

**TITLE 7**  
Licensing and Regulation

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**CHAPTER 1**  
Licensing of Dogs and Regulation of Animals

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**SEC. 7-1-1 DEFINITIONS.**

In this Chapter, unless the context or subject matter otherwise require:

- (1) "Owner" shall mean any person owning, harboring or keeping a dog and the occupant of any premises on which a dog 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 within the meaning of this Section.
- (2) "At large" means to be off the premises of the owner and not under the control of some person by leash, but a dog within an automobile of its owner, or in an automobile of any other person with the consent of the owner of said dog, shall be deemed to be upon the owner's premises.
- (3) "Neutered" as used herein as describing a dog shall mean a dog having nonfunctional reproductive organs.
- (4) "Animal" means mammals, reptiles and birds.
- (5) "Cruel" means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
- (6) "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.
- (7) "Farm Animal" means any warm-blooded animal normally raised on farms in the United States and used for food, fiber or labor.
- (8) "Pet" means an animal kept and treated as a pet.

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

**SEC. 7-1-2 ISSUANCE OF DOG AND KENNEL LICENSES.**

(a) **Dog Licenses.**

- (1) It shall be unlawful for any person in the City of Delavan to own, harbor or keep any dog more than five (5) months of age without complying with the provisions of Section 174.05 through Section 174.10, Wisconsin Statutes, relating to the listing, licensing and tagging of the same. This license requirement shall not apply to the temporary housing of dogs on grounds licensed by the State of Wisconsin for the purpose of providing pari-mutuel betting.

- (2) The minimum license tax under this Section shall be Five Dollars (\$5.00) plus the Walworth County fee for spayed females or neutered males. The minimum fee for unspayed or unneutered animals shall be Fifteen Dollars (\$15.00) plus the Walworth County fee. The license year shall commence January 1 and end December 31. (Amended 11-15-2016, Ord RC-374)
  - (3) 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.
  - (4) 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).
  - (5) 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.
  - (6) 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 Ten Dollars (\$10.00) 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. Kennels may only be established in locations following issuance of a conditional use permit 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 any where outside the limits of the kennel unless the dog is in leash or temporarily for the purposes of hunting, breeding, trial, training or competition.
  - (3) A condition of a kennel license shall be that the licensed premises may be entered and inspected at any reasonable hour by the City Health Officer without any warrant, and the application for a license hereunder shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this Section. Should any kennel be found to constitute a public nuisance, the license shall be revoked and the nuisance abated pursuant to City ordinances.

State Law Reference: Section 174.053, Wis. Stats.

**SEC. 7-1-3 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. 7-1-4 RABIES QUARANTINE.**

- (a) **Animals Confined.** If a district is quarantined for rabies, all animals within the City shall be kept securely confined, tied, leashed or muzzled. Any animal 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.** An animal control or law enforcement officer shall order an animal 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 animal cannot be captured, the officer may kill the animal if the officer has reason to believe the animal bit a person or is infected with rabies pursuant to Sec. 95.21(4)(a), Wis Stats. The officer shall attempt to kill the animal in a humane manner and in a manner which avoids damage to the animal's head.
- (d) **Quarantine of Dog or Cat.**
  - (1) Delivery to isolation facility or quarantine on premises of owner. An animal control or law enforcement officer who orders a dog or cat to be quarantined shall deliver the animal or shall order the animal delivered to an isolation facility as soon as possible but no later than twenty-four (24) hours after the original order is issued or the officer may order the animal to be quarantined on the premises of the owner if the animal is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence.
  - (2) Health risk to humans. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal bit a person, the custodian of an isolation facility or the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least ten (10) days after the incident occurred. In this paragraph, "supervision of a veterinarian" includes, at a minimum, examination of the animal on the first day of isolation, on the last day of isolation and on one (1) intervening day. If the observation period is not extended and if the veterinarian certifies that the dog or cat has not exhibited any signs of rabies, the animal may be released from quarantine at the end of the observation period.
  - (3) Risk to animal health.
    - a. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal and if the dog or cat is not currently immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for one hundred eighty (180) days. The owner shall have the animal vaccinated against rabies between one hundred fifty-five (155) and one hundred sixty-five (165) days after the exposure to a rabid animal.
    - b. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal but if the dog or cat is immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for sixty (60) days. The owner shall have the animal revaccinated against rabies as soon as possible after exposure to a rabid animal.

- (4) Sacrifice of a dog or cat exhibiting symptoms of rabies. If a veterinarian determines that a dog or cat exhibits symptoms of rabies during the original or extended observation period, the veterinarian shall notify the owner and the officer who ordered the animal quarantined and the officer or veterinarian shall kill the animal in a humane manner and in a manner which avoids damage to the animal's head. If the dog or cat is suspected to have bitten a person, the veterinarian shall notify the person or the person's physician.
- (e) **Delivery of Carcass; Preparation; Examination by Laboratory of Hygiene.** An officer who kills an animal shall deliver the carcass to a veterinarian or local health department. The veterinarian or local health department shall prepare the carcass, properly prepare and package the head of the animal in a manner to minimize deterioration, arrange for delivery by the most expeditious means feasible of the head of the animal to the State Laboratory of Hygiene and dispose of or arrange for the disposal of the remainder of the carcass in a manner which minimizes the risk or exposure to any rabies virus. The Laboratory of Hygiene shall examine the specimen and determine if the animal was infected with rabies. The State Laboratory of Hygiene shall notify the 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.
- (f) **Cooperation of Veterinarian.** Any practicing veterinarian who is requested to be involved in the rabies control program by an officer is encouraged to cooperate in a professional capacity with the 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.
- (g) **Responsibility for Quarantine and Laboratory Expenses.** The owner of an animal is responsible for any expenses incurred in connection with keeping the animal in an isolation facility, supervision and examination of the animal by a veterinarian, preparation of the carcass for laboratory examination and the fee for the laboratory examination. If the owner is unknown, the county is responsible for these expenses.

**SEC. 7-1-5 RESTRICTIONS ON KEEPING OF DOGS AND OTHER ANIMALS.**

- (a) **Restrictions.** Except as otherwise provided by this Chapter, it shall be unlawful for any person within the City of Delavan to own, harbor or keep any dog which:
  - (1) Habitually pursues any vehicle upon any public street, alley or highway in the City.
  - (2) Assaults or attacks any person as described in Subsection (b) or destroys property.
  - (3) Kills, wounds or worries any domestic animal.
  - (4) Is known by such person to be infected with rabies or to have been bitten by an animal known to have been infected with rabies.
- (b) **Vicious Dogs and Animals.**
  - (1) No vicious dog shall be allowed off the premises of its owner unless muzzled and on a leash in charge of the owner or a member of the owner's immediate family over sixteen (16) years of age. For purposes of enforcing this Section, a dog shall be deemed as being of a vicious disposition if, within any twelve (12) month period it bites two (2) or more persons or inflicts serious injury to one (1) person in unprovoked circumstances.
  - (2) No person shall harbor or permit to remain on his premises any animal that is habitually inclined toward attacking persons or animals, destroying property, barking excessively or making excessive noises or running after any vehicles.
- (c) **Dogs Running at Large.**
  - (1) No person shall permit or allow any dog to run at large within the limits of the City. Any person owning or harboring a dog shall restrain the same and shall not permit such dog to be off of the premises of the owner, except as provided herein. A dog within an automobile or truck of its owner or of any other person with consent of the dog's owner shall be deemed to be upon the owner's premises.

- (2) Such dog shall be in the care and custody of the owner or a responsible person designated by the owner at all times, provided, however, a dog may be off the owner's premises if the dog is restrained and on a leash.
- (d) **Exceptions** Dogs that are acting in an official capacity as an agent of a police or fire department or any other governmental agency are exempt from the provisions of 7-1-5. (created 12/9/97 Ordinance RC-20)
- (e) **Owner's Liability for Damage Caused by Dogs; Penalties.** The provisions of Sec. 174.02, Wis. Stats., relating to the owner's liability for damage caused by dogs together with the penalties therein set forth are hereby adopted and incorporated herein by reference. (amended 12/9/97 Ordinance RC-20)

**SEC. 7-1-6 IMPOUNDMENT OF ANIMALS.**

- (a) **Animal Control Agency.**
  - (1) The City of Delavan 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 Delavan 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 animal control or law enforcement officer may impound any 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 possession a signed statement of a complaining witness alleging the facts regarding the violation.
- (c) **Claiming Animal.** After seizure of animals under this Section by the Police Department or Humane Officer, the animal shall be impounded in a suitable place to be arranged for or provided by the City for not less than forty-eight (48) hours. Should the animal's owner not claim and pay for pickup and maintenance charges for such animal within said period, the animal(s) shall be transferred to the Walworth County authorized animal shelter or to such place deemed suitable for temporary housing which may be arranged for by the City. 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.
- (d) **Maintenance Charge.** A charge shall be made for the maintenance of said animal(s) as are impounded, such charges to be established by resolution from time to time by the Common Council or designated committee thereof.
- (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. 7-1-7 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 and shall keep such dog or cat confined for not less than ten (10) days or for such period of time as the animal control officer shall direct. The owner or keeper of any such dog or cat shall surrender the dog or cat to a law enforcement, health, or humane officer upon demand for examination.

**SEC. 7-1-8 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, public property, 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. *The person responsible for such animal must immediately remove and dispose of all feces so deposited in a sanitary manner.* (Amended 6-10-97, Ordinance RC-5) (Amended 7/10/2012, Ordinance RC 321)

**SEC. 7-1-9 BARKING DOGS.**

It shall be unlawful for any person knowingly to keep or harbor any dog which habitually barks, howls, or yelps to the great discomfort of the peace and quiet of the neighborhood or in such manner as to materially disturb or annoy persons in the neighborhood who are of ordinary sensibilities. Such dogs are hereby declared to be a public nuisance. A dog is considered to be in violation of this Section when two (2) formal, written complaints are filed with the animal control officer within a one (1) week period.

**SEC. 7-1-10 PROHIBITED ANIMALS, FOWL, REPTILES AND INSECTS.**

- (a) **Wild Animals; Prohibition on Keeping.** Except for state-licensed game farms, it shall be unlawful for any person to keep, maintain or have in his possession or under his 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 possession or under his control within the City any of the following living 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), thirty (30) inches in length or more.
  - (8) Constrictor snakes, six (6) feet in length or more.
  - (9) Coyotes (Cants latrans).
  - (10) Game cocks and other fighting birds. (11) Hyenas (Hyaenidae).
  - (12) Jaguars (Panthera once).
  - (13) Leopards (Panthera pardus).
  - (14) Lions (Panthera leg).
  - (15) omitted
  - (16) Lynxes (Lynx).
  - (17) Ostriches (Struthio).
  - (18) Pumas (Felis concolor); also known as cougars, mountain lions and panthers.
  - (19) Sharks (class Chondrichthyes).
  - (20) Snow leopards (Panthera uncia).
  - (21) Tigers (Panthera tigris).
  - (22) Wolves (Cants lupus).
  - (23) Poisonous insects.
  - (24) Except in properly zoned districts, horses, mules, ponies, donkeys, cows, pigs, goats, sheep, chickens, poultry or any animal raised for fur-bearing purposes unless otherwise permitted elsewhere in this Code.
  - (25) Fighting dogs.
  - (26) Bees (except where permitted by this Chapter).

- (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.

**SEC. 7-1-11 LIMITATION ON NUMBER OF DOGS.**

- (a) **Purpose.** The keeping of more than two (2) dogs within the City for a considerable period of time detracts from and, in many instances, is detrimental to, healthful and comfortable life in such areas. The keeping of a large number of dogs is, therefore, declared a public nuisance.
- (b) **Definitions.**
  - (1) Dog. A dog means any canine, regardless of age or sex.
  - (2) Residential Lot. A residential lot means a parcel of land zoned as residential, occupied or to be occupied by a dwelling, platted or unplatted, and under common ownership. For the purpose of this Section, any vacant parcel or parcels adjoining a dwelling and under the same ownership shall constitute one (1) lot.
- (c) **Limitation.** There shall be a limit of two (2) dogs per household with the following exceptions:
  - (1) This limitation shall not apply to situations in which there are more than two (2) dogs kept on a premises at the time of enactment hereof; rather, the intent is that existing dogs in excess of two (2) may continue to be kept but shall not be replaced, so that ultimately the number of dogs on such premises shall not exceed the limitation of two (2).
  - (2) Dogs less than five (5) months of age born to dog(s) included in the limitation shall not be included in the two (2)-dog limitation.
  - (3) This limitation shall not apply to the temporary housing of impounded stray dogs as may be arranged by the City for periods not to exceed thirty (30) days.

**SEC. 7-1-12 TRAPPING.** (amended 4/14/98 Ordinance RC-32)

- (a) The statutory definitions of "trapping" (Sec. 29.13, Wis. Stats.) are hereby adopted.
- (b) As a matter of public safety, except as is provided in Subsection (c) hereof, trapping of game is hereby prohibited within the City limits.
- (c)
  - (1) Recognizing that some control over nuisance animals may, from time to time be desirable, application for a trapping permit may be made to the Chief of Police, or his designee, the same to set forth the purported need of control, planned location of traps, the type of trap(s) to be used and time period therefor not to exceed three (3) months. With respect to the type of traps to be used, conibear traps and leg hold type traps are strictly prohibited except for use by the DNR or the City of Delavan.
  - (2) Individuals, other than the DNR, City of Delavan, landowner, lessee, or occupant, applying for said trapping permit must possess a valid trapping license as set forth and issued by the Wisconsin Department of Natural Resources (DNR). Individuals including the DNR, City of Delavan, Landowner, lessee, or occupant, shall abide by all rules and regulations as set forth by the DNR for trapping.
  - (3) Such permit shall be restrictive as to purpose, location and duration and shall be revocable by said Chief of Police upon violation of any such restriction and/or DNR regulations.

**SEC. 7-1-13 BEEKEEPING.**

- (a) The practice of keeping of bees within the City, except as may be allowed as a permitted use in a particular classified zoned area under the Zoning Code, is declared to be a health hazard, a threat to public health and safety, a source of sickness and thereby a public nuisance.
- (b) Any person or the City may maintain an action to recover any damages or to abate the same and obtain an injunction to prevent the same.



**SEC. 7-1-14 KEEPING OF CHICKENS** (Adopted 8/21/2012, Ord. RC-324)

(a) **Chickens Allowed by Permit.** Within the City limits of the City of Delavan, female chickens (hens) are allowed by permit only, subject to the following rules, regulations, terms and conditions:

- (1) Completion of a permit application which shall include the name and address of the applicant and the number of chickens to be kept by the applicant at said address together with a comprehensive site plan detailing property boundaries, location of existing structures and proposed location of chicken coop and pen area and a \$50 nonrefundable permit application fee.
- (2) No more than four (4) female chickens (hens) shall be allowed.
- (3) Roosters are not allowed within the City limits of the City of Delavan.
- (4) No outside slaughtering of any chicken(s) shall be allowed.
- (5) A single-family detached dwelling is located on and the principal use of the property/lot where the chickens are kept is single-family residential. (No chickens shall be allowed in multi-family complexes including duplexes.)
- (6) The raising or keeping of hens for fighting and the fighting of hens and other fowl is not allowed within the City of Delavan pursuant to Wis. Stat. Sec. 951.08.
- (7) All chicken feed must be kept in airtight containers that are inaccessible and out of the reach of wild animals and shall be stored in a vermin-proof container.
- (8) Chickens and enclosures shall not create a private nuisance.
- (9) As a condition to approval of the application, applicant must register their premises through the Wisconsin Livestock Identification Consortium at [www.wiid.org](http://www.wiid.org). Proof of registration must be provided by the applicant upon request by the City.
- (10) Chickens shall be kept at all times in a secured enclosure (coop and yard together) that meets the following design and location requirements:
  - i. The coop element of the enclosure shall be elevated at least two feet above the surface of the ground.
  - ii. Constructed enclosure shall be large enough to provide at least 16 square feet per chicken;
  - iii. All chicken coops and pen areas shall be kept in good repair, and shall be maintained in a clean, sanitary, humane condition, with proper ventilation, and free from objectionable odors at all times. Manure shall be removed and disposed of properly as needed to ensure a clean, sanitary and humane condition. Bedding within the chicken coop shall be kept dry at all times.
  - iv. No chicken coop or pen area shall be placed closer to the front lot line than the principal structure.
  - v. All chicken coops and pen areas shall be set back a minimum of 10 feet from the side and rear yard property lines and a minimum of 25 feet from any adjacent residences.
  - vi. During the winter months: all coops shall be kept in a safe and humane condition in order to ensure the health and well-being of the chickens.

(b) **Permit Application Process.**

- (1) Property owners interested in applying for permit to allow for the keeping of chickens shall obtain and complete an application form available from the City Clerk. The completed application shall be submitted to the Clerk and shall include a Plan demonstrating compliance with the restrictions identified in Section (a) above along with payment of the Fifty Dollar (\$50.00) non-refundable permit application fee. Upon receiving payment, copies of the completed application shall be mailed by the City to each of the owners of record, as listed in the Office of the City Assessor, who are owners of the property situated wholly or in part within seventy-five (75) feet of the boundaries of the property for which the application is made. If within fifteen (15) calendar days of mailing the

copies of the complete application to the neighboring property owners the City receives written objections from fifty-one percent (51%) or more of the neighboring property owners, a meeting with the applicant and the objecting parties will be held to resolves issues/concerns. If a satisfactory resolution cannot be reached within forty-five (45) calendar days, the City Clerk shall deny the application.

- (c) **Private nuisance.** For the purpose of this section, a private nuisance is defined as a condition that interferes with the ordinary comfort, use or enjoyment of the property of another.
- (d) **Authority.** The Public Works Director or his designee shall have the authority to investigate complaints regarding violations of this Section. The City may revoke the permit by giving written notice of revocation to the permittee if the permittee has failed to correct any violation or violations set forth in a written warning given by the Public Works Director or his designee.
- (e) **Licenses.** Licenses are for a one (1) year term beginning January 1<sup>st</sup> of each year. After the initial application fee, the license fee is \$10 annually. There will be no proration for any portion of the year of their the annual fee or the one time application fee of \$50. Licenses not renewed by March 1<sup>st</sup> will be considered revoked. All license renewals shall be submitted to the City Clerk's Office.
- (f) **General Care Requirements.** Hens must be properly cared for:
  - (1) Food must be provided daily and must be proper for the hens in accordance with Wis. Stat. Sec. 951.13(1).
  - (2) Clean water must be provided at all times and changed daily in accordance with Wis. Stat. Sec. 951.13(2).
- (g) **Denial or Revocation.** An applicant or permittee may appeal to the General Operations Committee regarding the denial or revocation of their permit by filing a written notice of appeal on a form provided by the City Clerk within 14 days immediately following notice of denial or revocation of the permit.
- (h) **Penalties.** Any and all penalties imposed shall be pursuant to City of Delavan Code of Ordinances 1-1-7.
- (i) **Abatement of Nuisances.** Abatement of nuisances shall be per Title 11, Chapter 6 of the City of Delavan Code of Ordinances.

#### **SEC. 7-1-15 PENALTIES.**

Any person violating any provision of this Chapter shall be subject to the penalties found in Section 1-1-7.

**CHAPTER 2**  
Fermented Malt Beverages and Intoxicating Liquor

Article A      Fermented Malt Beverages and Intoxicating Liquor

- 7-2-1      State Statutes Adopted
- 7-2-2      Definitions (Amended 09-19-2017, Ord. RC-388)
- 7-2-3      License Required
- 7-2-4      Classes of Licenses (Amended 09-19-2017, Ord. RC-388)
- 7-2-5      License Fees (Amended 09-19-2017, Ord. RC-388)
- 7-2-6      Application for License
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(Amended 09-19-2017, Ord. RC-388)
- 7-2-8      Investigation
- 7-2-9      Approval of Application
- 7-2-10     Granting or Denial of License
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- 7-2-12     Numbering of License
- 7-2-13     Posting Licenses; Defacement
- 7-2-14     Conditions of License (Amended 09-19-2017, Ord. RC-388)
- 7-2-15     Closing Hours (Amended 2/2/2012, RC-315) (Amended 09-19-2017, Ord. RC-388)
- 7-2-16     Restrictions on Temporary Fermented Malt Beverage  
or Wine Licenses
- 7-2-17     Revocation and Suspension of Licenses; Non-Renewal (Amended 10/11/2011 RC-311)
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Premises
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Article B      Operator's License

- 7-2-30     Operator's License Required
- 7-2-31     Procedure Upon Application
- 7-2-32     Duration
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- 7-2-34     Issuance or Denial of Operator's Licenses
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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 Chapter 125 of the Wisconsin Statutes, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this Chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Chapter. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this Chapter in order to secure uniform statewide regulation of alcohol beverage control.

State Law Reference: Chapter 125, Wis. Stats.

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

- (a) Unless otherwise herein provided, the definitions found in Sec. 125.02, Wis. Stats., shall apply to the provisions of this Chapter. (Amended 09-19-2017, Ord. RC-388)

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

No person, firm or corporation shall vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, or cause the same to be done, without having procured a license as provided in this Chapter nor without complying with all the provisions of this Chapter, and all statutes and regulations applicable thereto, except as provided by Sections 125.16, 125.27, 125.28 and 125.51 of the Wisconsin Statutes.

#### 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 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.
- (c) **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.

(d) **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 (½) of a percent of alcohol by volume, without obtaining a special license to sell such beverages. Such license may be issued after July 1st. The license shall expire on the following June 30th.
- (2) Application. Class "B" licenses may be issued to any person qualified under Sec. 125.04(5), Wis. Stats. Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least six (6) months before the date of application. A Class "B" license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this Chapter. Except as provided in Sec. 125.31, Wis. Stats., Class "B" licenses may not be issued to brewers or fermented malt beverages wholesalers.

(e) **Temporary Class "B" Fermented Malt Beverage License.**

- (1) License. As provided in Sec. 125.26(1) and (6), Wis. Stats., temporary Class "B" fermented malt beverage licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least six (6) months before the date of application and to posts of veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, during a fair conducted by the fair association or agricultural society or Beer Walk. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. Such license is valid for dates as approved by the Common Council. (Amended 09-19-2017, RC-388)
- (2) Application. Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the City Clerk together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary Class "B" license for one (1) year. The license shall specify the hours and dates of license validity. The application shall be filed a minimum of four (4) days prior to the meeting of the Common Council at which the application will be considered. If the application is for a license to be used in a City park, the applicant shall specify the main point of sale facility.

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

- (1) License. Notwithstanding Sec. 125.68(3), Wis. Stats., temporary "Class B" 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 wine containing not more than six percent (6%) alcohol by volume 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, during a fair conducted by the fair association or agricultural society, or Wine Walk. 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., or 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

## Fermented Malt Beverages and Intoxicating Liquor

containing not more than six percent (6%) alcohol by volume 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 wine containing not more than six percent (6%) alcohol by volume from the stands while the fair is being held. (Amended 09-19-2017, Ord. RC-388)

- (2) **Application.** Application for such license shall be signed by the president or corresponding officer of the society or association making such application and shall be filed with the City Clerk together with the appropriate license fee for each day for which the license is sought. Any person fronting for any group other than the one applied for shall, upon conviction thereof, be subject to a forfeiture of Two Hundred Dollars (\$200.00) and will be ineligible to apply for a temporary "Class B" wine license for one (1) year. The license shall specify the hours and dates of license validity. (Amended 09-19-2017, Ord. RC-388)
- (g) **Wholesaler's License.** A wholesaler's fermented malt beverage license, when issued by the Clerk under the authority of the 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.
- (h) **Retail "Class C" Licenses.**
- (1) In this Subsection, "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.
  - (2) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.
  - (3) A "Class C" license may be issued to a person qualified under Sec. 125.04(5), Wis. Stats., for a restaurant in which the sale of alcohol beverages accounts for less than fifty percent (50%) of gross receipts and which does not have a barroom 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.
  - (5) General requirements in this Chapter relative to intoxicating liquors, licensees and/or licensed premises therefor, shall be deemed to apply to "Class C" licensees and premises as well, unless specifically excepted or generally recognizable as excepted by the specificity of the subject matter relating thereto.

Cross Reference: Section 7-2-17.

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

There shall be the following classes of licenses which, when issued by the 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. All such fees are payable after approval of the application by the Common Council and prior to the release of the license being delivered to the licensee, with the exception of Special Class B Temporary Licenses, for which the fee shall be paid at the time application is submitted.

- (a) **Class "A" Fermented Malt Beverages Retailer's License.** The annual fee for this license shall be One Hundred Dollars (\$100.00). The fee for a license for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the license is issued.
- (b) **Class "B" Fermented Malt Beverage License.** The annual fee for this license shall be One Hundred Dollars (\$100.00). 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.

- (c) **Temporary Class "B" Fermented Malt Beverage License.** The fee for this license, or multiple licenses as may be required for a Beer Walk, shall be Ten Dollars (\$10.00) per event. (Amended 09-19-2017, Ord. RC-388)
- (d) **Temporary "Class B" Wine License.** The fee for this license, or multiple licenses as may be required for a Wine Walk, shall be Ten Dollars (\$10.00) per event. However, there shall be no fee if the Temporary Wine License is obtained along with a Temporary Fermented Malt Beverage License. (Amended 09-19-2017, Ord. RC-388)
- (e) **Fermented Malt Beverage Wholesalers' License.** The annual fee for this license shall be Twenty-five Dollars (\$25.00).
- (f) **"Class A" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be Five Hundred Dollars (\$500.00).
- (g) **"Class B" Intoxicating Liquor Retailer's License.** The annual fee for this license shall be Five Hundred Dollars (\$500.00). 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. Pursuant to Sec. 125.51(4)(bm) WI Stats., as created by 1997 Wisconsin Act 27, in addition to the aforesaid fee, the three reserve licenses available as of December 1, 1997 shall bear an additional initial fee of \$10,000 each. (amended 12/9/97 Ordinance RC-19)
- (h) **"Class C" Wine License.** The annual fee for this license shall be One Hundred Dollars (\$100.00).

**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. Such application shall be filed and sworn to by the applicant if an individual, by the president and secretary, of a corporation.
- (b) **Publication.** The City Clerk shall publish each application for a Class "A", Class "B", "Class A", "Class B", or "Class C" license pursuant to Sec. 125.04(3)(g), Wis. Stats. 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.
- (c) **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 or "Class A" or "Class B" intoxicating liquor license shall be granted only to persons who are citizens of the United States and who have been residents of the State of Wisconsin continuously for at least ninety (90) days prior to the date of the application.
- (b) **Applicant to have Malt Beverage License.** No retail "Class B" intoxicating liquor license shall be issued to any person who does not have or to whom is not issued a Class "B" retailer's license to sell fermented malt beverages.
- (c) **Right to Premises.** No applicant will be considered unless he has the right to possession of the premises described in the application for the license period, by lease or by deed.
- (d) **Age of Applicant.** Licenses related to alcohol beverages shall only be granted to persons as allowed by Wisconsin law.

- (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.** (Repealed 09-19-2017, Ord. RC-388)~~
- ~~(h) **Limitations on Other Business; Class "B" Premises.** (Repealed 09-19-2017, Ord. RC-388)~~
- ~~(i) **Single Business Use Concept.** (Repealed 09-19-2017, Ord. RC-388)~~
- (j) **Licensed Premises.** All sales of intoxicating liquors and fermented malt beverages within the City of Delavan shall be limited to and shall be made upon the premises described within the licensed granted by the Common Council.
- ~~(k) **Number of Class "A" Intoxicating Liquor Licenses and Class "A" Fermented Malt Beverage Licenses.** (Repealed 09-19-2017, Ord. RC-388)~~
- (l) **Number of Class "B" Licenses for Intoxicating Liquors.** Number of "Class B" Licenses shall be as established in conformance with Sec. 125.51(4), Wis. Stats. (Amended 09-19-2017, Ord. RC-388)
- (m) **Delinquent Taxes, Assessments, Etc.**
- (1) Premises. No initial or renewal alcohol beverage licenses shall be granted for any premises for which City taxes, assessments, utility bills, sewer and water bills or other assessments or other claims to the City are delinquent and unpaid.
  - (2) Persons. No initial or renewal alcohol license shall be granted to any person:
    - a. Delinquent in payment of any City taxes, utility bills, sewer and water bills, assessments or other claims owed to the City.
    - b. Delinquent in payment of a forfeiture resulting from a violation of any ordinance of the City.

## SEC. 7-2-8 INVESTIGATION.

- (a) The City Clerk, on behalf of the Common Council's General Operations Committee, shall notify the Chief of Police, Health Officer, Fire Inspector and Building Inspector of each new and renewal 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. 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. These officials shall furnish to the City Clerk in writing, who shall forward to the General Operations Committee, the information derived from such investigation. The General Operations Committee will make 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.

- (b) If the General Operations Committee recommends the denial of the application, the applicant shall be notified by the City Clerk at not less than three (3) nor more than ten (10) days prior to the Council meeting at which the application is to be considered. The notice shall set forth the basis for such recommendation and inform the applicant of the opportunity to appear before the Common Council.
- (c) In determining whether to grant such license, consideration shall be given to the arrest and conviction record of the applicant, subject to the limitations imposed by Sections 111.321, 111.322 and 111.335, Wis. Stats., financial responsibility of the applicant, the appropriateness of the location and premises where such licensed business is to be conducted, and generally the applicant's fitness for the trust to be reposed. 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.
- (d)
  - (1) 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 may 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 not less than three (3) nor more than ten (10) days prior to the Common Council meeting at which the application is to be reconsidered.
  - (2) If, upon reconsideration, the Council again denies the application, the City Clerk shall notify the applicant in writing of the reasons therefor. 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.

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

- (a) 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.
- (b) 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 businesses to be conducted; and
- (4) Generally, the applicant's fitness for the trust to be reposed.
- (c) 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.

#### **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 made 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 Chief of Police 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 Common Council.

**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 affidavit as provided by Sec. 125.04(4) of the Wisconsin Statutes.

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

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

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

All retail Class "A", Class "B", "Class A", "Class B" and "Class C" 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 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 person under the age of eighteen (18), 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 premise 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 are at least eighteen (18) years of 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 possesses an operator's license, or there is a person with an operator's license upon said premises at the time of such service.
- (e) **Health and Sanitation Regulations.** The rules and regulations of the State Board of Health governing sanitation in restaurants shall apply to all "Class B" liquor licenses issued under this Chapter. No "Class B" or "Class C" license shall be issued unless the premises to be licensed conform to such rules and regulations.
- ~~(f) **Restrictions Near Schools and Churches.**~~ (Repealed 09-19-2017, Ord. RC-388)
- (g) **Clubs.** No club shall sell or give away any intoxicating liquors except to bona fide members and guests invited by members.
- (h) **Gambling Prohibited.** Except as authorized by state law, no gambling or game of chance of any sort shall be permitted in any form upon any premises licensed under this Chapter or the laws of the State of Wisconsin.
- (i) **Credit Prohibited.** No retail Class "A", Class "B", "Class A", "Class B", or "Class C" liquor, wine, 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.

- (j) **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.
- (k) **Improper Exhibitions.** It shall be unlawful for any person to perform, or for any licensee or manager or agent of the licensee to permit any employee, entertainer or patron to engage in any live act, demonstration, dance or exhibition on the licensed premises which:
  - (1) Exposes his or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
  - (2) Exposes any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
  - (3) Exposes any portion of the female breast at or below the areola thereof; or
  - (4) Engages in or simulates sexual intercourse and/or any sexual contact, including the touching of any portion of the female breast or the male and/or female genitals.
- (l) **Consumption on Premises.** All purchase of intoxicating liquor or fermented malt beverages by the glass or in open containers shall be consumed on the licensed premises where served and shall not be removed therefrom to any thoroughfare, street, alley or sidewalk unless authorized by the Common Council.
- (m) **Operational Telephone Required.** All premises located within the City, which are licensed to sell alcoholic beverages, shall, during hours they are open, be equipped with a functioning telephone, which shall be available to the operators and/or patrons of the establishment.
- (n) **Complimentary Food.** No tavern or other premises for which a Class "B" or "Class C" license is issued shall furnish a free lunch or meals, excepting popcorn, cheese, crackers, pretzels, sausage, fish, bread and butter, and other such snack foods.

Annotation: See Colonnade 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 warrant less searches of licensed premises.

**SEC. 7-2-15 CLOSING HOURS.** (Amended 2/2/2012, RC-315) (Amended 09-19-2017, Ord. RC-388)

Closing hours shall be established in conformance with Sec. 125.32(3), Wis. Stats-

**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 Delavan, 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 Common Council 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 Common Council may waive or modify the requirements of this Section due to the physical characteristics of the licensed site.
- (g) **Suitable Facilities.** For indoor events, the structure used must have suitable exits and open spaces to accommodate anticipated attendance. It should contain adequate sanitary facilities to accommodate the size of the group.
- (h) **Prohibited Containers.** Intoxicants cannot be sold outside in glass containers.
- (i) **Additional Regulations Concerning the Sale or Drinking of Fermented Malt Beverages in Parks.**
  - (1) All organizations shall post in a conspicuous location at the main point of sale facility and at all remote sales facilities a sufficient number of signs disclosing that no fermented malt beverage shall be served to any underage person or without proper age identification.
  - (2) All organizations shall install a single fence around the main point of sale facility to control ingress and egress and shall station a checker at the entrance for the purpose of checking age identification.
  - (3) The sale of fermented malt beverages from remote sites, that is, other than the main point of sale facility, shall be prohibited after the hour of 9:00 p.m.
- (j) **Insurance.** The applicant for a temporary fermented malt beverage or wine license may be required to indemnify, defend and hold the City 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 Delavan. The applicant may be required to furnish a performance bond prior to being granted the license.

Cross Reference: Section 11-4-1.

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

- (a) **Procedure.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 4, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by this Section.
- (b) **Cancellation of Premised Licenses.** (Amended 10/11/2011 RC-311)
  - (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 within one hundred eighty (180) days of issuance or, in the case of new construction, within one hundred eighty (180) days of the estimated completion date provided in writing to the City at the time of application; or

- b. Is not open for business for a period of three hundred sixty-five (365) consecutive days or more; or
  - c. Is not open for business at least fifty percent (50%) of the days within any twenty-four (24) month period, either within two (2) licensing years or overlapping three (3) licensing years; or,
  - d. Has been used, for a period of one hundred eighty (180) days or more for a purpose that does not include the serving of alcoholic beverages; or
  - e. Was leased by the licensee's and licensee's usage of said premise is discontinued for sixty (60) days or the remainder of a license period, whichever is less and such reduced time period for cancellation for nonuse of license is so requested by the owner of the licensed premises, shall be canceled unless, after notice and hearing as provided in Subsection (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) Seasonal. License granted to a premise, the business operation of which is seasonal in nature and which is or shall be continuously closed for a period of ninety (90) days or longer and the licensee has to have notified the City Clerk in writing as to the period of anticipated off-season closure, shall not be subject to the provisions as to non-use, discontinuance and cancellation for non-use appearing in Subsection (b)(1) above. However, should the period of closure continue for ninety (90) days beyond the terminus date set forth in such writing for such closure, or should non-use or discontinuance appear to be due to other than the seasonal nature of the business, the City may properly proceed under the provisions of Subsection
- (3) 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. Judicial review shall be as provided in Sec. 125.12(2)(d), Wis. Stats., or any amendments thereto.
- (c) **License Revocation or Suspension.**
- (1) Notice and Hearing. Whenever a person holding a license to sell alcoholic beverages has failed to maintain the premises according to standards prescribed for sanitation, or on whose premises persons are permitted to loiter for purposes of prostitution, or when the licensee has not observed and obeyed any lawful order of the Common Council or police officers of the City, has violated City Ordinances, or for any other good reason, the Common Council shall issue a summons, to be signed by the City Clerk commanding the licensee complained of to appear before the Common Council on a day and time and at a place named in the summons to show cause why the license should not be revoked or suspended. In addition, any resident may file a sworn, written complaint with the City Clerk. Such summons shall be served not less than three (3) and not more than ten (10) days before the time at which the licensee is commanded to appear and may be served personally upon the licensee or the agent of the licensee or upon the person in charge of the licensed premises. The complaint shall be served with the summons and shall set forth the offense allegedly committed, the date and place of said offence and the facts constituting the alleged offense. If such licensee shall not appear as required by the summons, the complaint shall be taken as true, and if the Common Council deems its allegations sufficient, the Council shall revoke or suspend the license as provided herein
- (2) Procedure on Hearing; Effect of Revocation.
- a. The Mayor or, in his absence, the Council President shall conduct the hearing, administer oaths to all witnesses and may issue subpoenas. So far as practicable, the rules of evidence shall be followed. The complainant shall have the burden of proving the charges to a preponderance of the evidence.

The licensee and the complainant may be represented by counsel, may call and examine witnesses and cross-examine witnesses of the other party. All proceedings and testimony shall be recorded on tape. If either party requests a stenographic recording and transcription, the City shall make the necessary arrangements, but the expenses shall be borne by the requesting party. The City Clerk administers all others, shall serve as secretary to the Council and shall make and receive all exhibits admitted into the record. The Common Council, upon the testimony and evidence presented at the hearing, shall determine by simple majority vote of those present whether the charges are true or not. If the vote is to suspend the license, it shall be for a period of not less than ten (10) days or more than ninety (90) days. Following the procedure above, the determination may be to revoke the license. If the Council determines that the charges are not substantiated, the complaint shall be dismissed without cost to either party. The City Clerk shall record the Council's action.

- b. If the complaint is found to be true, the licensee shall pay to the City the actual cost of the proceedings. If the complaint is found by the Common Council to be malicious and without probable cause, the complainant shall pay the cost of the proceedings in the same amount.
- c. When a license is revoked, it shall be so entered of record by the City Clerk, and no other license shall be granted to such licensee or for such premises for a period of twelve (12) months from the date of the revocation, nor shall any part of the money paid as application fee for any incense so revoked be refunded

(d) **Other Provisions.** Any license issued pursuant to this Chapter shall be subject to such further regulations and restrictions as may be imposed by the Common Council by amendment to this Section or by the enactment of new ordinances. If any licenses shall fail or neglect to meet the requirements imposed by such new restrictions and regulations his license may be revoked in accordance with this Section. In case of revocation of any license or any violation of any provision of this Chapter in accordance with this Section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

**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 canceled 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 ECONOMIC DEVELOPMENT GRANT~~ (Created 9/13/2011, Ord. RC-306) (Repealed 09-19-2017, Ord. RC-388)

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



**ARTICLE B**  
Operator's License

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

- (a) **Operator's Licenses: Class "A", Class "B", or Class "C" Premises.** Except as provided under Sec. 125.32(3)(b) and Sec. 125.07(3)(a)10, Wis. Stats., no premises operated under a Class "A", Class "B", or Class "C" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under Sec. 125.27(2), Wis. Stats., is valid outside the municipality that issues it. For the purpose of this section, any person holding a manager's license under Sec. 125.18, Wis. Stats., or any member of the licensee's or permittee's immediate family who has attained the age of eighteen (18), shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent, may serve fermented malt beverages in any place operated under a Class "A", Class "B", or Class "C" license or permit unless he or she has an operator's license or is at least (18) years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.
- (b) **Use by Another Prohibited.**
- (1) No person may allow another to use his or her Class "A" or Class "B" license or permit to sell alcoholic 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 City Clerk may issue an operator's license, which shall be granted only upon application in writing. Such license shall be issued only to those applicants who are qualified to hold said license and have submitted proper fee. Operator's licenses shall be operative only within the limits of the City. The fee shall be payable at the time of application.
- (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 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 City Clerk 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.
- (c) **Training Course.**
- (1) Except as provided in Subsection (b) below, the City Clerk 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:

- a. The person is renewing an operator's license.
  - b. Within the past two (2) years, the person held a Class "A", Class "B", "Class A" or "Class B" license or permit or manager's or operator's incense.
  - c. Within the past two (2) years, the person has completed such a training course.
- (d) 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.
- (e) The City Clerk may not require that applicants for operators' licenses undergo training in addition to that under Subsection (a), but may require applicants to purchase, at cost, materials that deal with relevant local subjects not covered in the course under Subsection (a).

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

Operator's licenses issued under the provisions of this Chapter shall be valid for a period of one (1) year and shall expire on the thirtieth (30th) day of June.

### **SEC. 7-2-33 OPERATOR'S LICENSE FEE; PROVISIONAL OR TEMPORARY LICENSES.** (Amended 9/8/2009, Ord RC 278)

- (a) **Operators' Licenses.** The City Clerk may issue an operator license, which shall be granted only upon application in writing. Such license shall be issued only to persons who have reached the age of eighteen (18) years, who do not have an arrest or conviction record subject to Sections 111.321, 111.322 and 111.335, Wis. Stats., who are not habitual law offenders or have been convicted of a felony unless the person has been duly pardoned, have submitted the proper fee, and in the case of new applicants have successfully completed a beverage trainer course as provided in Sec. 125.17(6), Wis. Stats. The license fee shall be Forty Dollars (\$40.00) for a year or fraction thereof and shall expire on the following June 30. A two-year license fee shall be Sixty Dollars (\$60.00) and shall expire on June 30th of the second year.
- (b) **Temporary Licenses.** The City Clerk may issue temporary licenses under the terms of Subsection (a) of this Section except that:
- (1) This license may be issued only to operators employed by, or donating their services to, non-profit corporations.
  - (2) No person may hold more than one (1) license of this kind per license year (i.e. July 1 through the following June 30).
  - (3) This license is valid for any period from one (1) to fourteen (14) days, and the period for which it is valid shall be stated on the license.
  - (4) The license fee shall be Five Dollars (\$10.00).
- (c) **Provisional Licenses.** The City Clerk may issue provisional licenses under the terms of Subsection (a) of this Section except that:
- (1) The applicant need not have completed the beverage trainer course as provided in Sec. 125.17(6), Wis. Stats., but, must show that he has enrolled in said course.
  - (2) The license will expire sixty (60) days after its issuance or when a license under Subsection (a) above is issued to the holder, whichever is sooner.
  - (3) Application for a provisional license may be made only one (1) time.
  - (4) A provisional license may not be issued to any person who has been denied a license under Subsection (a) above. The City Clerk may revoke the provisional license if she discovers that the holder of the license made a false statement on the application, and, if the applicant fails to complete the course in which he or she enrolls, the license shall be revoked.
  - (5) The license fee shall be Fifteen Dollars (\$15.00).

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

- (a) After the approval of an operator's license, the City Clerk shall issue the license. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b) If the application is denied, the City Clerk shall, in writing, inform the applicant of the denial, the reasons therefore, and of the opportunity to request a reconsideration of the application by the General Operations Committee.
- (c)
  - (1) Any applicant denied an operator's license by the City Clerk shall have the right to appeal the denial to the General Operations Committee. Such appeal shall be in writing and given to the City Clerk within thirty (30) days of the denial. The City Clerk shall promptly place the matter on the soonest available Committee agenda. The General Operations Committee shall independently review the applicant's request for an operator's license under this Section.
  - (2) If, upon reconsideration, the General Operations Committee again denies the application, the City Clerk shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license upon reconsideration of the matter, may apply to Circuit Court pursuant to Sec. 125.12(2)(d), Wis. Stats., for review.
- (d)
  - (1) Consideration for the granting or denial of a license will be based on Sec. 125.04(5), Wis. Stats.:
  - (2) If a licensee is convicted of an offense substantially related to the licensed activity, the General Operations Committee may act to revoke or suspend the incense.
- (e) 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 General Operations Committee, the General Operations Committee reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to grant or deny an original license.

**SEC. 7-2-35 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 possession, or carry a license card. Further, the General Operations Committee, 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. 7-2-36 REVOCATION OR SUSPENSION 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 or suspension of the license. Because a license is a privilege, the General Operations Committee, at its discretion, may act to revoke or suspend a license if the licensee is convicted of an offense substantially related to the licensed activity or if other grounds exist.

**SEC. 7-2-37 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 Delavan, 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 Delavan, 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 Delavan.
- (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 (Amended 11-10-98 by RC-56)

#### 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 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 One Hundred Dollars (\$100.00). (RC-56)
- (c) **Issuance and Term of License.** Licenses for the sale, exchange, barter, disposition of, or giving away or keeping for sale of cigarettes, 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.

## 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	Regulation of Direct Sellers
7-4-8	Suspension for Cause
7-4-9	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 Delavan without being registered for that purpose as provided herein.

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

In this Chapter:

- (a) **Direct Seller** 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, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such, but shall not include religious organizations.
- (e) **Person** shall mean all humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for the same purpose or objective.

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

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

- (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;

- (b) Any person selling goods at wholesale to dealers in such goods;
- (c) Any person selling agricultural products which such person has grown;
- (d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business;
- (e) 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;
- (f) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;
- (g) Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods;
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the City Clerk 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; it is intended to include any employee, officer, agent or member of any local charitable organization having a local group or association.
- (j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the City Clerk that such person is a transient merchant, provided that there is submitted to the City Clerk proof that such person has leased for at least one (1) year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business in this City for at least one (1) year prior to the date complaint was made.
- (k) Veterans and patriotic organizations which "give" tokens as evidence of donations, local service and religious organizations in sale of tickets, local youth organizations, such as Boy Scouts and Girl Scouts in fund raising project sales.
- (l) Any person conducting what is commonly referred to as a "garage sale" or "rummage sale," which are understood to be occasional sales by individuals of accumulated items of personal property, most commonly within a household and no longer having utility thereto. Such sales are allowed to be held within the City of Delavan but shall not be conducted more than six (6) days, or a portion of days, from the same location within any calendar year. No such sales shall be conducted on street terraces or any portions of street right-of-way.
- (m) Any person or organization granted a waiver by the General Operations Committee.

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

- (a) **Registration Information.** Applicants for registration must complete and return to the City Clerk a registration form furnished by the Clerk which shall require the following information:
  - (1) Name, permanent address and telephone number, and temporary address, if any;
  - (2) Height, weight, color of hair and eyes, and date of birth;
  - (3) Name, address and telephone number of the person, 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 business;
  - (8) Last cities, villages, and towns, not to exceed three (3), where applicant conducted similar business just

prior to making this registration.

Direct Sellers

- (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) **Identification and Certification.** Applicants shall present to the City Clerk for examination:
- (1) A driver's license or some other proof of identity as may be reasonably required;
  - (2) A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
  - (3) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety (90) days prior to the date the application for license is made.
- (c) **License Registration Procedure and Fee.** At the time the registration form is returned, the procedure shall be as follows:
- (1) Should the Clerk determine that the applicant has failed to comply with any previous applicable provisions of this Section, said Clerk shall refuse to process the registration until the applicant is in full compliance with said provisions. Upon a finding of compliance, the procedure shall be as follows in this Subsection.
  - (2) A fee of Twenty-five Dollars (\$25.00) shall be paid to the Clerk to cover the cost of processing said registration, including investigation.
  - (3) The applicant shall sign a statement appointing the Clerk his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant in the event the applicant cannot, after reasonable effort, be served personally, such statement to be effective, by its terms, only upon registration.
  - (4) The Clerk shall refer the application immediately to the Chief of Police who shall make and complete a prompt investigation as provided in Section 7-4-5 and thereafter approve or disapprove of such application.
  - (5) Upon receipt of approval from the Chief of Police as to such application, the Clerk shall:
    - a. Register the applicant as a direct seller and date the entry, such registration to be valid for a period of one (1) year from the date of entry.
    - b. Issue evidence of such registration showing the period for which it is valid, such evidence to be in such form that it may be easily carried and displayed.
    - c. Notify the applicant of such registration and that the evidence thereof can be personally obtained from the office of the Clerk.
  - (6) Should the Chief of Police disapprove of such registration, the Clerk shall deny the application and send notice thereof by regular mail.
  - (7) There shall be no right of refund as to fee paid in the event of denial of the application.

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

- (a) Upon receipt of each application, the City Clerk may refer it immediately to the Police Department for an investigation of the statements made in such registration, said investigation to be completed within five (5) days from the time of referral.
- (b) The City Clerk 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, or whose previous registration has been suspended pursuant to this Chapter, may appeal the denial or suspension through the appeal procedure provided by ordinance or resolution of the Common Council, or, if none has been adopted, under the provisions of Sections 68.07 through 68.16, Wis. Stats.

#### **SEC. 7-4-7 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 8:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
- (2) A 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 visit, his identity or the identity of the organization he 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) Except as provided by waiver or permit, no direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
- (4) No 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 is conducting business.
- (6) No direct seller shall sell or offer to sell any merchandise, the sale of which is forbidden by law.
- (7) No direct seller shall allow or attempt to allow some other person to engage in direct sales under his or her registration.

##### **(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 name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.

Direct Sellers

- (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 shall, at the time the order is

taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

**SEC. 7-4-8 SUSPENSION FOR CAUSE.**

- (a) A report of violation by a registrant of provision(s) of this Chapter by the Chief of Police to the City Clerk shall result in the suspension for cause of the registration of the registrant by the Clerk pending resolution on appeal pursuant to Section 7-4-6, or determination as to revocation in proceedings by Council pursuant to Section 7-4-9. During such period of suspension no business activities authorized under such registration shall be conducted.
- (b) Failure to appeal within the time period allotted for appeal pursuant to Section 7-4-6 and the administrative review procedures referenced therein in Sections 68.07 through 68.16, Wis. Stats., and absent initiation of proceeding for revocation under Section 7-4-6, shall result in a ripening of the suspension into a revocation.

**SEC. 7-4-9 REVOCATION OF REGISTRATION.**

- (a) Registration may be revoked by the Common Council 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

### Processions, Parades, Runs, Walks, Bicycle Races and Marathons

- 7-5-1 Purpose; Definitions
- 7-5-2 Permit Requirements

#### SEC. 7-5-1 PURPOSE; DEFINITIONS.

- (a) **Purpose.** The City of Delavan recognizes that City streets and highways are primarily for the use of vehicular travel. It further recognizes a need to use these public streets and highways for processions, parades, runs, walks, bicycle races, marathons, etc., which do not substantially interfere with the public's right to travel on such streets and highways. This Chapter is intended to regulate and control non-vehicular use of the streets and highways and for protecting the general welfare and safety of the persons using the streets and highways within the City. Said authority to regulate is contained in Sec. 349.185, Wis. Stats., and related sections.
- (b) **Definitions.** As used in this Chapter:
  - (1) "Processions, parades, runs, walks, marathons, bicycle races, or like event," means their usual and customary usage.
  - (2) "Highways" or "streets" have the meaning set forth in Sec. 340.01, Wis. Stats., and also include areas owned by the City of Delavan which are used for vehicular traffic.

#### SEC. 7-5-2 PERMIT REQUIREMENTS.

- (a) **Permit Required.** No person shall form, direct, lead or participate in any procession, parade, run, walk, marathon, bicycle race, or like event, on any street or highway under the jurisdiction of the City unless a permit has been obtained in advance as provided in this Chapter.
- (b) **Exemptions from Permit Requirement.** A permit is not required for assembling or movement of a funeral procession or military convoy. Any other such event sponsored by any agency of the federal, state or municipal government, acting in its governmental capacity within the scope of its authority, shall be required to obtain a permit, however, shall be exempt from the parade permit fee and insurance requirements contained herein.
- (c) **When Application Must Be Made.** A written application for a permit for any above-described function on the streets and highways under the jurisdiction of the City shall be made by one (1) of the organizers or officers to the City Clerk on a form provided by said Clerk no less than fifteen (15) days prior to the usage. Application made less than forty-five (45) days prior to the day of the proposed usage must be made in person. Said time periods may be waived by the Mayor.
- (d) **Information Required in Application.** The application shall set forth the following information regarding the proposed usage:
  - (1) The name, address and telephone number of the applicant.
  - (2) If the usage is proposed 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 authorized and responsible heads of such organization.
  - (3) The name, address and telephone number of the person who will be responsible for conducting the usage.
  - (4) The date when the usage is to be conducted and its duration.
  - (5) The assembly area, the starting point, the route to be traveled and the termination point.
  - (6) The number and size of participants or units comprising the usage.

- (7) If the usage is to be conducted by or for any person other than the applicant, the applicant for such permit shall file with the Clerk a communication in writing from the person proposing to hold the usage authorizing the applicant to apply for the permit on its behalf.
  - (8) Any additional information which the Clerk finds reasonably necessary for a fair determination as to whether a permit should be issued.
- (e) **Recommendations of Governmental Agencies.** The City Clerk shall submit a copy of the application to the Chief of Police and Director of Public Works for their recommendation.
- (f) **Basis for Discretionary Denial of Permit.** The application may be denied:
- (1) If it is for a usage that is to be held on a work day during hours when and at places where, in addition to the proposed usage, the flow of vehicular traffic is usually delayed by its own volume.
  - (2) If it is for a usage that is to be commenced between the hours of 9:00 p.m. and 9:00 a.m.
  - (3) If sufficient usage marshals are not provided as to reasonably assure the orderly conduct of the usage.
  - (4) If proposed route for conducting usage involves a street or highway under construction or detour route.
- (g) **Mandatory Denial of Permit.** The application shall be denied:
- (1) If it is for a usage that is primarily for private or commercial economic gain; or
  - (2) If it is for a usage which would involve violation of federal, state or local laws relating to use of highways or of other applicable regulations of the City; or
  - (3) If the granting of the permit would conflict with another permit already granted or for which application is already pending; or
  - (4) If the application does not contain the information required by Subsection (d); or
  - (5) If more than one (1) assembly area or more than one (1) dispersal area is proposed; or
  - (6) Failure to receive permit under Sec. 84.07(4), Wis. Stats.
- (h) **Permit Issued Unless Threat to Public Safety.** The City Clerk shall issue a permit to the applicant subject to the foregoing requirements of this Chapter, unless the Clerk concludes that
- (1) The policing of the usage will require so large a number of persons and vehicles, including ambulances, as to prevent adequate service of the needs of the rest of the municipality; or
  - (2) The usage will substantially hinder the movement of police and fire and other emergency vehicles as to create a substantial risk to persons and property; or
  - (3) The conduct of the usage will substantially interrupt the safe and orderly movement of other traffic contiguous to its route; or
  - (4) The usage is so poorly organized that participants are likely to engage in aggressive or destructive activity.
- (i) **Grant or Denial of Permit.**
- (1) Time When Required. The City Clerk shall act as promptly as he reasonably can on all applications for permits after consulting with other government agencies directly affected and after consulting with the applicant, if necessary. All applications filed forty-five (45) days or more in advance shall be granted or denied not less than thirty (30) days before the date of the usage stated in the application. Action on applications filed less than forty-five (45) days in advance shall be taken within fifteen (15) days after the application is filed, but in no case later than forty eight (48) hours in advance of the time applied for. The City Clerk shall immediately, by the most reasonable means of communication, notify the applicant of such action and, if the application is denied, the reasons for denial of the permit.
  - (2) Modification of Requested Permit. In lieu of denying a permit, the Clerk may authorize the changing of assembly areas or dispersal areas or the conducting of the usage at a date or time or over a route different than as applied for in the permit. The applicant or permittee may accept such modification by immediately notifying the Clerk in writing of such acceptance.
- (j) **Fee.** There shall be paid at the time of filing the application for a usage permit a fee of Twenty-five Dollars (\$25.00).

- (k) **Charge for Increased Costs.** Were the City Clerk determines that the cost of municipal services incident to the staging of the usage will be increased because of the usage, the Clerk may require the permittee to make an additional payment into the general fund of the City in an amount equal to the increased costs.
- (l) **Emergency Revocation.** The City Clerk, Mayor, City Administrator, or Chief of Police may revoke a permit already issued if the official deems that such action is justified by an actual or potential emergency due to weather, fire, riot, other catastrophe or likelihood of a breach of the peace, or by a major change in the conditions forming the basis of the standards of issuance. In lieu of revoking a permit, an above-named official may require the permittee to file evidence of good and sufficient sureties, insurance in force or other evidence of adequate financial responsibility, running to the City of Delavan and such third parties as may be injured or damaged, in an amount depending upon the likelihood of injury or damage as a direct and proximate result of the holding of the usage sufficient to indemnify the municipality and such third parties as may be injured or damaged thereby, caused by the permittee, its agents or participants.
- (m) **Usage Permit Contents.** Each usage permit shall state such information as the City Clerk shall find necessary to the enforcement of this Chapter.
- (n) **Copies of Usage Permit Distributed.** Immediately upon the issuance of a usage permit, the City Clerk shall send a copy thereof to the Chief of Police, City Administrator, Mayor and Director of Public Works.
- (o) **Compliance With Regulations.**
  - (1) Permittee. A permittee under this Chapter shall comply with all permit directions and conditions and with all applicable laws, ordinances and other regulations of the state and City.
  - (2) Participants. No person who leads or participates in any usage shall disobey or encourage others to disobey this Section after a law enforcement officer has directly and presently informed him or her of any of the provisions of this Section or the terms of the applicable usage permit.
- (p) **Insurance Required.** Prior to issuance of the permit by the City Clerk, each permittee shall furnish evidence of a liability insurance policy in amounts of not less than One Hundred Thousand Dollars (\$100,000.00) for one (1) person and Five Hundred Thousand Dollars (\$500,000.00) for any one (1) accident and shall be in force and effect at the time such usage is to take place. Said evidence of insurance shall include a certificate of insurance naming the City of Delavan as an additional insured in connection with said usage.

**CHAPTER 6**  
Vehicles for Hire

7-6-1	Regulation of Vehicles for Hire
7-6-2	Insurance Required
7-6-3	Inspection Required
7-6-4	Conditions of License
7-6-5	Exceptions
7-6-6	Refusal to Pay Fare Prohibited
7-6-7	Revocation of License

**SEC. 7-6-1 REGULATION OF VEHICLES FOR HIRE.**

(a) **Licensing of Vehicles for Hire.**

- (1) No person, firm or corporation shall operate a public vehicle for hire, taxicab or automobile for the conveyance of passengers, with or without baggage, for hire or reward, without having first obtained a license therefor from the Common Council. Such license shall entitle such person, firm or corporation to operate such public vehicle, taxicab or automobile for hire or reward until the first day of January of the year subsequent to the issuance thereof. This Section shall apply to all vehicles conveying persons or baggage for hire or offering taxicab or cab or similar transportation service to the public, (hereinafter referred to as "taxicabs") except such vehicles as operate over a regular route or between fixed termini, excepting, also, such vehicles as are rented to be driven by the renter or his agent, commonly known as rent-a-cars, and except vehicles operated solely as funeral cars.
- (2) a. Application for the licensing of a taxicab business shall be addressed to the Common Council, following a recommendation from the General Operations Committee, and shall be filed with the City Clerk, together with a tendered license fee prorated on the basis of the annual license fee set forth in Subsection (a)(4), should each remaining portion of the calendar license year be less than eleven (11) months. The application shall contain the name and address of the applicant, the number of vehicles to be licensed, number of adult persons the vehicle is designed to carry, name of insurance carrier, name of the insured and the number, amount and duration of the policy.  
b. Upon the filing with the City Clerk of such application, together with a receipt of the City Clerk showing payment of the license fee required, the Common Council shall either grant or deny such license, whichever shall, in its judgment, appear in the interests of the public, specifying the terms and conditions, if any, under which said person, firm or corporation shall operate a public vehicle, taxicab or automobile for hire, and any other limitations or conditions that may be deemed advisable in the judgment of the Council. After the granting of such license by the Council, the City Clerk shall issue to the applicant a license for the operation of such vehicle or vehicles.
- (3) The taxicab business license fee shall be based on the number of vehicles to be operated thereunder as follows: One Hundred Dollars (\$100.00) for the first vehicle and Fifty Dollars (\$50.00) for each additional vehicle for hire.
- (4) The license year for taxicab business licenses shall be from January 1 through December 31. As a condition to the continued holding and renewal of license for a taxicab business, the proprietor, owner or his agent shall pay to the City the license fees computed as set forth in Subsection (a)(4) above each year on or before the 15th day of January.

- (b) **Chauffeur's License Required for Taxi Operators.** No person shall operate any motor vehicle for hire upon the highway and streets of the City of Delavan unless such person possesses a valid driver license, is not an habitual traffic offender and has not been convicted of a felony unless the person has been duly pardoned. A "Habitual Traffic Offender" as defined in Sec. 343.02(1), Wis. Stats. The City shall require a City Chauffeur's License for an annual fee of Twenty-five Dollars (\$25.00).

State Law Reference: Sec. 349.24, Wis. Stats.

**SEC. 7-6-2 INSURANCE REQUIRED.** (Amended 2/11/03 Ord. RC-156)

- (a) It shall be unlawful to operate a vehicle for the conveyance of passengers for hire or permit the same to be operated, nor shall any license be issued hereunder until and unless the applicant for a license deposit with the City Clerk a certificate of liability insurance for the vehicles for which licenses are sought, said certificate of liability insurance to be acceptable and approved by the City Clerk and issued by a company authorized to do business in the State of Wisconsin, indemnifying the applicant in the amount of One Hundred Thousand Dollars (\$100,000.00) for damage to property, and One Hundred Thousand Dollars (\$100,000.00) for injury caused by the operation of said vehicles in the City of Delavan.
- (b) Each taxicab insurance policy shall contain a provision that the same may not be canceled before the expiration of its term except upon thirty (30) days' written notice to the City. Every day upon which any vehicle is operated for the conveyance of passengers for hire or when taxicab or cab or similar transportation is offered to the public without an insurance policy as required herein being in effect and on file with the City Clerk shall be deemed a separate violation. The cancellation or other termination of any insurance policy issued in compliance with this Section shall automatically revoke and terminate all licenses issued for the taxicab covered by such insurance policy, unless another policy shall be provided and in effect at the time of such cancellation or termination.
- (c) The insurance policy or certificate shall further provide that it cannot be canceled until fifteen (15) days' notice of such cancellation shall have been given by registered mail to the City Clerk. The cancellation or other termination of any such insurance policy or certificate shall automatically revoke and terminate all licenses issued for the taxicabs covered by such insurance policy, unless another policy shall be provided and be in effect at the time of such policy cancellation or termination.
- (d) The owner of any taxicab, at the time of filing with the City Clerk said insurance policy or certificate, shall also file a receipted bill from the insurance company issuing said policy or certificate showing that the premium for said policy or certificate for one (1) year has been paid in full.

**SEC. 7-6-3 INSPECTION REQUIRED.**

- (a) No vehicle shall be licensed until it has been annually examined by a reputable automobile repair facility and found to be in a thoroughly satisfactory and safe condition for the transportation of passengers, clean, of good appearance and well painted. The Chief of Police shall determine whether said vehicle complies with all the other provisions of this Chapter. If such examination and inspection shows that vehicle does not comply with any of the provisions of this Section, no license shall be issued. At the request of the Chief of Police, the taxicab owners shall take their vehicles to a reputable garage for an independent inspection at owner's expense.
- (b) No taxicab shall be licensed until the Police Department has approved that:
  - (1) Vehicles licensed under this Section must comply with Sec. 347, Wis. Stats., Equipment of Vehicles, that are applicable and Trans Code MVD 5, Wis. Adm. Code, "Standards for Motor Vehicle Equipment" (or other Standards as they are enacted).
  - (2) The taxicab is in generally safe, sanitary and reliable condition.
- (c) The inspection required by this Section is only an inspection of the taxicab's exterior and passenger areas and shall not be a thorough mechanical inspection of the taxicab. Nothing in this Section shall be interpreted as relieving the owner or operator of a taxicab from any and all liability arising from any unsafe, unsanitary, unreliable or illegal conditions existing in his taxicab, whether or not such conditions are discovered or omitted by the inspections required herein. This Section shall not be interpreted as creating a duty or liability on the part of the City of Delavan, the Police Department or any employee or agent of the City to any person.
- (d) Any police officer of this City may, at all reasonable times, inspect any cab or public hack under such taxicab business license and may prohibit the use of any cab which is unsafe or not in proper repair.

**SEC. 7-6-4 CONDITIONS OF LICENSE.**

- (a) **Licenses Nontransferable.** Licenses issued or granted under this Chapter shall be nonassignable and nontransferable.
- (b) **Information Card to be Displayed.** A card containing the name of the owner, license number, the number of the vehicle and rates of fare printed thereon shall be placed and at all times kept in a conspicuous place inside such vehicle.
- (c) **Liability of Licensee.** Any licensee shall be liable for any violations of ordinances or statutes by any and all persons operating taxicabs under its license.
- (d) **Number of Passengers.** No licensee or person driving a taxicab shall carry or permit to be carried in any such vehicle more than the number of persons specified in the license applicable to such vehicle.
- (e) **Common Council May Impose Further Restrictions.** Any licensee hereunder shall be subject to such further regulations and restrictions as may be imposed at any time by the Common Council.

**SEC. 7-6-5 EXCEPTIONS.**

This Chapter shall not apply to persons, firms or corporations engaged in the business of carrying passengers for hire both interstate and intrastate between regularly established points and on regularly established time schedules, nor to the operator of a motor vehicle engaged in the business of transporting school students for hire.

**SEC. 7-6-6 REFUSAL TO PAY TAXI FARE PROHIBITED.**

No person who has been transported by a taxicab shall refuse to pay the fare for such transportation as such fare is shown on the taximeter or zone meter.

**SEC. 7-6-7 REVOCATION OF LICENSE.**

- (a) **Revocation.** Licenses granted under this Chapter may be suspended or revoked at any time by the Chief of Police for any violation of this Chapter. When a taxicab license is revoked or canceled as herein provided, the Chief of Police shall immediately notify the owner to cease at once to operate the vehicle for which the license has been revoked as a taxicab.
- (b) **Appeals.** Any person who received a revocation of license and objects to all or part thereof may appeal to the General Operations Committee within seven (7) days of the receipt of the order and the General Operations Committee shall hear such appeal within thirty (30) days of receipt of such written notice of the appeal. After such hearing, the General Operations Committee shall make its recommendations to the Common Council, which may reverse, affirm or modify the order or determination.



**CHAPTER 7**  
Regulation and Licensing of Fireworks

7-7-1 Regulation of Fireworks

**SEC. 7-7-1 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 per chlorate.
  - (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.
  - (4) Retail sales of fireworks may only occur from a permanent structure that has been inspected and given written approval by the city building inspector and the city fire chief. All structures, which hold (for the intent of later selling) or utilized in the sale of fireworks, shall be equipped with a fire sprinkler system if required by NFPA, knock box, fire alarm and any other fire safety equipment required by the fire chief. Any additions to or changes of location must be approved by the Common Council. (Amended 3-10-15, Ord. RC-352)
- (c) **Use.**
- (1) Permit Required. Permits for the use of fireworks, other than those prohibited by Sec. 167.10(6), Wis. Stats., by public authorities, civic organizations or other individuals or groups, may be given by the Mayor of the City of Delavan upon application and upon the Mayor's satisfaction as to the purpose and supervision and the handling of such fireworks and provided that the City of Delavan is named as an additional insured and provided with a copy of said liability insurance policy.

- (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 City
- (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.
  - (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.

## CHAPTER 8

### Licensing of Pool Tables, Billiard Tables, Bowling Alleys, and Amusement Devices

- 7-8-1 Billiard Table, Pool Table, and Bowling Alley Licenses Required; Fees (Amended 12-11-2007 Ord. RC-240)
- 7-8-2 Definitions
- 7-8-3 Amusement Device License Required (Amended 12-11-2007 Ord. RC-240)
- 7-8-4 Restrictions
- 7-8-5 Transferability of Licenses

#### **SEC. 7-8-1 BILLIARD TABLE, POOL TABLE, AND BOWLING ALLEY LICENSES REQUIRED; FEES.** (Amended 12-11-2007 Ord. RC-240)

The owner of every public billiard table, pool table, or bowling alley, kept for gain or hire shall pay a nonproratable license fee of Twenty Dollars (\$20.00) per table and/or alley for the license year of July 1 to the following June 30, or portion thereof, for which the license is to issue.

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

A "mechanical or electronic amusement device" is defined as any machine, device, or game which permits a person or operator to use the device as a game or contest of skill or amusement, whether or not the device registers a score, and which is not a gambling device. The term shall include, but not be limited to, juke boxes, electronic or mechanical game machines, and pinball machines. Excepted from the term shall be billiard tables and bowling alleys licensed under a previous Section of this Code of Ordinances.

#### **SEC. 7-8-3 AMUSEMENT DEVICE LICENSE REQUIRED; FEES.** (Amended 12-11-2007 Ord. RC-240)

Any person maintaining, operating, or permitting the operation of a mechanical or electronic amusement device shall obtain a license to operate such device from the City Clerk. The license fee for operation of a mechanical or electronic amusement device shall be nonproratable and in the amount of Ten Dollars (\$10.00) per machine per license year, or portion thereof, for which license is to issue, the license year to be July 1 through the 30th day of June.

#### **SEC. 7-8-4 RESTRICTIONS.**

No license shall be granted under this Chapter unless the premises comply with fire and building code requirements of the City and State. Licensed premises shall be adequately supervised by the licensee in such manner to insure that no disorderly conduct, gambling, or other prohibited activities shall occur, and failure to so supervise shall be grounds for revocation.

#### **SEC. 7-8-5 TRANSFERABILITY OF LICENSES.**

Mechanical or electronic amusement device licenses may be transferred from premises to premises during the license year without charge. The holder of such license shall notify the City Clerk within ten (10) days of the time such transfer is made.

**CHAPTER 9**  
(Repealed and Recreated 05/11/1999 by RC-65)  
Massage Facilities, Masseur/Masseuse,  
and the Performance of Massage Activities

7-9-1	Definitions Within This Subchapter
7-9-2	Massage Facility
7-9-3	Massage Facility -- Operation
7-9-4	On-Site Massage Activities
7-9-5	Massage Facility -- License Required
7-9-6	Applicability
7-9-7	Masseur/Masseuse -- Permit Required
7-9-8	Insurance Requirements
7-9-9	Education and Training Requirements
7-9-10	License or Permit Suspension or Revocation
7-9-11	Violations
7-9-12	Prohibited Conduct of Masseur/Masseuse, Facility Operators and Clients
7-9-13	Penalty
7-9-14	Sale or Transfer
7-9-15	Expiration of Licenses and Permits
7-9-16	Exemptions

**SEC. 7-9-1 DEFINITIONS WITHIN THIS SUBCHAPTER.**

- (a) **Massage Activities or Massage Treatments** means the manipulation of the soft tissue of the body for any purpose, including therapeutic or relaxation purposes, and may include, but is not limited to, holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing, as well as effleurage, petrissage, tapotement, vibration, friction, or stroking, either by hand or with mechanical or electrical apparatus, for the purpose of body massage.
- (b) **Massage Facility** means any place where any person engages in, conducts or carries on massage activities or any person engages in, conducts or permits massage activities to be engaged in, conducted or carried on.
- (c) **Client** means any person who receives massage treatment under such circumstance that it is reasonably expected that he or she will pay money or give anything of value therefor.

Masseur/Masseuse means any person who engages in, conducts, provides, performs or carries on massage activities or treatments.

**SEC. 7-9-2 MASSAGE FACILITY.**

Every massage facility shall meet the following requirements:

- (a) Every massage facility shall have restroom facilities that meet the standards prescribed by state law.
- (b) If male and female clients are to be served simultaneously, such massage rooms, dressing facilities, steam rooms and sauna rooms as are provided shall be separate for male and female clients and each such separate facility or room shall be clearly marked as such.
- (c) Rooms in which massage activities are practiced or administered shall have at least fifty (50) square feet of clear floor area and shall maintain a light level of no less than forty (40) candles as measured at three (3) feet above the floor. Lighting in colors other than white is prohibited. Such rooms shall be equipped with cabinets for the storage of clean linen and chemicals and have proper receptacles for the storage of clean linen and chemicals.

- (d) No stuffed or upholstered furniture shall be used for massage treatments in massage facilities. These facilities shall be equipped with massage tables and/or chairs having an impervious surface or covering with a width of no more than three (3) feet and a length of no more than eight (8) feet. Such tables and/or chairs may be equipped with either nondisposable pads or coverings or disposable coverings not more than three and one-half (3-1/2) inches thick. Factory installed, nondisposable pads or coverings shall be impervious and cleaned after each use. Clean linens or disposable coverings may be used over such installed coverings and must be changed/cleaned after each use.

### **SEC. 7-9-3 MESSAGE FACILITY -- OPERATION.**

Every massage facility and every masseuse/masseur shall comply with the following operating requirements. These requirements shall be prominently and publicly displayed in a conspicuous place upon every premises licensed under the provisions of this Section:

- (a) Massage facilities shall commence operations no earlier than 6:00 a.m. and the hours of operation shall extend no later than midnight. Masseur/masseuses shall not perform, provide or administer massage treatments at massage facilities at any time outside of the hours of operation.
- (b) Massage facilities and masseuse/masseurs operating therein shall prominently and publicly display on the premises their licenses and permits during all hours of operation.
- (c) Massage facilities shall at all times be equipped with clean and sanitary towels, coverings and linens for body and feet to be used by all clients. Disposable coverings and towels shall not be used on more than one client. Soiled linens, clothing and disposable products/coverings shall be deposited in proper receptacles.
- (d) Instruments utilized in performing massage activities or treatments shall not be used on more than one (1) client unless they have been first sanitized, using disinfecting agents and methods approved by the health officer for the City. Massage table and/or chair pads and reusable table and/or chair coverings shall be disinfected between each massage session or treatment. Chemicals used for cleaning/disinfecting shall be stored separately in containers clearly labeled as to contents. All chemical containers shall be stored in cabinets reserved solely for such purpose.
- (e) Massage treatments shall not be given unless clients are properly clothed, covered or draped fully covering their genitals and female clients are in addition fully clothed, covered or draped, covering their breasts; with the expressed consent of the client, this clothing, covering or draping may be repositioned to accommodate specific and appropriate work on underlying musculature of the chest or abdomen, excluding the mammary glands. Where such clothing, covering or draping are furnished clients by the massage facility, it shall not be used by more than one (1) client unless it has first been laundered and disinfected. Masseur/masseuses shall be fully clothed in clean, opaque clothing.
- (f) Massage treatments shall not be given to clients who have open sores or any visual signs of contagious or communicable diseases or conditions..
- (g) For purposes of ascertaining violations of this Chapter and conducting routine inspections, police officers, health officers, building inspectors, and the fire chief shall have the right of entry onto the premises of any massage facility during the hours such facility is open for business.  
If health officers observe that any masseuse/masseur has open sores, or otherwise have reasonable grounds to believe that any masseuse/masseur is infected with a contagious or communicable disease, they shall have the right to suspend such masseuse/masseur from performing or administering massage treatments until such time as he or she furnishes a doctor's certificate showing him or her to be free of any contagious or communicable disease.

**SEC. 7-9-4 ON-SITE MASSAGE ACTIVITIES OR TREATMENTS**

- (a) On-site massage activities or treatments shall include home visits and massage in public buildings outside of the licensed facility. This privilege shall be available only to those masseuse/masseurs who hold permits issued under this Chapter. The permit must accompany the masseuse/masseur on all site visits.
- (b) On-site massage activities or treatments are also regulated by the conditions set forth in this Chapter.

**SEC. 7-9-5 MASSAGE FACILITY -- LICENSE REQUIRED.**

No person shall carry on the business of operating a massage facility at any place within the City unless he or she has a valid license issued pursuant to the provisions of this Section for each and every such place of business:

- (a) **Term.** The license is an annual license to be issued for the license year of July 1st through the following June 30th. Any license shall be issued for such year or fraction thereof.
- (b) **Application.**
  - (1) **Fee.** Any person desiring to obtain a license to operate a massage facility shall make application to the City Clerk. A non-proratable fee of Two Hundred Dollars (\$200.00) shall accompany the submission of the application to defray the costs of administration and investigation.
  - (2) **Contents.** Any person desiring a massage facility license shall file a written application with the City Clerk on a form to be provided by the City Clerk. If the applicant is a corporation, the name of the corporation shall be set forth in its articles of incorporation, together with the names and addresses of each of its officers, directors and each stockholder of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners, and the application shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant shall apply to the corporate partner. If the applicant is neither a corporation nor a partnership, the application shall set forth the full name and address of the applicant and be verified by the applicant. The application for massage facility license shall set forth the proposed place of business and the facilities therefor, together with a detailed description of the nature and scope of the proposed business operation.
  - (3) **Information.** In addition to the provisions of Subsection (b)(2), the following information shall be furnished concerning the applicant if an individual; concerning each individual stockholder, officer and director if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership:
    - a. The previous addresses, if any, for a period of one (1) year immediately prior to the date of application and the dates of such residence;
    - b. The date of birth;
    - c. The business, occupation or employment history for the past two (2) years immediately preceding the date of application, including, but not limited to, whether such person previously operated under a similar permit or license in another city in this or another state and whether or not such license was suspended or revoked;
    - d. Whether or not the individual has had a felony conviction involving a crime against morality under Chapter 940 of the Wisconsin Statutes or has had a felony conviction involving a crime against life and bodily security under Chapter 940 of the Wisconsin Statutes.
- (c) **Investigation.** Applications for licenses under this Section shall be referred to the Chief of Police, Building Inspector and Fire Chief, all of whom shall cause an investigation to be made and report their findings and recommendations for the Common Council to the City Clerk. Applicants shall cooperate with any investigation conducted pursuant to the provisions of this Section and shall permit access to the proposed place of business and facilities therefor in conjunction with any such investigation.

**(d) Granting a License.**

- (1) Upon receipt of findings and recommendations for the Council, the Clerk shall report as to the application, findings and recommendations to the General Operations Committee which, in turn, shall report on the same to the Common Council together with its recommendation for action. The Council, in considering whether to grant a massage facility license, shall consider whether it can make affirmative findings as to all or, in its estimation, a sufficiently large number of the following statements:
  - a. The required fee has been paid;
  - b. The application conforms in all respects to the provisions of this Section;
  - c. The applicant has not knowingly made a material misstatement in the application for a license;
  - d. The applicant has fully cooperated in the investigation of his or her application;
  - e. The massage facility as proposed by the applicant would comply with all applicable laws, including but not limited to, the City's building, zoning and health regulations;
  - f. The applicant, if an individual, or any of the stockholders of the corporation, any officers, or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted of any felony crime involving dishonesty, fraud, deceit or immorality as contained in Chapter 940 of the Wisconsin Statutes prior to the date of application;
  - g. The applicant has not had a massage facility license or a masseuse/masseur permit or other similar license or permit denied or revoked for cause by this City or any other City located in or out of this State prior to the date of application;
  - h. The applicant, if an individual, or each of the officers and directors, if the applicant is a corporation, or each of the partners, including limited partners, if the applicant is a partnership, or each member, if the applicant is a limited liability company, is at least eighteen (18) years of age;
  - i. The applicant, if a corporation, is licensed to do business and is in good standing in the state; if a limited partnership or limited liability company, is duly registered with the state;
  - j. The massage facility as proposed by the applicant would comply with the requirements of Section 7-9-2 and insurance requirements of Section 7-9-7.
- (2) The Council may consider any other concern which it or any of its members may deem relevant in considering whether to grant or deny the application. It may defer action in the event it determines clarification or further investigation or information is needed.

**SEC. 7-9-6 APPLICABILITY**

This Ordinance shall not apply to, nor be enforced against, any person who has been issued a license of registration by the Wisconsin Department of Regulation and Licensing pursuant to Ch. 440.98, Wis. Stats - Registry of Massage Therapists and Bodyworkers.

**SEC. 7-9-7 MASSEUSE/MASSEUR -- PERMIT REQUIRED.**

No person shall perform, provide, administer or engage in massage activities or treatments unless he or she has a valid permit issued pursuant to the provisions of this Section. No person issued a permit under this ordinance shall use any title designation other than "masseuse/masseur."

**(a) Application.**

- (1) Fee. Any person desiring to obtain a permit to act as a masseuse/masseur shall make application to the City Clerk for a masseuse/masseur permit. A fee of Twenty-five Dollars (\$25.00) shall accompany the submission of an application to defray the costs of investigation and administration.



- (2) Contents. Any person desiring a masseuse/masseur permit shall file a written application with the City Clerk on a form to be provided by the City Clerk. The application shall be verified by the applicant. Any applicant for a masseuse/masseur permit shall furnish all the information required above in 7-9-5(b) and evidence of education and training requirements as required in Section 7-9-8.
- (3) Investigation. Applications for permits under this Section shall be referred to the Chief of Police who shall cause an investigation to be made of the applicant and report his or her findings to the City Clerk.
- (4) Granting of Permit. Within thirty (30) days of receipt of the application and all information and evidence required therewith, the City Clerk shall grant or deny a masseuse/masseur permit. The City Clerk shall grant a masseuse/masseur permit if he or she makes an affirmative finding as to all of the following:
  - a. The required fee has been paid;
  - b. The application conforms in all respects to the provisions of the ordinance codified in this Chapter;
  - c. The applicant has not knowingly made a material misstatement in the application for a permit;
  - d. The applicant has fully cooperated in the investigation of his application;
  - e. The applicant has not been convicted of a felony crime of immorality as outlined in Chapter 944, Wis. Stats.
  - f. The applicant has not previously had a masseuse/masseur permit or other similar permit or license denied or revoked for cause by the City, the state of Wisconsin, any other state or by any other municipality in this or any other state prior to the date of application;
  - g. The applicant is at least eighteen (18) years of age.
  - h. The applicant meets the education and training requirements for eligibility for a permit set forth in Section 7-9-9.
  - I. The applicant is covered by insurance as required under Section 7-9-8.

(b) **Findings.** Should the Clerk be unable to make affirmative finding to all of the foregoing requirements, or should said Clerk have other concern(s) deemed relevant to the granting thereof, whether or not specifically dealt with in this Subchapter, he or she shall either deny the application or may forward the matter to the General Operations Committee with explanation of its questionable status. Said Committee shall then consider the same and make its recommendation to the Common Council to make the ultimate decision thereon.

#### **SEC. 7-9-8 INSURANCE REQUIREMENTS.**

- (a) No masseuse/masseur permit or massage facility license shall be issued until the applicant has furnished satisfactory proof that a public liability insurance policy is in full force and effect in a company authorized to do business in this state in minimum amounts of Five Hundred Thousand Dollars (\$500,000.00) for any person injured or killed; Five Hundred Thousand Dollars-(\$500,000.00) for the injury or destruction of any property. These policies shall cover the conduct of the masseuse/masseur and the operation of the activities or treatments provided within the massage facility and shall include coverage for off-site activities or treatments as referred in 7-9-4(a).
- (b) No licensee or permittee shall continue to engage in the massage after the above required insurance has lapsed, expired or is otherwise not in full force and effect.

**SEC. 7-9-9 EDUCATION AND TRAINING REQUIREMENTS.**

To be eligible for a permit, an applicant:

- (a) Shall furnish a diploma or certificate of graduation from a recognized school. A recognized school means any school or institution of learning which has for its purpose the teaching of theory, method, profession and work of massage therapy or massage activities or treatments requiring a resident course of study approved by the Wisconsin Department of Regulation and Licensing or the Wisconsin Educational Approval Board pursuant to sec. 39.51, Wis. Stats. The course of study shall consist of not less than five hundred (500) hours in the classroom prior to March 1, 2000, and 600 hours after March 1, 2000. The required and supervised course of study shall include, but not be limited to, anatomy, physiology, massage theory and practice, professional ethics, basic first aid, cardiopulmonary resuscitation, hygiene ethics, school clinics and practical application of technique. A correspondence course of study not requiring actual class attendance shall not be deemed a recognized school.
- (b) If filing an application for a permit on or after March 1, 2000, pass only examinations required by the Department of Regulation and Licensing relating to the practice of massage and bodywork excluding the state jurisprudence exam, with the costs of exam(s) being paid by the applicant/examinee; or
- (c) Present evidence that the applicant has passed an exam that is approved by the Wisconsin Department of Regulation and Licensing, such as the National Certification Exam, and after March 1, 2000 the applicant must also meet the 600-hour educational requirement.

**SEC. 7-9-10 LICENSE OR PERMIT SUSPENSION OR REVOCATION.**

- (a) Grounds for suspension or revocation, depending on the seriousness thereof, and not limited by enumeration thereof, shall include violation(s) of provision(s) of this Chapter, repetitions of situations of need for active enforcement against violations, the change of relevant facts from those existent at time of a licensee's or permittee's original application as to felony conviction for crime against morality or against life and bodily security or change in other pertinent facts, and convictions for violation(s) of provision(s) of this Chapter.
- (b) Any license or permit issued under this Chapter may be suspended not more than thirty (30) days or revoked by the Common Council after due notice and hearing before the Council to determine if grounds for such suspension or revocation exist. The procedure for suspension or revocation shall be substantially in accordance with such procedures in Chapter 125 of the Wisconsin Statutes.

**SEC. 7-9-11 VIOLATIONS.**

It is unlawful for any person:

- (a) To operate a massage facility without having a license therefor as required by Section 7-9-5;
- (b) To act as a masseuse/masseur without having a permit therefor as required by Section 7-9-7;
- (c) Who operates a massage facility to allow or permit persons to act therein as a masseuse/masseur or perform any massage activities or treatments without first having a permit therefor as required by Section 7-9-7;
- (d) To act as a masseuse/masseur within a massage facility which does not have a license therefor as required by Section 7-9-5.

**SEC. 7-9-12 PROHIBITED CONDUCT OF MASSEUSE/MASSEURS, FACILITY OPERATORS AND CLIENTS.**

- (a) It is unlawful for any masseuse/masseur to massage the genital area of any client or the breasts of any female client, or for any operator of a massage facility to allow or permit such massage in such massage facility, or for any client to permit such massage upon his or her body.
- (b) It is unlawful for any operator of a massage facility or any masseuse/masseur to violate any of the provisions of Section 7-9-3
- (c) It is unlawful for any masseuse/masseur to engage in sexual conduct, exposure or gratification, or any other sexual behavior with or in the presence of a client.

**SEC. 7-9-13 PENALTY.**

Any person who violates any provisions of this Subchapter shall, upon conviction, be subject to a forfeiture as prescribed in Section 1-1-7, City Code of Ordinances, for each offense together with costs of prosecution, and in default of payment of such forfeiture and costs, shall be imprisoned in the County Jail until payment thereof, but not exceeding ninety (90) days for each violation. Each day, or portion thereof, during which any violation continues shall be deemed to constitute a separate offense. Conviction for violations of the provisions of this Chapter may serve as grounds for suspension or revocation of license or permit under Section 7-9-10 as well.

**SEC. 7-9-14 SALE OR TRANSFER.**

Upon the sale or transfer of any interest in a massage facility, the license therefor shall be null and void. Any person desiring to continue to operate such massage facility following sale or transfer shall make application therefor pursuant to this Chapter.

**SEC. 7-9-15 EXPIRATION OF LICENSES AND PERMITS.**

All licenses or permits issued pursuant to the provisions of this Chapter shall expire on the last day of June of each calendar year.

**SEC. 7-9-16 EXEMPTIONS.**

This Chapter shall not apply to the following:

- (a) Hospitals, nursing homes, sanitariums or other health care facilities licensed under the State of Wisconsin, and physicians, surgeons, chiropractors, osteopaths or physical therapists licensed or registered to practice their respective professions under the laws of the state.
- (b) Barbershops, barbers, cosmetologists and beauty salons licensed under the laws of the state, provided that such massage activities are within their respective scopes of practice.
- (c) Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment
- (d) Trainers of any amateur, semiprofessional or professional athlete or athletic team while acting within the scope of their employment.
- (e) Reflexologists, practicing the science of reflexology, provided that such massage therapy as is practiced is limited to the feet and hands.
- (f) State registered massage therapists and body workers.

**CHAPTER 10**  
Regulation and Licensing of Pawnbrokers

7-10-1 Regulation and Licensing of Pawnbrokers

**SEC. 7-10-1 REGULATION AND LICENSING OF PAWNBROKERS.**

- (a) **Pawnbrokers.** Except as otherwise specifically provided in this Code, all provisions of Chapter 138.10, Wis. Stats., describing and defining regulations with respect to pawnbrokers, including penalties to be imposed and procedure for prosecution, are hereby adopted and by reference made a part of this Code as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Code. Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made a part of this Code in order to secure uniform State regulation of pawnbrokers.
- (b) **Application and Investigation.** Upon referral of application for registration by the Clerk for investigation, the Chief of Police shall make and complete a prompt investigation of the statements made in the registration form. Following such investigation, the Chief of Police shall notify the General Operations Committee in writing of his approval or disapproval and, if the latter, the reason(s) therefor. The General Operations Committee shall then make its recommendation to the Common Council regarding the granting and issuance of said pawnbroker's license.
- (c) **Annual license Fee.** Upon review by the Common Council of an applicant for a pawnbrokers license, the annual fee, which shall not be pro rated and which shall expire in June of each year, shall be One Hundred Fifty Dollars (\$150.00) and not transferable from one person to another nor one place to another.

## CHAPTER 11

### Bed and Breakfast Regulations and Licensing

7-11-1	Introduction
7-11-2	Criteria and Conditions
7-11-3	Licensing Fees
7-11-4	Application Requirements
7-11-5	Consideration of Issuance
7-11-6	Public Nuisance Violations
7-11-7	Suspension, Revocation and Renewal

#### SEC. 7-11-1 INTRODUCTION.

- (a) **Purpose.** This Chapter is established to enable single-family dwelling units of historic significance to conduct bed and breakfast operations as defined herein. This Chapter is enacted on the basis of the public policy that supports the City of Delavan as a tourist destination for persons interested in architectural and historic significance of the City's single-family structures. The Chapter also focuses on the need to provide an incentive for owners to continue occupancy and maintenance of historic structures. The Chapter emphasizes protection to neighborhoods with the provision of standards that prohibit nuisance and detrimental change in the single-family character of any site proposed for a bed and breakfast operation.
- (b) **Bed and Breakfast Establishment Defined.** A use which is subordinate to the principal use of the owner occupied dwelling unit as a single-family dwelling unit and a use in which transient guests are provided a sleeping room and breakfast in return for payment. Such establishments shall be licensed by the State of Wisconsin Department of Health and Social Services pursuant to HAS 197, Wis. Adm. Code, and Sec. 50.51, Wis. Stats.

#### SEC. 7-11-2 CRITERIA AND CONDITIONS.

- (a) The structure to be used as a bed and breakfast establishment shall be of historic significance. It is the applicant's responsibility to show proof of historic significance to the satisfaction of the Plan Commission.
- (b) No premises shall be utilized for a bed and breakfast operation unless there are at least two (2) exits to the outdoors from such premises. Rooms utilized for sleeping shall have a minimum size of one hundred (100) square feet for two (2) occupants with an additional thirty (30) square feet for each additional occupant to a maximum of four (4) occupants per room. Each sleeping room used for the bed and breakfast operation shall have a separate operational smoke detector alarm, as required in the Delavan Building Code. One lavatory and bathing facility shall be required for every ten (10) occupants, in addition to the owner occupant's personal facilities. The bed and breakfast rooms shall occupy no more than a total of twenty-five percent (25%) of the dwelling unit floor space.
- (c) Two (2) parking spaces for the owner/occupant plus one (1) additional space per room to be rented must be provided.
- (d) Tandem parking is allowed; however, not more than two (2) cars per space shall be allowed.

- (e) All parking spaces shall be graded and paved to City standards, limited to the side or rear yard, and pursuant to zoning code regulations regarding parking.
- (f) Parking stalls shall be provided with low level illumination and adequate sound buffering between the subject structure/parking areas and contiguous residential structures, as determined by the Plan Commission.
- (g) If the applicant is unable to meet Subsections (c), (d), (e) or (f) above, the applicant may request special consideration from the Plan Commission through a site plan review process. The City's intent is not to encourage yards to be destroyed, landscaping removed or the integrity of the neighborhood altered in order to provide parking.
- (h) Identifying signs are permitted. The sign shall not exceed two (2) square feet in area. The sign shall be non-illuminated and unanimated.
- (I) The dwelling unit in which the bed and breakfast takes place shall be the principal residence of the operator/owner and said operator/owner shall live on the premises when the bed and breakfast operation is active.
- (j) Only the meal of breakfast shall be served to overnight guests.
- (k) Each operator shall keep a list of names of all persons staying at the bed and breakfast operation. This list shall be kept on file for a period of one (1) year. Such list shall be available for inspection by City officials at any time.
- (l) The maximum stay for any occupants of a bed and breakfast operation shall be fourteen (14) days.

**SEC. 7-11-3 LICENSING FEES.**

- (a) It shall be unlawful for any persons to operate a bed and breakfast operation as defined and as permitted in this Chapter without first having obtained a conditional use permit and a license. The fee for issuance of a license required under this Chapter shall be Seventy-five Dollars (\$75.00) and collected by the office of the City Clerk. The amount of such fee shall be established by the Common Council and shall be in an amount sufficient to defray the cost of inspections and supervision necessary for the implementation and enforcement of this Chapter. The fees shall be paid at the office of the City Clerk, who shall issue the license on July 1st of each year.
- (b) This Chapter shall not apply to hotels, motels, motor lodges, boarding houses, inns, or rooming houses doing business within the City of Delavan on the date thereof.

**SEC. 7-11-4. APPLICATION REQUIREMENTS.**

Applicants for a license to operate a bed and breakfast shall submit a floor plan of the single-family dwelling unit illustrating that the proposed operation will comply with the City Zoning Code as amended, other applicable City codes and ordinances, and within the terms of this Chapter.

**SEC. 7-11-5 CONSIDERATION OF ISSUANCE.**

After application duly filed with the City Clerk for a license under this division, Plan Commission review and recommendation for a conditional use permit, the Common Council shall hold a public hearing and determine whether any further license shall be issued based upon the public convenience and necessity of the people in the City. In the determination by the Common Council of the number of bed and breakfast operations required to provide for such public convenience and necessity, the Common Council shall consider the effect upon residential neighborhoods, conditions of existing holders of licenses, and the necessity of the issuance of additional licenses for public service.

**SEC. 7-11-6 PUBLIC NUISANCE VIOLATIONS.**

Bed and breakfast operations shall not be permitted whenever the operation endangers, or offends, or interferes with the safety or rights of others so as to constitute a nuisance.

**SEC. 7-11-7 SUSPENSION, REVOCATION AND RENEWAL.**

- (a) Any license issued under the provisions of this Chapter may be revoked by the Common Council for good cause shown after investigation and opportunity to the holder of such license to be heard in opposition thereto; in such investigation the compliance or non-compliance with the state law and local ordinances, the conduct of the licensee in regard to the public, and other consideration shall be weighed in determination of such issue.
- (b) Any license issued is non-transferable.

## CHAPTER 12

### Licensees to Pay Local Claims; Appellate Procedures

7-12-1 Licensees Required To Pay Local Taxes, Assessments and Claims;  
Appellate Procedures

#### SEC. 7-12-1 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 Delavan:
- (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 therein.
  - (2) With respect to licenses other than those described in Subsection (a) herein, the Common Council or its assignee 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 Clerk's decision not to issue a license or permit under this Title on grounds other than those specified in Subsections (a) through (d) above, the applicant may file a request in writing with the Clerk 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 Council shall consider all relevant information and shall render a decision which shall be binding.



## CHAPTER 13

### Weights and Measures

(Created 1-8-2008 Ord RC-243)

7-13-1	Purpose
7-13-2	Application of State Codes
7-13-3	State Contract; Appointment of Inspectors; Compliance Required
7-13-4	Definitions
7-13-5	Weights and Measures License Required
7-13-6	Types of Licenses
7-13-7	Application for License
7-13-8	Issuance of Licenses and Fees
7-13-9	License Term
7-13-10	Enforcement for Non-renewal
7-13-11	Fees Assessment
7-13-12	Violations

**SEC. 7-13-1 PURPOSE.** This section adopts the State of Wisconsin Weights and Measures Regulations and establishes a Weights and Measures Program wherein any person or entity subject to said regulations must obtain a license in order for the City to comply with and recoup the costs of enforcing said regulations. This section is adopted pursuant to the provisions of Chapter 98, Wis. Stats.

**SEC. 7-13-2 APPLICATION OF STATE CODES.** Except as otherwise specifically provided in this section, the provisions of Chapter 98, Wis. Stats. Weights and Measures and Chapters ATCP 90, 91 and 92 of the Wisconsin Administrative Code are hereby adopted and by reference made a part of this section as through fully set forth herein. Any act required be performing or prohibiting by any statute or code incorporated herein by reference is required or prohibited by this section. Any future amendments, revisions or modifications of the statutes and codes incorporated herein are intended to be made a part of this section.

### **SEC. 7-13-3 STATE CONTRACT; APPOINTMENT OF INSPECTORS; COMPLIANCE REQUIRED**

- (a) **State Contract.** In order to assure compliance with the requirements of the State of Wisconsin related to the inspection and certification of weights and measures, the City shall contract with the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, pursuant to 98.04(2), Wis. Stats., in lieu of the establishment of a department of weights and measures.
- (b) **Appointment of Inspectors.** The provisions of the contract set forth in subsection (a), shall provide for the enforcement of the statutes and regulations set forth herein, and the City hereby grants the authority and duties of sealers and inspectors required by this section to the State of Wisconsin Department of Agriculture, Trade and Consumer Protection.
- (c) **Compliance Required.** All persons and entities required to be licensed hereunder shall comply with the enforcement of the statutes and regulations set forth herein; shall comply with the orders and inspections of the inspectors appointed herein, and shall comply with the licensing requirements set forth herein.

**SEC. 7-13-4 DEFINITIONS.**

- (a) **Weights and Measures.** Weights and measures means weights and measures of every kind, instruments and devices for weighting and measuring, and any appliances and accessories used with any or all such instruments and devices, except meters for the measurement of electricity, gas (natural and manufactured) or water when the same are operated in a public utility system. Weights and measures shall include devices used or employed in establishing the size, quantity, extent, area or measurement of quantities, things, produce, payment for services rendered on a basis of weight or measure, and shall include, but not be limited to, commodities, liquid measuring devices, scales, weighting, measuring, price verification systems, timing devices and linear measuring devices.
- (b) **Weights and Measures Program.** The program that includes administration and enforcement of this section, Chapter 98 Wis. Stat., applicable Wisconsin Administrative Code provisions, and any related actions.

**SEC. 7-13-5 WEIGHTS AND MEASURES LICENSE REQUIRED.**

- (a) **License Requirements.** Except as provided in subsection (b), no person or entity shall use, operate or maintain any commercial weights and measures as defined in this section unless the person or entity is licensed by a Weights and Measures License issued pursuant to the provisions of this section.
- (b) **Exemptions.** Sales by a person registered as a Direct Seller, or by a holder of a Farmer's Market, Vendor or Special Event Permit are exempt from licensing under this section, but if any person exempted herein is required by the State to hold a State Certificate of Examination by the Sealer of Weights and Measures, a copy of said Certificate shall be provided to the City with his or her application for said permit.

**SEC. 7-13-6 TYPES OF LICENSES.**

- (a) There shall be five classes of licenses that shall correspond to the type of the business regulated by the weights and measures program and the amount of time necessary for inspection of the weights and measures of that business. The fee for the license shall be uniform for all classes of licenses, in an amount set by the Common Council, and shall not exceed the cost of administering the weights and measures license program.
- (b) The classes of licenses shall be:
  - Class 1, which shall cover large grocers (more than 2 check-out points).
  - Class 2, which shall cover large gas stations (more than 12 fuel meters) and large retailers (more than two check-out points).
  - Class 3, which shall cover businesses that operate vehicle scales, LPG meters and vehicle tank meters, small gas stations (12 or fewer fuel meters), and small grocers (two or fewer check-out points).
  - Class 4, which shall cover small retailers (two or fewer check-out points).
  - Class 5, which shall cover Laundromats and small businesses not elsewhere classified.
- (c) If a person or entity falls into more than one category, the person or entity shall be required to obtain the higher (lower numbered) classification of license.

**SEC. 7-13-7 APPLICATION FOR LICENSE.** An application for a Weights and Measures license shall be made in writing on a form provided by the City Clerk and shall be signed by the owner of the commercial business or by its authorized agent. Such application shall state the type of the business, the type and number of weighting, measuring and scanning devices used by the business, the location of the devices, the number of check-out lanes present on the premises, the applicant's full name, post office address and telephone, and whether such applicant is an individual, partnership, limited liability company, corporation or other entity. If the applicant is a partnership,

the application shall state the names and address of each partner. If the applicant is a corporation or limited liability company, the application shall state the names and addresses of all officers and agents of the applicant, including the registered agent thereof.

**SEC. 7-13-8 ISSUANCE OF LICENSES AND FEES.** Upon compliance with this section, the City Clerk shall determine the class of license to be issued, and shall issue a license to the applicant upon payment of the annual license fee of \$20.00. Each store or other business shall require a separate license.

**SEC. 7-13-9 LICENSE TERM.**

- (a) A license issued under this section shall expire on June 30 of each year. Except as provided in subsection (b), the license fee shall not be prorated for a partial year.
- (b) The initial license issued to a businesses existing on the effective date of this section shall be for the balance of the year 2008, and the license fee shall be one-half the cost of a full-year's license.

**SEC. 7-13-10 ENFORCEMENT FOR NON-RENEWAL.** It shall be the duty of the City Clerk to notify appropriate City officials and to order the immediate enforcement of the provisions of this section in cases involving a failure to renew a Weights and Measures License. A licensee shall be prohibited from engaging in any business involved in weights and measures until such time as a valid license has been obtained under the provision of this section.

**SEC. 7-13-11 FEES ASSESSMENT.**

- (a) Annual Assessment. In addition to the cost of the license, the Common Council shall annually assess fees to each licensee based on the class of license it holds. The total of the fees assessed and collected under this subsection shall not exceed the actual costs of the weights and measures contract between the City and the State.
- (b) Clerk to Prepare Assessment Schedule. The City Clerk shall at least annually prepare a proposed schedule of assessments for each class of license, which shall be based upon the State contract changes, to be submitted to the Common Council. A copy of the propose schedule together with notice of the date and time at which the Common council will consider the assessments shall be mailed to each licensee. If the Clerk fails to prepare the annual schedule or notify the participant, the assessment shall not increase over the prior years assessment.
- (c) Common Council to Determine Assessment. At least ten days after the mailing set forth in subsection (b), the Common Council shall consider the Clerk's proposed schedule of assessments and determine the schedule of assessments on a reasonable basis. The city clerk shall mail to each licensee an invoice for the amount of the fee assessment to the licensee as determined by the Common Council and each licensee shall pay the fee assessed within 30 days after the date the notice was mailed.
- (d) Failure to Pay Assessment. If the assessed fee is not paid within 30 days of the date of mailing of the invoice an additional administrative collection charge of \$20.00 shall be added to the amount due, plus interest shall accrue on the assessment at the rate of 1.5% per month or fraction thereof until paid. To the extent permitted by law, if the licensee is the owner of the real estate where the licensed business is located, any delinquent assessment shall be extended upon the current or the next tax bill as a special charge against the real estate premises for current services. No license shall be issued or renewed under this section if the licensee is delinquent in the payment of a fee assessed under this section.
- (e) Mailing of Notices. Schedules, notices and invoices shall be considered mailed to the licensee when mailed by first class mail, postage prepaid, to the licensee at the licensee's address as shown on the application form
- (f) Change in Ownership. If the ownership of a commercial business licensed under this section is transferred during a license year, the owner of the business as of July 1, of the license year shall be liable and responsible for the payment of the fees assessed under this section.

**SEC. 7-13-12 VIOLATIONS.** In addition to any other remedy, any person who fails to comply with the provisions of this section shall, upon conviction thereof, forfeit not less than \$100.00 nor more than \$250.00 plus court costs. Each day a violation exists or continues shall constitute a separate offense.

**CHAPTER 14**  
**Sidewalk Café and Merchandise Display Permits**  
(Created 03-12-2013, Ord. 330)

- 7-14-01 – Purpose
- 7-14-02 – Definitions
- 7-14-03 – Eligibility Criteria
- 7-14-04 – Permit application and review process and fees
- 7-14-05 – Sidewalk Café and Merchandise Display standards
- 7-14-06 – Alcohol licensing and service of alcohol beverages
- 7-14-07 – Liability and insurance
- 7-14-08 – Revocation or suspension
- 7-14-09 – Appeal
- 7-14-10 – Penalty

**SEC. 7-14-01 – Purpose**

The Business Central Zoning District (“District”) is a unique area that is designed to encourage pedestrian traffic and interaction. In order to further encourage the revitalization of this unique District through the development of social and economic activity, the Common Council finds and determines:

- a. That there exists a need for outdoor eating facilities and merchandise display areas within this District to provide a unique environment for relaxation, social interaction, and food consumption.
- b. That sidewalk cafés and merchandise display areas will enhance the use of the available public rights-of-way, will complement restaurants and retail establishments operating from fixed premises, and will promote economic activity in the area.
- c. That the existence of sidewalk cafés and merchandise display areas encourages additional pedestrian traffic but their presence may impede the free and safe flow of pedestrians. Therefore, a need exists for regulations and standards for the existence and operation of sidewalk cafés and merchandise display areas to ensure a safe environment.
- d. That the establishment of permit conditions and safety standards for sidewalk cafés and merchandise display areas is necessary to protect and promote public health, safety, and welfare.

**SEC. 7-14-02 – Definitions**

- a. Restaurant shall mean an establishment defined in Sec. 254.61(5) Wis. Stats. and whose food and other retail sales excluding the sale of alcoholic and alcoholic beverages are greater than fifty percent (50%) of its gross receipts.
- b. Sidewalk Café shall mean an expansion of a restaurant creating an outdoor dining facility on part of the public right-of-way that immediately adjoins the licensed restaurant premises for the sole purpose of consuming food or beverages prepared.
- c. Area shall mean an expansion of a retail store operation on part of the public right-of-way that immediately adjoins the store for which an occupancy use permit has been issued for the sole purpose of creating an outdoor display area for the store adjacent thereto.

- d. Racks shall mean holders or containers used to display/hold merchandise as well any other merchandise that may be displayed in the designated area.

SEC. 7-14-03 – Eligibility Criteria

- a. The business must be a Restaurant and/or retail store, must be located in the Business Central Zoning District and must occupy first floor space that has direct access to a public sidewalk having a width of not less than eight feet (8'). Only the eligible business to which the permit is issued shall be authorized to operate and use the space as a Sidewalk Café and/or Merchandise Display Area.

SEC. 7-14-04 – Permit application and review process and fees

- a. Application for a permit to operate a sidewalk café or outdoor merchandise display area shall be submitted to the Building and Zoning Division of the Public Works Department and shall include the following information:
  - 1. Completed City application form.
  - 2. A layout, drawn to scale, which accurately depicts the dimensions of the existing sidewalk area (including location of memorial brick area if applicable) and adjacent private property, the proposed location of the sidewalk café or merchandise display area, location of doorways, trees, sidewalk benches, planters, trash receptacles, light poles and other sidewalk obstructions. Also include specific elements that are to be located within the designated café and/or display area including, but not limited to, display racks, tables, chairs, planters, and umbrellas. This layout shall be submitted on eight and one-half-inch by eleven-inch paper, suitable for reproduction.
  - 3. Photographs, drawings, or manufacturer’s brochures fully describing the appearance and dimensions of all proposed racks, tables, chairs, umbrellas, barriers and other objective relating to the sidewalk café or merchandise display area.
- b. The application and site plan shall be reviewed for approval by the Building and Zoning Division of the Public Works Department, the Fire Department and the Police Department. Subject to these approvals, the Building and Zoning Official may approve, approve with conditions and/or restrictions, or deny a permit where necessary to protect the public health, safety or welfare, to prevent a nuisance from developing or continuing, or due to violation of this section, the city code of ordinances, or applicable state or federal law. Final approval of a permit is subject to and its issuance is contingent on the submittal of evidence of public liability insurance coverage in an amount not less than \$1,000,000 and naming the City of Delavan as an additional insured.
- c. Each permit shall be effective for a seven month period commencing April 1 and ending October 31 of each year.
- d. The permit may be transferred to a new owner only for the location and area listed in the permit. The transferred permit shall be valid only for the remainder of the period for which it was originally issued. A new certificate of insurance naming the City of Delavan as an additional insured must be filed with the city before the permit is transferred.
- e. There shall be no application, renewal or permit fee for sidewalk café and/or merchandise display permits.

SEC. 7-14-05 – Sidewalk Café and Merchandise Display standards

The following standards, criteria, conditions, and restrictions shall apply to all sidewalk cafes and merchandise display areas except as otherwise noted. Additionally the Building and Zoning Official may impose additional conditions and restrictions to protect and promote the public health, safety, or welfare, to prevent a nuisance from developing or continuing, and to comply with this section, the City of Delavan code of ordinances, and all applicable state and federal laws.

- a. Sidewalk cafes and merchandise display areas are restricted to the public right-of-way immediately adjacent to the restaurant or retail store to which the permit is issued and may only be operated by the restaurant or retail store to which the permit is issued.
- b. Use of the sidewalk/public right-of-way for this purpose is limited to a seven month period commencing April 1 and ending October 31 of each year. Sidewalk cafes and merchandise display areas shall only be permitted incidental to the operation of a restaurant or retail store located in a building contiguous to the sidewalk and as such hours of operation shall not extend beyond the hours of operation of the respective restaurant or retail store. Additionally sidewalk cafes and merchandise display areas shall not operate after 10:00 p.m. or before 7:00 a.m. The permit may be revoked at any time for any reason in the sole discretion of the City.
- c. Display racks, tables, chairs, umbrellas or other fixtures located in the area designated for the café or merchandise display:
  1. Shall not be placed within two (2) feet of the curb of the street as measured by the closest edge of the table or seat with an occupant seated therein to the street.
  2. Shall not be placed within five (5) feet of fire hydrants, alleys, or bike racks. Shall not be placed within five (5) feet of a pedestrian crosswalk or corner curb cut.
  3. Shall not block designated ingress, egress or fire exits from or to the restaurant, retail store or any other structure.
  4. Shall be readily removable and shall not be physically attached, chained or in any manner affixed to any structure, tree, signpost, light pole, or other fixture, curb, or sidewalk.
  5. In order to not impede the watering of the flowers in the downtown flower baskets, shall be relocated by 6:00 p.m. to allow for a five (5) foot distance from the basket, measured as if the basket was located on the sidewalk.
  6. Shall be removed when the merchandise display area is not in operation or in the case of the sidewalk café when the café is not regularly being used and during the period of (November 1 through March 31) that is not covered under the permit and during which time sidewalk cafes and merchandise display areas are not allowed.
  7. Shall be maintained in a clean, sanitary and safe manner.
- d. Sidewalk cafes and merchandise display areas shall be located in such a manner that provides for and maintains at all times a clear and unobstructed, continuous ADA compliant pedestrian path with a minimum width of not less than five (5) feet. For the purposes of the minimum clear path, traffic signs, trees, light poles and all similar obstacles shall be considered obstructions.

- e. The sidewalk cafe and/or merchandise display area, along with the sidewalk and roadway immediately adjacent to it, shall be maintained in a neat and orderly manner at all times. Debris shall be removed as required during the day and again at the close of each business day.
- f. Plant tubs may be located in the sidewalk café/merchandise display area with the approval of the Building and Zoning Official. Plant tubs shall be maintained in a safe, neat, clean, and presentable manner.
- g. Tables and Chairs shall be “Commercial Grade” with Chairs being constructed to accommodate a weight of at least 250 pounds. Umbrellas and other decorative material shall be made of treated wood, canvas, cloth or similar material that is manufactured to be fire-resistant. No portion of an umbrella shall be less than six (6) feet eight (8) inches above the sidewalk.
- h. Signs to be used in the sidewalk café/merchandise display area shall be in accordance with the City Sign Ordinance. However, the Building and Zoning Official may allow temporary easel signs.
- i. No amplified entertainment shall be allowed in the sidewalk café/merchandise display area unless authorized by the Building and Zoning Official as part of a special event.
- j. A copy of the site plan, as approved in conjunction with the current sidewalk café/merchandise display area permit, shall be maintained on the permittee’s premise and shall be available for inspection by city personnel at all times.
- k. The sidewalk café/merchandise display area permit covers only the public right-of-way described in the permit. Racks, tables and chairs on private property will be governed by other applicable regulations.
- l. The use of a portion of the public right-of-way as a sidewalk café/merchandise display area shall not be an exclusive use. All public improvements, or any public initiated maintenance procedures, shall take precedence over said use of the public right-of-way at all times. The City Administrator, Chief of Police, Director of Public Works or their designee may temporarily order the removal of the sidewalk café/merchandise display area for special events including, but not limited to, parades, sponsored runs or walks, or for public health and safety reasons.
- m. The area encompassing the sidewalk café shall be roped off or otherwise enclosed by a freestanding barrier on all dates and at all times while in use. Acceptable materials for the barrier include, but are not limited to, attractive fence segments, flowers/plants, bollards, artwork and decorative menu boards, subject to the approval of the City of Delavan Building and Zoning Department. Barrier elements shall be connected in such a manner that creates an appearance that the sidewalk café is located within an enclosed area. The barrier element should be designed to allow for it to be closed off from the public when not in use.
- n. The City, its officers and employees shall not be responsible for sidewalk café/merchandise display area fixtures that are relocated or damaged.

SEC. 7-14-06 – Alcohol licensing and service of alcohol beverages

- a. A permittee may sell and serve alcohol beverages in an outdoor sidewalk café only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the sidewalk café is listed on the alcohol beverage license application as being a part of the licensed premises.



- b. Alcohol may be served at sidewalk cafes under the following conditions:
1. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
  2. The retail alcohol beverage license premises description includes the sidewalk café in the description of the licensed premises as an extended area.
  3. The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the sidewalk café.
  4. Alcohol beverages are sold and served by the licensee or the licensee's employees in compliance with the alcohol beverage laws, ordinance and regulations.
  5. Alcohol beverages may only be served at the sidewalk café during those times that the café is authorized to be opened and any to the extent that during those times food service is available through the licensed establishment.
  6. The permittee shall be responsible for policing the sidewalk café area to prevent underage persons from entering or remaining in the sidewalk café, except when underage persons are allowed to be present on the licensed premises under applicable laws.
  7. The permittee shall deliver all alcohol beverages to the table and shall not allow patrons of the sidewalk café to bring alcohol beverages into the sidewalk café from another location within or outside of the restaurant, nor to allow patrons while in the sidewalk café area to walk around while carrying open containers of alcohol, nor to allow patrons to carry open containers of alcohol beverages served in the sidewalk café outside the sidewalk café area.
  8. The bar from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the sidewalk café area.
  9. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the sidewalk café area all containers use for or containing alcohol beverages. No container of alcohol beverages shall be present in the sidewalk café area between 10:00 p.m. and 7:00 a.m.
  10. Signage shall be displayed indicating that alcohol beverages may not be carried outside of the enclosed seating area.

SEC. 7-14-07 – Liability and insurance

- a. No permit shall be issued pursuant to this exception, unless the applicant furnishes to the City Clerk evidence of public liability insurance naming the City as a party insured insuring the City against liability resulting from the uses permitted herein. The coverage shall be in an amount not less than \$1,000,000.00.

SEC. 7-14-08 – Revocation or suspension

- a. The permit issued hereunder is a privilege and not a right. The permit may be revoked at any time for any reason in the sole discretion of the City. A restaurant or retail store shall not permit racks, tables and chairs to be placed on the sidewalk without a permit. A permit is only valid between April 1 and October 31 of each year.

SEC. 7-14-09 – A revocation, suspension, or denial of a permit may be appealed by the permittee to the General Operations Committee (GOC). If the Building and Zoning Official’s decision is appealed, the GOC shall hold a hearing and either grant, grant with conditions, or deny the permit. The permit holder of applicant shall be notified of the GOC appeal meeting and shall have the right to be heard prior to a decision.

SEC. 7-14-10 – Any person, firm or corporation who violates the provisions of this Chapter of the Code shall, in addition to possible revocation or suspension of the permit, be subject to a penalty as provided in Section 1-1-7 of this Code of Ordinances.

## CHAPTER 15 Public Art Permits

- 7-15-01 – Purpose
- 7-15-02 – Definitions
- 7-15-03 – Eligibility Criteria
- 7-15-04 – Location Criteria
- 7-15-05 – Program Criteria
- 7-15-06 – Maintenance Criteria
- 7-15-07 – Permit Application
- 7-15-08 – Permit Review Process
- 7-15-09 – Effects of Denial of Permit
- 7-15-10 – Time Limits on Completion
- 7-15-11 – Termination or Revocation of an Approved Permit

### 7-15-01 – Purpose

To establish a permitting process that will allow for and encourage the installation of Public Art throughout the community. Art contributes to livable, aesthetically pleasing and pedestrian friendly streetscapes. The experience of public art makes a space seem more welcoming. It helps a community remember its past, honor an ideal, and express its values and concerns to future generations. Public art makes a community more livable and more visually stimulating.

Specific goals of Public Art are to:

- 1) Enhance the City's sense of place in the region by providing unique artwork throughout the community in a manner unlike any other place in the area
- 2) Celebrate the City's history and cultural spirit and identity through the creation of art that is accessible to the public
- 3) Create a recognizable icon
- 4) Enhance the appearance and livability of public spaces, through the placement of site-specific art projects that respond to the natural and built landscape
- 5) Enliven public spaces
- 6) Enhance overall quality and identity of the place and/or building
- 7) Strengthen community identity, spirit and collective cultural experience through the placement of public art throughout the City
- 8) Allow local, regional, national and international artists to share their creations with the community
- 9) Stimulate the economic success of businesses
- 10) Attract visitors and leave them with a positive impression and a desire to return
- 11) Create a more livable community by linking arts and everyday life with the objective of making Delavan the place of choice to live, work, recreate and raise a family.

Public Art should be designed to complement the visual experience of those who live, work or visit the City of Delavan. In addition the placement of Public Art throughout Delavan will contribute to the City's economic draw and be an on-going educational tool and tourism draw for the community. By virtue of the effort, the community should become a richer place for residents and visitors.

Through the permitting process, the City is able to (1) ensure that community objectives of Public Art are achieved, (2) address any public health, safety, and welfare concerns that may arise relative to the art media or locations proposed, and (3) verify that public access and long-term maintenance issues are addressed.

#### 7-15-02 – Definitions

- a. **Artist:** For the purpose of this Chapter "Artist" means an individual generally recognized by peers as a professional practitioner of the visual arts as judged by the quality of that professional practitioner's body of work, educational background, experience, past public commissions, and production of artwork. It also may include students or youth who are creating Public Art under the direct supervision of practicing artist/art teacher.
- b. **Alterations:** includes any change to a permitted Public Art, including but not limited to any change to the image(s), materials, colors, or size of the Public Art. "Alteration" does not include naturally occurring changes caused by exposure to the elements or the passage of time. Minor changes that result from the maintenance or repair of the Public Art shall not constitute "alteration." Such minor changes may include slight and unintended deviations from the original image, colors, or materials that occur when the Art piece is repaired due to the passage of time or as a result of vandalism.
- c. **Project Initiation Date:** For the purposes of this Section, "Project Initiation Date" shall be defined as the date on which the first art piece included in the permitted Public Art Project is fully or partially installed on a site.
- d. **Public Art:** Includes works of art in any media that have been planned and executed with the specific intention of being sited or staged in or have the ability to be viewed from the physical public domain, usually outside and accessible to all. Public art includes all forms of visual art originally created by an Artist or under the Artist's direction, whether contemporary or traditional in style that is located outdoors and is visible to the general public. Works of Public Art to be placed in the community may include:
  - 1) **Sculpture and Kinetic Art:** free-standing, wall supported or suspended; in any appropriate material or combination of materials.
  - 2) **Murals and Paintings:** in any appropriate material or variety of materials, with or without collage.
  - 3) **Mosaics:** including tiled composites on walkway, street furniture and wall surfaces.
  - 4) **Water features:** including fountains, waterfalls and decorative pools.
  - 5) **Earthworks:** environmental works in appropriate outdoor sites.
  - 6) **Glass:** including but not limited to ceramics, and lighted glass including neon and plastic.
  - 7) **Functional Art:** including decorative furnishings or fixtures, but not limited to gates, railings, streetlights or seating, if created or decorated by artists as unique elements.

To be considered “Public Art” the art must be located either upon public property or upon private property for which an agreement to which the City is a party is secured and authorizes the “Public Art” subject to the conditions included in the agreement. Whether it is on public or private property “Public Art” must be freely accessed by the general public during the normal hours of operation of the premises upon which the art is located. All Public Art projects must be reviewed by the Plan Commission and approved by the Common Council. Public Art that is not approved by the Common Council under this Chapter shall also be subject to the provisions of the applicable sections of the Zoning Code and any other ordinance that regulates signs and land use including any applicable overlay district(s).

- e. Sponsor (also referred to as Applicant): For the purpose of this Chapter the “Sponsor” shall be any person, firm, corporation or association who applies for and secures a Public Art permit for the purpose of install Public Art as provided for in this Chapter. The Sponsor shall be responsible for ensuring compliance with all requirements and obligation of the permit including but not limited to obligations relating to maintenance of the Public Art and its removal if a permit is revoked or terminated. The Sponsor shall be a party to any and all agreement(s) provided herein.

#### 7-15-03 – Eligibility Criteria

- a. To be considered “Public Art” the art must be located either upon public property or upon private property for which an agreement to which the City is a party is secured and authorizes the “Public Art” subject to the conditions included in the agreement. Whether it is on public or private property “Public Art” must be freely accessed by the general public during the normal hours of operation of the premises upon which the art is located. All Public Art projects must be reviewed by the Plan Commission and approved by the Common Council. The following factors are to be considered in approving “Public Art”:
  - 1) Achievement of the goals of Public Art
  - 2) The appropriateness of the location for Public Art
  - 3) The originality and/or aesthetic quality of the work
  - 4) The appropriateness of the art media selected for the location
  - 5) Appropriateness of the work, including theme and size, to a chosen location, including scale of artwork to the site and obstacles of the site
  - 6) The subject matter is consistent with the goals of Public Art and appropriate for the proposed location
  - 7) The artist has demonstrated in the design, aesthetic and functional coordination with the architecture of the building/buildings, streetscape and/or landscape
  - 8) The proposed maintenance plan and funding level is consistent with “best practices” relative to the type of art media proposed
  - 9) The sponsor of the program has secured the right to locate the Public Art on either public or private property as evidenced by a written agreement that may be subject to successful completion of this approval process

## 7-15-04 – Public Art Location Criteria

- a. Display of Public Art throughout the City is encouraged. There may however be areas that are not appropriate for an art display. The following criteria will be considered in determining whether a proposed location for Public Art should be approved:
- 1) Visibility and public access
  - 2) Public safety
  - 3) Interior and/or exterior traffic patterns
  - 4) Relationship of art to the site's existing or future architectural or natural features
  - 5) Function and uses of the facility or site
  - 6) Future development plans for the area which may affect the public art project
  - 7) Relationship of the proposed work to existing works of art or design elements within the site's vicinity
  - 8) Social or cultural context of the proposed artwork relative to the site and its surrounding environment
- b. When a public art display is considered for a particular site, consideration will also be given as to whether or not public art in such a location has the potential to:
- 1) Express the values, diversity and character of the neighborhood
  - 2) Illustrate the cultural heritage or built heritage or other unique qualities inherent to the site, neighborhood, area or community (such as existing/lost landmarks)
  - 3) Recognize the unique natural settings of shoreline, prairie and wetland present in the City
  - 4) Reinforce spatial networks that link one neighborhood to another
  - 5) Enrich the visitor's experience of the place
  - 6) Enhance the pedestrian experience
  - 7) Inspire new ways of looking at the community
  - 8) Reveal aspects of the social, historical, physical or commercial context of the site, neighborhood, area or community
  - 9) Add to the attractiveness, and therefore, inherent value of the site or area

## 7-15-05 – Public Art Program Criteria

- a. A Public Art Project once approved cannot be altered, as further clarified below, unless an amendment reviewed by the Plan Commission is approved by the Common Council.
- Additionally Public Art, once approved, shall:
- 1) not have any alterations to the permitted public art.
  - 2) not, if attached to a building,

- a. exceed the height of the structure or 100 feet whichever is lower
  - b. extend more than six inches from the building façade
  - c. cover windows, doors, vents or other architectural elements such as cornices and pilasters
- 3) not contain changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).
  - 4) not provide for any compensation from the artist or the City to the property owner. Compensation is herein defined as the exchange of something of value, including, but not limited to money, securities, a real property interest, the barter of goods or services, the promise of future payment, or the forbearance of debt, and is given to or received by said property owner, or a leaseholder with the right to possession of the wall upon which the public art is to be placed, for the display of the public art, or for the right to place the public art on the property. The applicant shall certify in the registration application that no compensation for the display of the Public Art or the right to place the Public Art on the property will be given to or received by the property owner or leaseholder). (However, nothing herein contained is intended to limit or prohibit the compensation of the artist.)
  - 5) not contain any brand name, product name, or abbreviation of the name of any product, company, profession or business, or any logo, trademark, trade name or other commercial message, with the exception of Public Art that is being created to capture “events” (which may include places, businesses, products, people) of historic value or significance to the Delavan area, except as otherwise approved by the Common Council.
  - 6) remain intact for a minimum of five years subject to the following exceptions:
    - a. the property on which the mural is located is sold and the new owner has requested that the agreement be terminated; or
    - b. the structure or property is substantially remodeled or altered in a way that precludes continuance of the Public Art

#### 7-15-06 – Public Art Maintenance Criteria

- a. Except as otherwise provided for in a written agreement, the sponsor of the project shall retain responsibility for maintenance and regular upkeep of the approved Public Art per the maintenance plan reviewed and approved in conjunction with the approval of the Public Art Project. Where appropriate the maintenance plan for the Public Art shall provide for the treatment of the art with an anti-graffiti coating. If, for any reason, a Public Art piece is removed, destroyed, or has deteriorated, the owner on which the Art is located is responsible for removal except as otherwise provided in a written agreement.

## 7-15-07 – Permit application process

- a. A Public Art permit must be secured for all Public Art Installations. No fee shall be charged for this permit. If the installation is not completed per the approved plan, re-inspection fees shall apply.
- b. Application for a permit for Public Art must be completed by the sponsoring person, partnership, corporation, limited liability company or other entity and submitted to the Building and Zoning Division of the Public Works Department and shall include the following information:
  - 1) Completed City application form for a Public Arts permit
  - 2) Project Information on the program including each location (including alternate locations if any). A dimensioned sketch for each location identifying the boundaries within which the Public Art element is to be located. Pictures depicting the relationship of the Public Art element to adjacent buildings and spaces.
  - 3) The overall theme of the Public Art Project and, if applicable, a listing of the specific topics (including alternates if any) that will be addressed in the individual Public Art elements of the project
  - 4) Information on the materials to be utilized for the project and the durability of these materials.
  - 5) Maintenance plan which plan shall include evidence of available funds or a funding source to cover the cost of the maintenance plan as proposed
  - 6) Acknowledgement that agreements must be secured for each location at which Public Art is to be located which agreements shall, at minimum, provide rights to the program sponsor to access the property for maintenance purposes and require the owner of the property to commit to maintaining the Public Art element on the property for a minimum of five (5) years except as otherwise provided for in this Chapter

## 7-15-08 – Permit review process

- a. Once submitted a Public Art permit application shall be reviewed by the Building and Zoning Administrator as follows:
  - 1) The Building and Zoning Administrator shall determine whether the application is complete and whether the proposed project meets the eligibility criteria to be considered a Public Art project. If the Building and Zoning Administrator determines that the application is not complete or does not fulfill the eligibility criteria to be considered Public Art he shall return the application to the Applicant. If the Building and Zoning Administrator determines that the application is complete, he shall so notify Applicant.
  - 2) Upon notifying the Applicant that his application is complete the Building and Zoning Administrator shall review the application and evaluate and comment on whether the Public Art Project as proposed meets the criteria established under the program
  - 3) Upon completion of his review the Building and Zoning Administrator shall then submit the application to the Plan Commission for review and recommendation to the Common Council as to whether the Public Art Permit should be issued.



b. Plan Commission Review and Recommendation

- 1) The Plan Commission shall consider the application at a regular or special meeting open to the public. The Public Art Project Sponsor shall be in attendance to present a summary of the proposal and to answer questions that may arise at the meeting.
- 2) The Plan Commission shall consider the effectiveness of the proposed Public Art Project in meeting the objectives of and criteria for the program and the effect of the proposed project on the health, safety, morals, and general welfare of the surrounding areas and the overall community. The Plan Commission may request further information and/or additional reports from the Building and Zoning Administrator and/or the Sponsor.
- 3) Within 60 days after the public meeting (or within an extension of said period requested in writing by the Applicant and granted by the Plan Commission), the Plan Commission is to submit to the Common Council, a report on its findings as to whether, in the opinion of the Plan Commission, a Public Art permit should be approved for the proposed Public Art project. Said report shall also identify any and all conditions of approval that may be recommended by the Plan Commission.
- 4) If the Plan Commission fails to make a report within 60 days after the adjournment of the public meeting at which this matter was presented (unless extended as provided for in this section) then the Common Council may proceed with the consideration of the Public Art Permit.

c. Common Council Review and Consideration

- 1) The Common Council shall consider the Public Art Application following receipt of the report from the Plan Commission or following the expiration of the 60 day period if no report is filed.
- 2) The Common Council shall consider the Plan Commission's recommendation regarding the proposed Public Art project. The Council may request further information and/or additional reports from the Plan Commission, the Building and Zoning Administrator, and/or the Applicant. The Common Council shall also consider the effectiveness of the proposed Public Art Project in meeting the objectives of and criteria for the program and the effect of the proposed project on the health, safety, morals, and general welfare of the surrounding areas and the overall community.
- 3) The Common Council, in the permitting of a Public Art Project, may impose, in addition to the standards and requirements expressly specified by the Municipal Code, additional conditions which the Plan Commission and Common Council consider necessary to protect the best interests of the surrounding area or the City as a whole.
- 4) The Common Council may approve the Public Art Permit application as originally proposed, may approve the application with modifications (per the recommendations of the Building and Zoning Administrator, the Plan Commission, authorized outside experts, or its own members), or may deny approval of the application.

7-15-09 - Effect of Denial

No application which has been denied (either wholly or in part) shall be resubmitted for a period of twelve (12) months from the date of said order of denial, except if new information is submitted to the Building and Zoning Administrator sufficient to change his recommendation, or, the proof of a change of factors used to deny said application, is found to be valid by the Building and Zoning Administrator.

#### 7-15-10 - Time Limits on Completion

Once a permit for a Public Arts project has been approved, this project, unless an extension is granted by formal action of the Common Council, must commence (“Project Initiation Date”) within 365 days of said approval of the permit by the Common Council, and shall be completed within 730 days of the project initiation date. The failure to initiate or complete the project within the periods set forth herein shall automatically constitute a revocation of the Public Art permit.

#### 7-15-11 - Termination or Revocation of an Approved Permit

- a. Any Public Art Project found not to be in compliance with the terms of this Title and/or the conditions under which a permit for the project was issued under this Title shall be considered in violation of this Title and shall be subject to the penalties set forth under Section 1-1-7 of this Code of Ordinances. A Public Art Permit may be revoked for such a violation by majority vote of the Common Council.
- b. Public Art created or installed under a Public Art permit that has been terminated or revoked must be removed within 60 days of the date of the notice to remove, or sooner based upon a finding by the Common Council that it is a detriment to the public health, safety, or welfare. If said Public Art is not removed within the time period provided in the notice, the City shall have the right, but not the obligation, to either remove or contract for the removal of the non-permitted Public Art media and shall bill the property owner, or other responsible party as provided for in the agreement, for all costs incurred in taking this action. Any costs incurred shall be in addition to the penalties set forth in Section 1-1-7 of the Code of Ordinances.