least three (3) feet in height and located at least six (6) feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises. Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.
- 2) Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal, measured at thirty (30) inches from the floor and on 10-foot centers is hereby established for all areas of the Adult Cabaret where members of the public are admitted.
- 3) A sign at least two (2) feet by two (2) feet, with letters at least one (1) inch high shall be conspicuously displayed in the public area(s) of the premises stating the following:

THIS ADULT CABARET IS REGULATED BY THE TOWN OF FOND DU LAC.  
ENTERTAINERS ARE:

- A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT.
- B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE.
- C. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE.
- D. NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA.

c) **Inspections.** In order to insure compliance with this Chapter all areas of Adult Cabarets that are open to members of the public shall be open to inspection by Town agents and employees or law enforcement officers during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the premises are operated in accordance

with the requirements of this Chapter. It is hereby expressly declared that unannounced inspections are necessary to assure compliance with this Chapter.

- d) **Performances Not Prohibited.** This Chapter shall not be construed to prohibit:
  - 1) Plays, operas, musicals, or other dramatic works that are not obscene;
  - 2) Classes, seminars and lectures that are held for serious scientific or educational purposes and which are not obscene; or
  - 3) Exhibitions, performances, expressions or dances that are not obscene.
- e) **Determination of Obscenity.** Whether or not activity is obscene shall be judged by consideration of the following factors:
  - 1) Whether the average person, applying contemporary community standards would find that the activity taken as a whole appeals to the prurient interest in sex; and
  - 2) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in this Chapter; and
  - 3) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.
- f) **Effective Date.** This Chapter shall take effect upon adoption and publication by the Town's official newspaper and shall apply to all existing or new Adult Cabarets located within the Town.

#### **SEC. 7-9-8 MEASUREMENT.**

For the purpose of this Chapter, measurement shall be made in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where an adult-oriented establishment is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, Residential District, or residential lot, or licensed day-care center. The distance between any two (2) adult oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which such business is located.

## **SEC. 7-9-9 NONCONFORMING USES.**

Any business lawfully operating on the effective date of this Chapter that is in violation of the locational or structural configuration requirements of this Chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period of not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. The nonconforming use is required to submit an application for a permit and otherwise comply with the requirements of this Chapter.

## **SEC. 7-9-10 MISCELLANEOUS.**

- a) **Penalties.** Any person who fails to comply with any provisions of this Chapter shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00) and the costs of prosecution, including reasonable attorneys' fees, for each violation. Each day that a violation exists or continues shall constitute a separate offense.
- b) **Other Remedies.** In addition to other remedies the Town reserves the right to institute appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this Chapter or to prevent any illegal act, conduct, business, or use in or about the subject premises.
- c) **Interpretation.** The provisions of this Chapter are considered minimum requirements. Where the provisions of this Chapter impose greater restrictions than any statute or other regulation, the provisions of this Chapter shall apply. Where the provisions of any statute or other regulation impose greater restrictions, the provisions of the statute or regulation shall prevail.
- d) **Severability.** If any provision of this Chapter is declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this Chapter in its entirety, or any part thereof, other than that so declared to be invalid. The balance of the Chapter not found invalid shall be enforced.
- d) **Rules of Construction.** In the construction of this Chapter references to the male gender include the female and references to the singular include the plural. References to "person" or "persons" extends to natural persons, firms, corporations, partnerships, limited liability companies or other entities.

## CHAPTER 10

### Licensees to Pay Local Claims; Appellate Procedures

- 7-10-1 Licensees Required To Pay Local Taxes, Assessments and Claims; Appellate Procedures
- 7-10-2 Duty of Clerk with Regard to Licenses

#### SEC. 7-10-1 LICENSEES REQUIRED TO PAY LOCAL TAXES, ASSESSMENTS AND CLAIMS.

- a) **Payment of Claims.** The Town shall not issue or renew any license to transact any business within the Town:
  - 1) For any purposes for which taxes, assessments or other claims of the Town are delinquent and unpaid.
  - 2) For any person who is delinquent in payment:
    - a. Of any taxes, assessments or other claims owed the Town; or
    - b. Of any forfeiture resulting from a violation of any Town Ordinance.
- b) **Exemption.** This Section shall apply to licenses issued pursuant to the provisions of Title 7 of this Code of Ordinances, except Chapters 1 and 5.
- c) **Applicability.** An application for renewal of a license subject to this Chapter shall be denied pursuant to the provisions of Subsection (a) only following notice and opportunity for hearing as provided by Subsection (d) below.
- d) **Hearings.** Prior to any denial of an application for renewal of a license, including denials pursuant to Subsection (a), the applicant shall be given notice and opportunity for a hearing as hereinafter provided:
  - 1) With respect to licenses renewable under Chapter 2 of Title 7 of this Code of Ordinances, notice and opportunity for hearing shall be as provided by Sec. 125.12, Wis. Stats., as amended from time to time, and Town ordinances.
  - 2) With respect to licenses other than those described in Subsection (a) herein, the Town or its assignee shall notify the applicant in writing of the Town's intention not to renew the license and shall provide the applicant with an opportunity for hearing. The notice shall state the reasons for the intended action and shall establish a date, not less than three (3) days nor more than ten (10) days after the date of the notice on which the applicant shall appear before the Town Board. If the applicant shall fail to appear before the Board on the date indicated on the notice, the Board shall deny the application for renewal. If the applicant appears before the Board on the date indicated in the notice and denies that the reasons for nonrenewal exist, the Board shall conduct a hearing with respect to the matter. At the hearing, both the Town and the applicant may produce witnesses, cross

examine witnesses and be represented by counsel. The applicant shall, upon request, be provided a written transcript of the hearing at the applicant's expense. If the Board determines the applicant shall not be entitled to renewal pursuant to Subsection (a), the application for renewal shall be denied.

- e) **Appeals.** Where an individual, business or corporation wishes to appeal the Town Clerk's decision not to issue a license or permit under this Title on grounds other than those specified in Subsections (a) through (d) above, the applicant may file a request in writing with the Town Clerk that the matter be referred to the Town Board. A public hearing shall be scheduled within fourteen (14) calendar days by the Town Board. All parties may be represented by counsel. The Board shall consider all relevant information and shall render a decision which shall be binding.

#### **SEC. 7-10-2 DUTY OF CLERK WITH REGARD TO LICENSES.**

The Town Clerk shall be charged with the administration of all ordinances relating to licenses unless otherwise provided by the Town Board.

## CHAPTER 11

### Short-Term Rental Licensing Ordinance

7-11-1	Purpose
7-11-2	Authority
7-11-3	Definitions
7-11-4	Short-Term Rental License
7-11-5	Operation of a Short-Term Rental
7-11-6	Penalties
7-11-7	Severability
7-11-8	Effective Date and Publication

#### **SEC. 7-11-1 PURPOSE.**

The purpose of this ordinance is to ensure that the quality and nature of the short-term rentals operating within the Town of Fond du Lac are adequate for protecting public health, safety, and general welfare and to protect the character and stability of neighborhoods within the Town.

#### **SEC. 7-11-2 AUTHORITY.**

The Town Board of the Town of Fond du Lac has been authorized to exercise village powers pursuant to Wis. Stats. §§ 60.10(2)(c) and 60.22(3). The Town Board adopts this ordinance under its general village powers authority and Section 66.1014 of the Wisconsin Statutes.

#### **SEC. 7-11-3 DEFINITIONS.**

The following definitions shall apply to this ordinance:

- a) “Property Manager” means a person who is not the property owner and who provides property management services for one or more short-term rentals and who is authorized to act as the agent of the property owner for the receipt of service of notice of municipal ordinance violations and for service of process pursuant to this ordinance.
- b) “Residential Dwelling” means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one or more persons maintaining a common household, to the exclusion of all others.
- c) “Short-Term Rental” means a residential dwelling that is offered for rent for a fee and for fewer than 29 consecutive days.



#### **SEC. 7-11-4 SHORT-TERM RENTAL LICENSE**

- a) No person may maintain, manage, or operate a Short-Term Rental more than 15 nights each year without a town short-term rental license issued pursuant to this ordinance.
- b) Licenses shall be issued using the following procedures:
  - 1) All applications for a short-term rental license shall be filed with the Town Clerk on forms provided. Applications must be filed by the property owner. No license shall be issued unless the completed application form is accompanied by the payment of the required application fee.
  - 2) The Town Clerk shall issue a short-term rental license to all applicants following payment of the required fee, receipt of all information and documentation requested by the application, and Town Board approval of the application.
  - 3) A short-term rental license shall be effective for one year and may be renewed for additional one-year periods. A renewal application and renewal fee must be filed with the Town Clerk at least 45 days prior to the license expiration so that the Town Board has adequate time to consider the application. The renewal application shall include any updated information since the filing of the original application. An existing license becomes void and a new application is required any time the ownership of a Residential Dwelling licensed for short-term rentals changes.
  - 4) The Town Board may suspend, revoke, or non-renew a short-term rental license following a due process hearing if the Board determines that any of the following have occurred:
    - a. The licensee has failed to comply with any of the requirements of this ordinance;
    - b. The licensee, the licensee's Property Manager or the licensee's renters have been convicted of engaging in illegal activity while on the short-term rental premises on two or more separate occasions within the past 12 months; or
    - c. The licensee has outstanding fees, taxes, or forfeitures owed to the Town in violation of Town ordinance.

## **SEC. 7-11-5      OPERATION OF A SHORT-TERM RENTAL**

Each Short-Term Rental shall comply with all of the following requirements:

- a) No Residential Dwelling may be rented for a period of 6 or fewer days, except that this prohibition does not apply between July 15 and July 30 of each year.
- b) If a Residential Dwelling is rented for periods of more than 6 but fewer than 29 consecutive days, the total number of days within any consecutive 365-day period that the dwelling may be rented shall not exceed 180 days, which shall run consecutively.
- c) The Property Owner or Property Manager shall notify the Town Clerk in writing when the first rental within a 365-day period begins.
- d) No recreational vehicle, camper, tent, or other temporary lodging arrangement shall be permitted on site as a means of providing additional accommodations for paying guests or other invitees. On-street parking is prohibited between the hours of 10:00 p.m. and 8:00 a.m. each day.
- e) Any outdoor event held at the short-term rental shall last no longer than one day occurring between the hours of 8:00 a.m. and 10:00 p.m. At minimum, a seven-consecutive-day interval must occur between outdoor events held at the Short-Term Rental. Any activities occurring at the Short-Term Rental shall comply with other applicable noise regulations.
- f) A local property management contact (either the property owner or an appointed Property Manager) must be on file with the Town at all times and must be located within 10 miles of the Short-Term Rental. The property owner and/or Property Manager must provide the Town with current contact information and must be available 24 hours a day, 7 days a week by telephone. The Town must be notified within 24 hours of any change in contact information.
- g) Each Short-Term rental shall maintain a register and require all guests to register with their actual names and addresses. The register shall be kept on file for at least one year. The register shall also include the time period for the rental and the monetary amount or consideration paid for the rental.
- h) Each Short-Term Rental shall hold a valid State of Wisconsin Tourist Rooming House License and shall provide proof of such license by attaching a copy to the initial license application and all subsequent renewal applications.

**SEC. 7-11-6 PENALTIES.**

Any person, partnership, corporation or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than \$200 nor more than \$500, plus the applicable surcharges, assessments and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. The Town may also seek equitable relief, including injunctions and abatement orders, in the event of a violation.

Penalties set forth in this section shall be in addition to all other remedies of injunction, abatement or costs whether existing under this ordinance or otherwise.

**SEC. 7-11-7 SEVERABILITY**

Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such a decision shall not affect the validity of any other provisions of this ordinance.

**SEC. 7-11-8 EFFECTIVE DATE AND PUBLICATION.**

This ordinance shall become effective upon adoption and publication as required under Wis. Stat. §60.80. The Town Clerk and Town Attorney are hereby authorized and directed to incorporate this ordinance into Title 7 of the Town's Code of Ordinances.

## CHAPTER 12

### Mobile Food Vendors Ordinance

7-12-1	Definitions
7-12-2	License Required
7-12-3	License, Application, and Regulation
7-12-4	Suspension and Revocation
7-12-5	Violations and Penalties

#### SEC. 7-12-1 DEFINITIONS.

- A. **MOBILE FOOD VEHICLE:** A commercially manufactured, self-contained, mobile food unit, including trucks, carts and trailers, in which food is prepared or processed and from which food is sold or dispensed to the ultimate consumer.
- B. **MOBILE FOOD VEHICLE VENDOR:** The owner of a mobile food vehicle or pushcart; hereinafter referred to as "vendor."
- C. **PUSHCART:** A non-self-propelled wheeled cart, specifically designed and used for keeping, storing, or warming food or beverage for sale by a mobile food vehicle vendor, which may be moved by one person without the assistance of a motor.

#### SEC. 7-12-2 LICENSE REQUIRED

- A. It shall be unlawful for any person to do any of the following within the Town without first having obtained a valid mobile food vending license as prescribed in this article:
  - (1) Operate a mobile food vehicle or pushcart;
  - (2) Serve, sell, or distribute food from a mobile food vehicle or pushcart;
  - (3) Cook, wrap, package, process, or portion food in a mobile food vehicle or pushcart for service, sale, or distribution.
  - (4) A mobile food vending license is not required in order to engage in any of the activities described in (1) through (3) at an event that is not open to the public.
- B. No person shall park, stop, or operate a mobile food vehicle or pushcart, nor shall any mobile food vehicle vendor permit any person to park, stop or operate a mobile food vehicle or pushcart in a location adjacent to or within a one-hundred-foot radius of the nearest edge of any building or section of a building comprising a licensed food establishment, excluding any patio, awning, or temporary enclosure attached thereto, the

kitchen of which is open for serving food to patrons. This requirement may be waived if the most recent application for a mobile food vending license was submitted together with the written consent of the proprietor of the adjacent licensed food establishment.

- C. Each vendor will at all times keep a "measuring wheel or measuring tape" with a measuring capacity of no less than 200 feet on the mobile food vehicle. The measuring wheel or tape will be available for use by any person operating or working on the mobile food vehicle and by any police officer or other municipal official tasked with enforcing the provisions of this article.
- D. All vendors will abide by all parking and traffic laws, ordinances, statutes, rules, and regulations at all times.
- E. Mobile food vehicle vending locations will be utilized on a first-come-first-served basis and may generally occur in commercially and industrially zoned area (subject to limitations within residential areas). All mobile food vehicle units must maintain a distance of five feet from the nearest edge of any building and two feet from the curbs. All vendors will maintain the appropriate distances from crosswalks, curb cuts, sidewalk benches, bike racks, bus shelters and stops and other obstructions. The vendor is required to set up the mobile food vehicle, arrange for waiting on customers and have customers line up in a way that avoids conflict between customers and the traveling public, including pedestrians, parked vehicles and moving vehicles. A clearance of not less than five feet wide will be maintained on any public sidewalk upon which a pushcart is located. Mobile food vehicles are not permitted on public sidewalks.
- F. Mobile food vendors are allowed in Town-owned parking lots only as part of an approved special event, march, or public assembly.
- G. A person with a valid driver's license of such a classification to allow the operation of the mobile food vehicle shall be with the vehicle at all times that any activity is taking place in the mobile food vehicle. The vendor is liable for any violation of this subsection.
- H. No person will park, stop, or operate a mobile food vehicle, nor will any mobile food vehicle vendor permit any person to park, stop or operate a mobile food vehicle in a location within 500 feet of the boundary line of any property upon which a fair, farmer's market, festival, carnival, circus, civic event, or special event, march, or public assembly, that is licensed or sanctioned by the Town is occurring, except when the vendor has obtained a permit or otherwise properly obtained permission to do so.
- I. Appropriate permits or other properly obtained permission must be obtained to park, stop, or operate a mobile food vehicle or pushcart in a location within 500 feet of the boundary line of any property upon which a fair; farmer's market; festival; carnival; circus; civic event; march, or public assembly, or special event that is licensed or sanctioned by the Town is occurring.

- J. All mobile food vehicle vendors are prohibited from connecting to light poles, utility poles, or any public source of electricity, water or sewer, or to any planter or tree or other public amenity.
- K. Mobile food vehicle or pushcart vending hours on public property and public right-of-way are from 8:00 a.m. to 9:00 p.m. (Sunday through Thursday) and from 8:00 a.m. to 10:00 p.m. (Friday and Saturday). Mobile food vehicle must be closed, the area cleaned and the mobile food vehicle removed by the time specified. Mobile food vehicle vending hours are not restricted on private property locations.
- L. Nothing in this article shall be deemed to supersede or repeal any ordinance relating to noise, park closing hours, or parking, except as specifically provided in the article. Vendors will take every precaution to ensure that their operations do not materially affect the peace and welfare of the general public nor cause any unreasonably loud, disturbing and unnecessary noise or any noise of such character, intensity or duration as to be detrimental to the life or health of any individual or which is in the disturbance of public peace and welfare.

**SEC. 7-12-3 LICENSE APPLICATION AND REGULATION.**

- A. Any person desiring to operate a mobile food vehicle or pushcart will make written application for a mobile food vending license to the Town Clerk's office. The application for such license shall be on forms provided by the Town Clerk's office and will include all of the following:
  - (1) The name, signature, and address of each applicant and of each member or officer of a corporate applicant.
  - (2) A description, including make, model, VIN number, and license plate, of the mobile food vehicle and a photograph.
  - (3) A valid copy of all necessary licenses, permits or certificates required by the County of Fond du Lac, the State of Wisconsin, or any subsidiary enforcement agencies or departments thereof, including but not limited to valid proof of registration for the vehicle and driver's licenses for all operators and documentation of the necessary approvals from the Fond du Lac County Health Department for operation as a mobile food vendor.
  - (4) If a proposed location is on private property, a site plan showing the location of all existing and proposed structures, access points, equipment and parking.
  - (5) Certificate of Liability Insurance that names the Town as an additional insured. Insurance coverage should be not less than \$1,000,000 in coverage.

- (6) Any additional information deemed necessary by the Town Clerk to determine if issuance of a mobile food vending license to a particular applicant would be in the best interest of the public.
- B. Upon receipt of an application for a mobile food vending license, the clerk may conduct a background check. Any such investigation will be completed as soon as practicable. The Town Clerk may refuse to register the applicant if any of the following is determined:
    - (1) The application contains any material omission or materially inaccurate statement;
    - (2) The applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is substantially related the applicant's fitness to engage in direct selling; or
    - (3) The applicant failed to comply with any requirement of in Section 3. A. above.
  - C. Each mobile food vending license will expire on June 30 of each year or as designated within the license.
  - D. A mobile food vending license is not transferable.
  - E. A mobile food vending license is valid for one vehicle only and is not transferrable between vehicles.
  - F. The mobile food vending license must be permanently and prominently affixed to the mobile food vehicle.
  - G. License, late fee and renewal fees shall be paid in accordance with the fee schedule set by resolution of the Town Board.

#### **SEC. 7-12-4 SUSPENSION AND REVOCATION.**

A mobile food vending license may be suspended or revoked by the Town if the license holder made any material omission or materially inaccurate statements in the license application, or if the license holder violates any provision of this article, if there are noise complaints related to the mobile food vehicle or the operation thereof, or if the license holder is convicted of any crime or ordinance or statutory violation directly related to the licensed activity. Notice of suspension or revocation will be personally served on the applicant and will include a statement of the act(s) upon which the denial is based. The license holder will be provided the opportunity for a hearing before the Town Board before any suspension or revocation is final.

**SEC. 7-12-5 VIOLATIONS AND PENALTIES.**

- A. In addition to the denial, suspension or revocation of a permit issued under this Chapter, any person who shall violate any provision of this Chapter or who shall fail to obtain a permit as required hereunder shall upon conviction of such violation, be subject to a penalty of a civil forfeiture as prescribed in Section 1-1-6 of this Code of Ordinances, together with the costs of prosecution. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Chapter shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Chapter.
  
- B. The Town shall have authority to remove or cause the removal of any vending equipment or merchandise found on the street, sidewalk, terrace, or other location in violation of any regulations herein. In addition to any forfeiture, the violator shall be liable for removal, towing, and storage charges incurred by the Town.