

**CITY OF MUSKEGO
CHAPTER 12 - LICENSES AND PERMITS**

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**CITY OF MUSKEGO
CHAPTER 12 - LICENSES AND PERMITS**

12.01 LICENSING SALES OF ALCOHOLIC BEVERAGES (Ord. #718 – 07-03-91)

(1) STATE STATUTES ADOPTED.

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

(2) BASIC REQUIREMENTS.

- (a) Occupancy Permit Required. No person on any licensed premises, as defined in this Ordinance, shall conduct any transactions regulated by this Ordinance unless a Licensee holds a valid Occupancy Permit, as may be required, issued by the Municipality. The Occupancy Permit shall be specific in detail as to what area of the premises shall be licensed for the sale of alcoholic beverages. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.
- (b) Seller's Permit Required. No person on any licensed premises, as defined in this Ordinance, shall conduct any transactions regulated under this section unless a licensee holds and maintains a valid Seller's Permit as required under 77.52 WIS. STATS., issued to the premises and licensee described in the license during the period of licensing. Any violation is grounds for suspension or revocation of any license or permit issued under this Chapter.

(3) APPLICATIONS.

A written application for any license or permit by the provisions of this Ordinance shall be on the form(s) provided by the City Clerk-Treasurer. (Ord. #1263 – 09/20/2007)

- (a) Content. All applications other than operator's licenses shall contain all the information required under Section 125.04(3), WIS. STATS., and any other information required by the City Clerk-Treasurer. Operator's license applications shall be on a form prescribed by the City Clerk-Treasurer containing all information deemed necessary, including but not limited to name, residence, age. (Ord. #1263 – 09/20/2007)
- (b) Filing. All applications for licenses and permits to sell alcohol beverages shall be filed with the Clerk of the Municipality in which the premises are located as required by State law. Operator's licenses and licenses issued under Section 125.26(6), WIS. STATS., for a picnic or other gathering lasting less than four (4) days must be filed with the Clerk at least 24 hours prior to granting of the license or permit.

(4) FEES.

- (a) Licenses and permits may be issued by the Municipal Clerk under the authority of the Governing Body after payment of the appropriate fees, which when so issued shall permit the holder to sell, deal or traffic in alcoholic beverages as provided in Chapter 125.
- (b) Fees for the above-noted licenses and permits shall be in such amount as may be established by the Governing Body from time to time by separate resolution.

- (c) Any applicable publication fee and/or application fee and/or investigation fee shall be submitted with the license or permit application as may be established by the governing body from time to time by separate resolution.
- (d) The fees for licenses or permits which are not granted shall be refunded after deducting the application fee and all actual publication fees and investigation fees.
- (e) Fees for partial licensing years may be prorated at the discretion of the Governing Body. In all cases when an alcohol beverage license is issued for a partial year, a minimum fee of \$25.00 and all actual publication fees and investigation fees must be paid.
- (f) Once any license or permit is issued, no return of any payment shall be made regardless of whether the license or permit is used for the entire year.

(5) INVESTIGATION. (Ord. #807 - 8-5-93)

Upon receipt of a license application under the provisions of this Ordinance, the City Clerk-Treasurer shall forward a copy of the application to the appropriate persons to conduct an investigation of the applicant(s) as set forth below. (Ord. #1263 – 09/20/2007)

- (a) All Alcoholic Beverage Licenses. The Police Department, Fire Department, Health Department, and Building Inspector and other persons authorized, may conduct an investigation and inspection of the premises mentioned in the applications, to determine if the premises comply with all applicable regulations, ordinances and laws. The Police Department shall investigate all persons included in the application, both new and renewal, to determine the suitability and character of the applicants.
- (b) Review. The Governing Body may refer any and all licenses to the appropriate committee for review and recommendation prior to action by the Governing Body. (Ord. #1263 – 09/20/2007)

(5.5) PROVISIONAL RETAIL LICENSE. (Ord. #878 - 12-07-95)

- (a) The City Clerk may issue a Provisional Retail License to any person who has applied for a Class A Retail Fermented Malt Beverage License, a Class B Retail Fermented Malt Beverage License, a Class A Retail Liquor License, or a Class B Retail Liquor License and whose license application has been approved by the Common Council except for the failure of the applicant to have completed a Responsible Beverage Server Course as required under §125.04(5)(a)5, Wis. Stats. The Provisional Retail License shall authorize only those activities authorized by the type of retail license applied for and shall only be issued to an applicant who is in the course of completing a Responsible Beverage Server Course as required under §125.04(5)(a)5, Wis. Stats.
- (b) A Provisional Retail License shall expire sixty (60) days after the issuance of the Provisional Retail License or upon the issuance of the Class A Retail Fermented Malt Beverage License, a Class B Retail Fermented Malt Beverage License, a Class A Retail Liquor License, or a Class B Retail Liquor License to the holder, whichever is sooner.
- (c) The City Clerk may revoke the Provisional Retail License if he or she discovers that the holder of the license made a false statement on the application.
- (d) The fee for a Provisional Retail License shall be in such amount as may be established by the Governing Body from time to time by separate resolution.
- (e) No person may hold more than one Provisional Retail License for each type of license applied for by the holder per year.

- (f) No person shall apply for or obtain a Provisional Retail license for purposes of circumventing the license requirements of this Code. A Provisional Retail License shall only be issued to a person who has satisfied all provisions of this Code and whose application for a regular Retail Malt Beverage or Liquor License has been approved by the Common Council, but who cannot obtain such license because of failure to complete the Responsible Beverage Server Course as required under §125.04(5)(a)5, Wis. Stats.

(6) REGULAR OPERATOR'S LICENSE. (Ord. #1263 – 09/20/2007)

(a) Authority to Issue Regular Operator's Licenses.

- 1. Regular operator's licenses may be granted by the Common Council to individuals upon recommendation from the Finance Committee for the purposes of complying with Section 125.32(2) and 125.68(2), WIS STATS., and this Chapter.

(b) Qualifications.

- 1. Any individual applying for an operator's license must meet the following qualifications:
 - a. The individual must be eighteen (18) years of age by the time of issuance.
 - b. The individual must have successfully completed a responsible beverage server training course approved by the Wisconsin Department of Revenue. Individuals are exempted from the training course requirements if they are renewing an existing operator's license, have successfully completed the responsible beverage server training course within the last two years, or have held a retail license, manager's or operator's license anywhere in Wisconsin within the last two years. Section 125.17(6), WIS. STATS.
 - c. Complete an application provided by the City Clerk-Treasurer and payment of the proper fee.
 - d. Subject to requirements of Wisconsin Fair Employment Law, Chapter 111 (more specifically, §111.321, §111.322, §111.335), Wisconsin Statutes and also Wisconsin Statutes §125.04(5).

(c) Investigation.

- 1. The Chief of Police or his/her designee shall conduct a records search of all applicants, new or renewal. The Finance Committee shall not formulate any recommendation until the records search is completed and returned to the City Clerk-Treasurer.
- 2. The Chief of Police or his/her designee shall furnish a written report of the information derived from the records search including a statement as to the following:
 - a. Conviction of a felony within the last five (5) years which substantially relates to the alcohol beverage licensing activity.

b. Conviction of any combination of two (2) or more forfeiture/ordinance/misdemeanor violations of the following, within the last twenty-four (24) months:

1. Any violation related to alcohol;
2. Controlled substances;
3. Resisting arrest/battery to a police officer/obstructing justice;
4. Disorderly conduct if in conjunction with activity at a licensed alcohol establishment.

c. Any other conviction which the Chief of Police or his/her designee deems relevant.

3. Any incomplete, misleading or falsified statement in an application if the incomplete, misleading or falsified statement pertains to either the identification of the applicant or to any matter occurring within five years prior to the date of application may be grounds for denial.

(d) Granting of Regular Operator's Licenses.

1. The City Clerk-Treasurer will submit a list of regular operator's licenses for consideration at each regular Finance Committee meeting for recommendation to the Common Council.

2. If the investigation report includes any matters listed in the preceding section or if the City Clerk-Treasurer deems an appearance by the applicant before the Finance Committee is warranted, the applicant shall be notified in writing that he/she has the right to appear in person before the Finance Committee or respond in writing to the Finance Committee when the Finance Committee considers the application. The notification shall include the date and time of the Finance Committee meeting when the application will be considered. The Finance Committee shall, after meeting with the applicant or reviewing the written response from the applicant, make a recommendation to the Common Council. A recommendation to deny a regular operator's license shall include a statement as to the reason(s) for the denial.

3. The Finance Committee will decide if a three (3), six (6), nine (9), and/or 12 month review is warranted for applicants in violation of Section (c) 2 and 3.

(e) Revocation or suspension of license.

1. Revocation or suspension of regular operator's licenses granted pursuant to this ordinance shall be governed as follows:

a. The Finance Committee may recommend revocation or suspension of any existing regular operator's license to the Common Council following the procedure as set forth in Section 125.12, WIS. STATS.

b. Automatic Revocation. Any regular operator's license issued under this ordinance may be revoked without further proceedings upon the conviction of the license holder, pursuant to Section 125.11, WIS. STATS.

(6.3) PROVISIONAL OPERATOR'S LICENSE. (Ord. #1330 – 09-23-2010)

(a) Authority to Issue Provisional Operator's Licenses.

1. The City Clerk-Treasurer shall have the authority to issue a Provisional Operator's License to individuals who have applied for a Regular Operator's License pursuant to Section 125.17 (5), Wisconsin Statutes.

(b) Issuance of Provisional Operator's Licenses.

1. All requirements pertaining to issuance and eligibility for a Regular Operator's License shall apply to a Provisional Operator's License. However, evidence that the applicant has either completed or is enrolled in the training course required by Section 125.17 (6), Wisconsin Statutes, must be submitted at the time of application.

(c) Qualifications.

1. No Provisional License shall be issued to any individual who:

- a. Has been denied an Operator's License by the Common Council.
- b. Has had his/her Operator's License revoked or suspended within the preceding 12 months.

(d) Expiration.

1. The Provisional Operator's License shall expire sixty (60) days after its issuance or when a Regular Operator's is issued, whichever is sooner. A provisional Operator's License shall not be renewed

(e) Revocation.

1. The City Clerk-Treasurer may revoke a provisional license if it is discovered that the holder of the license made a false statement on his/her application. Notice to the holder of the license shall be mailed and a copy supplied to the police department.

(6.5) TEMPORARY OPERATOR'S LICENSES. (Ord. #1263 – 09/20/2007)

(a) Authority to Issue Temporary Operator's Licenses. Temporary operator's licenses may be granted to individuals by the Common Council pursuant to Section 125.17(4), WIS. STATS., upon recommendation by the Finance Committee for the purpose of allowing said individuals to dispense and serve alcohol beverages under a license issued under Section 125.26(6) or Section 125.51(10), WIS. STATS. No person may hold more than one license of this kind per year.

(b) Granting of Temporary Operator's Licenses. All requirements pertaining to qualifications, investigation and granting of a regular operator's license shall apply to a temporary operator's license.

(6.7) TERMS AND FEES FOR REGULAR, PROVISIONAL, TEMPORARY OPERATOR'S LICENSES. (Ord. #1263 – 09/20/2007)

(a) The fee for regular, provisional, and temporary operator's licenses shall be set by a resolution approved by the Common Council.

(b) Regular operator's licenses issued under this section shall expire biennially on June 30 of each year.

(c) Provisional operator's licenses issued under this section shall expire sixty (60) days after its issuance or when a regular operator's license is issued to the holder, whichever is earlier. Provisional operator's licenses shall not be renewed.

(d) Temporary operator's licenses issued under this section shall be valid for any period from one day to 14 days.

(7) RESTRICTIONS ON GRANTING LICENSES.

- (a) Statutory Requirements. Licenses and permits shall be issued only to those persons eligible under Chapter 125 WIS. STATS. Licenses and permits granted in error shall be void.
- (b) Health and Sanitation Requirements. No retail Class A or Class B alcohol beverage license shall be issued for any premises which has not been approved by Waukesha County Health Department. (Ord. #790 - 4-22-93)
- (c) Delinquent Taxes, Assessments, Claims, et al.
 - 1. No initial or renewal alcohol beverage license shall be issued for any premises or property for which taxes, assessments, forfeitures, or claims for the Municipality are delinquent and unpaid.
 - 2. No initial or renewal license or permit shall be issued under this Code to any person who is:
 - a. Delinquent in the payment of any taxes, assessment, or other claims owed the Municipality.
 - b. Delinquent in the payment of a forfeiture resulting from the violation of any ordinance of the Municipality.
 - c. Delinquent in the payment of any taxes to the State or County.
 - d. Who has any outstanding warrant or capias from any other municipal, state or federal court.
- (d) License Quota. (Ord. #1022 - 04-06-2000)
 - 1. Class "A" Fermented Malt Beverage License. None. (Ord. #1149 - 10-23-2003)
 - 2. "Class A" Retail Liquor Licenses. None. (Ord. #1149 - 10-23-2003)
 - 3. Class "B" Retail Fermented Malt Beverage Licenses. No more than 43 Class "B" Fermented Malt Beverage Licenses shall be issued within any license year.
 - 4. "Class B" Retail Liquor Licenses. The quota is based on the number of "Class B" Retail Liquor Licenses granted or issued in good faith and in force on December 1, 1997 in accordance with Section 125.51 (4)(b)1g, Wisconsin Statutes plus the number of reserve "Class B" retail liquor licenses determined in accordance with Section 125.51 (4)(br), Wisconsin Statutes. The number of reserve "Class B" retail liquor licenses increases in accordance with Section 125.51 (4)(br)2. (Ord. #976, 1-21-99)

The quota is not reduced because all available "Class B" licenses are not issued for one or more licensing years. (Ord. #976, 1-21-99)
 - 5. "Class C" Wine Licenses. "Class C" Wine Licenses shall be issued on the basis of the most recent estimated population received by the City as determined by the Wisconsin Department of Administration Population Estimates forwarded annually to the City of Muskego. Licenses shall be available for issue based on one (1) license per 2,100 population or fraction thereof over 2,100 within any

license year, except that no person licensed under a "Class C" Wine License shall be deprived of such license merely because of the quota.

(8) CONDITIONS OF LICENSE.

- (a) Consent to Inspection. Every applicant obtaining a license thereby consents to the entry of the police or other authorized representatives of the Municipality or the State at any reasonable time for the purpose of inspection and search, and consents to the removal from said premises all things found in violation of Municipal Ordinances or State Law and consents to the introduction of such things as evidence in any prosecution that may be brought for such offenses.
- (b) Safety and Sanitation Requirements. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose being used.
- (c) Sales on Credit Prohibited. No retail licensee shall sell or offer to sell any alcohol beverage to any person on credit except by a hotel to a resident guest, by a restaurant to a patron, a club to a bona fide member, and by grocers and pharmacists who maintain a credit system in connection with other purchases. No licensee shall sell alcohol beverages on a passbook or store order, or receive goods, wares, or merchandise in exchange for alcohol beverages.
- (d) Orderly Conduct Required. Every licensed premises shall be conducted in an orderly manner and no disorderly, riotous or indecent conduct shall be allowed.
- (e) Gambling Prohibited. Gambling shall not be permitted on a licensed premises, unless authorized by State law. Slot machines or other devices of chance are prohibited and shall not be kept on the premises, unless authorized by State Law.
- (f) Repealed (Ord. #1018 - 03-09-00)
- (g) Sale to Intoxicated Persons Prohibited. No licensee, agent, operator or server shall sell, give, procure or otherwise furnish any alcohol beverages to an intoxicated person.
- (h) Underage Persons. No licensee shall employ any underage person to serve, sell, dispense, or give away an alcohol beverage unless authorized by State Law or the General Codes of the Municipality. The current and future provisions of Section 125.10(2), WIS. STATS., and Sections 125.07(4)(a), (b) or (bm), 125.08(3)(b) and 125.09(2), are adopted and made a part of this section by reference. A violation of any such provision shall constitute a violation of this section. Any future amendments, revisions, modifications or additions of the statutes incorporated herein are intended to be made part of this ordinance in order to secure uniform statewide regulations of alcohol beverages in this state.
- (i) Controlled Substance Use Prohibited. Any licensee, partner, agent, authorized representative or employee who is convicted of the use, possession, delivery or intent to deliver, any controlled substance defined and regulated under Chapter 161, WIS. STATS., may be considered grounds for the revocation or suspension of any license provided for in this ordinance.

(9) MISCELLANEOUS GENERAL PROVISIONS.

- (a) Transfer of Licenses.

1. The transfer of every alcohol beverage license shall be governed by 125.04(12), WIS. STATS.
2. No transfer of operator's license is permitted.
3. If the transfer is approved by the Governing Body pursuant to 125.04(12)4, all conditions set forth under this Code shall be complied with.
4. Failure to conform with the terms of license transfer shall be grounds for denial, suspension or revocation of license.

(b) Non-Renewal of Licenses.

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

(c) Violations by Agents and Employees.

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

(d) Closing Hours. (Ord. #1350 – 02-02-12)

Closing hours shall be as set by State Statute.

(e) Local Option.

The holder of a Retail "Class B" Liquor License shall be permitted to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises and in the original packages or containers in multiples not to exceed four (4) liters at any one time and to be consumed off the licensed premises. Off premise sales shall cease at midnight of each day. It is intended by this Section that the packaged sales from Class "B" licensed premises will not be permitted after midnight under the option granted herein.

(10) REVOCATION AND SUSPENSION OF LICENSES. (Ord. #1263 – 09/20/2007)

- (a) Whenever the holder of any alcohol beverage license under this Ordinance violates any portion of this ordinance, proceedings for the revocation or suspension of the license may be instituted in the manner and under the provisions established under Chapter 125.12, WIS. STATS. In addition, the Governing Body, by its own motion by adoption of a resolution may begin proceedings for the revocation or suspension of such license.
- (b) Whenever the Governing Body or the Municipal Clerk, as agent thereof, is made aware of an incompatibility in the operation of a licensed premises in relation to its surrounding or nearby environment, or a licensed premises is in violation of any condition established,

or required at the issuance of the license or of this Code, proceedings for the purpose of revoking, establishing new conditions, or continuing the license under previous conditions will be initiated under the same procedures as provided in sub. (a).

- (c) Automatic Revocation. Any license or permit issued under this ordinance may be revoked without further proceedings upon the conviction of the licensee, agent, employee or representative thereof, pursuant to Section 125.11, WIS. STATS.

(10.5) (Ord. #862 - 03-23-95)

Additional Regulations Regarding Restrictions, Non-Renewal, Cancellation, Revocation and Suspension of Licenses. In addition to requirements of all other rules, laws and regulations of the State of Wisconsin and this municipality, licenses are subject to the following requirements:

Any license granted or issued pursuant to the general ordinances for this municipality shall be subject to further regulation or restriction as may be imposed by the governing body of the municipality, by amendment to this section or by the enactment of a new ordinance.

Further, the governing body of the municipality or any committee, if authorized by the governing body, is specifically authorized to impose reasonable conditions upon any alcohol beverage license granted or issued.

If any licensee shall fail or neglect to meet the requirements imposed by such restrictions and regulations or the conditions imposed by the municipality, or any committee, if authorized by the governing body, his or her license may be revoked, not renewed, suspended or canceled in accordance with this section.

In the case of revocation, non-renewal, suspension or cancellation of any license for any violation of any provision of this ordinance or violation of any condition imposed by the governing body of the municipality or any committee, if authorized by the governing body, or by the Court or for any reasonable cause, no refund shall be made of any part of the license fee.

The following situations may be grounds for cancellation, suspension, revocation or non-renewal of licenses in accordance with the provisions of this section and the laws of the State of Wisconsin:

- 1) A license is not used within 365 days of the original issuance to an applicant unless otherwise provided under Special Conditions on said license, or
- 2) When, at the request of the owner of the licensed premises, any licensee's usage of said premises is discontinued for 60 days or the remainder of a license period, whichever is less, or
- 3) Any licensed premises, for a period of 120 days, is being used for a purpose other than for the purpose of serving alcohol beverages, unless otherwise approved through special conditions.

(11) PENALTIES.

Any person, firm, corporation or the employee or agent of any licensee under this ordinance, who shall violate any provisions of this Code or Chapter 125, WIS. STATS., shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

12.02 (Deleted per Ord. #1181 - 11-18-2004)

12.03 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS (Ord. #1308 – 12-03-09)

(1) PURPOSE.

This chapter is intended to protect against criminal activity, including fraud and burglary, to minimize the unwelcome disturbance of citizens and the disruption of privacy and to otherwise preserve the public health, safety and welfare by regulating, controlling and licensing door-to door solicitors and peddlers as well as other transient merchant trade.

The regulations contained in this chapter are not intended to regulate speech by any person, but merely regulate the activities of those individuals selling or offering for sale merchandise or requesting contributions for a charitable purpose.

It shall be unlawful for any Peddler, Solicitor or Transient Merchant to engage in any sales or solicitation within the City of Muskego without being issued a license for that purpose as provided herein except those individuals that are exempt as defined in Section (3).

(2) DEFINITIONS. (As used in this chapter.)

- (a) "Peddler" means a person who goes from place to place within the City offering for sale property which he/she carries.
- (b) "Solicit" and "Solicitation" means and includes any one or more of the following:
 - 1. Selling or offering for sale, or taking or attempting to take orders for the sale of goods or services of any kind;
 - 2. Selling or offering for sale, or taking or attempting to take orders for books, magazines, periodicals, newspapers and every other type or kind of publication;
 - 3. Requesting contributions, directly or indirectly, on the plea or representation that such contributions will be used for a charitable or religious purpose.
- (c) "Transient Merchant" means a person who temporarily engages in the retail sale of merchandise at a fixed location in the City.
- (d) "Charitable Organization" means any benevolent, philanthropic, patriotic, social service, welfare, educational, civic, cultural, religious (when soliciting), or fraternal person, partnership, association or corporation.
- (e) "Contribution" means and includes alms, food, clothing, money, property, financial assistance or other thing of value. A contribution, as defined herein, shall also include a sale or offer to sell any book, card, magazine, membership, merchandise, subscription, ticket or other thing in connection with which an appeal is made of any charitable purpose.
- (f) "Sales Event" is an event during which numerous independent persons, businesses or firms are gathered together within a specific area to offer various types of goods for sale to the general public. A sales event includes one-time events as well as events held on a periodic basis. "Sales Events" shall include events organized by a local sponsor and held on a regular basis if the event involves any independent seller or dealer who does not attend and sell at every event. Events which typically will be defined as "Sales Events" include, but are not limited to, flea markets, craft fairs and any other events in which various independent exhibitors offer a variety of goods for sale.

(3) EXEMPTIONS.

No license shall be required by the City of Muskego as provided by this Ordinance of the following persons or categories of persons. All other provisions of this chapter must be complied with.

- (a) Persons selling personal property at wholesale to dealers in such articles.
- (b) Children under 18 years of age who are residents of the City.
- (c) Persons delivering to regular customers on established routes.
- (d) Waukesha County Residents, farmers or truck gardeners offering to sell products of the farm or garden occupied and cultivated by them.
- (e) Sales required by Statute or order of the Court.
- (f) Bona fide auction sales conducted pursuant to law.
- (g) Any church, fraternal or civic organization whose principal location is within the city limits of Muskego, including the Muskego Community Festival.
- (h) Any person exempt by Section 440.51 of the Wisconsin Statutes (Statewide license for ex-soldiers).
- (i) Religious organizations. The exemption does not pertain to a religious organization that is soliciting.
- (j) Political organizations.

(4) APPLICATION FOR A LICENSE.

A sworn, written application for a license under this section shall be filed with the City Clerk-Treasurer on a form provided by the Clerk's office. The form shall require the necessary information from the applicant as the Police Department shall need for the effective enforcement of this section and safeguarding of the residents of the City from fraud, misconduct or abuse. Applicants shall present a valid Driver's License at the time the application is submitted, or some other proof of identity as may be reasonably required.

- (a) Peddlers and Solicitors. The applicant who is the prospective licensee must obtain a license in his/her own name. The prospective licensee must further obtain a permit for each individual person peddling or soliciting.. The prospective licensee and each person peddling or soliciting under the licensee is required to remit fees as set forth in Section 5.
- (b) Transient Merchants. The applicant who is the prospective licensee must obtain a license in his/her own name. The prospective licensee is required to remit fees as set forth in Section 5. Applicants for a Transient Merchant license must contact the Community Development Department to determine if review and approval is needed by the Plan Commission. The Clerk-Treasurer will not issue the license until such approval is obtained.

Any sales to be conducted on property governed by the Parks and Recreation Department must comply with Chapter 26 of the Municipal Code of the City of Muskego.

(5) FEES.

- (a) Every applicant for a license under this section shall pay a daily fee or the annual fee as set by a resolution approved by the Common Council.

- (b) The annual fee shall be assessed on a calendar year basis. On or after July 1, the amount of the annual fee for a license shall be one-half of the amount for the remainder of the year except for an application for a Transient Merchant. The annual fee established for a Transient Merchant license shall be the same no matter when the application is submitted or how long the licensee operates.
- (c) An investigation fee for each prospective Peddler, Solicitor or Transient Merchant shall be paid at the time the application is submitted. The fee charged shall be set by a resolution approved by the Common Council.

(6) CHARITABLE ORGANIZATIONS

Any organization defined as a "Charitable Organization" shall file a sworn, written application with the City Clerk-Treasurer on a form provided by the Clerk's Office. The form shall require the necessary information from the applicant as the Police Department shall need for the effective enforcement of this section and safeguarding of the residents of the City from fraud, misconduct or abuse.

- (a) Charitable organizations are exempt from payment of the license fee except for the investigation - fee for each representative of the organization. The fee charged shall be based on the actual costs associated with the investigation and is nonrefundable.
- (b) Proof of tax-exempt status must be furnished to the City Clerk-Treasurer.

(7) INVESTIGATION AND ISSUANCE.

- (a) Upon receipt of each application, it shall be referred to the Chief of Police who shall immediately institute such investigation of the applicant's business and moral character as he/she deems necessary for the protection of the public good and shall endorse the application in the manner prescribed in this section within 72 hours after it has been filed by the applicant with the Clerk.
- (b) The Police Chief shall not endorse a license applicant for any of the following reasons, but shall not be limited to them:
 - 1. The application contains any material omission or materially inaccurate statement.
 - 2. The applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitation.
 - 3. The applicant failed to comply with any applicable provision of Sec. (4) above.
- (c) If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the City Clerk-Treasurer, who shall notify the applicant that his application is disapproved and that no license will be issued.
- (d) If as a result of such investigation, the applicant's character and business responsibility are found to be satisfactory, the Chief of Police shall endorse on the application his/her approval and return the application to the City Clerk-Treasurer, who shall issue the license. Such license shall contain the signature of the issuing officer and shall show the name of said licensee, the type of license issued, the license fee paid, the date of issuance and expiration. Each Peddler, Solicitor or Transient Merchant must secure a

personal license. No license shall be used at any time by any person other than the one to whom it is issued. The Clerk-Treasurer shall keep a record of all licenses issued.

(8) LOUD NOISES AND SPEAKING DEVICES.

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

(9) USE OF STREETS.

No licensee shall have any exclusive right to any location in the public streets, nor shall he/she be permitted a stationary location thereon, or be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. The judgment of a police officer, exercised in good faith, shall be conclusive as to whether the area is congested and the public impeded or inconvenienced.

(10) EXHIBITION OF LICENSE.

Licensees are required to exhibit their certificate of license at the request of any citizen. Any person licensed herein, upon the demand of any police officer, shall exhibit his/her license and certify that he/she is the person named therein.

(11) PROHIBITED PRACTICES.

A licensed or exempt Peddler or Solicitor shall be prohibited from: calling at any dwelling or other places between the hours of 8:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

(12) DUTY OF CITY TO ENFORCE.

The City police shall require any person seen peddling or soliciting, and who is not known by such officer to be duly licensed, to produce his/her license and shall enforce the provisions of this section against any person found to be violating the same.

(13) RECORDS.

The police department shall report to the City Clerk-Treasurer all convictions for violation of this section, and the City Clerk-Treasurer shall maintain a record for each license issued and record the reports of violation therein.

(14) REVOCATION OF LICENSE.

- (a) Licenses issued under this section may be revoked by the Common Council after notice and hearing, for any of the following causes:
 - 1. Fraud, misrepresentation, or incorrect statement contained in the application for license.

2. Fraud, misrepresentation or incorrect statement made in the course of carrying on business as a Solicitor, Peddler, or Transient merchant, .
3. Any violation of this section.
4. Conviction of any crime or misdemeanor.
5. Conducting business as a Peddler, Solicitor, or Transient Merchant, as the case may be in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(b) Notice of the hearing for revocation of a license shall be given by the City Clerk-Treasurer, in writing, setting forth specifically the grounds of complaint and time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee's last known address at least 5 days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least 3 days prior to the date set for hearing.

(15) APPEAL.

Any person aggrieved by the action of the police or the City Clerk-Treasurer in the denial of a permit or license as provided in sub. (7), may appeal to the Common Council. Such appeal shall be taken by filing with the Common Council, within 14 days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The Common Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in sub. (14) for notice of hearing on revocation.

(16) REAPPLICATION.

No licensee whose license has been revoked shall make further application until at least 6 months have elapsed since the last previous revocation.

(17) EXPIRATION OF LICENSE.

All annual licenses issued under this section shall expire at midnight on December 31. Other than annual licenses shall expire at midnight on the date specified on the license.

(18) SALES EVENTS.

The individual exhibitors involved in a sales event, as defined in Subsection (2)(f), shall not be required to obtain individual licenses as provided in this section, provided, however, that the following conditions are complied with:

- (a) The person organizing the event, or an agent if the event is being organized by a corporation, shall obtain a sales event license from the City Clerk-Treasurer of the City of Muskego.
- (b) In order to obtain a sales event license, the applicant must file a sworn, written application with the City Clerk-Treasurer on a form to be furnished by the City Clerk-Treasurer. The form shall require the necessary information as the Police Department shall need for effective enforcement of this section and safeguarding of the residents of the City from fraud, misconduct or abuse.

- (e) The applicant must obtain a separate license for each day that the sales event takes place.
- (d) Upon receipt of the application, the application shall be referred to the Chief of Police for investigation pursuant to Subsection (7).
- (e) The applicant or a sales event licensee shall pay a daily fee for each day that the sales event takes place as set by a resolution approved by the Common Council.

(19) PENALTY

Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.

12.04 DANCE HALLS

(1) DEFINITIONS.

"Public Dance" or "Public Ball" shall mean any dance or ball to which admission can be had by the public generally upon payment of a fee or by the purchase, possession or presentation of a ticket or token; or in which a charge is made for caring for clothing or other property; or any other dance to which the public generally without any restriction may gain admission with or without payment of a fee; or any dance operated for profit; or any dance or dancing conducted or permitted upon any premises licensed for the sale of fermented malt beverages or intoxicating liquor, whether or not any charge is made therefore.

"Public Dance Hall" or "Public Ballroom" shall mean any room, place or space at which a public dance or ball may be held, or any premises licensed for the sale of fermented malt beverages or intoxicating liquor where dancing by the public is conducted or permitted, or a hall or academy in which classes in dancing are held and instructions in dancing given for hire, except bona fide instruction in dancing given to children not over 17 years of age.

(2) LICENSE REQUIRED. (Ord. #584 - 12-18-97)

No person shall hold any public dance or public ball within the City until the dance hall in which the same may be held shall first have been duly licensed for such purpose. The application for such license shall be filed with the City Clerk on the form supplied by the City Clerk.

All such applications shall be accompanied by the fee fixed by this section for such license. If such license is denied, such fee shall be returned.

No person shall conduct any public dance in the form or manner commonly known as "taxi dance" and no license shall be issued for any public dance to be conducted in the form or manner commonly known as "taxi dance".

(3) ISSUANCE OF LICENSE.

Whenever any applicant for a license shall have complied with all the conditions and regulations herein contained relative to the filing of his application, the City Clerk shall forward such application to the Common Council at the next regular or special meeting. Such application shall be referred to the Finance Committee who shall inspect the premises for which such license is applied for and report back to the Council and thereupon such license shall be granted or denied by the Council. Upon the granting of any license, the same shall thereupon be issued by the City Clerk.

Each license granted hereunder shall expire on July 1 and the license shall be posted in a conspicuous place within the hall in which the dance is held.

The licensee shall comply with this section and any rules or regulations of the State of Wisconsin.

(4) CLASSIFICATION OF LICENSES.

Classification as to types of licenses: Nontransferable licenses for public dances shall be issued for the following 4 divisions or classification, namely, Class "A" license, Class "B" or Class "C" and "Special Permit" license.

- (a) Class "A" License. A Class "A" license is required for the premises in which a public dance is held where a charge is made for admission or where admission is by means of the purchase, possession or presentation of a ticket or token or where the dance is advertised as such and where an orchestra is employed to furnish the dance music.
- (b) Class "B" License. A Class "B" license is required when dancing is incidental to such other business conducted on the premises used for dancing and where no charge, either directly or indirectly, is made for admission, and such dancing is not advertised as such and no orchestra or musicians are employed to furnish the music for such dancing.
- (c) Class "C" License. A Class "C" license is required when a non-profit, fraternal, church or school organization conducts a dance on any premises not holding a Class "A" or Class "B" license. A Class "C" license shall be subject to all other provisions of this section with the exception that no fee shall be required to obtain a Class "C" license.
- (d) Special Permit License. A "Special Permit" license may be granted to hold the number of public dances listed on the application in any structure or premises. Such "Special Permit" license shall be subject to all other provisions of this section, except that the requirement in (3) above which requires Common Council and Finance Committee approval shall not apply if said application is for one public dance. The Finance Committee may grant and direct the Clerk-Treasurer to issue said "Special Permit" license for one public dance, except, if complaints are on file at the Police Department pertaining to the applicant, the Finance Committee shall submit application to the Common Council for approval prior to granting the license. (Ord. #905 - 10-03-96)

(5) LICENSE FEES.

The following schedule of license fees for the 4 classes of dance hall license shall apply:

- (a) Class "A" license.....\$25.00 per year
- (b) Class "B" license.....\$10.00 per year
- (c) There shall be no fee for a Class "C" license.
- (d) "Special Permit".....\$10.00

(6) PREMISES TO COMPLY WITH REGULATIONS.

No license for a public dance shall be issued until it shall be found that the hall complies with and conforms to all ordinances, health and fire regulations of the City and of the State, is properly ventilated, supplied with sufficient toilet conveniences, and is a safe and proper place for the purpose for which it is used.

All public dance halls shall be kept in a clean and sanitary condition. All stairways and outer passages and all rooms connected with the hall shall be kept open and well lighted. The Finance Committee or any police officer or Mayor may cause the dance hall to be vacated whenever any provision of this section is violated.

(7) REVOCATION.

The license of any public dance hall may be revoked by the Council upon violation of this section.

(8) RULES AND REGULATIONS.

The following rules and regulations shall govern the conduct, operation and management of all public dances:

- (a) No person who is the proprietor of any dance hall or who conducts, manages or is in charge of any dance shall permit the use of intoxicating liquor in violation of law, the presence of intoxicated persons, or the presence of any children of 17 years of age or under unaccompanied by their parent or lawful guardian.
- (b) No live music shall be furnished or played during the hours the premises are required to be closed. In the event of a conflict between the state law and city ordinances applicable to closing hours, the state law shall apply. (Am. Ord. 122)
- (c) Idlers or loiterers shall not be permitted to remain either in a public dance hall or on the premises on which it is situated.

(9) PAYMENT OF FEES.

All fees for licenses as provided in this section shall be paid to the City Treasurer and retained by the City for the administration, execution and enforcement of this section.

12.05 AMUSEMENT PARKS.

(1) LICENSE REQUIRED.

No person shall operate an amusement park within the City without a license obtained hereunder.

(2) APPLICATION.

Application for a license hereunder shall contain such information as shall be prescribed by the Common Council on forms supplied by the City Clerk. The application, among other things, shall describe the location of the proposed amusement park, the name of the owner thereof, and if a corporation the officers of such corporation, and a schedule of the liability and property damage insurance in effect on such premises and amusement park operation.

(3) INVESTIGATION.

Upon filing of an application hereunder, the City Clerk shall refer the same to the Police Department, the Health Officer, and the Building Inspector for investigation of the premises and the applicant to determine whether the premises and the applicant are suitable for the operation of an amusement park. Such officers shall report thereon to the Common Council for action on the application.

(4) LICENSE FEE.

The fee for a license hereunder shall be \$100 per year or part thereof. Said fee shall be filed with the City Clerk at the time of application and shall be returned to the applicant if the license is denied.

(5) TERM OF LICENSE.

Any license issued hereunder shall expire on June 30 next after issuance.

(6) PROHIBITED OPERATION.

No amusement park shall be operated so as to unreasonably disturb the public peace and good order or affect adversely the health, safety, welfare or morals of the community or any portion thereof by reason of excessive or uncontrolled noise, odors, dust, dirt or waste materials, or by reason of the hours of operation thereof, or otherwise.

(7) REVOCATION.

Any license granted hereunder may be revoked by the Common Council for violation of this section upon 10 days' notice to the licensee. During such 10 days, the licensee may petition the Common Council for a public hearing upon the revocation, and after such hearing the Common Council shall either confirm, modify or rescind the revocation.

12.06 TAXICABS (Ord. #946 - 9/18/97)

(1) REGULATION OF TAXICABS.

- (a) **GENERALLY.** No person, firm or corporation shall engage in the business of operating taxicabs, limousines or other vehicles for transportation of persons for hire if their business is located within the City of Muskego, or the taxicabs, limousines or other vehicles for hire are kept in the City, without having a valid license from the City of Muskego for each taxicab, limousine or vehicle operated. Busses are excluded. (Ord #971-10-01-98)
- (b) **APPROVAL OF FINANCE COMMITTEE.** Applications for licenses for operation of taxicabs and other public vehicles under this Chapter shall be approved by the Finance Committee before a license is issued. The Finance Committee shall require the applicant to furnish proof that public convenience and necessity require his licensing. The applicant shall also file with his application the number of vehicles to be operated under the license, and the data shall be filed with the Clerk-Treasurer. If an applicant desires to add vehicles or to make a change in the vehicle operated under vehicles or to make a change in the vehicle operated under the license, he shall make and file any additions or substitutions with the Clerk-Treasurer. The Finance Committee, on receipt of the application shall fix a date for the hearing thereof and shall notify the applicant of the date.
- (c) **APPLICATION.** Application for license to operate public vehicles, taxicabs or automobiles for hire upon the streets of the City shall be made by the owner of the public vehicle, taxicab or automobile upon blanks to be furnished by the Clerk-Treasurer; and such application shall contain the full name, address, and date of birth of the owner of the public vehicle, taxicab or automobile, have the name of the insurance company carrying the insurance, the policy numbers or number, and the amount of the insurance carried, and such application shall be subscribed and sworn to by the applicant before the Clerk-Treasurer. The Police Department shall conduct an investigation of all applicants, both new and renewal, to determine the suitability and character of the applicant, and shall submit a written police report to the Finance Committee. The fee for such police report shall be as from time to time established by resolution. After the Finance Committee has held a hearing on the application and has recommended that a license be granted, then upon payment of the license fee, as from time to time as established by resolution, to the City Clerk-Treasurer with the application, the license shall be issued by the City Clerk-Treasurer and when so licensed, there shall be delivered to the licensee a license card containing the official license number of the license.
- (d) The license shall annually expire on December 31, and the fee for the privilege of engaging in the taxicab business shall be as from time to time established by resolution.

(2) INSURANCE REQUIRED

- (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-Treasurer a certified copy of the commercial automobile liability policy for the vehicles for which licenses are sought, said policy issued by a company admitted to do business in the State of Wisconsin, paying on behalf of 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 to one (1) person and Three Hundred Thousand Dollars (\$300,000.00) for injury to more than one (1) person caused by the operation of said vehicles in the city of Muskego.

- (b) In consideration of issuing, said license each taxicab insurance policy shall contain a provision that the same may not be cancelled 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-Treasurer 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.

(3) INSPECTION REQUIRED (Ord. #1322 – 7-01-2010)

- (a) No vehicle shall be licensed until it has been annually examined by an automobile repair facility that has been approved by the police department. Refusal to permit inspection of a vehicle shall be cause for suspension of the taxicab's or taxicab driver's license. Each vehicle shall be inspected to ensure that it is safe for the transportation of passengers, clean, of good appearance and well painted. If such examination and inspection reveals that the vehicle does not comply with any of the provisions of this section, no license shall be issued.

No taxicab shall be licensed until the taxicab owner has provided the City of Muskego with documentation from an automobile repair facility showing that:

1. The horn, footbrake, windshield, rear vision mirror, fenders, exhaust system, windshield wipers, emergency brake, directional signals, speedometer, license lamps, tires, headlamps, stop lamps and tail lamps are in legal working order, as required by the Wisconsin Motor Vehicle Code;
 2. The taxicab is in generally safe, sanitary and reliable condition.
- (b) 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 of any and all liability arising from any unsafe, unsanitary, unreliable or illegal conditions existing in this 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 Muskego, the Muskego Police Department or any employee or agent of the city to any person.
 - (c) Any police officer of the City of Muskego may, at all reasonable time, inspect any taxicab under such taxicab business license and may prohibit the use of any cab which is unsafe or not in proper repair.

(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.
- (f) Posting Rates. Any person operating a taxicab shall, at all times, prominently post and display in the taxicab, so they are visible to the passengers therein, the rates of fares for the use of the cab.
- (g) Marking. Every taxicab shall be distinctly marked on two (2) sides, in letters not less than one and one-half inches (1-1/2") n height, with the word "Taxicab" together with the licensee's name.

(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.

(6) TAXI DRIVER'S LICENSE

No person shall drive a taxicab unless he has secured a license therefor as provided in this chapter, in addition to the state chauffeurs license. The annual fee for a taxicab driver's license shall be as from time to time established by resolution. No such license shall be issued to any person who is not competent to operate a motor vehicle or who is not familiar with the traffic laws and ordinances. The Finance Committee of the Council shall examine each applicant for a taxicab driver's license to determine the competency of the applicant. No such license shall be issued except on certificate of the Committee that the applicant has demonstrated his ability to operate a motor vehicle as required in this Chapter, and that such applicant is a person of good character and moral standing. The Council may revoke any taxicab driver's license for repeated violations of traffic laws or ordinances or of any ordinance or law which might reflect adversely on the driver's character, reputation or moral standing.

(7) 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, or as is stated on the rate card posted in the taxicab.

(8) REVOCATION OF LICENSE

- (a) Revocation. Licenses granted under this Chapter may be suspended or revoked at any time by the Finance Committee of the City of Muskego after a hearing for any violation of this chapter. When a taxicab license is revoked or canceled as herein provided, the City 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 Common Council within seven (7) days of the receipt of the order and the Common Council shall hear such appeal within thirty (30) days of receipt of such written notice of the appeal. After such hearing, the Common Council may reverse, affirm or modify the order or determination.

(9) PENALTIES AND PROSECUTION

Any person who violates any provisions of this Ordinance or who shall fail to obtain a license or permit as required hereunder shall be subject to penalty as provided in Section 25.04 of the Municipal Code of the City of Muskego.

12.07 AMUSEMENT DEVICES (Ord. #972 - 11-05-98)

(1) LICENSE REQUIRED.

No person shall operate any amusement device in any place of business without a license from the Clerk-Treasurer.

(2) DEFINITION.

An amusement device shall include:

- (a) Pool (billiard) Table
- (b) Bowling Lane
- (c) Indoor Skating Rink
- (d) Coin-operated Amusement Device, including but not limited to:
 - 1. Mechanical Game
 - 2. Electronic Game
 - 3. Juke Box
 - 4. Dart Game
 - 5. Crane Device

(3) LICENSE FEES.

The license fee for each amusement device shall be established by Resolution of the Common Council.

(4) APPLICATIONS.

Applications for licenses hereunder shall be made to the Clerk-Treasurer on a form provided by the Clerk-Treasurer.

(5) EXPIRATION OF LICENSE.

Any license issued hereunder shall expire on June 30th.

(6) POSTING OF LICENSE.

Any license issued hereunder shall be posted in a conspicuous place on the premises where the licensed device is located.

12.08 JUNK DEALERS

(1) LICENSE REQUIRED.

No person shall within the City engage in the business of buying and selling or picking up and selling or picking up and selling at retail or wholesale or dealing in any article which from its worn condition renders it practically useless for the purpose for which it was made and which is commonly classed as junk or salvage without obtaining a license therefor.

(2) APPLICATION FOR LICENSE.

Application for license hereunder shall be made to the City Clerk upon a form provided by the City Clerk which shall request such information from the applicant as the Common Council may prescribe.

(3) LICENSE FEE.

The license fee hereunder shall be \$75.00 per year or part thereof for each premises at which business hereunder is conducted. (Ord. #541 - 12-30-85)

(4) TERM OF LICENSE.

Any license issued hereunder shall expire on June 30th.

(5) GRANTING OF LICENSE.

No license shall be issued hereunder until approved by the Common Council. In considering each application, the Common Council shall take into account, among other things, the nature and development of property surrounding a premises to be licensed, the proximity of places for public gathering, traffic volume, congestion and hazards at the location of the premises proposed to be licensed and the health, safety, and general welfare of the public.

(6) RESTRICTIONS ON BUSINESS OPERATIONS.

- (a) Storage. No junk or salvage shall be stored within 750 feet of the centerline of any public highway or within 1000 feet of a residence or place of public gathering.
- (b) Burning. No burning of junk or salvage shall be done within 1000 feet from the centerline of any public highway or within 1000 feet of a residence or place of public gathering.
- (c) Storage of Combustibles. No combustible junk or salvage shall be stored in any building unless said building is of fireproof construction and is approved by the Building Inspector.
- (d) Enclosure of Junk or Salvage Yards. Every junk or salvage yard coming into existence after the 7th day of October, 1993, shall be enclosed by a solid fence to be approved by the Building Inspector and the Finance Committee of a height not less than 8 feet. Such fence shall be painted one color within 30 days after construction and shall be maintained in a proper condition of repair at all times. Junk placed in any junkyard shall be so piled as to not rest against or project through or over the enclosure. It shall be unlawful to affix or display or to permit to be affixed or displayed upon such enclosure any picture, sign, bill, placard, pamphlet, notice or other thing for the purpose of advertising or notification.

Any junk or salvage yard in existence on the 7th day of October, 1993, shall not have to erect a fence required by this Section unless for reasons of public welfare and safety it is required by the Building Inspector and Finance Committee. (Ord. #1169 - 04-22-2004)

- (e) Record of Purchases. A written record which shall be open to public inspection shall be kept describing all things purchased, with the price thereof, and the name, age and residence of the seller.
- (f) Purchase from Certain Persons Prohibited. No purchase shall be made from any child under 18 years of age or from any intoxicated person, habitual drunkard or unknown person.
- (g) No purchase shall be made hereunder of used pipe, faucets, boilers, spigots or coils from any person other than the manufacturer thereof, a licensed plumber, a person licensed hereunder, or the owner of the building from which the material is taken.
- (h) Rodents and Vermin Prohibited. Any licensee hereunder shall take effective steps to eliminate rodents and vermin from the premises on which junk or salvage is stored.
- (i) Garbage Prohibited. No person shall store any garbage on premises licensed hereunder.

(7) REVOCATION

Any license issued hereunder may be revoked by the Council for violation of this section. A licensee whose license has been revoked hereunder may within 10 days after notice thereof apply to the Council for a public hearing on such revocation. After such hearing, the Council shall either confirm, modify or rescind the revocation.

12.09 CIGARETTE AND TOBACCO PRODUCTS RETAILER LICENSE (Ord. #972 - 11-05-98)

- (1) No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license as herein provided or a permit under §139.30 to 139.41 or 139.79 without first obtaining a license from the Clerk-Treasurer of the City of Muskego.
- (2) The current provisions of Section 134.65 Wis. Stats., and any successor, are hereby incorporated herein by the City of Muskego.
- (3) The fee for such license shall be established by resolution of the Common Council of the City of Muskego in compliance with Section 134.65(2)(a) Wis. Stats.

12.11 WATER-SKI JUMPS (See section 20.11)

12.12 RACES ON ICE (See section 20.06)

12.13 NATURAL GAS FRANCHISE See Franchise granted by Town of Muskego, May 21, 1957.

12.14 PENALTY

Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in section 25.04 of this Municipal Code.

12.15 REGULATING THE STORAGE AND USE OF EXPLOSIVES WITHIN THE CITY AND REQUIRING A PERMIT THEREFORE.

- (1) No person shall keep, store or allow to be kept or stored, in any building owned or occupied by him within the City of Muskego, any bulk gun powder, dynamite or other explosive material or device, nor shall such material be used for any purpose within the City, without first having obtained a permit therefore, except as provided herein.
- (2) Applications shall first be submitted to the Chief of Police on forms provided by the City and the applicant shall furnish the following information:
 - (a) Name, address and occupation.
 - (b) Location of building on premises where material is to be used or stored.
 - (c) Estimated duration of storage.
 - (d) Description of explosive material or device.
 - (e) Purpose or use for which intended.
 - (f) Such other information as the Chief of Police may deem necessary.
- (3) Upon approval of the Chief of Police and payment of the required fee, the Clerk shall issue a permit to be countersigned by the Mayor. The fee shall be as follows: (Ord. #598 - 03-17-88)
 - (a) \$25.00 for a 60 day permit.
 - (b) \$50.00 for annual permit.
- (4) BOND.

The Mayor may require an indemnity bond with good and sufficient sureties for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or storage of materials under such permit. Such bond, if required, shall be taken in the name of the City and any person injured thereby may bring an action on said bond in his own name to recover the damage he has sustained, but the aggregate liability of the surety to all persons shall not, in any event, exceed the amount of such bond. The bond, if required together with a copy of the permit shall be filed in the Office of the City Clerk. The bond limits may be in a maximum amount of Three Hundred Thousand (\$300,000.00) Dollars.

(5) INDUSTRIAL COMMISSION RULES.

The rules of the Industrial Commission with respect to the storage and handling of explosives and explosive devices as contained in the Wisconsin Administrative Code. Section IND, Chapter 5, are incorporated herein by reference and made a part hereof as if fully set forth herein.

- (6) In the event of a conflict between the provisions of this ordinance and the provisions of the Administrative Code, the stricter shall prevail.

(7) EXEMPTIONS.

The provisions of this ordinance shall not apply in the following circumstances:

- (a) To the storage of flammable liquids or the use of fireworks as otherwise regulated in the Municipal Code.
- (b) To the use of blank cartridges for signal purposes in athletic contests or other sports or recreational events.
- (c) To the storage or use of explosives or explosive devices by militia, police or military organizations.
- (d) To the use or sale of flares or torpedoes for highway signal purposes.
- (e) To the storage of powders or explosive component parts when the same shall be used for the purpose of reloading shells for the personal use of the owner thereof for hunting or target shooting.

(8) REVIEW OF PERMIT AND REVOCATIONS.

Any person to whom a permit is denied pursuant to this ordinance may in writing petition for a review of said denial before the Common Council. Said petition must be made within ten (10) days after notice of said denial. After a hearing the Council shall either confirm the denial or grant the permit. Proceedings for revocation of a permit hereunder shall be as provided in Section 12.09(7) of the Municipal Code.

12.16 REGULATING SWIMMING POOLS (Ord. #758 - 7-14-92)

- (1) TYPE OF POOLS REQUIRING PERMITS.
 - (a) Above ground pools with a depth of 24 inches or more, or a diameter of more than 10 feet.
 - (b) Spas and Hot Tubs.
 - (c) Inground Pools.
 - (d) Public Pools. All public pools shall be built and maintained in accordance with the rules of the State Board of Health, Chapter ISS 171.
- (2) PERMITS REQUIRED. (Ord. #1020 - 04-06-2000)
 - (a) Registration or Construction Permit.
 - (b) Electrical Permit.
Required for spas/pools with electrical equipment.
Must be taken out by electrician licensed to work in Muskego.
 - (c) Plumbing Permit.
Required for spas/pools, filters and pumps requiring plumbing connection or water supply lines.
When required, a licensed plumber must take out permit.
 - (d) The fees for permits required by this code shall be as from time to time established by resolution of the Common Council and listed in Table #1. Such resolution shall remain on file with the Clerk-Treasurer and in the office of the Building Inspector.
- (3) ITEMS REQUIRED WHEN APPLYING FOR POOL PERMIT.
 - (a) Survey or accurate drawing of the property, showing all existing structures, proposed pool location, fencing if required, and location of any underground or overhead utilities.
 - (b) Architectural approval from homeowner's association, or developer, if applicable.
 - (c) Brochure showing the type, style, etc., of the pool to be installed.
 - (d) Location of well, if applicable.
 - (e) Waukesha County Health Department approval for properties served by a private septic system.
 - (f) Pool height above highest point of grade (above ground pools only).
 - (g) Type and height of fence, if proposed, showing gate and latch details, or other method used to prevent unauthorized access.
 - (h) Show any changes in finish grade around pool.
 - (i) Proof of site inspection by Digger's Hotline.

- (j) If constructing a deck, information regarding material type, component size and spacing, as well as railing details, shall be submitted. All construction to meet requirements of Wisconsin Uniform Bldg. Code #30.44.

(4) LOCATION. (Ord. #1309 – 02-04-2010)

See Section 20.07 of the Chapter 17 Zoning Code for location requirements.

(5) FENCING REQUIREMENTS.

- (a) Inground pools shall be completely fenced, before filling, by a permanent, sturdy fence, not less than 4 feet or more than 6 feet in height. Access to any such pool shall be through a gate or gates in the fence, equipped with a lock or self-closing, self-latching device placed at a minimum height of 3 feet above the ground.
- (b) Above ground pools having a height of less than 3 1/2 feet (42 inches) above ground at any portion of the poolside wall are required to be fenced the same as inground pools. When fencing is required, it shall be installed to extend a minimum of 5 feet beyond any area less than 42 inches high.
- (c) When the height of a poolside wall is such that a fence will not be required (42 inches or higher), all ladders, steps or other means of access to an above ground pool shall be removed and/or designed to prevent access when the pool is unattended.

(6) GENERAL POOL REGULATIONS.

- (a) Lighting. Lights shall be erected so as to eliminate direct rays and minimize reflected rays of light onto adjoining properties and roadways. Lighting installation shall be done in accordance with the State of Wisconsin Electrical Code.
- (b) Safety Devices. Every swimming pool which has a capacity for water exceeding four (4) feet in depth at any point, shall be equipped with at least one life preserver and/or other safety devices.
- (c) Electrical. Separation from overhead and underground electrical wiring shall be in accordance with the State of Wisconsin Electrical Code and/or local code. Required electrical wiring supplying all pools shall be installed in accordance with Article 680 of the National Electrical Code by an electrical contractor licensed by the City of Muskego. The following parts of swimming pools shall not be placed under existing service-drop conductors or any other open overhead wiring; nor shall such wiring be installed above the following:
 - 1. Swimming pool and the area extending 10 feet horizontally from the inside of the walls of the pool.
 - 2. Diving structure.
 - 3. Observation stands, towers, or platforms.
The National Electrical Code requires the use of ground Fault Interrupter's with outlets.

(7) NUISANCE.

All pools designed to keep water throughout the summer shall be maintained in such a way as to not create a nuisance, hazard, eyesore, or otherwise result in a substantial adverse effect on neighboring

properties, or to be in any way detrimental to public health, safety, or welfare. Drainage or draining of any pool cannot be discharged onto abutting property, but must be absorbed into the streets or city gutters which would then empty into the city storm system.

(8) EQUIPMENT.

Equipment of circulating pumps and filters must be located as not to create a nuisance or a noise problem and if necessary, to shield or build a protective barrier.

(9) INSPECTIONS REQUIRED.

Inspections are required, the type and timing of which will vary depending upon the particular project in questions. When applying for your permit, inquire as to inspection information.

12.17 PARADES

(1) DEFINITIONS.

- (a) "Parade" is any parade, march, ceremony, show, exhibition, pageant, or procession of any kind, or any similar display in or upon any street, park or other public place in the City.
- (b) "Public Place" shall include any public park, school grounds, street, sidewalk or highway or any other place made available to the general public.
- (c) "Parade Permit" is a permit as required by this ordinance.

(2) PERMIT REQUIRED

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the Chief of Police. This Ordinance shall not apply to the following exceptions:

- (a) Funeral procession;
- (b) Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities;
- (c) A governmental agency acting within the scope of its functions.

(3) APPLICATION.

A person seeking issuance of a gathering or parade permit shall file an application with the Chief of Police on forms provided by such officer.

- (a) Filing Period. An application for a parade permit shall be filed with the Chief of Police not less than 30 days before the date on which it is proposed to conduct the parade.
- (b) Contents. The application for a parade permit shall set forth the following information:
 - 1. The name, address and telephone number of the person seeking to conduct such parade.
 - 2. If the parade 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 the parade chairman and who will be responsible for its conduct.
 - 4. The date when the parade is to be conducted.
 - 5. The route to be traveled, the starting point and the termination point.
 - 6. The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals and description of the vehicles.
 - 7. The hours when such parade will start and terminate.

8. A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed.
9. The location by streets of any assembly areas for such parade.
10. The time at which units of the parade will begin to assemble at any such assembly area or areas.
11. The interval of space to be maintained between units or such parade.
12. If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the applicant for such permit shall file with the Chief of Police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his behalf.

(4) LATE APPLICATIONS.

The Chief of Police, where good cause is shown therefore shall consider any application hereunder which is filed less than 30 days before the date such parade is proposed to be conducted.

(5) FEE. (Repealed - Ord. #521 - 3-21-85)

(6) STANDARDS FOR ISSUANCE.

The Chief of Police shall issue a permit as provided for hereunder when from a consideration of the application and from such other information as may otherwise be obtained he finds that:

- (a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its routes;
- (b) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas;
- (c) The conduct of such parade will not interfere with the movement of fire-fighting equipment enroute to a fire.
- (d) The conduct of the parade is not reasonably likely to cause injury to persons or property, or to provoke disorderly conduct;
- (e) The parade is not to be held for the sole purpose of advertising any product or goods and is not designed to be held purely for private profit.

(7) NOTICE OF REJECTION.

The Chief of Police shall act upon the application for a parade permit within 5 days after the filing thereof. If the Chief of Police disapproves the application, he shall mail to the applicant within 5 days after the date upon which the application was filed, a notice of his action, stating the reasons for his denial of the permit. Said notice shall be by certified mail, mailed to the post office address stated on the application.

(8) APPEAL PROCEDURE.

Any person aggrieved shall have the right to appeal the denial of a parade permit to the City Council. The appeal shall be taken within 5 days after notice. The City Council shall act upon the appeal at its next regular Council meeting.

(9) NOTICE TO CITY AND OTHER OFFICIALS.

Immediately upon the issuance of a parade permit, the Chief of Police shall send a copy thereof to the following:

- (a) The Mayor
- (b) The Fire Chiefs
- (c) The Superintendent of Public Works
- (d) The General Manager or responsible head of each public transportation utility, the regular routes of whose vehicles will be affected by the route of the proposed parade.
- (e) The Aldermen

(10) CONTENTS OF PERMIT.

Each parade permit shall state the following information:

- (a) Starting time;
- (b) Portions of the streets to be traversed that may be occupied by the parade;
- (c) Such other information as the Chief of Police shall find necessary to the enforcement of this ordinance.

(11) DUTIES OF PERMITTEE

A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.

(12) POSSESSION OF PERMIT

The parade chairman or other person heading or leading such activity shall carry the parade permit upon his person during the conduct of the parade.

(13) PUBLIC CONDUCT DURING THE PARADES

- (a) Interference. No person shall unreasonably hamper, obstruct, impede or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.
- (b) Driving through Parades. No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.
- (c) Parking on Parade Routes. The Chief of Police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of a parade. The Chief of Police may have signs posted to such effect, and it shall be unlawful for any person to park or leave

unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this Ordinance.

(14) REVOCATION OF PERMIT

The Chief of Police shall have the authority to revoke a parade permit issued hereunder upon violation of the standards for issuance as herein set forth.

12.18 ALARM SYSTEMS

(1) INTENT.

Although the City of Muskego recognizes that alarm systems serve a public service, it is the intent of this section to establish standards and regulations for all alarm systems as defined in this section in the City of Muskego in order to prevent responses by the Police or Fire Department when an emergency situation does not exist due to carelessness, improper maintenance or any other cause which results in false alarms from privately owned, commercially owned, leased or contracted alarm systems in that a large number of such false alarms from privately owned, commercially owned, leased or contracted alarm systems in that a large number of such false alarms have been received by the Police and Fire Department. Such false alarms initiate police and fire personnel and vehicle response which result in unnecessary expense to the City, increases the risk of damage to property or injury to persons and dilutes the police and fire protection available to other areas of the City. Such false alarms, therefore, constitute a public nuisance which must be abated and/or penalized.

(2) DEFINITIONS

- (a) Private alarm system is defined as any device, designed and installed solely for the purpose of detecting and signaling the Police or Fire Department, directly or via a central alarm station, to make an emergency response to the signal's location.
 - 1. Direct private alarm system is any private alarm system which is in any way linked to the Police or Fire Department.
 - 2. Indirect private alarm system is any private alarm system which is any way linked to a central alarm station.
- (b) False alarm is a signal, regardless of how received, resulting in a response by Police or Fire Department Personnel when an emergency situation does not exist. An emergency situation exists when an emergency response is substantiated to the satisfaction of the Police or Fire Department.
- (c) Local alarm system is any system which emits either an audible or visual signal, or both, on the exterior of any property, and is not connected to any other location by any means. This does not include any device designed solely for the purpose of alerting a building's occupants of fire, smoke or illegal entry, or any alarm devices on automobiles.
- (d) Person shall mean any individual, partnership, corporation or other entity whether singular or plural.
- (e) Central alarm station shall mean any facility other than the Muskego Police or Fire Station which receives signals from alarm systems and alerts the Police or Fire Department of the need to make an emergency response to the signal.
- (f) Alarm location is defined as any premises or property delineated on the application. No single alarm location may be granted more than one alarm permit. The Common Council reserves the right to designate a specific premises or property as one alarm location.
- (g) Applicant shall be person filing for permit.

(3) ALARM PERMIT REQUIRED.

- (a) The owner, occupant or person in control of premises protected by any type or number of alarm systems as defined herein is required to obtain an alarm permit. No owner, occupant or person in control of property shall cause to be placed in operation any alarm systems for which a permit has not been issued or for which a permit has been canceled.
- (b) All alarm systems defined herein must be applied for one time for the life of the specific system or systems and applicant as applied for in the application. The fee for this permit shall be \$50.00.

(4) APPLICATION FOR PERMIT.

- (a) All applications for a permit shall be made to the City Clerk's Office on a form prescribed by the Chief of Police.
- (b) The applications shall contain the following information:
 - 1. Name, address and status of applicant.
 - 2. Types and number of alarm systems on alarm location.
 - 3. Name and address of alarm location.
 - 4. All names, addresses and telephone numbers of persons able to respond to the alarm location within 1/2 hour after activation.
 - 5. Identification of the firm or person installing the alarm system.
 - 6. Name of the central alarm station if applicable.
 - 7. Agent for applicant if same is corporation or partnership.
 - 8. Any other information deemed necessary by the Chief of Police or Fire Chief.
- (c) No information contained in an application for an alarm permit shall be deemed to be public information. Unauthorized release of permit information is deemed to be a compromise of public safety.

(5) TIME TO ACQUIRE

All persons having an alarm system currently on premises shall obtain a permit within sixty (60) days of the effective date of this section. For all false alarm systems in operation on the effective date of this Ordinance, no permit fee shall be charged if a permit is obtained within sixty (60) days of the effective date of this Ordinance.

(6) DUTIES OF ALARM SYSTEM PERMITTEE

Any person, company, organization or other entity granted an alarm permit covered by this section shall be capable of having a service representative or other authorized key holder respond to the alarm location within thirty (30) minutes after activation.

(7) ALARM PERMIT ISSUANCE CONDITIONS

(a) The Police Chief may issue an alarm permit to any owner, occupant or person in control of premises protected by an alarm system as defined herein that meets the following conditions: (Ord. #639 - 04-06-89)

1. The applicant has properly prepared and filed an application for the same.
2. The applicant has paid all applicable permit fees.
3. The alarm system has approval of the Underwriters Laboratories or other nationally recognized testing service.
4. The alarm system has or will be installed in accordance with any applicable requirements of the City of Muskego Electrical Code, including necessary permits.
5. The local alarm system has or will have a device which will shut off any audible signal automatically within fifteen (15) minutes after activation.
6. The applicant agrees to pay any additional fees for false alarms as set forth under 12.18(10).
7. The applicant hold the City of Muskego harmless for any and all damages or losses resulting from the existence of the applicant's alarm system.
8. The applicant agrees to follow alarm testing procedures set forth by the Chief of Police and Fire Chief, and will assume any expenses for testing the alarm system.
9. The applicant accepts that a violation of any provision or condition of this chapter is cause for revocation of the permit by the City of Muskego.

(b) Additionally, any applicant for a direct private alarm system permit agrees to the following conditions:

1. Equipment must meet at least minimum standards as set forth in the Federal Bank Protection Act of 1968.
2. Applicant agrees to install at his or her expense at the Police or Fire Department switchboard termination point, equipment which is designated by the Chief of Police or Fire Chief.
3. Applicant agrees to assume all costs of installation, maintenance and monthly rental of telephone lines used by the applicant for such alarm.
4. The applicant assumes responsibility and expense for the removal of the alarm system when the service is disconnected or the permit is revoked.

(8) INTERFERENCE WITH POLICE OR FIRE DEPARTMENT TELEPHONE TRUNK LINES PROHIBITED.

No person, firm or corporation shall use or cause to be used, any telephone or electronic device or attachment which automatically selects a public primary telephone trunk line of the Police or Fire Department, and then reproduces any prerecorded message to report any intrusion, robbery or other emergency. Nor will the installation or a private telephone and trunk line for this purpose be allowed.

(9) APPEAL PROVISIONS.

Any person aggrieved by any administrative determination of the Common Council under this ordinance may have such determination reviewed as provided by Chapter 27, City of Muskego Municipal Code or by Writ or Certiorari, to the Circuit Court within 30 days of final determination, or as further outlined in the Municipal Code of the City of Muskego.

(10) FALSE ALARMS PROHIBITED - (Ord. #558 - 11-11-86)

The owner, occupant or person in control of an alarm location protected by any alarm system or alarm systems as defined herein is prohibited from allowing any false alarm whether intended or unintended.

(11) PENALTIES.

- (a) False Alarms. The owner, occupant or person in control of alarm location protected by any alarm system or alarm systems as defined herein upon conviction is subject to the following penalties regardless of cause each time a signal, regardless of how received, results in a response by the Police or Fire Department when an emergency situation does not exist.

(1 - 3 false alarms) - No fine or costs imposed.

(4 - 6 false alarms) - \$20.00 plus court costs.

(7 - 9 false alarms) - \$50.00 plus court costs.

(10 - 12 false alarms) - \$100.00 plus court costs.

(13 or more false alarms)- \$200.00 plus court costs.

The above schedule is per calendar year. In default of payment, said fees shall be included as a special charge against the property tax on the subject property. Additionally, said conviction shall be a basis for revocation or denial of any alarm permit.

- (b) Any other violation of this section. Any owner, occupant or persons in control of alarm location protected by an alarm system in violation of this section other than those offenses defined in section (a) shall upon conviction be subject to a forfeiture or not less than \$25.00 nor more than \$100.00 and the costs of prosecution, and in default of payment of such forfeiture and costs, shall be imprisoned in the county jail until such forfeiture and costs are paid, such imprisonment not to exceed thirty (30) days. Additionally, said conviction shall be a basis for revocation or denial of any alarm permit. Every day upon which any such violation exists constitutes a separate offense.

12.20 ADULT-ORIENTED ESTABLISHMENT LICENSE AND REGULATIONS (Ord. #1018 - 03-09-00)

(1) FINDINGS OF FACT

- (a) The Common Council finds that Adult-Oriented Establishments operating in the City require special licensing by the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City.
- (b) Based on a review of studies conducted in Phoenix AZ, Garden Grove CA, Los Angeles CA, Whittier CA, Indianapolis IN, Minneapolis MN, St. Paul MN, Cleveland OH, Oklahoma City OK, Amarillo TX, Austin TX, Beaumont TX, Houston TX, Seattle WA, and the findings incorporated in ***City of Renton v. Playtime Theaters, Inc.***, 475 U.S. 41 (1986), ***Coleman A. Young v. American Mini-Theaters, Inc.***, 427 U.S. 50 (1976), the City finds that Adult-Oriented Establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities including prostitution.
- (c) It has been documented that entertainers in Adult-Oriented Establishments offer to perform sexual acts for patrons, and that sexual contact occurs between patrons and other employees of Adult-Oriented Establishments.
- (d) There is convincing documented evidence that booths, rooms or cubicles in Adult-Oriented Establishments have been used by patrons for the purpose of engaging in Specified Sexual Activities or in high-risk sexual behavior and configuration of the interior of the premises is an important factor in combating such activities.
- (e) The State of Wisconsin Division of Health has published reports that have been considered by the City relating to the subject of sexually-transmitted diseases and the concern over sexually-transmitted diseases is a legitimate concern of the City in order to protect the health and well-being of its citizens.
- (f) The State of Wisconsin has seen a steady increase in several types of sexually-transmitted diseases since 1986.
- (g) Researchers have found that contracting sexually-transmitted diseases may increase a person's vulnerability to Human Immuno-Deficiency Virus (HIV), the virus that causes AIDS (Acquired Immune Deficiency Syndrome) and some types of cancer.
- (h) AIDS is a sexually-transmitted disease which destroys the body's immune system.
- (i) The State of Wisconsin Division of Health reports that as of June 30, 1999, 4,217 cases of AIDS were reported in the State, including 2,507 that resulted in death and new cases of HIV infection have been reported in Wisconsin each year.
- (j) The City is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses.
- (k) Licensing is a legitimate and reasonable means of accountability to ensure that the operators and employees of Adult-Oriented Establishments comply with reasonable regulations and to ensure that operators and employees do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

- (l) Information relating to pending charges and convictions of the applicants is desired to further the City's interest in controlling the secondary effects of Adult-Oriented Establishments.
- (m) There is convincing documented evidence that Adult-Oriented Establishments, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.
- (n) The Common Council has reviewed studies of the secondary effects of Adult-Oriented Establishments and has concluded that if unregulated, they present an increased risk of prostitution, high-risk sexual behavior and crime, deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.
- (o) The Common Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods.
- (p) It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Adult-Oriented Establishments.
- (q) It is not the intent of the Common Council to condone or legitimize the promotion of obscene material, and the Common Council recognizes that the law prohibits the promotion of obscene materials. The Common Council expects and encourages law enforcement officials to enforce anti-obscenity laws against any such illegal activities in the City.
- (r) Restricted hours of operation will allow law enforcement personnel to concentrate on crime prevention during high crime hours and/or low staffing hours by relieving them of enforcement duties relative to prostitution, loitering, and criminal activity associated with Adult-Oriented Establishments.
- (s) Prohibition of alcohol beverages on the premises will reduce the need for law enforcement resources to respond to alcohol related problems upon the premises, will reduce high-risk sexual activity and will contribute to the reduction of secondary effects of Adult-Oriented Establishments.

(2) PURPOSE AND INTENT.

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

(3) DEFINITIONS.

The following terms have the meanings indicated:

- (a) "Adult Arcade" means any place to which the public is permitted or invited, wherein coin, slug, electronically, or mechanically controlled or operated still or motion picture machines, projectors, computers, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas".
- (b) "Adult Bathhouse" means a commercial establishment which provides a bath as a service and which provides to its patrons an opportunity for engaging in "Specified Sexual Activities."
- (c) "Adult Body Painting Studio" means a commercial establishment wherein patrons are afforded an opportunity to be painted or to paint images on Specified Anatomical Areas. An Adult Body Painting Studio does not include a tattoo parlor.
- (d) "Adult Bookstore" means any commercial establishment having as its stock in trade the sale, rental or lease for any form of consideration, any one or more of the following:
1. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are distinguished or characterized by their emphasis on "Specified Sexual Activities" or "Specified Anatomical Areas";
 2. Instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities";
 3. Facilities for the presentation of "Adult Entertainment" as defined herein, including Adult-Oriented films, motion pictures, video cassettes, video reproductions, slides or other visual representations for observation by patrons therein.
- (e) "Adult Cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which features:
1. Live performances which are characterized or distinguished by the exposure of "Specified Anatomical Areas" or the removal of articles of clothing; or,
 2. Films, motion pictures, video cassettes, video reproductions, slides or other visual representations which are distinguished or characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."
- (f) "Adult Entertainment" means any exhibition of any motion picture, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by any one or more of the following:
1. "Specified Sexual Activities";
 2. "Specified Anatomical Areas";
 3. removal of articles of clothing;
- (g) "Adult Massage Parlor" means a commercial establishment with or without sleeping accommodations which provides the service of massage or body manipulation, including exercise, heat and light treatment of the body, and any form or method of physiotherapy, which also provides its patrons with the opportunity to engage in "Specified Sexual Activities".

- (h) "Adult Motel" means a hotel, motel or other similar commercial establishment which:
1. offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, film, motion pictures, video cassettes, video reproductions, slides, or other visual reproductions characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas"; and, has a sign visible from the public right of way which advertises the availability of this type of adult entertainment; or
 2. offers a sleeping room for rent for a period of time that is less than 10 hours; or
 3. allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.
- (i) "Adult-Oriented Establishment" includes: Adult Arcade, Adult Bathhouse, Adult Body Painting Studio, Adult Bookstore, Adult Cabaret, Adult Massage Parlor, Adult Motel, Adult Theater, and any commercial establishment presenting Adult Entertainment, whether or not such establishment is operated or maintained for a profit.
- (j) "Adult Theater" means an enclosed building such as a theater, concert hall, auditorium or other similar commercial establishment which is used for presenting "Adult Entertainment."
- (k) "Applicant" means the individual or business entity that seeks to secure a license under this section of the City municipal code.
- (l) "Common Council" means the Common Council for the City of Muskego, Waukesha County, Wisconsin.
- (m) "Employee" means any and all Persons, including but not limited to "Operators", "Entertainers", clerks, managers, janitors or other Persons who work in or at, or render any services directly related to the day-to-day operation of an Adult-Oriented Establishment. Employee, as used in this ordinance, specifically excludes independent contractors who are responsible for the improvement or repair of the physical premises or who provide supplies to the establishment, provided that these Persons are not also in the position of providing any other day-to-day services for the Adult-Oriented Establishment.
- (n) "Entertainer" means any Person who provides entertainment within an Adult-Oriented Establishment whether or not a fee is charged or accepted for the entertainment and whether or not the entertainment is provided by the Person as an Employee of the Adult-Oriented Establishment or as an independent contractor.
- (o) "Operator" means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Adult-Oriented Establishment's contact Person for the municipality.
- (p) "Person" means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.
- (q) "Public Area" includes all areas of an Adult-Oriented Establishment except: a public restroom to the extent it is used for its proper purpose, individual rooms rented in an Adult Motel, or areas to which patrons have no physical or visual access.
- (r) "Specified Anatomical Areas" means:

1. Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or
 2. Human male genitals in a discernibly turgid state, even if opaquely covered.
- (s) "Specified Sexual Activities" means and includes any of the following, simulated or actual:
1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, cunnilingus, anilingus.
 3. Showing of human genitals in a state of sexual stimulation or arousal.
 4. Excretory functions during a live performance, display or dance of any type.
- (t) "Transfer of Ownership or Control" of an Adult-Oriented Establishment means and includes any of the following:
1. the sale, lease, or sublease of the business;
 2. the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or other means; or
 3. the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the death of the Person possessing the ownership or control.
- (u) "Youth-facility" means any facility where minors gather for educational or recreational activities including but not limited to playgrounds, swimming pools, libraries, licensed child-care facilities, or youth clubs.

(4) LICENSING

(a) LICENSES REQUIRED.

1. License Required for All Adult-Oriented Establishments.
From and after the effective date of this section except as provided in par. (3) below, no Adult-Oriented Establishment shall be operated or maintained in the City without first obtaining a license to operate issued by the City. A license may be issued only for one Adult-Oriented Establishment located at a fixed and certain place. Any Person desiring to operate more than one Adult-Oriented Establishment must have a license for each.
2. License Required for All Employees of Adult-Oriented Establishments.
In addition to the license required by the establishment, all Employees of an Adult-Oriented Establishment must also be licensed.
3. License for Existing Adult-Oriented Establishments.
All Adult-Oriented Establishments existing at the time of the passage of this section must submit an application for a license within 90 days of the effective

date of this section. An establishment that submits an application within the 90 day period shall be allowed to continue to operate until the license application is acted upon by the Common Council. Any establishment which fails to submit an application within the 90 day period, must cease operation upon expiration of the 90 day period unless and until a valid license is timely issued by the Common Council. The City shall act upon any such license application in accordance with the provisions of this Section.

4. Licenses for Employees of Existing Adult-Oriented Establishments.
All employees already working in an Adult-Oriented Establishment existing at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any Employee that submits an application within the 90 day period shall be allowed to continue his or her employment until the license application is acted upon by the Common Council. Any Employee who fails to submit an application within the 90 day period must cease employment upon expiration of the 90 day period unless and until a valid license is issued by the Common Council. The City shall act upon any such license application in accordance with the provisions of this Section.
5. Change of Name Form.
Any licensed Adult-Oriented Establishment which desires to change its name from that as listed on the original license application must file a change of name form with the Clerk-Treasurer and pay a \$10.00 fee at least 30 days prior to effectuating the name change.
6. Effect of Other Licenses.
The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining an Adult-Oriented Establishment license under this Section.
7. Non-transferability of Licenses.
No license or interest in a license may be transferred to any Person. Any change in location for an Adult-Oriented Establishment shall require a new license application for that location.

(b) LICENSE APPLICATION PROCEDURE FOR ADULT-ORIENTED ESTABLISHMENTS

1. Any Person desiring to secure an Adult-Oriented Establishment license shall file an application together with two additional copies of the application with the Clerk-Treasurer.
2. The application shall be on a form provided by the Clerk-Treasurer.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - a. Name, including any aliases, date of birth, address, and phone number.
 - b. If the Applicant is a corporation, partnership, limited liability corporation or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address of the registered agent where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners; members or managers, whichever is applicable for the particular form of business entity.

- c. If the Applicant is an individual, written proof that the Applicant is at least 18 years of age and two copies of a recent photo.
- d. If the applicant is a business entity, a statement that no officer, director, partner, general partner, owner or manager is less than 18 years of age.
- e. Name, address and phone number of the Adult-Oriented Establishment for which a license is being secured.
- f. Name and address of any other current or past Adult-Oriented Establishments operated by the Applicant whether in this State or any other State or District within the United States.
- g. For any current Adult-Oriented Establishments operated by the Applicant, the Applicant shall describe the status of any required license for the establishment.
- h. Nature and date of offense if the Applicant has charges pending or has been convicted of violating any of the terms of this ordinance.
- i. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

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

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

- j. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in i., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
- k. Name, address and phone number of an individual who is responsible for

10. The City Police Department shall notify the Common Council in writing of any information bearing on the Applicant's qualifications, within 20 business days of the filing of the application.
11. The Building Inspector shall notify the Common Council in writing as to whether or not the Applicant's building plan, site plan, and plan of operation comply with this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any requirements in addition to those in this section, within 20 business days of the filing of the application.
12. The Common Council shall within 45 days of the filing of the application with the Clerk-Treasurer, either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Common Council fails to act upon the license application within 45 days of the filing of the application with the Clerk-Treasurer, then the license shall be deemed granted.
13. If the license is granted by the Common Council, then the Clerk-Treasurer shall issue the license on the next business day.
14. If the Common Council decides to deny the application for a license, the Common Council shall immediately notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
15. Any Applicant aggrieved by such a decision of the Common Council, shall be entitled to immediately appeal the Common Council's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Common Council. The City explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
16. Each license issued for an Adult-Oriented Establishment shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

(c) LICENSE PROCEDURES FOR EMPLOYEES IN ADULT-ORIENTED ESTABLISHMENTS.

1. Any individual desiring to secure an Employee license shall file an application together with two additional copies of the application with the Clerk-Treasurer.
2. The application shall be on a form provided by the Clerk-Treasurer.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - a. Name, including any aliases, date of birth and address. Pursuant to Sec. 19.35(1)(a)2.a., Wisconsin Statutes, the name and address of any entertainer shall be considered as exempt from disclosure under the public records law of the State of Wisconsin because of potential danger to the life and safety of such individuals from such disclosure.
 - b. Written proof that the individual is at least 18 years of age and two copies of a recent photo.

- c. Nature and date of offense and date if the Applicant has charges pending or has been convicted of any violations of any of the terms of this ordinance.
- d. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

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

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

- e. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in 4., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
 - f. A statement that the Applicant is familiar with the provisions of this Section and is in compliance with them.
 - g. A list of other similar or analogous Adult Entertainer or Employee licenses issued by any other municipalities, the name and state of the municipality and the status of the license.
4. Each application shall be signed by the Applicant.
 5. Each application shall be accompanied by payment of the license fee of \$50.00. Filing of the application does not occur until this fee has been paid.
 6. The Clerk-Treasurer shall date the filing of the application upon the face of the application.
 7. Upon receipt of the application, the Clerk-Treasurer shall immediately distribute a copy of the application to the City Police Department and the Common Council.

8. The City Police Department shall notify the Common Council in writing of any information bearing on the Applicant's qualifications as required herein, within 20 business days of the filing of the application.
9. The Common Council shall within 45 days of the filing of the application with the Clerk-Treasurer, either issue the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Common Council fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
10. If the license is granted by the Common Council, then the Clerk-Treasurer shall issue the license on the next business day.
11. If the Common Council decides to deny the application for a license, the Common Council shall notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
12. Any Applicant aggrieved by such a decision of the Common Council shall be entitled to immediately appeal the Common Council's decision in circuit court. Such an appeal must be made within 30 days of the receipt by the Applicant of the written decision of the Common Council. The City explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.

(d) PROCEDURES FOR ALTERATIONS OF LICENSED PREMISES

Following the granting of a license any licensee who wishes to alter any aspect of the licensed premises which was required to be described in the building plan, site plan or plan of operations required under this Section, shall be required to apply for a new license.

(e) LICENSING STANDARDS FOR INITIAL LICENSES

The Common Council shall grant an initial license to an Applicant unless it finds one or more of the following to be true:

1. The Applicant is less than 18 years of age.
2. The Applicant has charges pending or has been convicted of violating a provision of this Section or an analogous ordinance of another municipality within the 5 years immediately preceding the date of application.
3. The Applicant has charges pending or has been convicted of a crime specified in Sections IV. 2(C)(9) or IV. 3(C)(4); and if convicted, for which:
 - a. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense.
 - b. less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a felony offense;
 - c. less than five years have elapsed since the date of conviction or the date

of release from confinement imposed for the conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses, or combination of misdemeanor offenses, occurring within any 24 month period.

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

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

(f) LICENSE EXPIRATION AND RENEWAL

1. Transfer of Ownership or Control of an Adult-Oriented Establishment shall result in automatic expiration of the existing license. Upon transfer of Ownership or Control, the procedures for a new license application must be followed. In order to ensure continuous operation, such procedures may also be commenced by a new Applicant prior to the expiration of the prior license.
2. Every license issued pursuant to this Section will terminate upon the expiration of one year from the date of issuance unless sooner revoked. Any licensee desiring to renew an initial license shall make application to the Clerk-Treasurer. The application procedures governing new licenses shall be followed by an Applicant for a renewal license except for those found in Section (4)(b) 8, 12, 13, 14, and 15. for Adult-Oriented Establishment licenses, and Section (4)(c) 9, 10, 11, and 12 for Employee licenses. The application fee for a renewal license shall be \$300.00 for an Adult-Oriented Establishment license and \$50.00 for an Employee license.
3. Any licensee desiring to renew an initial license shall file the application for renewal no later than 60 days before the license expires. Any licensee who fails to apply for a renewal license at least 60 days before the license expires shall pay the same fee as if the licensee were applying for an initial license.
4. An existing license shall be allowed to continue until such time as the Common Council acts upon the renewal license application. If the Common Council fails to act upon the license application within 45 days of the filing of the application with the Clerk-Treasurer, then the license shall be deemed granted.
5. The Common Council will not expedite the renewal procedure to ensure that a license will not expire when the expiration of the license is due to the licensee's untimely filing of a renewal application. Upon expiration of a license under these circumstances, the licensee is prohibited from operating or serving as an employee until the new license is granted.
6. A license may not be renewed if the Common Council, following the procedures found in this Section, finds that a violation of this Section has occurred or that the applicant is not qualified to hold the license.
7. If the license is granted by the Common Council, then the Clerk-Treasurer shall issue the license on the next business day.

(5) LOCATION OF ADULT-ORIENTED ESTABLISHMENTS

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

(6) OPERATION OF ADULT-ORIENTED ESTABLISHMENTS

- (a) No Adult-Oriented Establishment is permitted to operate between the hours of 2 a.m. and 8 a.m. Further, no Adult-Oriented Establishment is permitted to operate between the hours of 8 a.m. and midnight on any Sunday or legal holiday as defined in §895.20, Wis. Stats.
- (b) No Operator or Employee of an Adult-Oriented Establishment shall permit to be performed, offer to perform, perform or allow patrons to perform any Specified Sexual Activity in the establishment or on the site. This provision does not apply to Adult Motels, to the extent that such Specified Sexual Activity is not prohibited by law.
- (c) No Operator or Employee of an Adult-Oriented Establishment shall allow any minor to enter into, loiter around or to frequent an Adult-Oriented Establishment or to view Adult Entertainment.
- (d) The Operator shall maintain the premises in a clean and sanitary manner at all times.
- (e) The Operator shall maintain at least 10 foot candles of illumination in the Public Areas of the establishment with the following exceptions:
 - 1. in a booth, room, or cubicle, if a lesser level of illumination is necessary to enable a patron to view the Adult Entertainment but at no time shall there be less than .01 foot candle of illumination as measured 30" from the floor;
 - 2. in an aisle adjacent to a booth, room, or cubicle, if a lesser amount of illumination is necessary to allow the occupant to view the Adult Entertainment, but at no time shall there be less than one and ½ foot candle of illumination as measured 30" from the floor.
 - 3. Adult Theaters must maintain 5 foot candles of illumination in the auditorium during intermission and no less than .01 foot candles during a picture as provided for in Wis. Adm. Code Comm. §73.07(6).
- (f) All Employees while engaged in the display or exposure of any Specified Anatomical Area, shall maintain a three-foot distance from any patron or other Employee.
- (g) No restroom shall be designed, operated or maintained so that a patron can view Adult Entertainment therein.
- (h) All performances in an Adult Cabaret shall be conducted upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest Employee or patron.
- (i) The selling, serving, possession, or consumption of alcohol beverages is strictly prohibited at all times in all Adult-Oriented Establishments.
- (j) No Employee or Operator shall knowingly work in or about, or knowingly perform any service directly related to the operation of any unlicensed Adult-Oriented Establishment,

in the City of Muskego.

- (k) All Employees shall carry their license upon their person at all times while working in the Adult-Oriented Establishment and shall produce said license upon demand for inspection by any law enforcement authority. Entertainers are exempt from carrying their license upon their person while providing entertainment, but shall be readily able to produce said license upon demand for inspection by any law enforcement authority.
- (l) The license for the Adult-Oriented Establishment shall be displayed in a conspicuous public place in the Adult-Oriented Establishment.
- (m) No Employee, Operator, or owner may refuse law enforcement officials entry in to an Adult-Oriented Establishment for purposes of inspecting the Adult-Oriented Establishment for compliance with these operational standards during business hours, or at other times at a reasonable hour, with reasonable notice.
- (n) The Operator shall be responsible for compliance with the provisions of this section by the Adult-Oriented Establishment, its Employees and patrons.
- (o) Every act or omission by any Employee constituting a violation of the provisions of this section shall be deemed the act or omission of the Operator if such act or omission occurs, either with the authorization, knowledge or approval of the Operator, or as a result of the Operator's negligent failure to supervise the Employee's conduct, and the Operator shall be accountable for such act or omission in the same manner as if Operator committed the act or caused the omission.

(7) DESIGN AND LAYOUT

- (a) EXTERNAL VISIBILITY
At no time should any Adult Entertainment inside the premises be visible to any persons who are outside the premises.
- (b) BOOTHS
Any Adult-Oriented Establishment having available for patrons any booth, room or cubicle for the private viewing of Adult Entertainment must comply with the following requirements:
 - 1. Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and Public Areas of the Adult-Oriented Establishment and shall be unobstructed by any door, lock or other control type devices.
 - 2. Construction. Every booth, room or cubicle shall meet the following construction requirements:
 - a. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-Public Areas by a wall.
 - b. All walls shall be solid and without any openings, extended from the floor to a height of not less than 6' and be light colored.
 - c. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth.
 - d. Booths must be separated at least twelve (12) inches from the exterior walls of any other viewing booths by open space.

3. Visibility. The interior of the booth, room or cubicle shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever.
4. Lighting. Lighting for booth, room or cubicle shall comply with the provisions of Section VI (5) of this ordinance.
5. Occupants. Only one individual shall be permitted to occupy a booth, room or cubicle at any time. No occupant of the booth, room or cubicle, shall be permitted to engage in any Specified Sexual Activity, cause any bodily discharge or litter while in the booth. No individual shall be permitted to damage or deface any portion of the booth.
6. Exception. This subsection does not apply to the individual rooms located in Adult Motels.

(8) EXCLUSIONS

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

(9) ENFORCEMENT

(a) LICENSE NON-RENEWAL, SUSPENSION, OR REVOCATION

1. CAUSES FOR LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION
The Common Council may refuse to renew, suspend or revoke a license for any violations of this Section or if the applicant is not qualified to hold the license.
2. LICENSE NON-RENEWAL, SUSPENSION AND REVOCATION PROCEDURES.
 - a. In order to commence the procedure for a license non-renewal, suspension or revocation, the City shall notify the licensee in writing by certified mail, return receipt requested, of the alleged violation or cause and the intent of the City to seek a non-renewal, suspension or revocation of the license.
 - b. The licensee shall be entitled to a public hearing before the Common Council regarding the license non-renewal, suspension or revocation, upon written request to the City Clerk within 10 days of receipt of the notification required in sub. a.
 - c. Any public hearing requested pursuant to sub. b., shall take place within 10 days of the filing of such written request, unless the time limits are waived by both parties.
 - d. At the hearing both the City and the aggrieved party may be represented by an attorney, present evidence, call and examine witnesses, cross-examine witnesses of the other party, and make opening and closing statements. Such witnesses shall be sworn. The Mayor shall be the presiding officer at the hearing.
 - e. Attorneys may issue subpoenas to compel attendance of witnesses or the production of evidence. Subpoenas issued must be in substantially the

same form as provide in §805.07(4), Wis. Stats., and must be served in the manner provided in §805.07(5), Wis. Stats. Copies of the subpoenas must be served on the opposing party.

- f. The Common Council shall cause the proceedings to be recorded by a stenographer, the expense thereof to be paid by the City. Costs for copies of any transcripts or transcription of a recording shall be paid by the party requesting the transcript or transcription. All exhibits shall be marked and preserved.
- g. Within 10 days of the completion of any hearing the Common Council shall determine if cause for non-renewal, suspension or revocation exists. If no public hearing is requested, the Common Council shall make a determination within 20 days of the notification date.
- h. The Common Council shall issue its determination in writing and provide it within 5 days to the licensee by certified mail, return receipt requested.
- i. If a license period expires while a non-renewal, suspension or revocation procedure is pending, then the non-renewal, suspension or revocation of any license shall be stayed pending the issuance of a determination by the Common Council. The non-renewal, suspension or revocation of a license shall become effective thirty days following the issuance of a decision by the Common Council, if judicial review is not commenced as provided in this Section.
- j. If judicial review of such determination by the Common Council is timely commenced, then license non-renewal, suspension or revocation shall not become effective until judgment is entered.
- k. Any Person aggrieved by such a decision of the Common Council shall be entitled to immediately appeal the Common Council's decision in circuit court. Such an appeal must be made within 30 days of the licensee's receipt of the written decision by the Common Council. The City explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
- l. Any Person whose license is non-renewed, suspended or revoked shall not be eligible to receive a license for a period of five years from the effective date of the suspension or revocation.

(b) VIOLATIONS

1. PENALTIES

Any Person who violates this Section will be subject to a monetary forfeiture in the amount of \$500.00 for each violation. Each day that a violation exists shall constitute a separate violation and be punishable as such.

2. INJUNCTION

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

3. NON-EXCLUSIVITY

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

12.21 THERAPISTS - (Ord. #985 - 06-17-99)

This ordinance is intended to insure persons who engage in the practice of massage or body work or massage therapy are registered as required by the State of Wisconsin.

(1) DEFINITIONS

For the purpose of this ordinance, the following words and phrase shall mean:

- (a) "Bodyworker" means any person who engages in massage therapy or bodywork.
- (b) "Massage" shall include holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing the soft tissue of the human body and applying friction to soft tissue.
- (c) "Massage Therapist" means a person who performs massage therapy, engages in the practice of massage or bodyworks and is currently registered as a massage therapist or bodyworker with the State of Wisconsin Department of Regulation and Licensing.
- (d) "Massage Therapy or Bodywork"
 - 1. The science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate.
 - 2. Does not include any of the following:
 - a. Making a medical diagnosis.
 - b. Instructing in or prescribing rehabilitative strengthening or conditioning exercises that are within the practice of physical therapy, as defined in Section 448.50 (4) WI Stats.

(2) EXEMPTIONS

This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

- (a) Medical doctors, doctors of chiropractic medicine, doctors of osteopathy, physical therapists, physicians' assistant or nurses who are duly licensed to practice their respective professions in the state of Wisconsin.
- (b) Barbers and beauticians who are duly licensed under the laws of this State, except that this exemption shall apply solely to the massage of the neck, face, scalp, hair, hands and feet of their clients.
- (c) Coaches and trainers employed by accredited high schools, colleges, or amateur, semi-professional or professional athletic teams and acting within the scope of their employment.
- (d) This chapter shall not apply to hospitals or licensed nursing homes or persons working within hospitals or licensed nursing homes who administer massage therapy under the

direct supervision and control of the hospital or licensed nursing home administration, as the case may be.

(3) PROHIBITED ACTIVITY

No person shall engage in the business of the practice of massage, bodyworks, or massage therapy without first being officially registered with the State of Wisconsin Department of Regulations and Licensing as a massage therapist or bodyworker.

(4) PENALTY

Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.