

TITLE 7

Licensing and Regulation

Chapter 1	Licensing of Dogs; Regulation of Animals; <i>Chickens</i>
Chapter 2	Fermented Malt Beverages and Intoxicating Liquor
Chapter 3	Cigarette License
Chapter 4	Direct Sellers
Chapter 5	Regulation and Licensing of Fireworks
Chapter 6	Street Use Permits
Chapter 7	Flea Markets
Chapter 8	Licensees to Pay Local Claims; Appellate Procedures
Chapter 9	Adult-Oriented Businesses
Chapter 10	Synthetic Drug Establishments

Title 7 ► Chapter 1

Licensing of Dogs; Regulation of Animals

7-1-1	Dog and Cat Licenses Required; Definitions; Adoption of Statutes
7-1-2	Rabies Vaccination Required for License
7-1-3	Issuance of Dog and Kennel Licenses
7-1-4	Late Fees
7-1-5	Rabies Quarantine
7-1-6	Restrictions on Keeping of Dogs, Cats, Fowl and Other Animals
7-1-7	Impoundment of Animals
7-1-8	Dogs and Cats Restricted on Cemeteries
7-1-9	Duty of Owner in Cases of Dog or Cat Bite
7-1-10	Animal Feces
7-1-11	Injury to Property by Animals
7-1-12	Barking Dogs or Crying Cats
7-1-13	Prohibited and Protected Animals, Fowl, Reptiles and Insects
7-1-14	Sale of Rabbits, Chicks or Artificially Colored Animals
7-1-15	Providing Proper Food and Drink to Confined Animals
7-1-16	Providing Proper Shelter
7-1-17	Neglected or Abandoned Animals
7-1-18	Cruelty to Animals and Birds Prohibited
7-1-19	Trapping of Animals
7-1-20	Dognapping and Catnapping
7-1-21	Vehicle Accidents
7-1-22	Display of Birds in Food Establishments
7-1-23	Keeping of Bees
7-1-24	Bait Ponds
7-1-25	Feeding of Deer Prohibited
7-1-26	Penalties - Keeping of Chickens
7-1-27	Penalties

Sec. 7-1-1 Dog and Cat Licenses Required; Definitions; Adoption of Statutes.

- (a) **License Required.** It shall be unlawful for any person in the City of Washburn 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.** 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 Chapter.
 - (2) **At Large.** To be off the premises of the owner and not under the control of some person by leash, 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.** Any canine, regardless of age or sex.
 - (4) **Cat.** Any feline, regardless of age or sex.
 - (5) **Neutered.** A dog or cat having nonfunctional reproductive organs.
 - (6) **Animal.** Mammals, reptiles and birds.
 - (7) **Cruel.** 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.** An animal kept and treated as a pet.
 - (11) **Leash.** A cord, thong or chain not more than ten (10) feet in length by which a dog is controlled by the person accompanying it.
- (c) **Incorporation of Statutory Regulation.** Sections 174.01 through 174.046 of the Wisconsin Statutes, and such sections as they may hereafter be amended and/or renumbered, are hereby incorporated by reference with respect to restraining action against dogs, the imposition of forfeitures for violations of such regulations and other regulations of dogs imposed under this Code, and the impoundment and subsequent delivery, treatment and disposition of dogs, provided, however, that this Section shall not be construed to restrict or limit any authority heretofore granted to the Police Department with respect to the regulation of dogs and shall not operate to reduce any forfeitures or other penalties which might otherwise be imposed under this Code.

State Law Reference: Sections 174.05 through 174.10, Wis. Stats.

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 City of Washburn 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 City 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 two (2) years after the previous vaccination. The certificate of vaccination shall meet the requirements of Section 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 City 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 City.
- (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 to a dog securely confined indoors. 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).
- (f) **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.
- (g) **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 and Cat Licenses.**
 - (1) It shall be unlawful for any person in the City of Washburn 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, Wis. Stats., 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 Six Dollars (\$6.00) for spayed females or neutered males. The minimum fee for unspayed or unneutered animals shall be Sixteen Dollars (\$16.00). These amounts shall be reduced by one-half (1/2) if the animal became five (5) months of age after July 1 during the license year. The license year shall commence January 1 and end December 31.
- (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 City Treasurer shall complete and issue to the owner a license for such dog containing all information required by state law. The City Treasurer 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 City police or humane officer shall seize, impound or restrain any dog for which a dog license is required which is found without such tag attached.
- (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 City Treasurer 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 of Thirty Dollars (\$30.00) for a kennel of twelve (12) or fewer dogs and an additional Three Dollars (\$3.00) for each dog in excess of twelve (12). Upon payment of the required kennel license tax and, if required by the Common Council, upon presentation of evidence that all dogs over five (5) months of age are currently immunized against rabies, the City Treasurer shall issue the kennel license and a number of tags equal to the number of dogs authorized to be kept in the kennel. However, no person shall operate a kennel within the City unless he/she has first obtained a conditional use permit, following notice and hearing, pursuant to the City Zoning Code.
- (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 or to a dog securely confined indoors. 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.

State Law Reference: Sec. 174.053, Wis. Stats.

Sec. 7-1-4 Late Fees.

The City 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 the Chief of Police or veterinarian determines that a dog or other domestically owned animal found in the City is infected with rabies or hydrophobia, the Mayor may order that all dogs and cats be muzzled. If a district is quarantined for rabies, all dogs and cats within the City 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 City Clerk shall promptly post in at least three (3) public places in the City notices of quarantine.
- (b) **Exemption of Vaccinated Dog or Cat from City 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 City 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.** An 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 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.** An 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) **Suspected Infections.** Any person who shall suspect that any dog or domestically owned animal within the City is infected with rabies or hydrophobia shall report his or her suspicion to the Police Department, describing the dog or domestically owned animal and giving the name of the owner, if known.
- (e) **Quarantine of Dog or Cat.**
 - (1) **Delivery to isolation facility or quarantine.** The Police Department or any owner of any dog or other domestically owned animal which has bitten any person shall immediately cause such dog or domestically owned animal to be examined, at the owner's expense, by a licensed veterinarian. Thereafter, the dog or domestically owned animal shall be confined and isolated for a period of ten (10) days by a licensed veterinarian, at the owner's expense, to determine whether or not the dog or domestically owned animal is infected with rabies. If the owner of the animal cannot be determined, the expense of the examination and confinement will be borne by the City. The dog or other domestically owned animal will be released after the ten (10) day confinement period only after determination that it is free from rabies. Any dog or other animal found to be infected with rabies shall be surrendered to the Police Department upon demand.
 - (2) **Health risk to humans.** If a dog, cat or other domestic animal not currently vaccinated against rabies 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 animal 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.
- (f) **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 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 City, 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.
- (g) **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 City, 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.
- (h) **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.

Cross-Reference: Section 7-1-9.

Sec. 7-1-6 Restrictions on Keeping of Dogs, Cats, Fowl and Other Animals.

- (a) **Restrictions and Prohibitions.** No person, corporate or other business entity, church, school, hospital or any other legal entity, within the limits of the City of Washburn shall own, harbor, keep, possess, care for any dog, cat or other animal which:

- (1) Habitually pursues any vehicle upon any public street, alley, right-of-way or highway within the City limits of Washburn.
- (2) Habitually barks, howls, cries, or makes other noises which tend to annoy or disturb the public peace in violation of Section 7-1-12.
- (3) Kills, wounds, or worries any domestic animal, subject to Section 7-1-6(e)(2)e and f.
- (4) Is infected with rabies or has been bitten by an animal known to have been infected with rabies.
- (5) In the case of a dog or other canine, which has not obtained a valid license from the City of Washburn.

(b) **Prohibitions Against Certain Dogs and Animals.**

- (1) The City of Washburn has determined that certain breeds of dogs and other animals shall not be allowed to be owned, harbored, kept or cared for within the City of Washburn corporate limits, by any person, corporate or other business entity, church, school, hospital or any other legal entity. This prohibition does not apply to professional veterinary care whether outpatient or inpatient. There shall be a presumption that any dog which substantially conforms or exhibits the distinguishing characteristics or substantially conforms to the standards describing the physical characteristics as recognized by the American Kennel Club, the United Kennel Club, or Continental Kennel Club for a particular breed which is prohibited by this Section, shall be deemed a dog of the breed so prohibited.
- (2) The following breeds of dogs shall be prohibited from being owned, harbored, kept, maintained or cared for within the City of Washburn corporate limits:
 - a. A Staffordshire Bull Terrier breed of dog.
 - b. An American Pit Bull Terrier breed of dog.
 - c. An American Staffordshire breed of dog.
 - d. Any dog which has the appearance and characteristics of being predominantly of the breeds of Staffordshire Bull Terrier, American Pit Bull Terrier, American Staffordshire Terrier, or any combination of these breeds.
 - e. The Perro de Presa Canario breed of dog, otherwise known as Presa Canario, also known as Canary Dog or Presa Dog.
 - f. Any dog which has the appearance and characteristic of being predominately of the breed or breeds of Perro de Presa Canario, also known as Presa Canario, also known as Canary Dog or Presa Dog.

(c) **Vicious Dogs and Animals.**

- (1) A "vicious dog or other animal" shall be defined as follows: Any dog or other animal shall be deemed and be presumed to be vicious if, at any time, it bites and inflicts a serious injury to any person or persons two (2) or more times during the dog's or animal's life under unprovoked circumstances and while off the dog's or animal owner's, keeper's or caretaker's premises or property. If the dog or other animal inflicts serious injury in a manner other than biting, said dog or other animal shall also be deemed and presumed to be vicious under this Section.

- (2) A "serious injury" shall be defined as any abrasions, bruising, cuts, broken bones, lacerations, internal injuries, torn or pulled ligaments or muscles, head injuries, or any other such similar condition.
 - (3) No vicious dog or other animal as defined herein shall be allowed to be owned, kept, harbored, maintained, or cared for within the City of Washburn corporate limits, by any person or legal entity.
- (d) **Penalty for Keeping Prohibited or Vicious Dogs or Animals.**
- (1) Any person convicted of violating Sections 7-1-6(a) through 7-1-6(c) shall pay a forfeiture of Five Hundred Dollars (\$500.00) together with all costs and assessments. Each day that a person owns, harbors, keeps, maintains or cares for any prohibited dog or other animal or vicious dog or other animal in violation of this Section may be deemed a separate and distinct violation, subject to separate citations and convictions. Furthermore, any violation of Sections 7-1-6(a) through 7-1-6(c) shall result in a further penalty of having the subject animal or dog impounded by any law enforcement or animal control officer of the City of Washburn, or any law enforcement or animal control officer of any jurisdiction authorized by the City of Washburn to enforce or effectuate the City of Washburn's ordinances.
 - (2) In the event that any prohibited dog or other animal or other vicious dog or animal has been impounded, the owner of said dog or animal shall be required to make arrangements to have said animal removed from the corporate limits of the City of Washburn within seven (7) days of impoundment. In the event any impounded animal has not had arrangements made to remove said animal from the corporate limits of the City of Washburn within said seven (7) day period, any law enforcement officer or animal control officer for the City of Washburn shall be authorized to destroy said animal.
- (e) **Potentially Dangerous Dog or Other Animal.**
- (1) **Definitions.** "Potentially dangerous dog or other animal" means the following:
 - a. Any dog or other animal which, when unprovoked, on two (2) separate occasions within the immediate prior thirty-six (36) month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog.
 - b. Any dog or other animal which, when unprovoked, bites a person, causing a less severe injury than is defined in Section 7-1-6(c)(2) above.
 - c. Any dog or other animal which, when unprovoked, on two (2) separate occasions within the immediate prior thirty-six (36) month period, has killed, seriously bitten, inflicted injury or otherwise caused injury to a domestic animal off the property of the owner or keeper of the dog.
 - d. Any dog or other animal which, when unprovoked, on two (2) separate occasions within the immediate prior thirty-six (36) month period, engages in any behavior described in either Subsection (e)(1)(a) or (e)(1)(c).
 - (2) **Restrictions and Rules Regarding Potentially Dangerous Dogs or Animals.**
 - a. If a law enforcement or animal control officer for the City of Washburn or any other law enforcement agency having jurisdiction and authority to enforce this Section, has investigated and determined that there exists probable cause to

believe that a dog or other animal which is owned, harbored, kept or cared for within the City of Washburn corporate limits is potentially dangerous as that term is defined herein, the chief law enforcement officer or animal control officer for the City of Washburn or his/her designee, shall petition the Common Council for the City of Washburn, for a hearing for the purpose of determining whether or not the dog or other animal in question, should be declared potentially dangerous. Whenever possible, any complaint received from a member of the public which serves as part of the evidentiary basis for the animal control officer or law enforcement officer to find probable cause, shall be sworn to and verified by the complainant and shall be attached to the aforementioned petition. Notice of the hearing before the Common Council shall be given to the owner, caretaker or keeper of the dog or animal in question no less than seven (7) days prior to said hearing, with said notice, together with a copy of the petition, and all sworn complaints to be either served personally, or by first class mail with return receipt requested. All hearings under this Section shall be open to the public. The hearing body, which shall be the Common Council for the City of Washburn, may admit all relevant documents and testimony into evidence including incident reports and affidavits of witnesses, photographs, and personal testimony. The Common Council for the City of Washburn shall be the exclusive trier of the issue of whether a dog or other animal is determined to be potentially dangerous. For the Common Council of the City of Washburn to determine that a dog or other animal is potentially dangerous, there must be a preponderance of the evidence to establish the same.

- b. Any owner, harborer, keeper, caretaker, or other interested party who is aggrieved by any decision of the Common Council under this Section shall have the right to appeal the same by filing an action for certiorari with the Circuit Court no more than thirty (30) days from the date that said aggrieved person had received written notice of the Common Council's decision on whether a dog or other animal is potentially dangerous.
- c. After the hearing conducted pursuant to Sec. 7-1-6(e)(2)a above, the owner, keeper, harbinger or caretaker of the dog or other animal shall be notified in writing of the determination and orders issued, either personally or by first class mail return receipt requested. If a determination is made that a dog or other animal is potentially dangerous as herein provided, the owner, keeper, harbinger or caretaker shall comply with Section 7-1-6(e)(2)g and h in accordance with the time schedule established by the chief law enforcement officer or animal control officer of the City of Washburn, but in no case more than thirty (30) days after the date of the determination, or thirty-five (35) days if the notice of the determination is mailed to the owner, keeper, harbinger or caretaker of the dog or other animal.

- d. No dog or other animal may be declared potentially dangerous if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner, keeper, harborer or caretaker of the dog or other animal, or was teasing, tormenting, abusing, or assaulting the dog or other animal, or was committing or attempting to commit a crime. No dog or other animal may be declared potentially dangerous if the dog or other animal was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault. No dog or other animal may be declared potentially dangerous if an injury or damage was sustained by a domestic animal which, at the time of the injury, or damage was sustained, was teasing, tormenting, abusing or assaulting the dog or other animal.
- e. No dog or other animal may be declared potentially dangerous if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, keeper, harborer or caretaker, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.
- f. No dog or other animal may be declared potentially dangerous if the injury or damage to another domestic animal was sustained while on the property or premises of the owner, harborer, keeper or caretaker of the dog or other animal, and the injured domestic dog or animal was upon the property not owned or maintained by the owner of the injured or damaged domestic animal.
- g. All potentially dangerous dogs or other animals shall be properly licensed and vaccinated. The licensing authority for the City of Washburn shall include the potentially dangerous designation in the registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the Common Council, after hearing, has determined the designation applies to the dog. The City of Washburn may charge a potentially dangerous dog fee in addition to the regular licensing fee as to provide for the increased cost of maintaining the records of the dog.
- h. A potentially dangerous dog or other animal, while on the owner's property, shall, at all times, be kept indoors or in a securely fenced yard from which the dog cannot escape and into which children cannot trespass. A potentially dangerous dog or other animal may be off the owner's premises only if it is restrained by a substantial leash, of appropriate length, and muzzled, and if it is under the control and supervision of a responsible adult while being restrained by said leash and muzzle.
- i. If a potentially dangerous dog or other animal dies, or is sold, transferred or permanently removed from the City of Washburn where the owner, harborer, keeper or caretaker so resides, said person who owns, keeps, harbors, or caretakes a potentially dangerous dog or other animal shall notify the chief law enforcement

officer for the City of Washburn or the animal control officer of the change in condition or new location of the potentially dangerous dog or other animal in writing within forty-eight (48) hours of said dog or other animal's remove.

- (f) **Penalty for Violations of Subsection (e)(2).** Any person or entity convicted of violating Section 7-1-6(e)(2) shall pay a forfeiture of Two Hundred Fifty Dollars (\$250.00), together with all costs and assessments. Each day that a person owns, harbors, keeps, maintains or cares for any potentially dangerous dog or other animal in violation of Section 7-1-6(e)(2), may be deemed separate and distinct violations, subject to separate citations and convictions. Furthermore, any violation of Section 7-1-6(e)(2) shall result in a further penalty of having the subject animal or dog impounded by any law enforcement or animal control officer of the City of Washburn, or any law enforcement or animal control officer of any jurisdiction authorized by the City of Washburn to enforce or effectuate the City of Washburn's ordinances, may impound any dog or other animal which is subject to Section 7-1-6(e)(2). In the event that any restricted or prohibited animal or other vicious or potentially vicious animal or dog has been impounded, said dog's or animal's lawful owner shall be required to make arrangements to have said animal removed from the corporate City of Washburn limits within seven (7) days of impoundment. In the event any impounded animal has not had arrangements made to lawfully remove said animal from the corporate City limits of Washburn within said seven (7) day period, any law enforcement officer or animal warden for the City of Washburn shall be authorized to destroy said animal.
- (g) **Unleashed Dogs or Other Animals Running at Large.**
- (1) No owner, keeper, harbinger or caretaker of any dog, cat or other animal shall permit the same to be unleashed or unrestrained at any time said dog, cat or other animal is not on the owner's, keeper's, harbinger's, or caretaker's property or premises and which is upon any public street, alley, right-of-way or any school ground, public park, cemetery or other public or private property without the permission of the owner or occupier of the property.
 - (2) A dog, cat or other animal is in compliance with this Section when it is leashed or otherwise restrained by any device that is less than ten (10) feet in length, which is of sufficient strength to restrain and control said dog, cat or other animal, and is held by a person competent to govern and control said animal, who has obtained the age of ten (10) years or more, and is able to prevent said dog, cat or other animal from annoying or worrying pedestrians or from trespassing on private or public property. Furthermore, a dog, cat or other animal is not unleashed or uncontrolled and at large if it is properly restrained within a motor vehicle.
 - (3) Any person or entity who violates this Subsection (g) shall be subject to a forfeiture of not less than Twenty-five Dollars (\$25.00) and not more than One Hundred Dollars (\$100.00), together with any impoundment under Section 7-1-7 of this Section.
- (h) **Feeding of Cats.** No person who is not the owner of a cat, or an agent of the owner, shall feed the cat or make food available to the cat.

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

Sec. 7-1-7 Impoundment of Animals.

- (a) **Animal Control Agency.**
- (1) The City of Washburn 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 City of Washburn 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 police or animal control officer may impound any dog, cat or other animal which habitually pursues any vehicle upon any street, alley or highway of the City, assaults or attacks any person, is at large within the City, 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 written statement of a complaining witness alleging the facts regarding the violation and containing an agreement to reimburse the City 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 animal control 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. 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 ten (10) 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 Common Council. In the alternative, animal control or humane agencies serving the City may provide notice pursuant to their operating procedures and state law. No animal shall be released from the pound without being properly licensed if so required by state law or City 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) **City Not Liable for Impounding Animals.** The City 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 on Cemeteries and Other Grounds.

No dog or cat shall be permitted in any public cemetery. Every dog specially trained to lead blind persons shall be exempt from this Section. No person shall walk a dog or permit any dog to be on public or private school grounds unless express permission from those in control of the school grounds have been secured.

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 the Police Department or Health Officer and shall keep such dog or cat confined pursuant to the requirements of Section 7-1-5. 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 Animal Feces.

- (a) **Dog Litter Nuisance.** It shall be unlawful for any person in immediate control of any dog to permit fecal matter which is deposited by such dog while off of its own premises to remain on any street, alley, sidewalk, lawn, field or any public property, and it shall be solely the responsibility of the person in control of said dog to immediately, after deposit, remove all fecal matter and dispose of the same. Any person owning or having control of a dog on any property, public or private, which is not owned or occupied by such person shall promptly remove excrement left by such dog and place it in a proper receptacle, bury it or flush it in a toilet on property owned or occupied by such person. This Section shall not apply to a person who is visually or physically handicapped.
- (b) **Cat Litter Nuisance.** No owner of any cat shall permit the cat to deposit fecal matter while off of the owner's own premises on any street, alley, sidewalk, lawn, field or any public property without removing the fecal matter immediately after deposit and disposing of the same by placing it in a proper receptacle, burying it, or flushing it in a toilet on property owned or occupied by the owner. This Section shall not apply to a person who is visually or physically handicapped.
- (c) **Complaints.** Any adult person alone or together with other adults may seek relief from dog or cat fecal matter deposits as described in Subsections (a) and (b) above by a complaint to the Police Department.

Sec. 7-1-11 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 or urinate thereon.

Sec. 7-1-12 Barking Dogs or Crying Cats.

It shall be unlawful for any person to own, keep, possess, or harbor any dog or cat which, by howling, barking, screaming, or otherwise, causes annoyance or disturbance to any person or persons.

Sec. 7-1-13 Prohibited and Protected Animals, Fowl, Reptiles and Insects.

(a) **Protected Animals.**

(1) **Possession and Sale of Protected Animals.** It shall be unlawful for any person, firm or corporation to possess with intent to sell or offer for sale, or buy or attempt to buy, within the City any of the following animals, alive or dead, or any part or product thereof: all wild cats of the family felidae, polar bear (*thalarctos maritimus*), red wolf (*canis niger*), vicuna (*vicugna vicugna*), or alligator, caiman or crocodile of the order of crocodilia, gray or timber wolf (*canis lupus*), sea otter (*enhydra lutris*), Pacific ridley turtle (*lepidochelys olivacea*), Atlantic green turtle (*chelonia mydas*), Mexican ridley turtle (*lepidochelys kempfi*).

(2) **Compliance with Federal Regulations.** It shall be unlawful for any person, firm or corporation to buy, sell or offer for sale a native or foreign species or subspecies of mammal, bird, amphibian or reptile, or the dead body or parts thereof, which appears on the endangered species list designated by the United States Secretary of the Interior and published in the Code of Federal Regulations pursuant to the Endangered Species Act of 1969 (Public Law 135, 91st Congress).

(3) **Regulating the Importation of Certain Birds.** No person, firm or corporation shall import or cause to be imported into this City any part of the plumage, skin or dead body of any species of hawk, owl or eagle. This paragraph shall not be construed to forbid or restrict the importation or use of the plumage, skin, body or any part thereof legally collected for use by the American Indians for ceremonial purposes or in the preservation of their tribal customs and heritage.

(b) **Exceptions.** The provisions of Subsection (a) above shall not be deemed to prevent the lawful importation, possession, purchase or sale of any species by any public agency, institute of higher learning, persons holding federal permits, or by a person holding a Scientific Collectors Permit issued by the Secretary of the Department of Natural Resources of the state, or to any person or organization licensed to present a circus.

(c) **Wild Animals; Prohibition on Keeping.** It shall be unlawful for any person to keep, maintain or have in his/her possession or under his/her control within the City any

poisonous reptile or any other dangerous or carnivorous wild animal, insect or reptile, any vicious or dangerous domesticated animal or any other animal or reptile of wild, vicious or dangerous propensities. Specifically, it shall be unlawful for any person to keep, maintain or have in his/her possession or under his/her control within the City any of the following animals, reptiles or insects:

- (1) All poisonous animals and reptiles including rear-fang snakes.
 - (2) Apes: Chimpanzees (Pan); gibbons (Hylobates); gorillas (Gorilla); orangutans (Pongo); and siamangs (Symphalangus).
 - (3) Baboons (Papoi, Mandrillus).
 - (4) Bears (Ursidae).
 - (5) Bison (Bison).
 - (6) Cheetahs (Acinonyx jubatus).
 - (7) Crocodilians (Crocodylia), including alligators, caymans and gavials.
 - (8) Constrictor snakes.
 - (9) Coyotes (Canis latrans).
 - (10) Deer (Cervidae); includes all members of the deer family; for example, whitetailed deer, elk, antelope and moose.
 - (11) Elephants (Elephas and Loxodonta).
 - (12) Foxes.
 - (13) Game cocks and other fighting birds.
 - (14) Hippopotami (Hippopotamidae).
 - (15) Hyenas (Hyaenidae).
 - (16) Jaguars (Panthera onca).
 - (17) Leopards (Panthera pardus).
 - (18) Lions (Panthera leo).
 - (19) Lynxes (Lynx).
 - (20) Monkeys, old world (Cercopithecidae).
 - (21) Ostriches (Struthio).
 - (22) Pumas (Felis concolor); also known as cougars, mountain lions and panthers.
 - (23) Raccoons.
 - (24) Rhinoceroses (Rhinocero tidae).
 - (25) Skunks.
 - (26) Snow leopards (Panthera uncia).
 - (27) Tigers (Panthera tigris).
 - (28) Wolves (Canis lupus).
 - (29) Poisonous insects, including tarantulas.
 - (30) Except in properly zoned districts, horses, mules, ponies, donkeys, cows, pigs, goats, sheep, chickens or any animal raised for fur-bearing purposes unless otherwise permitted elsewhere in this Code.
- (d) **Exceptions; Pet Shops.**
- (1) The prohibitions of Subsection (c) above shall not apply where the creatures are in the care, custody or control of: a veterinarian for treatment; agricultural fairs; shows or projects of the 4-H Clubs; a display for judging purposes; an itinerant or transient

carnival, circus or other show; dog or cat shows or trials; public or private educational institutions; zoological gardens; if:

- a. Their location conforms to the provisions of the zoning ordinance of the City.
 - b. All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors.
 - c. Animals are maintained in quarters so constructed as to prevent their escape.
 - d. No person lives or resides within one hundred (100) feet of the quarters in which the animals are kept.
- (2) Guard dogs, ferrets, nonpoisonous snakes, nonconstricting snakes, rabbits and laboratory rats which have been bred in captivity and which have never known the wild shall be excluded from this Section.
 - (3) Other situations specifically exempted by Council action.

Sec. 7-1-14 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 chicks, 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)(g), 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.

State Law Reference: Sec. 951.11, Wis. Stats.

Sec. 7-1-15 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.

State Law Reference: Sec. 951.13, Wis. Stats.

Sec. 7-1-16 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 particular 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.

State Law Reference: Sec. 951.14, Wis. Stats.

Sec. 7-1-17 Neglected or Abandoned Animals.

- (a) **Neglected or Abandoned Animals.**
- (1) No person may abandon any animal.

- (2) Any law enforcement officer may remove, shelter and care for an animal found to be cruelly exposed to the weather, starved or denied adequate water, neglected, abandoned or otherwise treated in a cruel manner and may deliver such animal to another person to be sheltered, cared for and given medical attention, if necessary. In all cases the owner, if known, shall be immediately notified and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and medical attention and the expense of notice.
 - (3) If the owner or custodian is unknown and cannot, with reasonable effort, be ascertained or does not, within five (5) days after notice, redeem the animal by paying the expenses incurred, it may be treated as a stray and dealt with as such.
 - (4) Whenever in the opinion of any such officer an animal is hopelessly injured or diseased so as to be beyond the probability of recovery, it shall be lawful for such officer to kill such animal and the owner thereof shall not recover damages for the killing of such animal unless he/she shall prove that such killing was unwarranted.
 - (5) Section 951.16, Investigation of Cruelty Complaints, and Section 951.17, Wis. Stats., Expenses of Investigation, are 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 City or any animal control agency with whom the City 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.

State Law Reference: Secs. 951.15, 951.16 and 951.17, Wis. Stats.

Sec. 7-1-18 Cruelty to Animals and Birds Prohibited.

- (a) **Acts of Cruelty Prohibited.** No person except a police officer or health or humane officer in the pursuit of his/her duties shall, within the City, shoot or kill or 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 City 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. 961.14, 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.
- (c) **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. 7-1-19 Trapping of Animals.

- (a) **Trapping Prohibited in City.** In the interest of public health and safety, it shall be unlawful for any person within the City of Washburn, to set, place or tend any trap for the purpose of trapping, killing, catching, wounding, worrying or molesting any animal, except by use of live box-type traps only, and except for mouse or rat traps placed within a structure by the owner or occupant of the structure. Live box-type traps shall be defined as those traps which capture and hold an animal in an alive and unharmed condition.
- (b) **State Law Compliance.** All such traps set, placed or tended on City-owned land shall comply with Ch. 29, Wis. Stats., as they relate to trapping.
- (c) **City Exception.** Nothing in this Section shall prohibit or hinder the City of Washburn or its employees or agents from performing their official duties.

Cross-Reference: Section 12-1-1(b)(6).

Sec. 7-1-20 Dognapping and Catnapping.

No person may take the dog or cat of another from one place to another without the owner's consent or cause such a dog or cat to be confined or carried out of the City or held for any purpose without the owner's consent. This Section does not apply to law enforcement officers or humane society agents engaged in the exercise of their official duties, or as otherwise permitted herein.

Sec. 7-1-21 Vehicle Accidents.

The operator of any vehicle involved in an accident resulting in injury to or death of a dog, cat or other animal which appears to be a pet shall immediately notify the Police Department or an animal control agency whose jurisdiction extends into the City.

Sec. 7-1-22 Display of Birds in Food Establishments.

No person shall sell or display birds of the Psittacine family in any store selling, giving away or preparing food or drink for human consumption unless the birds are so enclosed as to prevent any possible contamination of the food or drink.

Sec. 7-1-23 Keeping of Bees.

- (a) It shall be unlawful for any person to establish or maintain any hive, stand or box where bees are kept or keep any bees in or upon any premises within the corporate limits of the City unless the bees are kept in accordance with the following provisions:
- (1) No hive, stand or box where bees are kept shall be located closer than twenty (20) feet to any property boundary. Such hives, stands or boxes may only be located in the rear yard.
 - (2) If bee colonies are kept within fifty (50) feet of any exterior boundary of the property on which the hive, stand or box is located, a barrier that will prevent bees from flying through it, no less than five (5) feet high, shall be installed and maintained along said exterior boundary. Said barrier may be either a natural planting or artificial.
 - (3) Fresh, clean watering facilities for bees shall be provided on the said premises.
 - (4) The bees and equipment shall be kept in accordance with the provisions of the state statutes.
 - (5) A conditional use permit shall first be obtained pursuant to the City Zoning Code.
- (b) Nothing in this Section shall be deemed or construed to prohibit the keeping of bees in a hive, stand or box located within a school or university building for the purpose of study or observation.

Sec. 7-1-24 Bait Ponds.

It shall be unlawful to maintain a bait pond unless said pond shall be enclosed by a fence or other structure designed to keep children securely away from the pond.

Sec. 7-1-25 Feeding of Deer Prohibited.

- (a) **Prohibition.** It shall be unlawful for any person to place any feed such as salt, minerals, grain, fruit, vegetable material, sunflower seeds, deer suckers, or any other type of feed on any public or private property for the purpose of enticing whitetail deer into any specific area of anyone's property in the City of Washburn except as provided in Subsection (c) herein.

- (b) **Presumption.** There shall be a rebuttable presumption that either of the following acts are for the purpose of feeding whitetail deer:
 - (1) The placement of salts, minerals, grain, fruit, vegetable material, sunflower seeds, or deer suckers in an aggregate quantity of greater than one-half (1/2) gallon at the height of less than six (6) feet off the ground.
 - (2) The placement of salt, minerals, grain, fruit, vegetable material, sunflower seeds, or deer suckers in an aggregate quantity of greater than one-half (1/2) gallon in a drop feeder, automatic feeder, or similar device regardless of the height of the salt, minerals, grain, fruit, vegetable material, sunflower seeds, or deer suckers.
- (c) **Exceptions.** This Section shall not apply to the following situations:
 - (1) The placement of bait for the purpose of hunting whitetail deer subject to all other laws, ordinances, rules and regulations governing hunting and the discharge of hunting weapons.
 - (2) Naturally growing grain, fruit or vegetable material, including gardens and residue from lawns, gardens and other vegetable materials maintained as a mulch or compost pile.
 - (3) Unmodified commercially purchased bird feeders or their equivalent.
 - (4) Deer feeding may be authorized on a temporary basis by the Common Council for specific public purposes determined by the Common Council.
- (d) **Violations.** Any person who violates any provision of this Section and is found guilty shall be subject to a penalty as outlined in the provisions of Section 1-1-7(a) through (c) of the Washburn Code of Ordinances.

Sec. 7-1-26 Keeping of Chickens.

- (a) **Where Permitted.** Chickens, excluding roosters, may be raised in any Residential District as defined in the City Zoning Code, as well as those portions of the C-1 Cottage Commercial Districts located to the West of the intersection of Bayfield Street and 11th Avenue West, and to the East of the intersection of Bayfield Street and East Superior Avenue. All raising of chickens must be in accordance with the regulations prescribed in this Section.
- (b) **Number.** No more than six (6) mature female chickens may be kept at any one time at any permitted premises.
- (c) **Permit.** No chickens may be kept except pursuant to a permit obtained from the Zoning Administrator pursuant to this Section. A permit will be issued upon the applicant's meeting of the following conditions:
 - (1) **Consent From Adult Residents.** The applicant must furnish the written consent from all adult residents of the parcel for which the permit is sought.

- (2) **Neighbor Notification; Objection.** The applicant must furnish the name and mailing address of the owner of each parcel of real property that abuts the parcel for which the permit is sought and that contains a principal building, as that term is defined in Section 13-3-1(b)(38), any part of which is within one hundred (100) feet of the applicant's parcel. The City shall mail the notice to the owner of any abutting property meeting this criteria. The applicant and the City may presume that the owner and mailing address to which property tax bills for the parcel are sent is the correct owner and mailing address, unless the property owner has provided an alternative name and/or address to the City. The owner of any abutting property meeting the criteria stated above and who objects to the issuance of a permit must file a written and signed objection, stating the reasons for the objection, with the City Clerk no later than fifteen (15) days from the mailing date of the notice. Whenever an objection is filed, the Common Council shall decide whether or not a permit may be issued. The City Clerk shall send a copy of the objection to the applicant. The applicant and the objecting party shall be given no less than ten (10) days' notice of the Common Council meeting at which the Common Council shall determine whether or not a permit may be issued. The Common Council shall not deny the issuance of a permit on the basis of the objection unless there are circumstances particular to the parcel, the applicant, or the objector that indicate that the public health, safety, or welfare requires the denial of the permit. If the Common Council determines that a permit may be issued despite the objection, the applicant shall still meet all other conditions for the issuance of a permit, which shall be determined by the Zoning Administrator pursuant to Section 7-1-26(c)(6).
- (3) **Site Plan.** The applicant must furnish a site plan showing the location and dimensions of the proposed chicken coop and run, and the distance of the coop and run from all lot lines and buildings located on the adjacent lots.
- (4) **Fee.** The applicant shall make payment of the permit fee prescribed in Sec. 1-3-1.
- (5) **Inspection Consent.** Application for a permit under this Section constitutes consent by the applicant to the City of Washburn and any of its employees or agents to enter upon the applicant's property to ascertain compliance with this Section and with the terms of the permit, for as long as the permit is in effect.
- (6) **Permit Issuance.** Permits will be issued by the Zoning Administrator upon the Zoning Administrator's finding that all conditions for the permit have been met. Written notice of the grant or denial shall be provided to the applicant and to any person who has filed an objection to the granting of the permit. Any person aggrieved by the grant or denial of a permit may have such grant or denial reviewed by the Common Council by filing a written request for review with the City Clerk-Treasurer no later than ten (10) days after the mailing date of the notice of grant or denial.
- (d) **Permit Revocation.** A permit issued under this Section may be revoked by the Zoning Administrator upon a finding that the permittee has committed a serious violation of this

Section, or upon a finding that the permittee has committed multiple or repeated violations of this Section. A revocation may be initiated by the Zoning Administrator or by any citizen filing a written and signed complaint. The Zoning Administrator shall provide written notice to the permittee upon the revocation of a permit, and shall include in the notice a listing of the reason for the revocation and a notice of the permittee's appeal rights as provided in this Subsection. The Zoning Administrator shall provide a copy of the notice to any person who has filed a written and signed complaint regarding the permittee, and shall also provide to any such person notice of a non-revocation on the basis of such complaint. Any person aggrieved by the revocation or non-revocation of a permit may have such action reviewed by the Common Council, by filing a written request for review with the City Clerk-Treasurer no later than ten (10) days after the mailing date of the notice of action.

(e) **Chicken Coop Standards.** Chickens shall be provided with a building structure that meets the criteria set forth below:

- (1) **Location.** The coop must be no closer than ten (10) feet to a lot line, and no closer than twenty (20) feet to any house or other occupied structure other than that of the owner, and may not be located in the front yard, as that term is defined in the City of Washburn Zoning Code Section 13-3-1(b)(334).
- (2) **Space Per Chicken.** Each mature chicken shall have a minimum of three (3) square feet of floor space.
- (3) **Nesting Boxes.** There shall be at least one (1) nesting box per mature chicken.
- (4) **Elevated Perches.** The coop shall include elevated perches.
- (5) **Soundness of Construction.** The coop must be structurally sound, moisture-proof, and kept in good repair.
- (6) **Ventilation.** The coop shall have vents to provide for proper ventilation.
- (7) **Windows.** The coop must have at least one (1) window.
- (8) **Sanitary Standards; Manure.** The coop shall be cleaned daily and the waste must be properly disposed of.
- (9) **Chicken Run Access.** The coop must provide access to the chicken run.
- (10) **Temperature.** The coop must be maintained at an internal temperature of not less than 15° F.

(f) **Chicken Runs.** Chickens shall be provided with an outdoor fenced structure that meets the criteria set forth below:

- (1) **Location.** The run must be no closer than ten (10) feet to a lot line, and no closer than twenty (20) feet to any house or other occupied structure other than that of the owner, and may not be located in the front yard, as that term is defined in the City of Washburn Zoning Code Section 13-3-1(b)(334).
- (2) **Space Per Chicken.** Each mature chicken shall have a minimum of six (6) square feet of floor space.
- (3) **Minimum Dimensions.** The chicken run must have minimum dimensions of two (2) feet wide by three (3) feet long by three (3) feet tall (2' x 3' x 3').

- (4) **Fencing; Mesh Side.** The chicken run must be enclosed with fencing of a mesh size of not more than one (1") inch square.
- (5) **Chicken Run Roof Fencing.** The run must be covered with fencing with a mesh size of not more than one (1") inch square.
- (6) **Fencing Burial.** If the chicken run is not mobile, fencing must be buried at least one (1) foot underground around the entire periphery of the run.
- (g) **Food and Water.**
 - (1) **Water.** Adequate water shall be provided at least once a day.
 - (2) **Food.** Adequate food must be provided at least once a day.
- (h) **Sale of Eggs.** A permittee or family member of a permittee may sell eggs laid by the chickens permitted under this Section from the residence where the permit is located, provided the permittee complies with all other applicable law. The *de minimis* sale of eggs is not considered a commercial use or a customary home occupation.
- (i) **Free-Range Chickens Prohibited.** All chickens shall be enclosed at all times in a chicken coop or chicken run that complies with Subsections (e) and (f) above. No chickens are allowed outside of a permitted enclosure at any time.
- (j) **Penalties.**
 - (1) A forfeiture shall be assessed for any violation of this Section in an amount no less than Twenty-Five Dollars (\$25.00) and no more than Two Hundred Dollars (\$200.00), unless the individual cited shall have been previously found to have violated any part of this Section, in which case the forfeiture shall be no less than Fifty Dollars (\$50.00) and no more than Four Hundred Dollars (\$400.00). Each day that a violation of this Section continues shall be deemed a separate violation.
 - (2) Any violation of Subsection (c); (e)(2), (3), (4), (5), (6), (7), (8), (9) or (10); (f)(2) or (3); (g)(1) or (2); or (i) shall be deemed a separate violation for each chicken kept in violation of the Subsection.

Sec. 7-1-27 Penalties.

- (a) Any person violating Sections 7-1-15, 7-1-16, 7-1-17, 7-1-18, 7-1-19, 7-1-20, 7-1-21, 7-1-22, 7-1-23 or 7-1-24 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 City 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 and 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 Section 7-1-7 through 7-1-14 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.

- 7-2-32** Duration
- 7-2-33** Operator's License Fee
- 7-2-34** Issuance or Denial of Operator's License
- 7-2-35** Training Course
- 7-2-36** Display of License
- 7-2-37** Revocation of Operator's License
- 7-2-38 through**
- 7-2-39** Reserved for Future Use

Article C Penalties

- 7-2-40** Penalties

Article A Fermented Malt Beverages and Intoxicating Liquor

Sec. 7-2-1 State Statutes Adopted.

The provisions of Ch. 125, Wis. Stats., 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 amendments, 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.

State Law Reference: Chapter 125, Wis. Stats.

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 Ch. 125, Wis. Stats.

Sec. 7-2-3 License Required.

No person, firm or corporation shall vend, sell, deal or traffic in or have in his/her/its 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, fermented malt beverage, wine or intoxicating cider 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, except as provided by Secs. 125.16, 125.27, 125.28 and 125.51, Wis. Stats.

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 City Clerk under the authority of the Common Council, 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 A" Intoxicating Liquor License – Cider Only.** A "Class A" intoxicating liquor license issued under this Section shall entitle the holder to sell, deal and traffic in cider only, and only in original packages or containers and to be consumed off the premises so licensed. A retail "Class A" Intoxicating Liquor License for Cider only shall be granted to an applicant who holds a Class "A" Fermented Malt Beverage Retailer's license issued under Sec. 125.25, Wis. Stats., or under Subsection (c) of this Section, for the same premises for which the "Class A" license application is made.
- (c) **Retail "Class B" Intoxicating Liquor License.** A retail "Class B" intoxicating liquor license, when issued by the City Clerk under authority of the Common Council, 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.
- (d) **Class "A" Fermented Malt Beverage Retailer's License.** A Class "A" retailer's fermented malt beverage license, when issued by the City Clerk under the authority of the Common Council, 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.
- (e) **Class "B" Fermented Malt Beverage Retailer's License.**
 - (1) **License.** A Class "B" fermented malt beverage retailer's license, when issued by the City Clerk under the authority of the Common Council, 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.
- (f) **Temporary Class "B" Fermented Malt Beverage License.**
 - (1) **License.**
 - a. 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.

- b. 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.
- c. Such license is valid for dates as approved by the City Clerk.

(2) **Application.**

- a. 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 City Clerk together with the appropriate license fee for each day for which the license is sought. Any denial of a license may be appealed to the Common Council under Section 7-2-10. Any application not filed at least five (5) days before the date of the licensed event may not provide enough time for the City Clerk to take action of the application, and any application not filed at least forty-five (45) days before the date of the licensed event may not provide enough time for the applicant to appeal any denial of license by the City Clerk.
- b. 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.
- c. 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 Common Council at which the application will be considered for events of more than four (4) consecutive days.
- d. If the application is for a license to be used in a City park, the applicant shall specify the main point of sale facility.

(g) **Temporary "Class B" Wine License.**

(1) **License.**

- a. Notwithstanding Sec. 125.68(3), Wis. Stats., temporary "Class B" licenses may be issued to bona fide clubs and chambers of commerce, 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 wine in an original package, container or bottle or by the glass if the wine is dispensed directly from

an original package, container or bottle 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.

- b. No fee may be charged to a person who, at the same time, applies for a temporary Class "B" beer license under Sec. 125.26(6), Wis. Stats., for the same event. 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 wine from leased stands on the fairgrounds.
- c. 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 wine from the stands while the fair is being held.
- d. Not more than two (2) such licenses may be issued under this Subsection to any club, chamber of commerce, county or local fair association, agricultural association, church, lodge, society or veterans' post in any twelve (12) month period.
- e. An applicant may receive up to twenty (20) licenses if all of the following apply:
 1. Each license is issued for the same date and times and the licensee is the sponsor of an event held at multiple locations within the municipality on this date and at these times.
 2. An admission fee is charged for participation in the event and no additional fee is charged for service of alcohol at the event.
 3. Within the immediately preceding twelve (12) month period, the City has issued licenses under authority of this Subsection for fewer than two (2) events.
 4. The duration of an event may not exceed one (1) day.
 5. Multiple licenses issued under this Subsection count as one (1) license for purposes of Subsection (g)(1)d.

(2) **Application.**

- a. 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 City Clerk together with the appropriate license fee for each day for which the license is sought. Any application not filed at least five (5) business days before the desired date of the license may not provide enough time for the City Clerk to take action on the application. Any denial of a license may be appealed to the Common Council under Section 7-2-10.
- b. 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 shall be ineligible to apply for a temporary "Class B" wine license for one (1) year.

- c. The license shall specify the hours and dates of license validity.
 - d. If the application is for a license to be used in a City park, the applicant shall specify the main point of sale facility.
- (h) **Wholesaler's License.** A wholesaler's fermented malt beverage license, when issued by the City Clerk under authority of the Common Council, 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.
- (i) **Retail "Class C" Wine License.**
- (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 if the City's quota prohibits the City from issuing a "Class B" license to that person. 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.

- (a) **Fees.** There shall be the following classes of licenses in the City of Washburn which, when issued by the City Clerk under the authority of the Common Council 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.:
- (1) **Class "A" Fermented Malt Beverages Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1. 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) **"Class A" Intoxicating Liquor License – Cider.** There is no fee for a "Class A" Cider License.
 - (3) **Class "B" Fermented Malt Beverage License.** The annual fee for this license shall be as prescribed in Section 1-3-1. 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.
- (4) **Temporary Class "B" Fermented Malt Beverage License.** The fee for this license shall be as prescribed in Section 1-3-1 per event.
 - (5) **Temporary "Class B" Wine License.** The fee for this license shall be as prescribed in Section 1-3-1 per event. However, there shall be no fee if the Temporary Wine License is obtained along with a Temporary Fermented Malt Beverage License.
 - (6) **Fermented Malt Beverage Wholesalers' License.** The annual fee for this license shall be as prescribed in Section 1-3-1.
 - (7) **"Class A" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1.
 - (8) **"Class B" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be as prescribed in Section 1-3-1. 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.
 - (9) **"Class C" Wine License.** The annual fee for this license shall be as prescribed in Section 1-3-1. The fee for less than one (1) year shall be prorated.
- (b) **Cancellation for Failure to Pay Fee.** The City Clerk shall issue each license approved by the Common Council and shall make the same available at the City Clerk's office in City Hall. Any licenses for which the license fee is not paid within fifteen (15) days of approval of the application by the Common Council shall be returned to the Common Council for cancellation or other disposition.

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 City 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.** Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, of a corporation.
- (c) **Publication.** The City Clerk shall publish each application for a Class "A", Class "B", "Class A", "Class B", or "Class C" license. There is no publication requirement for temporary Class "B" picnic beer licenses under Sec. 125.26, Wis. Stats., or temporary "Class B" picnic wine licenses under Sec. 125.51(10), Wis. Stats. The application shall be

published once in the official City 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.

Sec. 7-2-7 Qualifications of Applicants and Premises.

- (a) **Residence Requirements.** A retail Class "A" or Class "B" fermented malt beverage, "Class A" or Class B" intoxicating liquor license, or Class "C" wine license shall be granted only to American citizen or persons with permanent residency status (green card) who have been residents of the State of Wisconsin continuously for at least ninety (90) days prior to the date of 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.
- (c) **Right to Premises.** No applicant will be considered unless he/she 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(a)1 and 4 and (b), Wis. Stats., unless the agent of the corporation appointed under Sec. 125.04(6) and the officers and directors of the corporation meet the qualifications of Sec. 125.04(a)1 and 3 and (b) and unless the agent of the corporation appointed under Sec. 125.04(6) meets the qualification under Sec. 125.04(a)2. The requirement that the corporation meet the qualifications under Sec. 125.04(a)1 and (b) does not apply if the corporation has terminated its relationship with all of the individuals whose actions directly contributed to the conviction.
 - (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 City 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) **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.
- (h) **Licensed Premises.** Licenses issued by the City shall be for the structure itself and shall not confer any license or right to property outside of the licensed structure. All sales of intoxicating liquors and fermented malt beverages within the City of Washburn shall be limited to and shall be made upon the premises described within the license granted by the Common Council. Specifically restricted by this Section is the sale and delivery of alcoholic beverages by food delivery services.

Sec. 7-2-8 Investigation.

The City Clerk shall notify the Chief of Police, City Treasurer, 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. These officials shall furnish to the City Clerk in writing, who shall forward to the Common Council, the information derived from such investigation, accompanied by a recommendation as to whether a license should be granted or refused. No license shall be renewed without a re-inspection of the premises and report as originally required.

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 City 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 City.

- (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, and 111.335, 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 Common Council, the Common Council 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 Council, 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. 7-2-10 Granting of License.

- (a) 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 Common Council, the City Clerk shall issue to the applicant a license, upon payment by the applicant of the license fee to the City. The full license fee shall be charged for the whole or fraction of any year.
- (b) If the Common Council 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 Common Council 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 Common Council consents to the request. Such written notice shall be mailed or served upon the applicant at least ten (10) days prior to the Common Council meeting at which the application is to be reconsidered.
- (c) No application for any license which shall have been denied by the Common Council for any reason shall again be considered by the Common Council for a period of three (3) months from the date of such denial.

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 Common Council. An application for transfer shall be made on a form furnished by the City 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 City Clerk shall forthwith notify the Wisconsin Department of Revenue of such transfer. In the event of the sale of a business or business premises of the licensee, the purchaser of such business or business premises must apply to the City for reissuance of said license and the City, as the licensing authority, shall in no way be bound to reissue said license to said subsequent purchaser.
- (b) Whenever the agent of a corporate holder of a license is for any reason replaced, the licensee shall give the City Clerk written notice of said replacement, the reasons therefor and the new appointment. Until the next regular meeting or special meeting of the Common Council, 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 City 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 Common Council until the successor agent or another qualified agent is appointed and approved by the City.

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 City Clerk shall affix to the license his/her affidavit as provided by Sec. 125.04(4) of the Wisconsin Statutes.

Sec. 7-2-13 Posting Licenses; Defacement.

- (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 City 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 City 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 City 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", 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 in immediate presence at the time of such service.
- (e) **Health and Sanitation Regulations.** The rules and regulations of the State Board of Health governing sanitation in restaurants shall apply to all "Class B" liquor licenses issued under this Chapter. No "Class B" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- (f) **Restrictions Near Schools and Churches.** 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) **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.
- (h) **Credit Prohibited.** No retail Class "A", Class "B", "Class A" or "Class B" liquor or fermented malt beverage 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.
- (i) **Licensee or Permittee Responsible for Acts of Employees.** 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.

Annotation: See *Colomade Catering Corp. v. United States*, 397 U.S. 72, 90 S. Ct. 774 (1970); and *State v. Erickson*, 101 Wis. 2d 224 (1981), for guidelines for warrantless searches of licensed premises.

Sec. 7-2-15 Closing Hours.

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

- (a) **Closing Hours.**
 - (1) No premises for which a retail "Class B" liquor, Class "B" fermented malt beverage, 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 – Fermented Malt Beverages.** Between 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 in original unopened packages, containers or bottles or for consumption away from the premises.

- (c) **Carryout Hours – Intoxicating Liquor.** Between 9:00 p.m. 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, intoxicating liquors 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 City-owned property or privately-owned property within the City of Washburn, except through the issuance of a Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License issued by the Common Council in accordance with Wisconsin Statutes and as set forth in this Section. A Temporary Class "B" Fermented Malt Beverage License or Temporary "Class B" Wine License authorizing the sale and consumption of beer and/or wine on City-owned property or privately-owned property may be authorized by the City Clerk 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 in a conspicuous location at the main point of sale and at all remote points of sale a sufficient number of signs 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 Common Council may require that organizations 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 as defined by the Wisconsin Statutes shall be allowed to assist in the sale of fermented malt beverages or wine 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 City Clerk 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 or wine license may be required to indemnify, defend and hold the City of Washburn 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 City of Washburn. The applicant may be required to furnish a performance bond prior to being granted the license.
- (h) **Beer and Liquor Not To Be Carried In.** No person shall bring fermented malt beverages or intoxicating liquor in any form of a container with him/her, or in his/her automobile, to any public function within the City of Washburn for his/her own consumption, or consumption of others; except only under permission of the Common Council granted for such function. The term public function shall be construed to mean any function that is open to the general public for an admission charge or without admission charge upon any premises in the City of Washburn.
- (i) **Permitted Cups or Cans Only.** Intoxicants will be sold outside only in foam or plastic cups or cans.

Cross-Reference: Section 11-4-1.

Sec. 7-2-17 Revocation and Suspension of Licensees; 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) **Cancellation of Premised Licenses.**
 - (1) **Grounds for Cancellation for Nonuse of License.** Any Class A or Class B Fermented Malt and/or Intoxicating Liquor Licenses granted under this Chapter for which the subject premises:
 - a. Is not open for business for a period of one hundred eighty (180) consecutive days or more; or
 - b. Is not open for business at least fifty percent (50%) of the days within any twelve (12) month period, either within a licensing year or overlapping two (2) licensing years.shall be cancelled unless after notice and hearing as provided in Subsection (b)(2) hereof, the Common Council shall determine that good cause exists for the failure of the licensee to be open for business for periods in excess of the minimums set forth in this Subsection. If such cause is found to exist, the Common Council may set such

terms as it deems appropriate to the continuation of the license with respect to minimum days of operation or a time frame within which the subject premises must open for business to avoid cancellation of the subject license(s).

- (2) **Notice and Hearing.** Prior to cancellation of any license, the City Clerk shall notify the licensee in writing of the City's intention to cancel the license for nonuse and provide the licensee with an opportunity for a hearing. Such notice shall also specify the time, place and date of the hearing, which shall be not less than fifteen (15) days after the date of the notice. Such hearing shall be conducted as provided in accordance with Sec. 125.12(2)(b) of the Wisconsin Statutes, or any amendments thereto.
- (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 Police Department 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 Police Department during normal working hours (8:00 a.m. to 5:00 p.m., Monday through Friday) and shall be given on forms prescribed by the Department. After a non-alcohol event notice has been given, the licensee may cancel an event(s) only by giving like notice to the Department 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 Police Department 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. Such notice cards shall be made available by the Department 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 Beer Garden Licenses Required for Outdoor Consumption at Class "B" Premises.

- (a) **Required for Outdoor Consumption.** No licensee shall permit the consumption of alcohol beverages on any part of the licensed premises not enclosed within the building, except under permit granted by the Common Council or under a permit granted pursuant to Section 7-2-20. The permits are a privilege in which no rights vest and, therefore, may be revoked by the Common Council at its pleasure at any time or shall otherwise expire on June 30 of each year. The fee for a Beer Garden permit shall be Ten Dollars (\$10.00). No person shall consume or have in his or her possession alcohol beverages on any unenclosed part of a licensed premises which is not described in a valid Beer Garden permit.
- (b) **Limitations on Issuance of Beer Garden Permits.** No permit shall be issued for a Beer Garden if the Beer Garden area is greater than fifty percent (50%) of the gross floor area of the adjoining licensed premises. Each applicant shall accurately describe the area intended for use as a Beer Garden and shall indicate the nature of the measures intended to visually demarcate the limits of the Beer Garden and the measure is intended to provide control over the operation of the Beer Garden. The provisions of Section 11-2-6 of the City of Washburn Code of Ordinances (Loud and Unnecessary Noise Prohibited) shall apply to the operations of beer gardens.
- (c) **Adjoining Property Owners to be Notified of Pendency of Applications.** All property owners within one hundred fifty (150) feet of the proposed beer garden shall be notified of the pendency of application for a Beer Garden permit by first class mail.
- (d) **State Statutes Enforced Within Beer Garden.** Every permittee under this Section shall comply with and enforce all provisions of Ch. 125, Wis. Stats., applicable to Class "B" licensed premises, except insofar as such provisions are clearly inapplicable. Violation of the provisions of Ch. 125, Wis. Stats., shall be grounds for immediate revocation of the Beer Garden permit by the Common Council.

Sec. 7-2-20 Temporary Extension of Licensed Premises for Special Events.

- (a) **Authority.** The granting of a temporary extension of a licensed premises for special events shall authorize the licensee to sell or serve intoxicating liquors or fermented malt beverages, as permitted by the specific license held, during the period of time and in the area described in the application for such temporary extension, as expressly approved by the City Clerk.

- Such authority, however, shall be contingent upon the licensee also obtaining any and all other special privileges or permits required for the conduct of the special event for which the temporary extension of the licensed premises is sought. Any licenses granted a temporary extension of licensed premises for a special event need not also obtain a license pursuant to Section 7-2-19 for said event.
- (b) **Eligibility.** Any person holding a valid license as defined in Section 7-2-4 may apply for temporary extension of such licensed premises for a special event. The area which the licensee wishes to include in any temporary extension of the licensed premises must be owned by or under the control of the licensee. If the applicant seeks a temporary extension of the licensed premises, such that the extended licensed premises would extend into or encroach upon public property or public thoroughfares, then the applicant shall also be required to obtain the applicable special privileges and/or permits that allow such use before the temporary extension of the licensed premises is issued by the City Clerk. The applicant shall also comply with all other applicable statutes, ordinances and resolutions of the City.
- (c) **Applicant's Responsibility.** Application for the temporary extension of licensed premises for special events shall be made by an individual, or authorized agent in the case of a corporation, limited liability company or other entity or association, who shall be personally responsible for compliance with all of the terms and provisions of this Chapter.
- (d) **Application.** An application for the temporary extension of licensed premises shall be filed on or before the deadline established by the City Clerk on forms provided by the City Clerk. The application shall be signed and sworn to by the applicant, if an individual; by one partner, if a partnership; or by a duly authorized agent, officer or member, if a corporation or limited liability company or other entity. The application shall include:
- (1) The name, business address and telephone number(s) of the applicant.
 - (2) The address of the existing licensed premises.
 - (3) A specific description of the site for which the temporary extension is sought, which may be accomplished by providing a map describing the area for which the temporary extension is sought.
 - (4) The name of the particular event or function for which the temporary extension of the licensed premises is sought.
 - (5) The date and period of time for which the particular event or function will be operated.
 - (6) Such other reasonable and pertinent information as the Common Council or City Clerk may require.
- (e) **Approval of Application.** The completed application shall be referred to the City Clerk, who shall determine whether to approve the permit. The City Clerk may take into consideration the following:
- (1) The appropriateness of the location and site for which the permit is sought and whether the event for which the permit is sought will create problems.
 - (2) The hours during which the event would be operated on the site and the likely effect of the event on the surrounding area.

- (3) Whether previous permits granted to the same applicant or to other applicants for the same site have resulted in neighborhood problems, including, but not limited to, complaints of loud music, noise, litter, and/or conduct that would be considered to be disorderly conduct.
 - (4) The opinion of the Chief of Police as to the appropriateness of the application.
 - (5) Any other factors which reasonably relate to the public health, safety and welfare.
- (f) **Denial of Application.**
- (1) If the City Clerk denies an application based upon the factors listed in Subsection (e), written notice of such denial will be communicated to the applicant within five (5) business days of such decision. The written notice of denial will contain an explanation of all the reasons considered for such denial.
 - (2) Any applicant that has had an application denied may request a *de novo* review of such application by the Common Council. Notice of such appeal must be submitted to the Common Council in writing within ten (10) business days of the applicant's receipt of the denial letter. At the next regularly scheduled Common Council meeting – or the following Common Council meeting if the appeal is not submitted with sufficient time for it to be placed on the agenda for the upcoming meeting – the Common Council will make a *de novo* determination on whether to approve or deny the application, which will be decided by a majority vote of the Council.
 - (3) If the Common Council issues a decision approving an application prior to the date of the special event, a temporary extension of licensed premises permit shall be issued for such event. If the Common Council issues a decision approving an application after the date of the special event has passed, such approval may be taken into consideration on future applications by the same applicant in addition to the factors listed in Subsection (e).
- (g) **Issuance.** If the City Clerk or Common Council grants the application for a temporary extension of licensed premises for special events, the City Clerk shall issue an appropriate document to the applicant confirming that fact and specifying the date, period of time and specific location for which the extended licensed premises shall be in effect. Such document shall also contain any restrictions or conditions which the City Clerk or Common Council may place on such approvals. The City Clerk shall inform the Chief of Police of the date, place and event for which the temporary extension of licensed premises was issued.
- (h) **Restrictions.**
- (1) Any extension of premises approval shall be for not more than a continuous twenty-four (24) hour period and shall be valid only at times that sales of alcoholic beverages are allowed by state law and by Title 7, Chapter 2 of the City of Washburn Code of Ordinances.
 - (2) The provisions of Section 11-2-6 of the City of Washburn Code of Ordinances (Loud and Unnecessary Noise Prohibited) shall apply to all extension of premises approvals.

Sec. 7-2-21 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" or Class "B" 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 and in a position of immediate supervision.
- (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.

State Law Reference: Secs. 125.17 and 125.32, Wis. Stats.

Sec. 7-2-31 Procedure Upon Application.

- (a) The Common Council may issue an operator's license, which license shall be granted only upon application in writing on forms to be obtained from the City Clerk-Treasurer only to persons eighteen (18) years of age or older. Operator's licenses shall be operative only within the limits of the City.
- (b) All applications are subject to an investigation by the Chief of Police 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. The Police

Department shall 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 Chief of Police shall recommend, in writing, to the Common Council approval or denial of the application. If the Chief of Police recommends denial, the Chief of Police 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 two (2) years and shall expire on the thirtieth (30th) day of June of each year succeeding the year in which it is issued.

Sec. 7-2-33 Operator's License Fee.

The fee for an operator's license shall be as provided in Section 1-3-1 of this Code of Ordinances.

Sec. 7-2-34 Issuance or Denial of Operator's License.

- (a) After the Common Council approves the granting of an operator's license, the City Clerk-Treasurer 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 Common Council, the City Clerk-Treasurer 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 Common Council in a closed session. Such notice must be sent by registered mail to, or served upon, the applicant at least ten (10) days prior to the Council'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 City Clerk-Treasurer 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, and 111.335, 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 Common Council 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 Common Council, the Common Council 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 Common Council, 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. In the event the application is denied, the fee shall be refunded.

Sec. 7-2-35 Training Course.

- (a) Except as provided in Subsection (b) below, the Common Council 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 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 City Clerk 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.
- (c) The Common Council 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).

NOTE: This Section shall take effect July 1, 1991.

Sec. 7-2-36 Display of License.

Each license issued under the provisions of this Chapter shall be posted on the premises whenever the operator dispenses beverages or be in his or her possession, or carry a license card.

Sec. 7-2-37 Revocation of Operator's License.

Violation of any of the terms or provisions of the State law or of this Chapter relating to operator's licenses by any person holding such operator's license shall be 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 City of Washburn, 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 City of Washburn, 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 City of Washburn.
- (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, firm or corporation 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, firm or corporation desiring a license under this Section shall file with the City 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 City 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 City Clerk a license fee of Twenty-five Dollars (\$25.00).
- (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 City 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.

State Law Reference: Sec. 134.65, Wis. Stats.

Title 7 ► Chapter 4

Direct Sellers

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	Registration and Issuance of License
7-4-8	Regulation of Direct Sellers
7-4-9	Records
7-4-10	Revocation of Registration

Sec. 7-4-1 Registration Required.

It shall be unlawful for any direct seller to engage in direct sales within the City of Washburn without being registered for that purpose as provided herein.

Sec. 7-4-2 Definitions.

In this Chapter:

- (a) **Direct Seller ("transient merchant")** means any individual who, for him/herself, or for a partnership, association or corporation, sells goods, or takes sales orders for the later delivery of goods, 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.
- (b) **Permanent Merchant** means a direct seller 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 this City; or
 - (2) Has continuously resided in this City and now does business from his/her residence.
- (c) **Goods** shall include personal property of any kind and shall include goods provided incidental to services offered or sold.

- (d) **Charitable Organization** shall include any benevolent, religious, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.
- (e) **Clerk-Treasurer** shall mean the City of Washburn Clerk-Treasurer.
- (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.
- (g) **Applicant** shall mean each individual applying for registration and licensing as a direct seller or solicitor.
- (h) **Registrant** shall mean each individual registered by the Clerk-Treasurer and to whom a license has been issued.

Sec. 7-4-3 Exemptions.

- (a) The following shall be exempt from all provisions of this Chapter:
 - (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
 - (2) Any person selling goods at wholesale to dealers in such goods.
 - (3) Any person selling agricultural products.
 - (4) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business.
 - (5) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by, said person.
 - (6) 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.
 - (7) Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
 - (8) 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.
 - (9) 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 City Clerk-Treasurer proof that such charitable organization is 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.
 - (10) Any person who claims to be a permanent merchant, but against whom complaint has been made to the City Clerk-Treasurer that such person is a transient merchant, provided that there is submitted to the City Clerk-Treasurer 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 in this City for at least one (1) year prior to the date complaint was made.

- (11) a. Charitable organizations shall be exempt from the requirements set forth in Section 7-4-4(a) and (c) if the organization has provided the individual representing it with credentials stating the name of the organization, the name of the representative and the purpose of the solicitation and provided, further, that said individuals provide the Clerk-Treasurer with the following information:
1. The individual's name and permanent address.
 2. The name and address of the organization represented.
 3. The name and address of the officers or directors of the organization.
 4. The nature of the sales or solicitations.
 5. Proposed dates and time of sales or solicitations.
- b. After approval by the Chief of Police, a license operative for the dates provided to the Clerk-Treasurer shall be issued without charge upon compliance with the foregoing.
- (12) Any religious 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.
- (13) Any veteran who holds a special state license pursuant to Sec. 440.151, Wis. Stats., shall be exempt from the provisions of Section 7-4-4(a) and (c) provided that such veteran provides the Clerk-Treasurer with the following information:
- a. The veteran's name and permanent address.
 - b. The nature of the sales or solicitations.
 - c. Proposed dates and times of sales or solicitations.
 - d. Copy of state license.

The Clerk-Treasurer shall then forward the above information to the Chief of Police.

Sec. 7-4-4 Registration.

- (a) **Registration Information.** Applicants for registration must complete and return to the City Clerk-Treasurer a registration form furnished by the City Clerk-Treasurer 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, firm, association or corporation that the direct seller 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 goods offered and any services offered;
 - (6) Proposed method of delivery of goods, if applicable;
 - (7) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
 - (8) Last cities, villages, town, 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 this City;
 - (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) **Documentation.** Applicants shall present to the City Clerk-Treasurer 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) **Fee.**
- (1) No application shall be processed until the application fee has been paid to the Clerk-Treasurer to cover the cost of processing said application. Said fee shall be as prescribed in Section 1-3-1.
 - (2) The applicant shall sign a statement appointing the City Clerk-Treasurer his/her 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) Applicants exempt from the requirements of this Chapter hereof shall deposit with the Clerk-Treasurer the sum of Twenty-five Dollars (\$25.00). Said sum shall be refunded to such applicants upon their taking delivery of the license or licenses issued pursuant to Section 7-4-7 hereof. In the event such an applicant fails and neglects to take delivery of said license or licenses before initiating their solicitation, such deposit shall be forfeited to the City.
- (d) **Permits for Particular Events.**
- (1) A separate application must be filed for a permit to be valid during any of the following events:

- a. Book Across the Bay.
 - b. Brownstone Days/Homecoming.
 - c. Merry Ol' Christmas.
 - d. Bayfield Apple Fest.
 - e. Ashland Bay Days.
 - f. Any other event designated by the Washburn Common Council.
- (2) Each of the above events, and any other event that may in the future be designated under Subsection (d)(1) above, if found by the City of Washburn Common Council to be an important civic event which promotes the general welfare, peace, good order, and prosperity of the City of Washburn and its inhabitants.
 - (3) The City Clerk-Treasurer shall issue no permit for use during any of the above-listed events which may tend to detract from the success of the event. In determining whether a permit may tend to detract from the success of an event, the Clerk-Treasurer shall consider the nature of the goods or services to be sold and the location of the sales.
 - (4) The fee schedule for permits issued under this Subsection are as prescribed in Section 1-3-1.

Sec. 7-4-5 Investigation.

- (a) Upon receipt of each application, the City Clerk-Treasurer may refer it immediately to the Chief of Police who may make and complete an investigation of the statements made in such registration.
- (b) The City Clerk-Treasurer shall refuse to register the applicant 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 Common Council or, if none has been adopted, under the provisions of Secs. 68.07 through 68.16, Wis. Stats.

Sec. 7-4-7 Registration and Issuance of License.

- (a) Upon compliance with the foregoing requirements, filing of a bond and payment of the license fee as hereinafter set forth, the Clerk-Treasurer shall register the applicant as a direct seller or solicitor and issue a license to the applicant. The license shall be operative only during the days requested on the registration form.
- (b) Such license shall contain the signature of the Clerk-Treasurer, the name and address of the direct seller or solicitor, the type of goods or services being sold or the nature of the solicitation, the dates during which the license is operative and the license number of any vehicle used for sales or solicitations.
- (c) Registrants shall exhibit their license at the request of any citizen or police officer.

Sec. 7-4-8 Regulation of Direct Sellers.

(a) Prohibited Practices.

- (1) A direct seller shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 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 direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods 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 goods.
- (3) No direct seller or solicitor shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales or solicitations are made from vehicles, all traffic and parking regulations shall be observed. No direct seller or solicitor shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon in excess of fifteen (15) minutes, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. Any move from a stationary location shall be to a place not less than one hundred (100) feet from such location, and the seller or solicitor shall not return to within one hundred (100) feet of any previously occupied location within four (4) hours of having moved from said location. For the purpose of this Section, the judgment of a police officer, exercised in good faith, shall

- be deemed conclusive as to whether the area is congested and public impeded or inconvenienced.
- (4) No direct seller 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 direct seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
- (b) **Disclosure Requirements.**
- (1) After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.
 - (2) If any sale of goods is made by a direct seller or any sales order for the later delivery of goods 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 direct seller takes a sales order for the later delivery of goods, he/she 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. 7-4-9 Records.

The Chief of Police shall report to the City Clerk-Treasurer all convictions for violation of this Chapter and the City Clerk-Treasurer shall note any such violation on the record of the registrant convicted. The decision of the City Clerk-Treasurer regarding revocation may be appealed to the Common Council.

Sec. 7-4-10 Revocation of Registration.

- (a) Registration may be revoked by the City Clerk-Treasurer 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 on the registrant at least seventy-two (72) hours prior to the time set for the hearing; such notice contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

CHAPTER 5

Regulation and Licensing of Fireworks

7-5-1 Regulation of Fireworks

SEC. 7-5-1 REGULATION OF FIREWORKS

- (a) **Definition.** 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.
- (b) **Sale.** No person may sell or possess with intent to sell fireworks, except:
- (1) To a person holding a permit under Subsection (c)(3);
 - (2) To a municipality; or
 - (3) For a purpose specified under Subsection (c)(2)b-f.
- (c) **Use.**
- (1) **Permit Required.** No person may possess or use fireworks without a user's permit from the Mayor or from an official or employee of the City as designated by the Common Council. 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 (c)(3)a-e or under Subparagraph (c)(3)f if the display is open to the general public.
 - (2) **Permit Exceptions.** Subparagraph (c)(1) above does not apply to:
 - a. The City, except that City 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.
 - f. A possessor or manufacturer of explosives in possession of a license or permit under 18 U.S.C. 841 to 848 if the possession of the fireworks is authorized under the license or permit.
- (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. An amusement park.
 - d. A park board.
 - e. A civic organization.
 - f. An agricultural producer 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) Bond. The Mayor issuing a permit under this Subsection shall require an indemnity bond with good and sufficient sureties or 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 City, 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, together with a copy of the permit, shall be filed in the office of the Clerk.
- (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 and Chief of Police 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.
- (d) 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.

Regulation and Licensing of Fireworks

- (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.
- (e) 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.

State Law Reference: Section 101(1)(j), Wis. Stats.

Title 7 ► Chapter 6

Street Use Permits

7-6-1 Street Use Permits

Sec. 7-6-1 Street Use Permits.

- (a) **Purpose.** The streets in possession of the City of Washburn are primarily for the use of the public in the ordinary way. However, under proper circumstances, the City Clerk-Treasurer 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, such as for block parties, to the end that the health, safety and general welfare of the public and the good order of the City of Washburn 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 City Clerk-Treasurer and shall be filed with the City Clerk-Treasurer a minimum of fourteen (14) days prior to the event. 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) **Review by Chief of Police and Director of Public Works.**
- (1) Before any application for a Street Use Permit is considered by the City Clerk-Treasurer, the application shall be reviewed by the Director of Public Works and Chief of Police for their recommendation as to the affect that the temporary closing

- of the street will have on the public safety and traffic movement in the area during the time the street may be closed.
- (2) A decision on the application shall be made by the Common Council, or the Council may delegate this responsibility to the Public Works/Safety Committee.
- (d) **Mandatory Denial of Street Use Permit.** An application for a Street Use Permit shall 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 City of Washburn.
 - (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 that would last later than 10:00 p.m.
 - (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 City Clerk-Treasurer may deny a permit for any other reason or reasons if he/she 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 as prescribed in Section 1-3-1. The fee may be waived at the discretion of the Council or Public Works/Safety Committee.
- (f) **Consent to Issuance of Street Use Permit.** In addition to the fee required by the previous Subsection, each application for a Street Use Permit, except for parades or races sponsored by civic, youth or scout organizations which have been in existence for at least six (6) months, shall be accompanied by a petition designating the proposed area of the street to be used and time for said proposed use, said petition to be signed by not less than sixty percent (60%) of the residents over eighteen (18) years of age residing along that portion of the street designated for the proposed use. Said petition shall be verified and shall be submitted in substantially the following form:

PETITION FOR STREET USE PERMIT

We, the undersigned residents of the _____ hundred block of _____ Street in the City of Washburn, hereby consent to the _____ recreational or business use of this street between the hours of _____ and _____ on _____, the _____ day of _____, 20____, for the purpose of _____ and do hereby consent to the City of Washburn to grant a Street Use Permit for use of the said portion of said street for said purpose and do hereby agree to abide by such conditions of such use as the City

of Washburn shall attach to the granting of the requested Street Use Permit. We further understand that the permit will not be granted for the event to last later than 10:00 p.m. on the date hereinabove specified, and agree to remove from the street prior to the end of said period all equipment, vehicles and other personal property placed or driven thereon during the event for which a permit is granted.

We designate _____ as the responsible person or persons who shall apply for an application for a Street Use Permit.

- (g) **Insurance.** The applicant for a Street Use Permit may be required to indemnify, defend and hold the City of Washburn and its employees and agents harmless against all claims, liability, loss, damage or expense incurred by the City 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 City of Washburn in an amount prescribed by the Common Council or Public Works/Safety Committee. The applicant may be required to furnish a performance bond prior to being granted the permit.
- (h) **Termination of a Street Use Permit.** A Street Use Permit for an event in progress may be terminated by the Police Department 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 Chapters of the City of Washburn. The Chief of Police has 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.

Title 7 ► Chapter 7

Flea Markets

7-7-1 Flea Market Licensing

Sec. 7-7-1 Flea Market Licensing.

- (a) **License Required.** No person shall conduct a flea market in the City of Washburn without first obtaining a license from the City Clerk-Treasurer in compliance with the provisions of this Section.
- (b) **Exemptions.** This Section or any part thereof shall not apply to a person or persons conducting a flea market on their own premises in the City of Washburn or as part of a neighborhood flea market or flea markets sponsored by non-profit groups which take place during Summerfest or Homecoming.
- (c) **Application.** At the time of filing the application, an investigation fee shall be paid to the City Treasurer to cover the costs of the investigation of the facts stated in the application.
- (d) **Investigation.** Upon receipt of an application, the City Clerk-Treasurer shall institute an investigation of the applicant's business and moral character as he determines necessary for the protection of the public good and shall endorse his approval or disapproval upon such application within seventy-two (72) hours after it has been filed with the Clerk-Treasurer.
- (e) **Fee.** The fee for a flea market shall be per day as prescribed in Section 1-3-1. The Common Council shall retain the right to waive the fee to civic or charitable organizations or to church groups.
- (f) **Bond.** If the City Clerk-Treasurer determines from his investigation of said application that the interests of the City or of the inhabitants of the City require protection against possible misconduct of the licensee, he may require the applicant to file with the City Clerk-Treasurer a bond in the sum of Five Hundred Dollars (\$500.00).
- (g) **Tax Number.** Applicants must have a valid State of Wisconsin sales tax number.

Title 7 ► Chapter 8

Licensees to Pay Local Claims; Appellate Procedures

7-8-1 Licensees Required to Pay Local Taxes, Assessments and Claims; Appellate Procedures

Sec. 7-8-1 Licensees Required to Pay Local Taxes, Assessments and Claims.

- (a) **Payment of Claims as Condition of License.** The City shall not issue or renew any license to transact any business within the City of Washburn:
 - (1) For any purposes for which taxes, assessments or other claims of the City are delinquent and unpaid.
 - (2) For any person who is delinquent in payment:
 - a. Of any taxes, assessments or other claims owed the City; or
 - b. Of any forfeiture resulting from a violation of any City Ordinance.
- (b) **Exception.** This Section shall apply to licenses issued pursuant to the provisions of Title 7 of this Code of Ordinances, except Chapter 1.
- (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) **Appeals; Notice and Hearing.** 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 Section 125.12, Wis. Stats., as amended from time to time.
 - (2) With respect to licenses other than those described in Subsection (a) herein, the Common Council or its designee shall notify the applicant in writing of the City'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 Common Council. If the applicant shall fail to appear before the Council on the date indicated on the notice, the Council shall deny the application for renewal. If the applicant appears before the Council on the date indicated in the notice and denies that the reasons for nonrenewal exist, the Common Council shall conduct a hearing with respect to the matter. At the hearing, both the City 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 Common Council determines the applicant shall not be entitled to renewal pursuant to Subsection (a), the application for renewal shall be denied.

- (e) **Other License Denial Appeals.** Where an individual, business or corporation wishes to appeal the City Clerk-Treasurer'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 Clerk-Treasurer that the matter be referred to the Common Council. A public hearing shall be scheduled within fourteen (14) calendar days by the Common Council. All parties may be represented by counsel. The Common Council shall consider all relevant information and shall render a decision which shall be binding.

Chapter 9

Adult-Oriented Businesses

7-9-1 Regulation of Adult-Oriented Businesses

Sec. 7-9-1 Regulation of Adult-Oriented Businesses.

(a) **Purpose.**

- (1) Sexually oriented businesses require special supervision in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the communities where they locate; and
- (2) The Common Council is aware, based on the experiences of other communities, that certain activities as defined herein, and the sexually oriented businesses within which such activities or simulation thereof may occur, may and do generate secondary effects which, the Council believes, are detrimental to the public health, safety and welfare of the citizens of the City of Washburn; among these secondary effects are:
 - a. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
 - b. The potential depreciation of both commercial and residential property values, or the failure to appreciate at the rate of other comparable properties, of properties located in proximity to sexually oriented businesses;
 - c. Health risks through the spread of sexually transmitted diseases; and
- (3) The Common Council recognizes that freedom of speech is one of our most precious and protected rights, and wishes to act consistently with full protection of that right; and the Council has no wish to regulate the freedom of expression that may be inherent in these activities, but only seeks to minimize, prevent and control these adverse secondary effects; and
- (4) The Common Council recognizes that some activities described herein are protected as expression under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, and the Council wishes to act consistently with full protection of those rights; and
- (5) The Common Council finds, however, that sexually oriented businesses have serious objectionable operational characteristics, particularly when located in proximity to each other and other areas as specified herein, and thereby have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other commercial uses; and

- (6) It is not the intent of the Common Council of the City of Washburn to condone or legitimize the distribution of obscene material, and the Common Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against such illegal activities in the City of Washburn; and
- (7) The Common Council of the City of Washburn has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of this City.

(b) **Intent and Findings.**

- (1) **Statement of Intent.** It is the intent of this Chapter to regulate sexually oriented businesses and related activities to promote the health, safety, and general welfare of the citizens of the City of Washburn, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City of Washburn. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent, nor effect of this Chapter, to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene materials.
- (2) **Findings.** Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the community in reports made available to the Common Council, and on holdings and findings in the cases of *City of Erie v. Pap's A.M.*, 120 S.Ct. 1382 (2000); *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); and *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *City of Newport, KY v. Iacobucci*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *Schultz v. City of Cumberland*, Case Nos. 98-4126 and 98-4209 (7th Cir., September 26, 2000) (2000 U.S. App. LEXIS 23773); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *East of the River Enterprises II v. City of Hudson*, 2000 WI App. LEXIS 734 (Ct. App. Aug. 1, 2000); and *Urmanski v. Town of Bradley*, 2000 WI App. 141, 613 N.W.2d 905 (Ct. App. 2000), as well as studies and summaries of studies conducted in other cities, including but not limited to Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the *Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin*; and the *Report of the Attorney General's Working Group of Sexually*

Oriented Businesses (June 6, 1989, State of Minnesota), the Common Council of the City of Washburn finds that:

- a. Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.
 - b. Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.
 - c. Sexually oriented businesses may contribute to an increased public health risk through the risk of sexually transmitted diseases.
 - d. There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.
 - e. The consumption of alcoholic beverages on the premises of a sexually oriented business exacerbates the deleterious secondary effects of such businesses in the community.
- (c) **Definitions.** The following definitions shall be applicable in this Chapter:
- (1) **Adult Arcade.** Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
 - (2) **Adult Bookstore or Adult Video Store.**
 - a. A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
 1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or
 2. Instruments, devices or paraphernalia that are designed for use in connection with "specified sexual activities."
 - b. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an "Adult Bookstore" or "Adult Video Store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "Adult Bookstore" or "Adult Video Store" so long as one of its principal business purposes is the offering for sale or rental or consideration the specified materials that depict or describe "specified sexual activities" or use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

- (3) **Adult Cabaret.** A nightclub, dance hall, bar, restaurant, or similar commercial establishment that regularly features:
 - a. Persons who appear in a state of nudity or semi-nudity; or
 - b. Live performances that are characterized by "specified sexual activities"; or
 - c. Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "nudity"; or
 - d. Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (4) **Adult Motion Picture Theater.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction of "specified sexual activities" or "specified anatomical areas."
- (5) **Adult Theater.** A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the "exposure of specified anatomical areas" or by "specified sexual activities."
- (6) **Breast.** A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is:
 - a. Reasonably compact and contiguous to the areola; and
 - b. Contains at least the nipple and the areola and one-fourth (1/4) of the outside surface area of such gland.
- (7) **Buttocks.**
 - a. (Note: For a short general description, see the last sentence of this Subsection). The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two (2) imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half (1/2) inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two (2) imaginary straight lines, one on each side of the body (the "outside line"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each nate meets the outer side of each leg. Notwithstanding the above, "buttocks" shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either:
 1. The left inside perpendicular line and the left outside perpendicular line; or
 2. The right inside perpendicular line and right outside perpendicular line.

- b. For the purpose of the previous sentence, the left inside perpendicular line shall be an imaginary straight line on the left side of the anus:
 1. That is perpendicular to the ground and to the horizontal lines described above; and
 2. That is one-third (1/3) of the distance from the anus to the left outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus:
 - i. That is perpendicular to the ground and to the horizontal lines described above; and
 - ii. That is one-third (1/3) of the distance from the anus to the right outside line. [The above description can generally be described as covering one-third (1/3) of the buttocks centered over the cleavage for the length of the cleavage].
- (8) **Employee.** A person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.
- (9) **Escort.** A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (10) **Escort Agency.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- (11) **Establishment.** Means and includes any of the following:
 - a. The opening or commencement of any sexually oriented business as a new business; or
 - b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
 - c. The addition of any sexually oriented business to any other existing sexually oriented business; or
 - d. The relocation of any sexually oriented business; or
 - e. A sexually oriented business or premises on which the sexually oriented business is located.
- (12) **Nudity or State of Nudity.** The appearance of human bare buttocks (as defined in this Subsection), anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or the female breast with

less than one-fourth (1/4) of her breast surface are contiguous to and containing the areola is to be covered.

- (13) **Person.** An individual, proprietorship, partnership, corporation, association or other legal entity.
 - (14) **Premises.** The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the owner or operator of the business.
 - (15) **Regularly.** Recurring at fixed or uniform intervals, as in every night or every Thursday; or when inspections during the normal operating hours of the business, and in separate weeks, finds the activity occurring on three (3) consecutive occasions.
 - (16) **Semi-Nude or Semi-Nudity.** The exposure of a bare female breast with less than one-fourth (1/4) of the breast surface area, contiguous to and containing the areola, completely and opaquely covered (see definition of "breast" in this Section). Each female person may determine which one-fourth (1/4) of her breast surface area contiguous to and containing the areola is to be covered.
 - (17) **Sexual Encounter Center.** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
 - a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - b. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.
 - (18) **Sexually Oriented Business.** An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, or sexual encounter center.
 - (19) **Specified Anatomical Areas.**
 - a. The human male genitals in a discernibly turgid state, even if fully and opaquely covered;
 - b. Less than completely and/or opaquely covered human genitals, pubic region, "buttocks", or a female "breast".
 - (20) **Specified Sexual Activities.** Means and includes any of the following:
 - a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
 - b. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
 - c. Masturbation, actual or simulated; or
 - d. Excretory functions as part of or in connection with any of the activities set forth in Subsections (20)a-c above.
- (d) **Regulation of Sexually Oriented Businesses.** It shall be unlawful:
- (1) For any person to knowingly and intentionally appear in a state of nudity in a sexually oriented business.

- (2) For any person to sell, use or consume alcoholic beverages on the premises of a sexually oriented business.
- (3) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City Clerk for the City of Washburn.
- (4) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the City Clerk for the City of Washburn, pursuant to this Chapter.
- (5) For any person to operate a sexually oriented business in any of the following locations:
 - a. One thousand (1,000) feet of a church, synagogue or other place of worship;
 - b. One thousand (1,000) feet of a public or private elementary or secondary school;
 - c. One thousand (1,000) feet of a boundary of any residential district;
 - d. One thousand (1,000) feet of a public park;
 - e. One thousand (1,000) feet of a licensed day care center;
 - f. One thousand (1,000) feet of an entertainment business that is oriented primarily towards children or family entertainment business that is oriented primarily towards children or family entertainment; or
 - g. One thousand (1,000) feet of another sexually oriented business.
- (6) For any person to operate a sexually oriented business within the same building, structure, or portion thereof, containing another sexually oriented business.
- (e) **Exemptions.** The provisions of this Section do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of a serious artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this Section seeks only to minimize and prevent the secondary effects of sexually oriented businesses on the community. Negative secondary effects have not been associated with these establishments.
- (f) **Public Nuisance.** Violation of this Section is declared to be a public nuisance per se, which shall be abated by the City Attorney by way of civil abatement procedures.
- (g) **Signs.** Notwithstanding anything to the contrary contained in Title 13, Chapter 1, Article H of the City of Washburn Code of Ordinances, the following more restrictive requirements for signs pertaining to sexually oriented businesses shall prevail:
 - (1) No more than one (1) exterior sign shall be allowed.
 - (2) No sign shall be allowed to exceed eighteen (18) feet.
 - (3) No animation shall be permitted on or around any sign or on the exterior walls or roofs of such premises.

- (4) No descriptive art or designs depicting any activity related to or inferring the nature of the business shall be allowed on any sign. Said sign shall contain alphanumeric copy only.
- (5) Only flat wall signs and/or awning signs shall be permitted.
- (6) Other than the signs specifically allowed by this Chapter, the sexually oriented business shall not attach, construct, or allow to be attached or constructed any temporary sign, banner, light or other device designed to draw attention to the business location.

Title 7 ► Chapter 10

Synthetic Drug Establishments

7-10-1	Findings of Fact
7-10-2	Definitions
7-10-3	Licensing of Synthetic Drug Establishments
7-10-4	Application for License
7-10-5	Annual License
7-10-6	License Issuance
7-10-7	Prohibited Acts and Conduct
7-10-8	Suspension and Revocation of Licenses
7-10-9	Appeals
7-10-10	Other Applicable Laws

Sec. 7-10-1 Findings of Fact.

- (a) **Findings of Fact.** The Common Council of the City of Washburn finds the following facts to exist:
- (1) Synthetic drugs have become a serious public health problem in the nation, state, and region.
 - (2) The use of synthetic marijuana can result in headaches, vomiting, confusion, agitation, anxiety, aggressive behavior, paranoia, inability to speak, dystonia, short-term memory deficits, seizures, hallucination, loss of consciousness, and death. Synthetic marijuana can have long-term destabilizing emotional effects.
 - (3) The local sale of synthetic drugs, including synthetic marijuana, can create additional costs for health care providers, law enforcement, the court system, and the business community.

Sec. 7-10-2 Definitions.

For purposes of this Chapter, the following words and phrases shall have the following meanings:

- (a) **Synthetic Drug.** The term "synthetic drug" means one (1) or more of the following:
- (1) A substance that a reasonable person would believe is a synthetic drug; or

- (2) A substance that a reasonable person would believe is being purchased, sold or given away as a synthetic drug; or
 - (3) A substance that a person knows or should have known was intended to be consumed by injection, ingestion, or any other immediate means, and consumption was intended to cause or simulate a depressant, stimulant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the depressant, stimulant or hallucinogenic effect on the central nervous system of a controlled substance on Schedule I as defined in Chapter 961, Wis. Stats. "Synthetic drug" does not mean food or drug ingredients, alcohol, tobacco, prescription drugs, or dietary supplements.
- (b) **Synthetic Drug Establishment.** Any business establishment where a person engages in the sale of synthetic drugs.

Sec. 7-10-3 Licensing of Synthetic Drug Establishments.

No person shall engage in the business of operating a synthetic drug establishment, either exclusively or in connection with any other business enterprise, in the City of Washburn without first obtaining a license for each synthetic drug establishment.

Sec. 7-10-4 Applications for License.

An application for a synthetic drug establishment license shall be made to the City Administrator-Clerk on forms supplied by the City containing the following information:

- (a) A description of the business.
- (b) A description of the location of the premises to be licensed;
- (c) The full names and addresses of the property owner, business owner, manager, lessee, and business operator, and the date of birth of each;
- (d) If the applicant is a partnership, limited liability corporation or corporation, the names and residence addresses of each of the partners including limited partners, and the address of the business entity if different from the address of the synthetic drug establishment; and
- (e) Whether any of the aforementioned individuals have ever been convicted of any crime or offense other than a traffic offense, and if so, a description of the offense, including date, time, place and disposition.

Sec. 7-10-5 Annual License.

- (a) The annual license fee initially shall be Five Hundred Dollars (\$500.00), and shall be subject to change by amendment to Title 1, Chapter 3, the City's Fee Schedule.
- (b) A separate license shall be obtained for each place of business.

- (c) The licensee shall display the license in a prominent place on the licensed premises at all times.
- (d) A license, unless revoked, shall be effective August 1st through July 31st annually.

Sec. 7-10-6 License Issuance.

- (a) No license under this Chapter shall be issued unless it is approved by the City Administrator-Clerk, upon the recommendation of the Police Department, and unless the establishment has passed fire and health inspections. The City Administrator-Clerk shall not approve any license if he/she has reasonable grounds to believe that:
 - (1) The granting of said license would result in a violation(s) of the law;
 - (2) The license application contains false or misleading information or statements;
 - (3) The establishment is a public nuisance under Section 11-6-6; and/or
 - (4) Other good cause exists for denying the license.
- (b) If the Chief of Police or the City Administrator-Clerk finds that the City has been given inadequate information to evaluate the license application, the City Administrator-Clerk may direct the applicant, manager or agent to appear at any reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to appear and cooperate with the investigation.

Sec. 7-10-7 Prohibited Acts and Conduct.

No synthetic drug establishment shall:

- (a) Remain open for business between the hours of 8:00 p.m. and 8:00 a.m.
- (b) Sell synthetic drug products that do not include the name, address and telephone number of the manufacturer, packer and distributor of the product.
- (c) Sell synthetic drug products that do not identify all commodities within the package, including organic and non-organic, chemically synthesized substances and compounds.
- (d) Sell synthetic products to any individual under the age of twenty-one (21).
- (e) Sell synthetic drug products that do not comply with all state and federal laws and regulations, including those related to packaging, labeling and weights and measures.
- (f) Be located within five hundred (500) feet of any park, school, daycare facility or area zoned residential or mixed-use. This restriction shall not apply to a synthetic drug establishment that was conducting business at the location indicated in the application and making sales of synthetic drugs at that location on or before the effective date of this Chapter.

Sec. 7-10-8 Suspension and Revocation of Licenses.

The City Administrator-Clerk may revoke or suspend any license issued pursuant to this Chapter, if, after giving the licensee an opportunity to be heard on the matter, the City Administrator-Clerk finds:

7-10-8

- (a) The licensee has violated a provision of this Chapter or any other law relating to the conduct of its operation including, but not limited to state, federal, or local law; or
- (b) The licensee secured the license through misrepresentation or fraud or misstated material fact in the application; or
- (c) Failure of the licensee to cooperate with the police, fire, or health officers in any investigation relating to their properties or failure to admit police officers into the establishment at any time when people are present in the establishment; or
- (d) The establishment is operated in such a way as to endanger public health or safety as evidenced by one (1) or more incidents involving serious health effects or law enforcement involvement resulting from the sale of synthetic drug products; or
- (e) The establishment is operated in such a way as to constitute a public nuisance under Section 11-6-6.

Sec. 7-10-9 Appeals.

Any person aggrieved by a licensing decision of the City Administrator-Clerk under this Chapter may appeal such decision to the Common Council by filing a written notice of appeal with the City Administrator-Clerk within fifteen (15) days after such decision is rendered. The decision of the Common Council is the final administrative decision of the City of Washburn.

Sec. 7-10-10 Other Applicable Laws.

This Chapter is intended to complement state and federal laws regulating synthetic drugs.