

CITY OF WASHBURN
119 Washington Avenue
P.O. Box 638
Washburn, WI 54891



715-373-6160
715-373-6161
FAX 715-373-6148

To: Honorable Mayor and City Council Members
From: Tony Janisch, Assistant City Administrator *Janisch*
Re: Regulating Commercial Activity on City Property
Date: December 31, 2020

In the past year, the Washburn has seen an increase of commercial activity on City property. Beginning with guided ice cave tours staging at the Coal Dock Beach & Memorial Park, then moving to kayak tours launching multiple times a day at the Coal Dock Beach. The later activity requiring Council to pass Ordinance 20-009 regulating commercial use of non-motorized vessels on City property this past July.

Following this ordinance adoption, the Parks Committee was charged with expanding this regulation to other types of commercial use activity on City property. The Committee formed a working group to investing the commercial permitting of other communities and make recommendations applicable to the City of Washburn.

At its meeting on Dec. 15, 2020, with the assistance of City Attorney Max Lindsey, the Parks Committee moved to recommend to Council a revised Commercial Activity Ordinance. *See the include draft committee minutes.* One recommended change is to link permitting to the existing Direct Sellers Permit. Thus, creating a tiered system for commercial permitting. All commercial activity would require a Direct Sellers Permit first, whether being door-to-door sales, food truck, or commercial usage on City property; with additional permitting and regulations if needed for said commercial activity.

Example: A kayak outfitters would be required to obtain a direct sellers permit first, and because of the type of activity and location of services additional permitting would also be required. While a food truck would only be required to obtain a direct sellers permit. In the future if Council determines to enact further regulations because of vending along City streets, then further permitting can be enacted.

Other points of discussion included exemptions of certain types of groups, size limits & frequency requiring a permit, and fee structure.

CITY OF WASHBURN
Ordinance No. 21-002

An ordinance adopted by the Common Council for the City of Washburn at its regular meeting of January 11, 2021, for the purpose of amending Title 7, Chapter 11, of the City's Code of Ordinances to regulate commercial activity on City Property.

1. Amend Title 7, Chapter 4 as follows:

Sec. 7-4-1 Registration Required

It shall be unlawful for any direct seller *or vendor* to engage in direct sales *or conduct any operations, solicitations, or providing of services* within the City of Washburn without being registered for that purpose *and complying with the general conduct requirements* as provided herein *and as provided in Title 7, Chapter 11, if applicable.*

Sec. 7-4-2 Definitions

(a) **Direct Seller ("transient merchant")** means any individual who, for him/herself, or for a partnership, association or corporation, sells, *distributes, provides, or offers goods or services, including but not limited to rentals, tours, demonstrations and/or instruction or use of bikes, ships, boats, kayaks, canoes, paddleboards or like vessels, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or service and whether or not he is collecting advance payment on such sales or not,* or takes sales orders for the later delivery of goods *or services* at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.

* * *

(i) **Vendor** means any individual, whether a resident of the City or not, who offers for sale or otherwise provides food, beverages, goods, merchandise, delivery, or for services to be performed immediately or in the future, from a certain location that is not within a building or a structure for which a certificate of occupancy is required by the City. This term applies to businesses that utilize City Property for access to Lake Superior to provide services in or upon the Lake. This term shall not apply to businesses that operate from within a building or structure within the City for which a certificate of occupancy is required and also displays or sells food, beverages, goods, merchandise, etc. or provides services directly outside the building or structure in which the business operates.

(j) **City Property** means real property situated in the City of Washburn, which is owned by the City of Washburn, including parks, beaches, playgrounds, recreational/sports fields, but shall not include sidewalks, streets, highways, and alleyways.

Sec. 7-4-3 Exemptions.

(a) The following shall be exempt from all ~~provisions~~ *registration requirements* of this Chapter:

* * *

~~(7) Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.~~ *Any Vendor or Direct Seller providing services, goods, food, beverages, or merchandise to less than four (4) people, customers, or businesses per day, and less than ten (10) per month.*

* * *

(12) Any religious *or educational* organizations for which there is provided proof of tax-exempt status pursuant to Sec.501(c)(3) of the United States Internal Revenue Code shall be exempt from the requirements set forth in Section 7-4-4(a) and (c). The provisions of Subsection (a)(11) above shall be applicable to such organizations.

* * *

(14) Any other organization that has a separate recreational use agreement with the City of Washburn.

* * *

Sec. 7-4-11 Commercial Activity on City Property

Any Direct Seller or Vendor operating on any City Property shall also comply with the requirements of Title 7, Chapter 11 of the City of Washburn Ordinances.

2. Delete the existing Title 7, Chapter 11, and replace with the following:

Commercial Activity on City Property

Sec. 7-11-1 Purpose

The purpose of this chapter is to provide additional regulation for Direct Sellers and Vendors providing, selling, or offering to sell goods or services on City of Washburn property.

Sec. 7-11-2 Definitions.

The definitions provided in Title 7, Chapter 4 of the City of Washburn Ordinances are incorporated into this Chapter.

Sec. 7-11-3 Commercial Use Permit Process

(a) Permit. A Commercial Authorization Permit (“CAP”) shall be required from the City Clerk or designee for any Direct Seller or Vendor to operate on City Property, unless exempt from registration pursuant to Section 7-4-3. A CAP shall expire on December 31st of the year issued, unless otherwise provided in the permit.

- (1) Application. A person seeking issuance of a permit hereunder shall file an application with the City Clerk, which will be on the same application form as required under Section 7-4-4. The application shall include all of the information required in Section 7-4-4, plus:
 - (i) Federal and state tax identification number, if applicable.
 - (ii) The applicant's general liability insurance information.
 - (iii) The names of any employees, agents, guides, officers, or other individuals associated with the activity conducted on City Property.
 - (iv) The number of vehicles, vessels, boats, nonmotorized vehicles ("NMV"), or other goods or products that the applicant intends to use on City property; and
 - (v) Any other information required to aid in the permit process.
- (2) Fees. Each application shall be submitted with the required fees prior to consideration of the permit process. The fees required for a CAP shall be as designated in the fee schedule established pursuant to Section 1-3-1.
- (3) Standards for issuance. The City Clerk or designee shall issue a CAP in consideration of the following:
 - (i) The commercial use will not interfere with or unreasonably detract from the general public enjoyment of the City Property or promotion of public health, welfare, safety and recreation;
 - (ii) The commercial use is not reasonably anticipated to incite disorderly conduct; and
 - (iii) The application is complete with all required information, including insurance information on file.
 - (iv) Depending on the classification of goods or services provided (as defined in the City's Commercial Authorization Permit Information Guidelines, which will be provided to the applicant), the commercial use complies with all requirements of said guidelines for the type of business conducted.
- (4) Issuance. The City Clerk or designee shall issue or deny the CAP within five business days of receiving the application. Denials shall be clarified in writing and state the reasons for such.
- (5) Appeal. The applicant may appeal the denial of a permit pursuant to § 4-1-1 of the City of Washburn Ordinances.
- (6) Financial Qualifications. To apply to the City for the issuance of a commercial use permit, the applicant shall not at the time of such application, owe the City:
 - (i) Any delinquent real estate taxes, delinquent personal property taxes, or any interest or penalty due thereon; or
 - (ii) Any unpaid forfeiture or fee which has been unpaid for 60 days or more; or
 - (iii) Money on a judgment in favor of the City and against the applicant or a corporation, limited liability company, partnership, joint venture, trust estate or any other entity in which that person is a shareholder, director, officer, owner, member, agent, trustee, representative manager, employee, consultant, advisor or the holder of any other right, title or interest, which has been unpaid for 60 days or more.
- (7) The City may revoke a permit issued under this Chapter from the holder who, after 60 days' notice, fails to pay any of the financial obligations listed in § 7-11-3(6) of this ordinance.

Sec. 7-11-4 Equipment, NMV, Vehicles, and Other Products or Goods on City Property

- (a) No equipment, NMV, vehicles, and other products or goods shall be left overnight on City Property, unless otherwise authorized in the permit.
- (b) Assumption of Risks.
 - (1) The City hereby notifies persons who decide to leave any goods, products, or other items unattended on City property that such items are very exposed to harm and are at substantial risk of being stolen, damaged or destroyed by persons, animals, or other perils or forces of nature, some of which are foreseeable and some of which are not foreseeable.
 - (2) Unattended goods, products, or other items, although situated on City property, are not within the possession, custody or control of the City nor are they under the City's supervision, so the City does not accept or assume any responsibility, obligation or liability in respect to the protection of such goods, products, or other items.
 - (3) A person who makes a voluntary decision to leave any goods, products, or other items unattended on City property shall be deemed:
 - (i) To have assumed and accepted all risks associated therewith including, but not limited to those involving theft, damage, destruction and loss of such goods, products, or other items; and
 - (ii) To have covenanted not to sue or assert any claim or cause of action, of any nature or kind against the City or any of its supervisors, officers, employees, agents or representatives associated with, related to or arising from any such loss, damage or destruction.

Sec. 7-11-5 Parking

Any Direct Seller or Vendor operating on City Property shall ensure that its agents, officers, customers, guides, or other individuals associated with said Direct Seller or Vendor do not park where prohibited. For purposes of this section, to "park where prohibited" means to stand an occupied or unoccupied vehicle, ATV/UTV or other motorized craft, or bike except as permitted by Title 10, Chapter 1 of these ordinances, other than temporarily while loading or unloading merchandise or passenger, or to have a stationary occupied or unoccupied ship, boat, kayak, canoe, paddleboard or similar vessel other than for less than five minutes for loading or unloading passengers. "Park when prohibited" shall also include leaving an unattended vehicle, boat trailer, ship, boat, kayak canoe, paddleboard or similar vessel on City Property not designated for that purpose, including all grassy areas.

Sec. 7-11-6 General Conduct Requirements

The following conditions apply to all Direct Sellers and Vendors using City Property:

- (a) **Performance:** The Direct Seller or Vendor agrees to carry out the services authorized under this Ordinance in a safe, professional, and courteous manner that causes no damage to the natural/cultural resources or facilities within the City.
- (b) **Employee Training and Responsibility:** The Direct Seller or Vendor must ensure that all employees working in the City are informed of the conditions of this Ordinance and are

adequately trained to safely and competently perform the services authorized and comply with the conditions of this Ordinance. In the event of a violation or infraction, responsibility and liability will generally be placed upon the holder of the CAP or responsible Direct Seller or Vendor, including citations, warnings, and fines. However, the City retains the right to cite, warn, and fine employees associated with a Direct Seller or Vendor.

- (c) **Behavior and Conduct:** The Direct Seller or Vendor and all persons employed by the Direct Seller or Vendor who work within City are required to exercise professional courtesy in their interactions with clients, visitors, City employees, volunteers, and other commercial operators. The Direct Seller or Vendor will routinely review and promptly correct the conduct of any of its employees whose actions or activities are considered by the City to be inconsistent with (1) the safety and enjoyment of City residents and landowners, visitors/ tourists, and clients; (2) the protection of City resources and/or facilities; and/or (3) the professional reputation of the City.
- (d) **Third Party Aggregators:** A Third-Party Aggregator is defined as an online merchant that sells a product or service that they do not own. CAP Holders may not use any Third-Party Aggregator website that has not been approved in writing by the City. To request permission to use a Third-Party Aggregator to sell trips and/or services that occur within the City, the Vendor must submit a written request to the City Clerk that includes the Third-Party Aggregator website URL and a copy of the Terms of Agreement for use of the Third-Party Aggregator service. Please be advised that the evaluation process and final decision may take up to 45 days, so the Direct Seller or Vendor must plan accordingly.
- (e) **Provision of Services:** Only the Direct Seller or Vendor and their registered employees may provide the services authorized by any CAP. The Direct Seller or Vendor may not sub-contract or otherwise allow outside entities and/or non-registered employees to provide any services within the park boundary. The Direct Seller or Vendor may not employ, partner, or contract with any individual who is a revoked CAP Direct Seller or Vendor, or who had a previous Commercial Use Permit revoked that was issued under a previous version of this ordinance.
- (f) **Change of Business Status:** A CAP may not be transferred or assigned without the written consent of the City. If the Direct Seller or Vendor is considering a change in the business name, ownership, or legal structure, the Direct Seller or Vendor must notify the City Clerk at least 45 days before the intended change is to take effect. Failure to do so will result in immediate suspension of the CAP until the changes are evaluated by the City.
- (g) **Change of Business Contact Information:** Direct Seller or Vendor must notify the City within 10 days of any changes in contact information (mailing address, physical address, website URL, telephone/fax numbers, or email address).
- (h) **Use of Area:** The Direct Seller or Vendor will not use or be assigned any facilities or portions thereof, located within the City, except as allowed to the general public. For example, a picnic table in a day use area that is intended for recreational use by visitors may not be converted to use as office space for the Direct Seller or Vendor. **A CAP does not authorize priority use of City areas.** The Direct Seller or Vendor is prohibited from

blocking access or impeding the flow of traffic along any roads, trails, walkways, greenways, parking lots, stairwell access, beaches, and/or waterways of any City facilities.

- (i) **Camping:** The Direct Seller or Vendor and/or employees will not camp overnight within the boundaries of the City except if registered in Town or private Campground. Direct Seller or Vendor and registered employees must comply with all camping rules as provided with Section 12 of the City Ordinances.
- (j) **Waste:** The Direct Seller or Vendor is responsible for the removal of all waste and trash associated with the commercial activity and is prohibited from depositing commercial waste into the City provided trash containers.
- (j) **Employment of Minors:** Direct Seller or Vendors with employees under the age of 18 are required to administer the employment of minor age children in accordance with federal and/or State of Wisconsin Child Labor Laws. The following apply concerning minor age employees registered under this CAP while working within the City:
 - a. All minor age employees will be at all times under constant, close supervision of a responsible adult employee registered under this CAP.
 - b. Minor age employees will not operate any motorized vessels, heavy machinery, or heavy equipment.
 - c. Minor age employees will not engage in any marine salvage activity or underwater operation.
- (l) **Vehicle/Vessel Signage:** Vehicles and vessels used to provide services on City Property are required to be easily identifiable by signage. Signage may not state, imply, or refer to pricing, services, and/or products provided. Signage will comply with the established guidelines listed below:
 - a. Vessels and Vehicles must be marked with company logo or lettering for identification purposes.
 - i. Logo or lettering must be readily identifiable to the naked eye at a distance of 50 feet.
 - ii. Minimum size of lettering: 2½ inch.
 - iii. Signage must be visible, clear, legible and of contrasting color.
 - iv. Logos must be of a unique design and a minimum size of 5 inches by 5 inches.
 - v. Identification is limited to company/organization name, logo, and telephone number and/or as required by state and/or federal motor carrier regulations.
 - vi. Signage should be centered on the front door or side window of the vehicle and located in a non- obstructed location on the sides (hull, cabin, or roof) of the vessel.
 - vii. Signage should be limited to two signs, one per side, tastefully and professionally appropriate to the size and type of vehicle/vessel.
- (m) **Reporting Accidents/Injuries:** The Direct Seller or Vendor is required to report in writing all non-emergency incidents involving an accident, collision, fire, injury, or other casualty to the City Clerk within 24 hours, regardless of the extent of damages. Filing this

report to the City Clerk does not satisfy applicable United States Coast Guard, State, and County accident reporting requirements.

- (n) **Supplies/Materials/Storage:** The Direct Seller or Vendor shall not stockpile or store any supplies/materials/equipment on City Property.
- (o) **Compliance Inspection:** Commercial operations are subject to compliance inspections at any time by the City while operating on City Property.
- (p) **Food Service:** The Direct Seller or Vendor shall have a valid permit from the Bayfield County Health Department. Food service provided shall be in accordance with current U.S. Public Health Service Food Code. Food service is subject to inspection by the Bayfield County Public Health and Safety Officer.
 - a. Any food items provided by the Vendor to the clients will only originate from an approved source (i.e., supermarket, grocery store, etc.) unless permitted food truck/stand. The Vendor must ensure that current copies of the Food Handler's Certificate(s) are always on file with the Town. The only exception is for individual pre-packaged food, like a granola bar, that the clients open and consume without any other person handling it.
- (q) **Other Prohibited Activity:** The Direct Seller or Vendor and their employees are specifically prohibited from the following activities:
 - a. Providing service or support to any commercial film or photography or research entity, without first ensuring the entity or agency possesses a valid permit issued by the City.
 - b. Traversing by vehicle anywhere other than on designated roads.
 - c. Causing any damage and/or harm to any natural, cultural and/or historic resource or facility.
 - d. Disturbing or collecting any artifacts by any means and/or any methods.
 - e. Cutting or creating new trails; marking trails or locations by any means including flagging, rock cairns, vegetation, dead wood, chalking.
 - f. Harassing, capturing, collecting, chasing and/or killing any wildlife.
 - g. Feeding wildlife.
 - h. Entering by vehicle, canoe/kayak/boat/vessel or on foot, any closed areas.
 - i. Providing alcohol products of any kind to any visitor/client.
 - j. Climbing on, diving from, or jumping from private property, sea caves, or cliffs.
 - k. Smoking cigarettes, pipes, or e-cigarettes while providing commercial services in the Town.
 - l. Using or being under the influence of any alcohol or drugs while providing commercial services in the Town.
- (r) **Hours of Operation.** Direct Sellers and Vendors may only conduct operations on City Property between the hours of 7:00 am and one-half hour after sunset, unless otherwise authorized in a CAP or special approval.
- (s) **Annual Report:** On or before December 15, every Direct Seller or Vendor required to obtain a CAP shall submit an annual report that includes visitor use data and gross receipts for

the previous operating season. The City Clerk will send a reporting form to each CAP Holder at least 30 days prior to the reporting deadline.

(t) Independent Contractors. If any Direct Seller or Vendor engages the services of other independent contractors for providing goods or services on City Property, i.e. independent guides, the permit holder shall identify the name, contact information, and credentials of said independent contractor. The permit holder must either (i) agree to be responsible for all actions of said independent contractors in assuring compliance with the City of Washburn ordinances, or (ii) said independent contractors must obtain their own CAP for operating on City Property.

Sec. 7-11-7 Use of City Waterfront

Any Direct Seller or Vendor wishing to utilize City Property as a means to access Lake Superior, including but not limited to the Coal Dock, Memorial Park, or West End Park, shall comply with the additional requirements:

(a) No person or group of persons shall utilize, block access to, store goods, items, accessories, or nonmotorized vessels on, or otherwise encumber more than thirty (30) feet of shoreline on City Property at any time.

(b) No Direct Seller or Vendor shall leave any equipment, goods, paddles, NMVs, or other items unattended along the waterfront for more than ten (10) minutes at a time.

Sec. 7-11-8 Enforcement of Ordinance.

(a) Issuance of citation to violator. Any law enforcement officer or any other officer or employee of City may, on behalf of the City, issue a citation to any person who is believed to have violated a provision of this ordinance. The penalty for citations issued for violations of this ordinance shall be assessed pursuant to Section 1-1-7 of the City of Washburn Ordinances.

(b) Each day a violation occurs constitutes a separate offense for which a separate penalty may be imposed.

(c) Revocation of Commercial Authorization Permit. In addition to or in lieu of the issuance of a citation to a person who is believed to have violated a provision of this ordinance, the City Clerk may provide the holder of a commercial use permit issued by the City with a written notice stating that the City intends to revoke the commercial use permit issued to such person on a date certain, not less than 15 days in the future. Such written notice of intent to revoke a commercial use permit shall be served on the commercial use permit holder by personal service or sent to them by certified mail, return receipt request, at least 15 days before the intended date of revocation of the commercial use permit. A certified mail letter properly addressed and sent to a commercial use permit holder shall be deemed to have been served on the addressee when mailed. Such written notice shall:

(1) Inform the commercial use permit holder of the City's intention to revoke the commercial use permit issued to them, the date of such intended revocation and the specific grounds for such intended revocation; and

(2) Inform the commercial use permit holder that they have a right, prior to the stated date of intended revocation, to file with the City Clerk a written request for a hearing before the Common Council on the issue of such revocation.

(i) If the City Clerk receives a written request for a hearing prior to the intended date of revocation of a commercial use permit, the commercial use permit issued to such person shall not be revoked until the hearing is conducted by the Common Council on such issue.

(ii) A hearing before the Common Council on the issue of whether to revoke a commercial use permit will be conducted, to the extent possible, similar to a hearing before the City Board of Review.

(iii) In the event the Common Council determines that a commercial use permit should be revoked, the Common Council can then also determine at such time whether to bar such person from being issued a commercial use permit in the future for a stated period of time.

(iv) An appeal from the determination of the Common Council under this section shall be by an action for certiorari commenced within 30 days after that party receives the written notice of the Common Council's decision.

2. Effective Date of Ordinance. This ordinance shall take effect upon passage and publication.

Attest:

Mary D. Motiff
Mayor

Scott J. Kluver
City Clerk

Adopted: _____

Published: _____

City of Washburn

119 Washington Avenue P.O. Box 638
Washburn, Wisconsin 54891
715-373-6160 www.cityofwashburn.org

DIRECT SELLER PERMIT APPLICATION INSTRUCTIONS

Title 7 Section 4 of the Washburn City Code requires that all direct sellers and vendors as defined in Section 7.4.2 ~~(a)~~ to apply for a permit. Each applicant must submit all applications in person at the Washburn City Hall, 119 Washington Avenue, and pay a ~~\$7550~~.00 application fee. A photo I.D. (preferably a driver's license or state-issued ID card) must be presented to the to the City Clerk's Office at the time of application. There may be a 1-3 business day delay from the time a completed application is received and paid until the time the permit is issued/given to the applicant. If a permit is denied for any reason, the fee paid at the time of application is non-refundable. A permit is valid for the period listed on the application, with exception of particular City sanctioned events; see Ordinance Section 7-4-4 (d) (1).

In addition, businesses that either recruit or use traveling sales crews are also required to register with the Wisconsin Department of Workforce Development's Equal Rights Division and secure sales permits for each crew member. When entering the city, the crew members must have their sales permits stamped by the City Clerk's Office and obtain a City Permit. Each sales member must carry these permits with them and present them upon request by potential customers or police officers. A "traveling sales crew" is defined as two or more individuals who are employed as salespersons or in related support work, who travel together in a group, and who are absent overnight from their permanent places or residence for the purpose of selling consumer goods or services from house to house, on any street, or in public places.

Applicants must comply with Title 7 Chapter 4 of the City of Washburn Code of Ordinances regulating direct sellers and vendors. Applicants should read this attached Ordinance before submitting their completed application and direct any questions to the City Clerk's Office.

Under Wisconsin law, Chapter 103.23, "No minor under the age of 12 years shall be employed or permitted to work at any street trade". Section 103.25 requires that a minor under the age of 18 years shall not be employed or permitted to work at any street trade unless he/she has obtained a work permit. A copy of the work permit must be attached to this application. Must provide verification of applicable Wisconsin Seller's Permit, Weights & measurer license, and/or food safety license if applicable.

If the applicant intends to operate or conduct business on any City Property, the applicant must also complete the attached Commercial Authorization Permit ("CAP") addendum and comply with all requirements of Title 7, Chapter 11, of the City's Code of Ordinances.

City of Washburn Direct Seller's Permit Application



■ Copy of Permit Must Be In Possession During Use ■

PLEASE PRINT LEGIBLY:

NAME OF APPLICANT (Last, First, MI):

PERMANENT ADDRESS OF APPLICANT:

CITY: _____ STATE: _____ ZIP: _____

Height: _____ Weight: _____ Color of Hair: _____ Eye Color: _____

DATE OF BIRTH: _____

HOME/CELL PHONE: (_____) _____

If you are from out of state, list the name, address and phone number of the hotel/motel/ or temporary residence at which you are staying or address where the applicant can be contacted within seven (7) days of leaving the City:

NAME OF BUSINESS YOU REPRESENT: _____

BUSINESS ADDRESS: _____

BUSINESS PHONE: (_____) _____

E-MAIL: _____

DISCRIPTION OF BUSINESS BEING CONDUCTED AND PROPOSED METHOD OF SERVICE DELIVERY:

DISCRIPTION OF ANY VEHICLE USED BY APPICANT IN CONDUCT OF BUSINESS
(MAKE, MODEL, LICENSE PLATE #) _____

TIME PERIOD OF ACTIVITY: _____

LIST AT MOST 3 DIFFERENT CITIES, TOWNS, OR VILLAGES AND THE CORISPONDING DATES
WHERE YOU LAST ENGAGED IN DIRECT SELLER ACTIVITES:

Have you ever been convicted of any crime, including citations? Yes or No

If so, when/where/what? _____

Disposition of charges _____

SIGNATURE OF APPLICANT: _____

DATE OF APPLICATION: _____

FOR OFFICE USE ONLY:

DATE PAID: _____

TYPE OF IDENTIFCATION: STATE _____ ID NUMBER _____

COMMENTS:

CITY OF WASHBURN
119 Washington Avenue
P.O. Box 638
Washburn, WI 54891



715-373-6160
715-373-6161
FAX 715-373-6148

COMMERCIAL AUTHORIZATION PERMIT FOR CITY PROPERTY

(Code 7-11-1 through 8)

Legal Business Name: _____

Trade Name(s): _____

Type of Business (Sole Proprietor, Partnership, Corporation, LLC): _____

Federal Identification Number (EIN)/ or Social Security #: _____

State Employment Identification Number: _____

Name and Title of Principle Officer: _____

Physical and Mailing Address of Applicant: _____

Telephone Number: _____ **E-mail:** _____

Emergency Contact: _____

Desired City Property Requested to be Used: _____

Description of Operation: _____
(Add additional Sheet if necessary)

Desired Hours of Operation: _____

- Provide a Copy of a Certificate of Insurance with the City of Washburn listed as additional insured with minimal individual liability coverage of \$500,000 and \$1,000,000 aggregate coverage, or greater insurance as required for specific uses.

APPLICATION FOR COMMERCIAL AUTHORIZATION PERMIT --- Page 2

Commercial Authorization Permit (CAP) authorizes businesses to provide certain services within the boundary of parks and other City owned property. The CAP is a privilege subject to the supervision of designated employees and officials of the City of Washburn. Specific terms and conditions apply based on the nature of the commercial use of City property and the impact on other public activity. The terms of issuing a CAP include but are not limited to the following:

1. Unless otherwise indicated on the permit, the CAP shall expire on December 31st of the year issued, unless otherwise provided in the permit.
2. The CAP will define the specific activities permitted and not permitted including the boundaries. Unless otherwise stated on the permit, the permittee can apply to operate between the hours of 7:00 a.m. and one-half hour after sunset.
3. The CAP may define minimum health and safety measures that must be maintained in the conduct of business.
4. There is no right or guarantee of renewal. Permittee must reapply for a new CAP for succeeding periods upon expiration of the current CAP.
5. A non-refundable application and monitoring fee applies and is determined by the City based on the type of business activity, duration and potential impact City services that may be required.
6. The Permittee agrees to comply with all Federal, State, County and City of Washburn laws, regulations and ordinances.
7. The City does not grant exclusive use of the City Property.
8. The Permittee acknowledges and agrees the City of Washburn, it's agents or employees are not a party to the business activity. The Permittee is solely responsible for any loss, damage, injury or death claim resulting from the use of City owned property in the conduct of business and will indemnify and defend the City of Washburn against all such claims. The Permittee must provide a general liability Certificate of Insurance naming the City of Washburn as an "additional insured" in the amount of not less than \$500,000 per occurrence and \$1,000,000 aggregate. Depending on the business activity, the City may require additional insurance.
9. The Permittee is responsible for maintaining order and cleanliness as a result of the use of City property. This includes removal and disposal of trash and debris generated as a result of the business activity or customers.
10. Once issued, the CAP is not transferable and cannot be assigned to another party.
11. The Permittee is prohibited from knowingly giving false information and to do so is considered a breach of condition of the CAP and grounds for revocation.
12. Commercial business activity is prohibited on City owned property unless a CAP has been granted.
13. The Washburn City Common Council may waive any or all requirements for a CAP for authorized public events.

I have read municipal code 7-11, and the standard conditions listed on this application form. I also understand that I may be required to submit supplemental information as may be required elsewhere in the zoning code for my particular request. The information that I have submitted on this application is true and accurate to the best of my knowledge.

Application Signature: _____ **Date:** _____

Filing Fee: *The filing fee is due at the time of submitting the application. A receipt of the fee payment shall be attached to this application form and shall serve as the application submission date. The filing fee for CAP shall be in addition to the \$75 charged for a direct seller's permit. If a CAP is for a period of less than*

one year, the permit holder is only required to pay one annual direct seller's permit fee, in addition to the subsequent amount of the daily, weekly, or monthly CAP fees, i.e. a daily vendor does not have to pay a direct seller fee for each day of operation, but would pay a separate daily fee for the CAP use of City Property.

Fee Schedule OPTIONS AVAILABLE FOR FEE SCHEDULES

Daily	\$30
Weekly	\$50
Monthly	\$175
Yearly (except Guided Kayak Tours)	\$500
Guided Kayak Tours (Yearly)	\$750

** After completing the annual report required in Ordinance § 7-11-6(s), any permit holder that has gross receipts that do not exceed twice the value of the permit fee shall be refunded 50% of the permit fee paid. If the permit holder applies for another permit in a subsequent year, the permit fee may be reduced or waived to be proportionate to the gross receipts of the permit holder.

	Non-Waterfront Parks	Waterfront Parks
Daily	\$5	\$30
Weekly	\$25	\$50
Monthly	\$75	\$200
Yearly (except Guided Kayak Tours)	\$300	\$500
Guided Kayak Tours (Yearly)		\$750
Guided Kayak Tours (Daily)		\$100 per day

OFFICE USE ONLY

Date Submitted: _____

Date of Review: _____

Dates of Approval: _____

Name and Signature of Approving Official: _____

ADDITIONAL CAP REQUIREMENTS

GUIDED KAYAK TOURS SPECIFIC CONDITIONS

The Holder and their employees registered under this Commercial Authorization Permit (CAP) will exercise this privilege subject to all of the following conditions:

Definition of Services Authorized Under This CAP: Guided Kayak Tours consist of guiding clients by kayak on the waters of Lake Superior, maintaining a required continuous presence at all times with the clients as specified below.

1. The Holder or registered employee(s) will maintain the required continuous presence with the clients for the entire duration of the scheduled trip. If clients self-transport, the Holder or registered employee(s) will maintain the required continuous presence from the moment of first contact within the City until the clients complete their trip.
2. Guiding day use or overnight tours on water for clients to destinations launching from City Property, by means of a seaworthy, non-motorized kayak of sufficient size to adequately and safely move the client on water while carrying the required safety equipment and activity-associated gear and supplies.
3. Guides will obtain an up-to-date marine weather forecast and ensure that lake conditions are safe for travel before departure on any portion of a tour.
4. Each tour group size is limited to 21 individuals (including guides) with at least one guide for every six clients. Under special circumstances (such as a class trip), Holder may request written permission from the City to increase group size, but these instances should be infrequent. Special conditions may apply.
5. Holder must ensure that all clients on Guided Kayak Tours are able to understand basic instructions, can sit upright in a kayak, and can remove spray skirt from kayak in event of capsizing.
6. The CAP Permit for Guided Kayak Tours shall expire on December 31st of the year issued, unless otherwise provided in the permit.
7. Daily Permits for Guided Kayak Tours are authorized on City Property if the permit holder is authorized to conduct such guided kayak tours in another municipality, and chooses to use the City as separate launching location on stormy or bad weather days to avoid the bigger open water. Applicants for such daily permits must still apply for a direct seller and CAP permit, which shall include a copy of any permit issued by any other municipality, but are only required to pay daily CAP fees for the days that the outfit actually uses City Property.

Authorized Hours of Operation: The Holder and their employees registered under this CAP will not provide any Guided Kayak Tours between sunset and sunrise and will ensure that all guides and clients will be physically off the waters of Lake Superior by sunset.

Website: Holder must maintain a functioning website with information about their guided kayak tour services. The website must include rates for tours offered, the legal business name as shown on the CAP, a valid physical address for the business, and a working telephone number and email address.

Trip Confirmations: Any trip confirmations that are electronically transmitted to the client must include the legal business name as shown on the CAP and a working telephone number and email address.

Required Equipment:

1. Each kayak in the Holder's party shall be equipped with the following:
 - a. Kayak paddle(s)
 - b. Spray skirt(s)
 - c. Adequate flotation bags or solid watertight bulkhead
 - d. Bilge pump or bailing device
2. All guides and clients are required to wear a properly fitted U.S. Coast Guard (USCG) approved PFD at all times during on-water activities of a Guided Kayak Tour.
3. Each traveling group shall have one marine radio, a cell phone, a group first aid kit, one flare kit, one safety throw rope, and one spare paddle for every three kayaks in the group.
4. Wet suits are required (to be on hand) for all overnight trips and required to be worn any time the combined air and water temperatures equal less than 120 degrees Fahrenheit.

Guide Certifications: When submitting the Employee/Guide List, Holder must identify guides as one of the four classifications listed below.

1. Apprentice Guide

The City of Washburn is an equal opportunity provider, employer, and lender.

- a. Must be at least 14 years old
 - b. Must have current First Aid and CPR training
 - c. No prior experience of guiding, sea kayaking, or outdoor leadership.
 - d. This is considered on the job training.
 - e. They may accompany any trip, but they do not qualify as a guide when related to guide/ client ratio, they do count in the group total as it relates to overnight camping trips.
2. Assistant Guide
- a. Must be at least 16 years old
 - b. Must have current First Aid and CPR training.
 - c. This would be for people that are new to guiding and/ or Lake Superior but have some prior experience sea kayaking and/or outdoor leadership.
 - d. Have the skills of ACA Level 2: Essentials of Kayak Touring Skills Assessment (or the equivalent).
 - e. May assist a Senior/ Lead Guide as a second guide on trips with over 6 clients. They may not lead any trips by themselves.
3. Lead Guide
- a. Must be at least 18 years old
 - b. Must have current First Aid and CPR training.
 - c. Experienced in the outdoors and has solid sea kayaking skills.
 - d. Intermediate level of knowledge of the natural history of the area and paddling experience on Lake Superior or comparable body of water. Good outdoor skills. Prior experience leading groups of various ages and abilities. Prior teaching experience. Considerable personal and professional outdoor experience. Demonstrated experience with complicated decision making, risk management and group management.
 - e. Have the paddling and leadership skills of ACA Level 3: Coastal Kayak Trip Leader (or the equivalent).
 - f. May lead any day trips by themselves.
 - g. May lead overnight trips with current Wilderness First Aid certification.
4. Senior Lead Guide/Instructor: Holder must identify at least one person as Senior Lead Guide/Instructor. Each Senior Lead Guide/Instructor must present their original certifications to the City Clerk before the beginning of the operating season each year. The Senior Lead Guide/Instructor will be responsible for assessing and verifying the skills of Apprentice Guides, Assistant Guides, and Lead Guides.
- a. Must be at least 18 years old
 - b. Current Wilderness First Aid and CPR certified
 - c. Are professionals with extensive paddling, physical skill teaching, demonstrated decision making, risk management, outdoor group management and leadership experience (3+ years)
 - d. Certified ACA Level 4: Open Water Coastal Kayaking Instructor (or above) or ACA Level 3: Coastal Kayaking Instructor Trainer (or the equivalents); current and valid certifications must be provided to the City Clerk. (NOTE: Certifications will be verified with the issuing organization.)
 - e. May lead all trips, plus check-out apprentice and assistant guides to qualify for more senior positions and oversee guide trainings.

Safety Briefing: Prior to each tour, the guide will provide a safety briefing for clients. At a minimum, the safety briefing must include:

1. Basic paddling instruction
2. How to exit the vessel in event of capsize
3. Group paddling parameters
4. Emergency procedures
5. Use of equipment (how to adjust seat, use foot pedals, operation of rudder, must wear PFD)
6. Basic understanding of kayak stability and how to maximize it.
7. Expected paddling conditions, weather briefing, and approximate route and time frame for the tour.

Motorized Support Vessels:

1. Support vessels are authorized and, for safety reasons, can be used to transport visitors/clients.
2. Vessels used to provide or support this service will be inspected, equipped, and licensed in accordance with U.S. Coast Guard requirements, applicable federal and state laws and regulations. Vessels will display current state registration or possess a U.S. Coast Guard Declaration.
3. The use of motorized vessels will be conducted in accordance with applicable U.S. Coast Guard (USCG) requirements, including, but not limited to operation, vessel capacity, safety equipment, and rules of the road. A minimum of a captains (six pack) license is required in order to transport clients/visitors.

4. Motorized vessels will adhere to Uninspected Charter Regulations (Six Packs) for vessels less than 100 gross tons as issued by U.S. Coast Guard. The vessel is subject to boarding and inspection at any time within the City.

Vehicles/Trailers:

1. When towing kayak trailers and/or the support vessel, the motorized tow vehicle will be mechanically sound, of sufficient size, horsepower, and brake horsepower, commensurate to the size of the trailer with boat/vessels being towed (or as required by state law) to adequately and safely complete the tow from its place of storage outside the City Property, to designated public launch ramps and return. Total length of vehicle plus trailer must not exceed 45 feet.
2. Motor vehicles used to provide this service will be street legal and have current insurance, registration, license, inspection, equipment, and will be properly permitted in accordance with state law. The license will be properly affixed and displayed as required by state law. All motor vehicles used to transport kayaks and/or clients in the City must be registered and insured in the name of the CAP Holder/business entity to whom this CAP is issued.
3. Trailers used to transport kayaks and the support vessel will be in sound mechanical condition, appropriately sized, and configured for the type of vessel being towed, with all lights and equipment in good working order. The trailer will be properly connected to the tow vehicle at all times.

Permits and/or Licenses: Holder is required to possess the following:

1. For operators of motorized support vessels, the Holder must provide current copies of the U.S. Coast Guard License(s) to the City for filing as part of the CAP.
2. When providing vehicle transportation for visitors/clients within the boundaries of the City, the Holder will ensure all employees under this CAP performing services as drivers are currently qualified to perform the service, possess a valid driver's license, and that a copy of the valid driver's license is on file with the City. A Commercial Driver's License (CDL) is required for operation of motor vehicles that have the capacity to carry 16 or more passengers, including the driver.

Use of Area: The Holder will not use or be assigned any facilities or portions thereof, located within the City, except as allowed to the general public. For example, a picnic table in a day use area that is intended for recreational use by visitors may not be converted to use as office space for the CAP Holder. This CAP does not authorize priority use of park areas. The Holder is prohibited from blocking access or impeding the flow of traffic along any roads, trails, walkways, greenways, parking lots, stairwell access, beaches, and/or waterways of any City facilities. Once safety briefing is complete and the tour is underway, any surplus equipment/supplies (wet suits, PFDs, etc.) must be properly stored in/on the Holder's vehicle or trailer or transported out of the City. It is acceptable for kayaks to be staged on the beach, but they must not be left unattended, must not encumber more than thirty (30) feet of shoreline, and must be removed from the park at the end of each day.

Congestion: CAP Holders are expected to work cooperatively and professionally to (1) stagger launch times to avoid congestion at the City Property and (2) stage kayaks on beach to minimize any negative impacts to beachgoers.

Overnight Stay (Camping): The Holder and their employees registered under this CAP will not stay overnight within the boundaries of the City while engaged in the commercial activities unless the Holder is registered at a Campground or Lodging facility.

Reporting Requirements: In addition to the annual CAP report that is required of all CAP Holders, the Guided Kayak Tours CAP shall also submit a monthly visitor use report that includes number of trips, number of clients, launch point, destination, and number of day trips vs. overnight trips. The report for each month of operation will be due on the 15th day of the following month. The City Clerk will provide a form for this reporting.

Additional Insurance Requirements: CAP Holders engaged in Guided Kayak Tours shall provide a copy of a Certificate of Insurance with the City of Washburn listed as an additional insured with minimum individual liability coverage of \$1,000,000 and \$2,000,000 aggregate coverage.

Additional Information Required: CAP Holders engaged in Guided Kayak Tours shall provide the City with the following information:

1. Number and type of watercraft being used.
2. List of all guides/employees/contractors used in association with the Guided Kayak Tours, including proof of CPR and guide training certification.
3. A manifest of all persons on the water must be maintained and readily available to emergency service personnel upon request.

December 15, 2020

CITY OF WASHBURN PARKS COMMITTEE MEETING

5:30 PM

In-person and Video Conference Call due to Covid-19 pandemic

Members Present:

Kyleleen Bartnick, Jamie Cook, Angel Croll, Erika Lang,
Jennifer Maziasz (Council rep)

Municipal Personnel:

City Administrator Scott Kluver, City Attorney Max Lindsey,
Assistant City Administrator Tony Janisch, Public Works Director
Gerry Schuette, Council Member Mary McGrath

Call to Order

Meeting was called to order at 5:33 pm by Maziasz. All 5 members confirmed present.

Approval of the October 20, 2020 Parks Committee Meeting Minutes

Motion made by Cook to the approve minutes from October 20, 2020, second by Croll. Motion carried unanimously.

Updates from Public Works Department

Public Works Director Gerry Schuette introduced himself to the committee. He and Janisch gave the following updates:

- The Public Works Department is doing planning for 2021.
- The artesian wells have been improved. One is now enclosed which helps minimize wind and ice exposure. And a pipe was installed on the artesian well that is on a concrete basin. The City as well as the Chamber of Commerce would still like to improve access at the artesian wells.
- Waterline improvements were completed at Memorial Park.
- The shower at West End Park that is available for people with physical challenges to use is in the process of being upgraded.
- The dock work is almost finished, with signage and final tasks to be completed in the spring.
- For the ice-skating rink, the plan is to open the rink this winter, but the warming building will remain closed due to Covid19. The City is looking at timers for the lights since there will be no attendant. The Washburn School has indicated that it will purchase a plastic liner for the rink. The City is looking at ice skate rental options, such as seasonal rental since there will be no rentals from the warming building.
- Washburn City Council approved starting comprehensive planning, which the recreation plan will also be a part. The Parks Committee will help with the recreation plan.

Update on Implementation of the Walking Trail Land Management Plan

- Janisch reported that the City received the grant contract/agreement from Wisconsin Coastal Management Program signaling that the funds have been awarded and the project can now begin.
- Maziasz gave Public Works Director Schuette a brief overview of needs and opportunities along the walking trail and the City property adjacent to it as well as the goals of the grant project.
- Parks Committee members briefly discussed organizing a community presentation about the project (30-45 minutes) which could occur outside of a Parks Committee meeting. Maziasz and Lang will work on this.
- Lang volunteered to meet with Schuette and any of the public works staff to review the project and walk the area.

- Lang will work with Janisch to put together a contract for the invasive plant removal/control work that an experienced contractor will complete starting this winter.
- Lang and Cook will also work on brainstorming types and potential designs for the interpretive signage that is part of the grant funded project. They will bring forth ideas to the Parks Committee. Other organizations will also be consulted for their ideas such as Washburn Heritage Association.

Discussion & Action of Commercial Activity on City Property

Cook, Kroll, and Maziasz have been working on this with others including Kluver, Janisch, and Mayor Motiff. They did a lot of research and learned what other cities/towns have done and how that is working. Max Lindsey, the City's attorney, drafted an ordinance that was shared with the Parks Committee. Lindsey presented the draft ordinance and Parks Committee members (excluding Bartnick as she wanted to avoid any perceived conflict of interest with her employer) and City staff discussed several points, all of which is summarized below. For a more complete list and review of the discussion, interested parties should contact City staff for the recording of the Parks Committee meeting.

- There is a Direct Seller Permit Application. The City of Washburn requires all direct sellers and vendors as defined in Tile 7 Section 4 to apply for a permit. Basically, if you are doing any business on City property, you need a direct seller permit.
- In addition to a direct seller permit, some businesses and/or organizations may need to apply for a commercial use activity permit as outlined by the Commercial Use Activity Ordinance which is being discussed today and will be further discussed at an upcoming City Council meeting.
- In creating a Commercial Use Activity Ordinance, the City used examples from other communities and organizations around the area. They want to make sure we are not being too stringent. That being said, in speaking with other communities, they learned that there is no way to predict every scenario.
- In receiving a commercial use activity permit, this does not give a business exclusive use of city property in said location.
- Looking at the definition of City Property, Parks Committee members would recommend that the ordinance not pertain to the use of City streets and sidewalks.
- Regarding exemptions depending on frequency of use and number of people, Parks Committee members believe that it should be based on the number of people per day as that is easier to track than a monthly amount.
- We should make sure we include language about whether workers are employees vs. independent contractors and define those terms.
- Regarding fee structure, it does not seem to make sense to charge a group that uses a spot a few times a year the same amount that a group that uses a spot many times a year would be charged. \$750 seems a bit high and additional levels should be explored by the City Council. Some organizations charge a flat fee and then require a performance fee at the end of the season based on how the company used that space and how they did financially.
- Regarding time period, no matter when a business would apply for a commercial use activity permit, does it make sense that it would only be good until the end of the year?
- Regarding businesses/organizations which would be exempt from the ordinance, Parks Committee members recommend that these be non-profit organizations, religious, or educational organizations. Parks Committee members would prefer to see groups such as the Tennis Club, North Coast Sailing, Little League, and other like-organizations exempt. They would of course still have to follow general conduct requirements when using City property. Additionally, it might be best for these organizations to have a separate recreational agreement with the City for use of City property.

- Regarding events, current City code requires a separate permit for events. The City will update that section in licensing requirements.
- It might be helpful to come up with a flow-chart that organizations can follow related to what they need.

Motion was made by Croll to recommend to the City Council the draft Commercial Use Activity Ordinance with proposed changes and fee structure, seconded by Cook. Motion carried with Bartnick abstaining.

Future Topics

- Continue parks inventory/evaluation including visiting Legion Park, Wikdal Park, and Memorial Park in the spring. Also, discuss how to improve and maintain the flags in Legion Park.
- Update on Implementation of the Walking Trail Land Management Plan
- Bayfield Street (Highway 13) update
- Ways to manage the many Parks Committee documents (could we post some to the City's website such as park management plans?)
- Recreation plan development

Adjournment

Meeting was adjourned at 7:45 pm.

Erika Lang
Parks Committee Secretary