

## **12.01 LICENSE FEES.**

(1) GENERAL . (Rep. & rec. 99-473) The fees for the following licenses shall be established, from time to time, by separate Resolution of the Town Board:

- (a) Alcohol Beverages.
- (b) Soda Water Beverage Licenses.
- (c) Cigarette Licenses.
- (d) Direct Sellers Licenses (including non-refundable application fee)(amd. 01-527).
- (e) Dog Licenses.
- (f) Marina Licenses.
- (g) Garbage Hauler Licenses.
- (h) Concrete Surfacing of Private Drive Licenses.
- (i) Lake Pewaukee Sanitary District Licenses.
- (j) Park Permit Licenses.
- (k) Core Sampling Licenses.
- (l) Hall Rental Licenses.
- (m) Adult Oriented Establishment Licenses.

(2) ZONING . General. The fees for the following licenses shall be established, from time to time, by separate Resolution of the Town Board:

- (a) Petition Conditional Use Permits.
- (b) Petition to the Zoning Board of Appeals.
- (c) Petition to the Plan Commission or the Town Board of Supervisors.
- (d) Petition for Rezoning.

## **12.02 GENERAL PROVISIONS AS TO LICENSES.**

(1) LICENSES OR PERMITS REQUIRED. No person shall engage in any trade, profession, business or privilege in the Town for which a license or permit is required by any provision of this General Code without first obtaining such license or permit from the Town in the manner provided in this section, unless otherwise specifically provided.

(2) APPLICATION. Unless otherwise provided, application for a license or permit shall be made in writing to the Town Clerk upon forms provided by the Town, and applicant shall state the location of the proposed activity and such other facts as may be required for or be applicable to the granting of such a license or permit.

(3) PAYMENT OF FEE. The fees required for any license or permit shall be paid at the office of the Town Clerk before the granting of the license or permit. No fee paid shall be refunded unless the license or permit is denied.

(4) BOND AND INSURANCE. All required bonds shall be executed by 2 sureties or a surety company and be subject to the approval of the Town Board. Where policies of insurance are required, such policies shall be approved as to substance and form by the Town Attorney. Satisfactory evidence of coverage by bond or insurance shall be filed with the Town before the license or permit is issued.

(5) APPROVAL OR DENIAL OF LICENSES. Where the approval of any Town or State officer is required prior to the issuance of any license or permit, such approval shall be presented to the Town before any license or permit is issued.

(6) CERTIFICATE. Licenses or permit certificates shall show the name of the licensee or permittee, the date of issue, the activity licensed and the term of the license or permit and shall be signed in the name of the Town by the Chairman and Town Clerk and be impressed with the Town seal. The Clerk shall keep a record of all licenses and permits issued.

(7) TERMS.

- (a) Unless otherwise provided, the license year shall end on June 30 of each year.
- (b) Where the issuance of licenses for a period of less than one year is permitted, the effective date of such license shall commence with the date of issuance.
- (c) Permits shall be issued for the term set forth in the permit.

(8) EXHIBITION OF CERTIFICATE. Every licensee or permittee shall carry his license or permit certificate upon his person at all times when engaged in the activity for which the license or permit was granted, except that where such activity is conducted at a fixed place or establishment, the license or permit certificate shall be exhibited at all times in some conspicuous place in his place of business. The licensee or permittee shall exhibit the license certificate when applying for a renewal and upon demand of any police officer or person representing the issuing authority.

(9) TRANSFER. Unless otherwise provided, no license or permit shall be transferable or assignable.

(10) DETERMINATIONS OF THE TOWN BOARD. All determinations made by the Town Board shall be subject to the provisions of Ch. 68, Wis. Stats.

(11) INSPECTION. Town officials may enter upon the premises where any licensed or permitted activity is being conducted for the purpose of inspection at any reasonable time.

(12) REVOCATION AND SUSPENSION OF LICENSES.

- (a) Except as otherwise provided, any license issued under this chapter may be revoked for cause by the Town Board. No license shall be revoked except upon written verified complaint filed with the Town Board by the Chairman, a member of the Town Board, the Constable or a resident of the Town. The licensee shall be served with a written copy of the charges and shall be given an opportunity to be heard before the Town Board. The licensee shall be given notice of such hearing, which shall be not more than 20 nor less than 5 days after notice, except as otherwise agreed between the parties.
- (b) At such hearing, the licensee shall be entitled to be represented by counsel, shall have the right to present and cross-examine witnesses and, upon request, may have subpoenas issued by the Chairman or presiding officer of the Board to compel the attendance of witnesses.
- (c) After hearing the evidence, the Board may revoke such license or impose a limited period of suspension. The determination of the Board shall be final, subject to review under Ch. 68, Wis. Stats., provided the licensee shall not be entitled to a further hearing unless granted by the Town Board.
- (d) The Constable shall repossess any license revoked hereunder.
- (e) If the licensee does not apply for a hearing within the time provided, the license may be revoked by the Town Board.

**12.03 ALCOHOL BEVERAGES.**

(1) STATE STATUTES ADOPTED. The provisions of Ch. 125, Wis. Stats., defining and regulating the sale, procurement, dispensing, consumption and transfer of alcohol beverages, including provisions relating to persons under the legal drinking age, are adopted and made a part of this section by reference. A violation of any of such provisions shall constitute a violation of this section.

(2) LICENSES, PERMITS, AUTHORIZATION REQUIRED.

- (a) When Required . Except as provided by §125.06, Wis. Stats., no person shall within the Town, serve, sell, manufacture, rectify, brew or engage in any other activity for which this chapter or Ch. 125, Wis. Stats., requires a license, permit or other authorization without holding the appropriate license, permit or other authorization as provided in this chapter. See §125.04(1), Wis. Stats.
- (b) Separate License Required for Each Place of Sale. Except for licensed public warehouses, a license shall be required for each location or premises where alcohol beverages are stored, sold or offered for sale. See §125.04(9), Wis. Stats.

(3) **CLASSES OF LICENSES AND FEES.** The following classes and denominations of licenses shall be issued by the Town Clerk under the authority of the Town Board upon compliance with law and payment of the license fees as set forth from time to time by resolution of the Town Board which, when so issued, shall permit the holder to sell, deal or traffic in alcohol beverages as provided in the referenced State statute.

- (a) Class "A" Fermented Malt Beverage Retailer's License. (Rep. & rec. 2003-004) These licenses are issued on or after July 1<sup>st</sup> for a one year term, expiring on June 30<sup>th</sup>. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued. See §125.25(4), Wis. Stats.
- (b) Class "B" Fermented Malt Beverage Retailer's License. (Rep. & rec. 2003-004)
  - 1. These licenses are issued on or after July 1<sup>st</sup> for a one year term, expiring on June 30<sup>th</sup>. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued. See §125.26(1) & (4), Wis. Stats.
  - 2. Six Month License. A Class "B" license may be issued at any time for a 6 month period for 50% of the annual license fee. Such license shall not be renewable during the calendar year in which issued. See §125.26(5), Wis. Stats.
  - 3. Temporary - Special Event (Picnic). (Rep. & rec. 2016-02) Available to certain bona fide clubs, chambers of commerce, fair associations, agricultural societies, churches, lodges or societies that have been in existence for 6 months or more. See §125.26(6), Wis. Stats.
- (c) Wholesaler's Fermented Malt Beverage License. (Rep. & rec. 2003-004) This is an annual license. The license fee is per year or fraction thereof (not prorated). See §125.28, Wis. Stats.
- (d) Retail "Class A" Liquor License. (Rep. & rec. 2003-004) See §125.51(2), Wis. Stats.
  - 1. These licenses are issued on or after July 1<sup>st</sup> for a one year term, expiring on June 30<sup>th</sup>. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.
  - 2. Six Month License. A "Class A" license may be issued at any time for a 6 month period for 50% of the annual license fee. Such license shall not be renewable during the calendar year in which issued. See §125.51(9), Wis. Stats.
- (e) Retail "Class B" Liquor License. (Rep. & rec. 2003-004) A retail "Class B" liquor license permits its holder to sell liquor for consumption upon the premises where sold by the glass only. It also authorizes the sale of intoxicating liquor in the original package or container in multiples not to exceed 4 liters at any one time, and wine in original container or package with no quantity limit, to be consumed off the licensed premises. See §125.51(3)(b), Wis. Stats.
  - 1. These licenses are issued on or after July 1<sup>st</sup> for a one year term, expiring on June 30<sup>th</sup>. A license for a period of less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.

2. Six Month License. A "Class B" license may be issued at any time for a 6 month period for 50% of the annual license fee. Such license shall not be renewable during the calendar year in which issued. See §125.51(9), Wis. Stats.
  3. Temporary - Special Event License. (Rep. and recr. 2016-02) Available to certain bona fide clubs, chambers of commerce, fair associations, agricultural societies, churches, lodges or societies that have been in existence for 6 months or more. See §125.51(10), Wis. Stats. The amount of the license fee shall be as set forth from time to time by resolution of the Town Board, except that no fee shall be charged if the person applies at the same time for a Class "B" license under §12.03(3)(b)3. for the same event. Not more than 2 licenses may be issued under this subsection to qualified groups under §125.51(10), Wis. Stats. in any 12 month period, except for multiple-license events that may be allowed per Section 125.51(b), Wis. Stats.
- (f) Operator's License. See §125.17, Wis. Stats. (Rep. & recr. #94-372)
1. Regular Operator's License.
    - a. Regular Operator's Licenses shall be granted by the Town Board and thereafter issued by the Town Clerk to any individual who is qualified under §125.04(5), Wis. Stats., for the purpose of complying with §§ 125.32(2) and 125.68(2), Wis. Stats., and upon payment of the annual license fee. (Rep. & rec. 2003-004)
    - b. Regular Operator's Licenses may be issued only on written application on forms provided by the Town.
    - c. Regular Operator's Licenses shall be valid for 2 years and shall expire on June 30 of the even numbered years.
    - d. If the remaining license period is less than 12 months, an applicant for a Regular Operator's License shall pay half the fee amount set forth from time to time by resolution of the Town Board. (Rep. & rec. 2003-004)
    - e. In addition to the license fee, the applicant shall pay the full cost of fingerprinting and photographing at the office of the Sheriff. Fingerprinting shall be required only for the initial application. A new photograph shall be required for each new license and such photograph shall be attached to each application.
  2. Provisional Operator's License.
    - a. The Town Clerk, upon authorization by the Town Chairperson, shall issue a Provisional Operator's License to an applicant in case of a bona fide emergency. An emergency shall be caused by such things as death, disability, absence of the regular operator on the premises and the like. The Town Chairperson before authorizing such issuance, shall determine if the applicant has a satisfactory record, and probably would be issued a Regular Operator's License. The license shall be valid for a period not to exceed 60 days unless sooner revoked by the Town Board. A Provisional Operator's license may be issued only to a person who has applied for a Regular Operator's License pursuant to §125.17(6), Wis. Stats. A Provisional Operator's License may not be issued to any person who has been denied a Regular Operator's License by the Town Board.
    - b. The Town Board or its authorized designee shall issue a Provisional Operator's License to a person who is enrolled in a training course and has applied for a Regular Operator's License pursuant to §125.17(6), Wis. Stats. A Provisional Operator's License may not be issued to any person who has been denied a Regular Operator's License by the Town Board. The Town Board shall revoke the Provisional Operator's License if the applicant fails to successfully complete the course in which he or she is enrolled. (Rep. & rec. 2003-004)

- c. The fee for the Provisional Operator's Licenses shall be as set forth from time to time by resolution of the Town Board but no greater than the maximum amount allowed by statute. (Rep. & rec. 2003-004)
- d. The official who issued the Provisional Operator's License may revoke the license if he or she discovers that the holder of the license made a false statement on the application.
- (g) Class C Wine License. (Cr. MSC `92) A Class C license authorizes the retail sale of wine by the glass or in opened original container for consumption on the premises where sold.
- (h) Provisional Retail License. (Cr. #95-410) See § 125.185, Wis. Stats.
  - 1. The Town Clerk shall issue a Provisional Retail License to any person who has applied for a Class A Fermented Malt Beverage Retailer's License, a Class B Fermented Malt Beverage Retailer's License, a retail Class A Liquor License, a retail Class B Liquor License, or a Class C Wine License and whose license application has been approved by the Town Board 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. (Rep. & rec. 2003-004)
  - 2. 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 Fermented Malt Beverage Retailer's License, a Class B Fermented Malt Beverage Retailer's License, a retail Class A Liquor License, a retail Class B Liquor License, or a Class C Wine License to the holder, whichever is sooner.
  - 3. The Town 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.
  - 4. The fee for a Provisional Retail License shall be as set forth from time to time by resolution of the Town Board but no greater than the maximum amount allowed by statute. (Rep. & rec. 2003-004)
  - 5. No person may hold more than one Provisional Retail License for each type of license applied for by the holder per year.
  - 6. 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, Liquor or Wine License has been approved by the Town Board, 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.

(4) LICENSE APPLICATION.

- (a) Form. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the Wisconsin Department of Revenue and filed with the Town Clerk at least 15 days prior to issuance. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances or not separated by a solid wall.

- (b) Application to be Notarized. The application shall be signed and sworn to by the applicant as provided by §887.01, Wis. Stats.
- (c) Publication. Prior to issuance of a license under this section, the Town Clerk shall publish notice of the application in the official Town newspaper.
- (d) List of Licensees. (Am. MSC `90) By July 15 of each year, the Clerk shall forward to the State Department of Revenue a list containing the name, address and trade name of each person holding a license issued under this section, except a picnic, manager's or operator's license.

(5) LICENSE RESTRICTIONS.

- (a) Statutory Requirements. (Am. MSC `88) Licenses shall be issued only to persons eligible therefore under §125.04, Wis. Stats.
- (b) Location.
  1. No retail "Class A" or "Class B" license shall be issued for premises the main entrance of which is less than 300' from the main entrance of any established public school, parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to the premises covered by the license.
  2. This paragraph shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300' thereof by any school, hospital or church building.
- (c) Violations of Liquor or Beer Laws or Ordinances. No retail Class A or B license shall be issued to any person who has been convicted of a violation of any federal or State liquor or fermented malt beverage law or the provisions of this section or whose license has been revoked under §125.12, Wis. Stats., during one year prior to such application. A conviction of a member of a partnership or the partnership itself shall make the partnership or any member thereof ineligible for such license for one year.
- (d) Health and Sanitation Requirements. No retail Class B license shall be issued for any premises which does not conform to the sanitary, safety and health requirements of the State Department of Industry, Labor and Human Relations pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Social Services applicable to restaurants and to all such ordinances and regulations adopted by the Town Board.
- (e) License Quota. The number of persons and places that may be granted a retail Class B liquor license under this section is limited as provided in §125.51(4), Wis. Stats.
- (f) Corporations. (Am. MSC `87) No corporation organized under the laws of the State or of any other state or foreign country may be issued any alcohol beverage license or permit unless such corporation meets the requirements of §125.04(6), Wis. Stats.
- (g) Age Requirement. (Am. MSC `90) No license hereunder, except an operator's license, shall be granted to any person who has not attained the legal drinking age. Operator's licenses may be issued only to applicants who have attained the age of 18.
- (h) (rep. & renumbered #2003-004)
- (i) Delinquent Taxes, Assessments and Claims. No license shall be granted for any premises for which taxes, assessments or other claims of the Town are delinquent and unpaid, or to

any person delinquent in payment of such claims, including unpaid forfeiture judgments, to the Town.

- (j) Issuance for Sales in Dwellings Prohibited. No license shall be issued to any person for the purpose of possessing, selling or offering for sale any alcohol beverages in any dwelling house, flat or residential apartment.
- (k) Payment of Fee. (Cr. # 2004-04). If the governing body of the municipality or other authorized person or entity approves the issuance of a license or permit under the ordinance and the required fee is not paid within sixty (60) days after the date of approval, such failure to pay shall be grounds for denial, suspension or revocation or non-renewal of the approval of the license or permit in accordance with the provisions of this ordinance and the laws of Wisconsin.

(6) FORM AND EXPIRATION OF LICENSES.

- (a) All licenses shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee and, unless sooner revoked, shall expire on June 30 thereafter except as otherwise provided by law. The Town Clerk shall affix his or her affidavit as required by §125.04(4), Wis. Stats.
- (b) Surrender of License. No new alcohol beverage license will be released to the possession of the new license holder until such time as the old alcohol beverage license is physically surrendered to the Town Clerk.

(7) TRANSFER OF LICENSES.

- (a) As to Person. No license shall be transferable as to licensee except as provided by §125.04(12), Wis. Stats.
- (b) As to Place. Licenses issued pursuant to this section may be transferred to another premises once during any license year as provided in §125.04(12), Wis. Stats. Application for such transfer shall be made on blanks furnished by the State Department of Revenue. Proceedings for transfer shall be had in the same manner and form as the original application. The fee for such transfer shall be as set forth from time to time by resolution of the Town Board. (Rep. & rec. 2003-004)

(8) POSTING AND CARE OF LICENSES. Every license or permit required under this section shall be framed and posted and at all times displayed as provided in §125.04(10) Wis. Stats., No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application, or knowingly deface or destroy such license.

(9) REGULATION OF LICENSED PREMISES AND LICENSEES.

- (a) Gambling and Disorderly Conduct Prohibited. Each licensed and permitted premises shall at all times be conducted in an orderly manner; and no disorderly, riotous or indecent conduct or gambling shall be allowed at any time on any such premises.
- (b) Employment of Underage Person. (Am. MSC `87) No licensee shall employ any underage person who does not have a valid operator's license to serve, sell, dispense or give away any alcohol beverage.
- (c) Sales by Clubs. No club shall sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.
- (d) 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 for which used.

(10) CLOSING HOURS. No premises for which an alcohol beverage license has been issued shall remain open for the sale of alcohol beverages:

- (a) If a retail Class A fermented malt beverage license, between midnight and 8 a.m.
- (b) If a retail Class A intoxicating liquor license, between 9 p.m. and 8 a.m.
- (c) (Rep. and recr. 2016-02) If a retail Class B license, between 2 a.m. and 6 a.m. on weekdays and between 2:30 a.m. and 6 a.m. on Saturdays and Sundays. On January 1 premises operating under a Class B license are not required to close. No package, container or bottle sales may be made after midnight. No person may serve wine after 9:00 p.m. on premises covered by a temporary "Class B" license issued as provided in Section 125.51(10)(b), Wis. Stats.
- (d) Hotels and restaurants, the principal business of which is the furnishing of food or lodging to patrons, bowling alleys, indoor horseshoe pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business, but no intoxicating liquors or fermented malt beverages shall be sold during prohibited hours. (Am. MSC `91)

(11) REVOCATION AND SUSPENSION OF LICENSES.

- (a) Procedure. Whenever the holder of any license under this section violates any portion of this section, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by §125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.
- (b) Effect of Revocation of License. Twelve months shall elapse before another license shall be granted to the person whose license was revoked.
- (c) Grounds for Revocation of Alcohol Beverage Licenses. (Renumb. 2003-004) Any alcohol beverage license issued pursuant to the general ordinances of the Town shall be subject to such further regulation and restriction as may be imposed by the Town Board by amendment to this section or by the enactment of a new ordinance. Further, the Town Board is specifically authorized to impose reasonable conditions upon any alcohol beverage license. Further, the Town Board is specifically authorized to impose reasonable conditions upon any alcohol beverage license. If any licensee shall fail or neglect to meet the requirements imposed by such new restrictions and regulations or the conditions imposed by the Town, his license may be revoked, not renewed, suspended or cancelled in accordance with this section. In the case of revocation, nonrenewal, suspension or cancellation of any license for any violation of any provision of this subsection in accordance with this section or by the court or for any reasonable cause, no refund shall be made of any part of the license fee. If a license issued hereunder is not used within 60 days after its issuance or its usage is discontinued for a period of 60 days after its issuance or its usage is discontinued for a period of 60 days or more, such situation may be grounds for cancellation, suspension, revocation or nonrenewal of the license in accordance with the provisions of this section and the laws of Wisconsin.

(12) NONRENEWAL OF LICENSES. Before renewal of any license issued under this section is refused, the licensee shall be given written notice of any charges or violations or the reasons proposed for nonrenewal and a copy of any proposed motion for nonrenewal and shall have an opportunity to be heard before the Town Board.

(13) **NONUSE OF LICENSE.** (Rep. & recr. #95-405, Renumb. 2003-004) If a license or permit issued under this section is not used within 60 days after its issuance or its usage is discontinued for a period of 60 days or more, such nonuse shall be grounds for cancellation, suspension, revocation or nonrenewal of the license or permit in accordance with the provisions of this section and State law.

(14) **VIOLATIONS BY AGENTS AND EMPLOYEES.** (Ren. 2003-004) A violation of this section by an authorized agent or employee of a licensee shall constitute a violation by the licensee.

(15) **PREMISES REQUIRED FOR LICENSE.** (Cr. #90-246, Ren. 2003-004)

- (a) Alcohol Beverage Licenses Required a Premises. In the Town no alcohol beverage license will be issued, unless there is a building in existence that is the licensed premises.
- (b) Transfer of Alcohol Beverage License. An alcohol beverage license shall be granted only for a building described as the premises and shall remain at that premises, unless movement thereof is approved by the Town Board.
- (c) Exception. In the event of fire or loss of the premises by act of God or calamity at the request of the owner of such premises, the alcohol beverage license may be maintained and renewed while the premises is being restored, subject to the provisions of par. (e).

**12.04 SODA WATER BEVERAGES.** Section 66.053, Wis. Stats., is adopted by reference and made a part of this chapter. See §12.01 for required license fee.

#### **12.05 DIRECT SELLERS.**

(1) **REGISTRATION REQUIRED.** No direct seller shall engage in direct sales within the Town without being registered for that purpose as provided herein.

(2) **DEFINITIONS.** For the purposes of this section, the following words and phrases shall be defined as:

- (a) Direct Seller. Any individual who, for himself or for a partnership, association or corporation, sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.
- (b) Permanent Merchant. A direct seller who, for at least one year prior to the consideration of the application of this section to such merchant, has continuously operated an established place of business in the Town, or has continuously resided in the Town and now does business from his residence.
- (c) Goods. Includes personal property of any kind and shall include goods provided incidental to services offered or sold.
- (d) Charitable Organization. Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.
- (e) Clerk. The Town Clerk.

(3) **EXEMPTIONS.** The following shall be exempt from all provisions of this section:

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

- (b) Any person selling goods at wholesale to dealers in such goods.
- (c) Any person selling agricultural products which such person has grown.
- (d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this County and who delivers such goods in their regular course of business.
- (e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with and specifically requested a home visit by such person.
- (f) Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer.
- (g) Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods.
- (h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- (i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of such organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under §440.41, Wis. Stats. Any charitable organization not registered under §440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this section;
- (j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk that such person is a transient merchant; provided that there is submitted to the Clerk proof that such person has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in the Town for at least one year prior to the date complaint was made.

(4) REGISTRATION.

- (a) Applicants for registration shall complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:
  1. Name, permanent address and telephone number and temporary address, if any.
  2. Age, height, weight, color of hair and eyes.
  3. Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold.
  4. Temporary address and telephone number from which business shall be conducted, if any.
  5. Nature of business to be conducted and a brief description of the goods offered and any services offered.
  6. Proposed method of delivery of goods, if applicable.
  7. Make, model and license number of any vehicle to be used by applicant in the conduct of his business.

8. Last cities, villages, towns, not to exceed 3, where applicant conducted similar business.
  9. Place where applicant can be contacted for at least 7 days after leaving the Town.
  10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's direct seller's business within the last 5 yrs.; the nature of the offense and the place of conviction.
- (b) Applicant's shall present to the Clerk for examination:
1. A driver's license or some other proof of identity as may be reasonably required.
  2. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State authorities.
  3. A State health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under State law. Such certificate shall state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.
- (c) At the time the registration is returned, the fee required by §12.01 shall be paid to the Clerk to cover the cost of processing such registration, and the applicant shall sign a statement appointing the Clerk his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, if the applicant cannot, after reasonable effort, be served personally. Upon payment of the fee and the signing of the statement, the Clerk shall register the applicant as a direct seller and date the entry. Such registration shall be valid for a period of 90 days from the date of entry, subject to subsequent refusal as provided in sub. (5)(b) below. The Clerk shall issue the direct seller a laminated picture identification card which the direct seller shall wear in plain view at all times when the direct seller is engaged in selling goods or taking sales orders. Failure to comply with wearing the identification card may result in the revocation of the direct seller permit. (amd. 01-527)
- (d) DIRECT SELLERS APPLICATION FEE. In addition to the license fee, direct sellers applying for registration also shall pay a non-refundable application fee. The application fee shall be established from time to time by separate Resolution of the Town Board.

(5) INVESTIGATION.

- (a) Upon receipt of each application, the Clerk may refer it immediately to the Constable who may make and complete an investigation of the statements made in such registration.
- (b) The Clerk shall refuse to register the applicant if it is determined, pursuant to the investigation above, that the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding 3, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last 5 yrs., the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicant provisions of sub. (4)(b) above.

(6) APPEAL. Any person denied registration may appeal the denial through the appeal procedure provided by Ch. 68, Wis. Stats.

(7) REGULATION OF DIRECT SELLERS.

(a) Prohibited Practices.

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of 9 p.m. and 9 a.m., except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered shall actually be used for the charitable purpose for which the organization is soliciting. Such portion shall be expressed as a percentage of the sale price of the goods.
3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a 100' radius of the source.
5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

(b) Disclosure Requirements.

1. After the initial greeting, and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.
2. If the sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction if it involves the extension of credit or is a cash transaction of more than \$25, in accordance with the procedure as set forth in §423.203, Wis. Stats., the seller shall give the buyer 2 copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of §423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.
3. If the direct seller takes a sales order for the later delivery of goods, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance, whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

(8) RECORDS. The Constable shall report to the Clerk all convictions for violation of this section and the Clerk shall note any such violation on the record of the registrant convicted.

(9) REVOCATION OF REGISTRATION.

- (a) Registration may be revoked by the Town Board after notice and hearing, if the registrant made any material omission or materially inaccurate statement in the application of

registration; made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales; violated any provision of this section; or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

- (c) Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing. Such notice shall contain the time and place of hearing and a statement of the facts upon which the hearing will be based.

## **12.06 DOGS, HOUSEHOLD PETS, ANIMALS.**

(1) STATE LAWS ADOPTED. Ch. 174, Wis. Stats., exclusive of any penalties, is adopted by reference and made a part of this chapter so far as applicable.

(2) LICENSE REQUIRED. Every owner of a dog more than 5 months of age on January 1 of any year or 5 months of age within the license year, January 1 through December 31 of each year, shall annually or within 30 days from the date such dog becomes 5 months of age, at the time and in the manner provided by law for the payment of personal property taxes, pay to the Treasurer his dog license tax and obtain a license therefor.

(3) DOGS, HOUSEHOLD PETS, ANIMALS RUNNING AT LARGE. (Rep. & rec. #95-400)

- (a) Prohibited. No owner, keeper or person having physical possession of any dog, other household pet or any other animal, shall permit the same to run at large at any place within the Town, unless accompanied and under the control of the owner, keeper or person having physical custody of the dog, other household pet or animal. A dog, other household pet or animal will be considered running at large under this section if it is upon the property of another without consent of the owner or occupant of that property. The restrictions set forth herein shall not be construed as to prevent any dog, household pet or animal running at large upon the premises of the owner, keeper or person having physical custody of the dog as long as the same remains on the premises.
- (b) Penalty. Any person who shall allow a dog, other household pet or animal to run at large in violation of (a) above shall be subject to forfeitures in an amount as may be established by the Town Board from time to time by separate resolution.

(4) VICIOUS DOGS. (Rep. and rec. #93-353) No person shall keep a vicious dog within the Town. A showing that a dog has bitten, attacked or injured any person or animal shall constitute a prima facie showing that such dog is vicious.

(5) NOISY DOGS PROHIBITED. No person shall keep a dog which by barking, fighting or howling disturbs the peace and quiet of the neighborhood.

(6) IMPOUNDMENT. (Rep. & rec. #95-400)

- (a) The Town Law Enforcement Officer or any officer appointed by the Town Board shall apprehend any dog, other household pet or animal running at large within the Town, not on the premises of its owner or keeper, as required by this section, or any dog suspected of having rabies, and confine the same to such facility or in such manner as may be provided by the Town Board.
- (b) Examination for Rabies. The keeper of the pound shall keep any dog suspected of rabies for such period as the Health Officer shall deem necessary to determine whether such dog has rabies. If the dog is found to have rabies, it shall be disposed of in a humane manner.
- (c) Disposition of Unclaimed Dogs. (Rep. & recr. #95-400) All dogs, other household pets or animals apprehended and confined as provided by the Town Board shall be kept for a period of seven (7) days. If any dog, other household pet or animal is not claimed by the

rightful owner within such time, it may be sold for the amount incurred in keeping the dog or it may be humanely destroyed.

- (d) Owner to Pay Costs. The owner or keeper of any dog, other household pet or animal confined as provided by the Town Board may reclaim such dog, other household pet or animal at any time before the same is disposed of upon payment of all costs and charges incurred by the Town in impounding and keeping such dog, other household pet or animal.

(7) **NUMBER OF DOGS LIMITED.** (Rep. & rec. #92-325) No person shall keep more than the following number of dogs over the age of 5 months in the following units in the Town, except in a kennel authorized pursuant to Ch. 17 of this Code:

Condominium Unit	One/residential unit
Apartment Unit	One/residential unit
Townhouses/Duplexes	One/residential unit
Single Family Home	2/residential unit
Nonconforming Residential Units (where more than one residential unit legally exists on a single lot)	One/residential unit

(8) **EXEMPTION OF DOGS FOR THE BLIND.** Every dog specially trained to lead blind persons shall be exempt from dog license tax and every taxpayer owning such dog shall annually receive a free dog license from the local collecting officer upon application therefore.

(9) **CONTROL OF DEFECATION.** (Cr. #95-394)

- (a) It shall be unlawful for any person to cause or permit a dog to be on any property, public or private, not owned or possessed by such person and without the consent of the owner of the property, unless such person has in his immediate possession a device for the removal of excrement and a depository for the transmission of excrement to a receptacle located upon property owned or possessed by such person. This provision shall not apply to handicapped persons owning or possessing dogs trained to assist such person to accommodate such person's handicap.
- (b) It shall be unlawful for any person in control of, causing or permitting any dog to be on any property, public or private, not owned or possessed by such person and without the consent of the owner of the property to fail to remove excrement left by such dog to a proper receptacle located on property owned or possessed by such person. This provision shall not apply to handicapped persons owning or possessing dogs trained to assist such person to accommodate such person's handicap.
- (c) Notwithstanding any provisions of this code to the contrary, any person violating any of the foregoing provisions of this Section 12.06(9) shall be give a written warning for the first offense, shall be fined not less than Forty (\$40.00) dollars for the second offense, Sixty (\$60.00) dollars for the third offense, One Hundred (\$100.00) dollars for the fourth offense and each offense thereafter, together with the costs of prosecution.

**12.07 REGULATING RECYCLING THROUGH PRIVATE GARBAGE CONTRACTORS.** (Rep. & rec. #92-310)

(1) DEFINITIONS. The following terms have the meanings indicated:

Garbage Contractor. A person who collects garbage, rubbish or waste materials for hire in the Town.

Households. Refers to dwellings of one or more families having pickup and collection service.

Pickup. Refers to recyclable and nonrecyclable items collected from a household.

Recyclable Materials. Materials which are deemed by the Waukesha County multi-material recycling facility to be recyclable including, but not limited to, the following:

1. Glass containers - various colors.
2. Aluminum cans.
3. Steel/tin cans.
4. Plastic bottles PETE and HDPE Nos. 1 and 2.
5. Newspapers.

(2) VIOLATIONS AND APPLICATION.

- (a) No homeowner or apartment dweller shall fail to separate recyclables from nonrecyclable materials.
- (b) (Am. #94-367) No burning or burying of recyclable materials which are deemed recyclable under (1).
- (c) Nothing in this section shall be construed as requiring any person to utilize or accept the recycling service provided by a specific garbage contractor.

(3) LICENSING AND REGULATION.

- (a) No person may collect garbage, rubbish or waste material or recyclable materials, unless licensed by the Town. Such person serving as a garbage contractor shall provide recycling service to its customers for all collection which will include recyclable materials to be picked up on the same day as such garbage contractor's regular pickup or such garbage contractor shall subcontract with a registered garbage contractor to provide such recycling pickup service to its customers pursuant to this section. Nothing in this section shall be construed to limit collection service to single family households. This section shall not apply to municipal workers or construction contractors removing scrap and debris from building sites or owners and/or occupants of homes, apartment buildings, condominiums or other dwellings removing material from their particular property.
- (b) Licensing applications and licenses shall be on forms prepared and furnished by the Town Clerk and shall set forth the name and address of the applicant, description of vehicles used and such other information as may be required by the Clerk or the Town Board. The license period shall be from January 1 to December 31 each year. Fees shall be paid annually. The fee is to be determined by the Town Board.
- (c) It shall be the right of any garbage contractor to refuse to pick up trash and recyclables not properly separated. This garbage shall be removed from the set out location by the person who put the unseparated materials out for pickup.
- (d) The garbage contractors shall collect and keep newspapers and other recyclable materials separate from nonrecyclable materials. Recyclables picked up in a commingled fashion shall, along with newspapers, be delivered to the Waukesha County multi-material recycling facility.
- (e) Garbage contractors shall keep records of the amount and types of recyclables and the amount of garbage collected by tons or cubic yards, the disposition of recyclables and the name of the landfill where garbage is dumped and report the same to the Town Clerk every 3 months.

- (f) Haulers may charge an additional fee for removal of leaves, grass, plant debris, brush or other yard wastes. However, no such materials may be dumped at the recycling site.
- (g) Each vehicle shall have a hauling body with closed joints to prevent the dripping or leakage of liquid or debris and with adequate means to cover and keep the material securely within the hauling body. Each vehicle shall be kept well painted, clean and in good repair and reasonably free from odors. The vehicle shall bear the name and address of the owner.
- (h) Collectors shall so far as possible transfer the contents of all containers into their vehicles without spilling the contents on driveways, walks, yards or streets; shall clean up all of such contents as may be spilled during collection; and shall completely empty containers and replace lids.

(4) **SCAVENGING PROHIBITED.** Recyclables placed for collection shall remain the property of the householder until such time as the garbage contractor or its authorized agent shall take possession of such recyclables. No person unauthorized by the householder or recycling collection shall collect or cause to be collected any such items.

(5) **INSURANCE AND INDEMNIFICATION.** The issuance of a license to a contractor by the Town under this section does not constitute a representation or warranty by the Town as to the contractor and the contractor shall hold the Town harmless from any and all claims and liability whatsoever due to the collection and disposal of any materials pursuant to the license. The contractor shall be covered by insurance against public liability and property damage to the limit as set forth from time to time by resolution of the Town Board which may be evidenced by delivering a copy of a certificate of insurance to the Town Clerk. Failure to obtain or maintain such insurance shall result in immediate revocation of the contractor's license.

(6) **CARE OF CONTAINERS.** The employees of the contractor shall handle the permitted containers in which garbage, refuse, rubbish and recyclables are placed in a careful manner and return the containers to locations provided after the containers have been emptied. Upon any container being damaged through mishandling or negligence of employees of the contractor, the same shall be restored to its former condition or replaced at the contractor's expense.

(7) **EFFECTIVE DATE.** Pickup for recyclables is effective April 1, 1992.

**12.08 ADULT ORIENTED ESTABLISHMENTS.** (Rep. & Rec. 2011-007)

(1) **FINDINGS OF FACT.** The Town Board finds that Adult-Oriented Establishments operating in the Town require special licensing by the Town in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town.

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 Town finds that Adult-Oriented Establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities including prostitution.

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.

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.

The State of Wisconsin Division of Health has published reports that have been considered by the

Town relating to the subject of sexually-transmitted diseases and the concern over sexually-transmitted diseases is a legitimate concern of the Town in order to protect the health and well-being of its citizens.

The State of Wisconsin has seen a steady increase in several types of sexually transmitted diseases since 1986.

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. AIDS is a sexually-transmitted disease which destroys the body's immune system.

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.

The Town is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses.

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.

Information relating to pending charges and convictions of the applicants is desired to further the Town's interest in controlling the negative secondary effects of Adult-Oriented Establishments.

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.

The Town Board has reviewed studies of the negative 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.

The Town Board finds that negative secondary effects associated with adult, sexually oriented establishments have been confirmed by the United States Supreme Court in its decisions in, for example, *City Of Renton v. Playtime Theatres, Inc.* (475 U.S. 41 (1986)) and by the United States Court of Appeals in its decisions in, for example, *Hang On, Inc. v. City of Arlington* (65 F.3d 1248 (5th Cir., 1995), *Fantasy Ranch v. City of Arlington Texas* (459 F.3d 546 (5th Circuit, 2006), and *Andy's Restaurant & Lounge, Inc. v. City of Gary* (466 F.3d 550 (7th Cir., 2006) and that such negative secondary effects include personal property crimes, prostitution, lewd behavior, assault, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. The Town Board finds that the decisions issued by the appellate courts constitute reliable sources of information that may be reasonably relied upon by the Town Board. The Town Board finds that each of the foregoing negative secondary effects constitutes a harm that the Town has a substantial governmental interest in preventing and/or abating. The Town Board finds that continued regulation of adult-oriented establishments is necessary to limit the aforementioned negative secondary effects associated with adult sexually oriented establishments and thereby promote the health, safety, and welfare of the Town of Delafield; and

The Town Board desires to minimize and control these negative secondary 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.

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 that addresses the negative secondary effects associated with Adult-Oriented Establishments.

It is not the intent of the Town Board to condone or legitimize the promotion of obscene material, and the Town Board recognizes that the law prohibits the promotion of obscene materials. The Town

Board expects and encourages law enforcement officials to enforce any applicable anti-obscenity laws against any such illegal activities in the Town.

Restricted hours of operation of Adult-Oriented Establishments 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.

Prohibition of alcohol beverages on the premises of Adult-Oriented Establishments 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 Town to regulate Adult-Oriented Establishments to promote the health, safety, morals, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize the negative 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. The Town Board intends that this section shall be construed and enforced in a manner consistent with the First Amendment to the United States Constitution, Article I, Section 3 of the Wisconsin Constitution, and the compelling State interest in protection of the free flow of ideas.
- (3) **DEFINITIONS.** The following terms have the meanings indicated:

Adult Arcade means any place to which the public is permitted or invited, wherein coin, slug, electrically, electronically, or mechanically controlled and/or operated still or motion picture machines, projectors, computers, or other image producing devices are regularly 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 their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas".

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."

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.

Adult Bookstore, adult novelty store, or adult video store means any commercial establishment which has a significant or substantial portion of its stock in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale, rental or lease, for any form of consideration, any one or more of the following:

- (a) Books, magazines, periodicals or other printed matter; photographs, images, slides, or video captures; films, motion pictures, video cassettes, compact or digital video discs, video broadcasts, recordings or reproductions; cable/satellite transmission, subscriber programming, or other medium that allows an image to be displayed or transmitted; or any other visual representations, which are distinguished or characterized by their emphasis upon the exhibition or description of "Specified Sexual Activities" or "Specified Anatomical Areas";
- (b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user(s) or others.

Adult Cabaret means a nightclub, bar, juice bar, restaurant, restaurant bottle club, or similar commercial establishment which features:

- (a) Live performances which are characterized or distinguished by the exposure of "Specified Anatomical Areas" or the removal of articles of clothing;
- (b) Persons who appear in a state of total or partial nudity; or,
- (c) Films, motion pictures, video cassettes, compact or digital video discs, video recording or imaging reproductions, slides, cable/satellite transmission, subscriber programming, or other video broadcastings, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."

Adult Entertainment means any sale, rental, or exhibition, for any form of consideration, of any motion picture, live performance, display, recording, photographic reproduction, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other physical medium or manner of imaging that allows an image to be displayed or transmitted, and/or any 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:

- (a) "Specified Sexual Activities";
- (b) "Specified Anatomical Areas"; or
- (c) person(s) who appear in a state of partial or total nudity.

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".

Adult Motel means a hotel, motel or other similar commercial establishment which:

- (a) offers accommodations to the public, for any form of consideration, and provides patrons with closed circuit television transmissions, cable/satellite transmission, subscriber programming, film, motion pictures, video cassettes, video reproductions, slides, or other physical medium that allows an image to be displayed or transmitted, 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
- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (c) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.

Adult Motion Picture Theater means a commercial establishment where films, motion pictures, video cassettes, compact or digital video discs, video recording or imaging reproductions, slides, cable/satellite transmission, subscriber programming, or other video broadcastings, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas" are regularly shown for any form of consideration.

Adult-Oriented Establishment includes, but is not limited to, Adult Arcade, Adult Bathhouse, Adult Body Painting Studio, Adult Bookstore, Adult Cabaret, Adult Massage Parlor, Adult Motel, Adult Motion Picture Theater, Adult Theater, and any commercial establishment presenting Adult Entertainment, whether or not such establishment is operated or maintained for a profit.

Adult Theater means an enclosed building such as, for example, a theater, concert hall, auditorium or other similar commercial establishment which is regularly used for presenting "Adult Entertainment."

Applicant means the individual or business entity that seeks to secure a license under this section of the Town municipal code.

Board means the Town Board for the Town of Delafield, Waukesha County, Wisconsin.

Distinguished or characterized by an emphasis upon means the dominant or principal theme of the object described by such phrase. For example, when used in conjunction with a reference to films, the films so described are those whose dominant or principal character and theme are the exhibition or description of Specified Anatomical Areas or Specified Sexual Activities.

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 any independent contractor(s) who are responsible for the improvement or repair of the physical premises or who provide supplies to the establishment, provided that such Person(s) are not also in the position of providing any other day-to-day services for the Adult-Oriented Establishment.

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.

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.

Person means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

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.

Specified Anatomical Areas means:

- (a) Less than completely and opaquely covered human genitals, pubic region or pubic hair,
- (b) Any human buttock, or any portion of the female breast(s) that is situated below a point immediately above the top of the areola.

Specified Sexual Activities means and includes any of the following, simulated or actual:

- (a) The fondling or other erotic touching of another or one's own human genitals, pubic region, perineum, buttocks, anus, or female breast(s);
- (b) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, cunnilingus, analingus.
- (c) Showing of human genitals in a state of sexual stimulation or arousal.
- (d) Excretory functions as part of, or in connection with, any of the activities set forth in sections (a) through (b).

Transfer of Ownership or Control of an Adult-Oriented Establishment means and includes any of the following:

- (a) the sale, lease, or sublease of the business;
- (b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or other means; or
- (c) 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.

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 paragraph (3) below, no Adult-Oriented Establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town. 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. Licenses for Existing Adult-Oriented Establishments. All Adult-Oriented Establishments existing in the Town 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 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 Town Board. 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 Town Board. The Town 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 Town Board. 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 Town Board. The Town 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 Town Clerk 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 Town Clerk.
2. The application shall be on a form provided by the Town Clerk.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
  - A. Name, including any aliases, address, and phone number.
  - B. If the Applicant is a corporation, partnership, limited liability company 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 or of any administrative regulation or ordinance in any other jurisdiction regulating Adult-Oriented Establishments.
- 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.)
  - Prostitution (§ 944.30, 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 Wisconsin 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 the day-to-day operation of the establishment, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.
  - L. A statement that the Applicant is familiar, and in compliance, with the provisions of this section of the Town's municipal code.
  - M. When the Applicant is a business entity described in subsection 4(b)(3)(B), the information requested of an "Applicant" shall be construed to require the inclusion of all of the information required in this section for each of the officers and directors, partners and general partners, members, managers, and other owners, and managers of the business entity applying for the license. This provision shall not apply to any owner of any kind who holds stock or a beneficial ownership interest of less than 10.0 percent.
4. Each application shall be accompanied by:
- A. A building plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any building plan requirements in addition to those in this Section. Each application shall be accompanied by a sketch or diagram showing the floor plan of the interior of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a 1/4 inch scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
  - B. A written plan of operation which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any plan of operation requirements in addition to those in this Section.
  - C. A written site plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any site plan requirements in addition to those in this Section.
  - D. For corporate or limited liability applicants, proof that the Applicant is in good standing and registered to do business in Wisconsin.
5. Each application shall be signed by the Applicant.
6. Each application shall be accompanied by payment of the license fee of \$500.00. Filing of the application does not occur until this fee has been paid.
7. The Town Clerk shall date the filing of the application on the face of the application.
8. Upon filing of the application, each Applicant shall place a sign at the proposed business location providing notification of the application. Each sign shall be at least 24 inches by 36 inches in size. The sign shall state "ADULT-ORIENTED ESTABLISHMENT LICENSE APPLICATION PENDING" AND "APPLICATION FILED ON (fill in the date)." The letters on the sign shall be no less than 1 and 2 inches high by 2 inches wide. The sign must be placed in a conspicuous location so that it is clearly visible to all passers by whether on the public road, highway, sidewalk or parking lot.
9. Upon receipt of the application, the Town Clerk shall immediately distribute a copy of

the application to the Building Inspector, Town Police Department, and the Town Board.

10. The Town Police Department shall notify the Town Board 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 Town Board 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 Town Board shall within 45 days of the filing of the application with the Town Clerk, either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Board 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.
13. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
14. If the Town Board decides to deny the application for a license, the Board 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 Town Board, shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town 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 Town Clerk.
2. The application shall be on a form provided by the Town Clerk.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
  - A. Name, including any aliases, 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 or of any administrative regulation or ordinance in any other jurisdiction regulating Adult-Oriented Establishments.
  - 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.)  
 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.

- 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 D., 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 Town Clerk shall date the filing of the application upon the face of the application.
  7. Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Town Police Department and the Town Board.
  8. The Town Police Department shall notify the Town Board 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 Town Board shall within 45 days of the filing of the application with the Town Clerk, either issue the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Board 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 Town Board, then the Town Clerk shall issue the license on the next business day.
  11. If the Town Board decides to deny the application for a license, the Board 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 Town Board shall be entitled to immediately appeal the Board'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 Board. The Town 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 Town Board 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 in any state or federal court where such crime is the same as or has substantially the same elements as the crimes specified in Subsections (4)(b)(3)(I) or (4)(c)(3)(D) of this Section; 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 Subsection (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 Town Clerk. The application procedures governing new licenses shall be followed by an Applicant for a renewal license except for those found in Subsection (4)(b)(8). 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 Town Board acts upon the renewal license application. If the Board 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.
  5. The Town Board 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 Board, 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 Town Board, then the Town Clerk 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 Town 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 2 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 six-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) No operator or Employee shall, or shall knowingly allow another, to appear in a state of partial or total nudity on the premises of an Adult-Oriented Establishment, unless the person is an employee of the operator's establishment who, while in a state of partial or total nudity, is on a stage (on which no customer or patron is present) at least eighteen (18) inches above the floor, and such employee is either:
  1. At least six (6) feet from any customer or patron; or
  2. Physically separated from patrons by a wall or partition composed of solid glass or light-transmitting plastic or substantially equivalent material extending from the floor of the performance stage to at least five (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers or patrons and such employee.
- (i) No Employee, while in a state of partial or total nudity on the premises of an adult oriented establishment shall receive directly any pay or gratuity from any patron or customer and no patron or customer shall pay or give any gratuity directly to any employee, while that employee is in a state of partial or complete nudity in an adult oriented establishment. Such gratuity or pay may be provided to such employee through a tip receptacle, located more than six (6) feet from the nearest point of the performance stage where such employee is in a state of partial or complete nudity, or may be paid to an employee that is not in a state of partial or complete nudity, as part of the customer's bill.
- (j) No employee of an adult oriented establishment while on the premises shall, while in a state of partial or complete nudity, touch a customer or patron or the clothing of a customer or patron.
- (k) No customer or patron of an adult oriented establishment shall touch an Employee appearing in a state of partial or complete nudity or touch the clothing of the Employee while such Employee is on the premises.
- (l) Employees shall maintain a minimum distance of five feet from areas on the adult oriented establishment's premises being occupied by customers for a minimum of one hour after such Employee appears in a state of partial or complete nudity on the establishment's premises. This regulation is not intended to prohibit ingress or egress from the premises or the employee's use of a common restroom. It is, however, intended to control illicit sexual contact and reduce the incidents of prostitution occurring in any adult oriented establishment. Regulating a reasonable delay between the times entertainers appear in a state of partial or complete nudity and their commingling with customers is a narrowly tailored furtherance of this interest.
- (m) No Employee or patron in an Adult Cabaret shall be permitted to have physical contact with any Employee or patron on the premises.
- (n) The selling, serving, possession, or consumption of alcohol beverages is strictly prohibited at all times in all Adult-Oriented Establishments.
- (o) 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.
- (p) 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.
- (q) The license for the Adult-Oriented Establishment shall be displayed in a conspicuous public place in the Adult-Oriented Establishment.
- (r) No Employee, Operator, or owner may refuse any law enforcement official or building inspector entry into an Adult-Oriented Establishment for purposes of inspecting the Adult-

Oriented Establishment for compliance with these operational standards or any other applicable statute(s), regulation(s), or ordinance(s) during business hours, or at other times at a reasonable hour, with reasonable notice.

- (s) The Operator shall be responsible for compliance with the provisions of this section by the Adult-Oriented Establishment, its Employees and patrons.
- (t) 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 (6) (e) 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.
- (c) UNENCLOSED STAGE MARKING. A two-inch wide line shall be prominently and continuously displayed on the floor such that said line is clearly visible at all times, including in the dark, marking a distance of six feet (6') from each unenclosed stage on which an employee in a state of partial or total nudity may appear. For purposes of this provision, an "unenclosed stage" is a stage that is not physically separated from customers or patrons by a solid clear transparent unbreakable glass or Plexiglas wall with no openings that would permit physical contact with customers or patrons.
- (d) REQUIRED SIGNAGE. A sign shall be continuously and conspicuously posted on the interior of the adult oriented establishments at each entrance where customers or patrons enter the premises and adjacent to each stage that states, in letters at least two inches high,

“TOUCHING OR TIPPING AN EMPLOYEE WHO IS IN A STATE OF NUDITY IS A VIOLATION OF SECTION 12.08 OF THE TOWN OF DELAFIELD ORDINANCES, PUNISHABLE BY A FORFEITURE OF UP TO \$1,000.00. PATRONS SHALL REMAIN AT LEAST SIX FEET FROM ALL UNENCLOSED PERFORMANCE STAGES.”

- (8) EXCLUSIONS. The provisions of this Section relating to the licensing of Adult-Oriented Establishments shall not apply to:
- (a) Any private or public school as defined in Ch. 115, Wis. Stats., located within the Town when instructing pupils in sex education as part of its curriculum.
  - (b) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber provided such business and licensed individual are only engaged in performing the normal and customary functions authorized under the license held;
  - (c) Any business operated by, or employing a licensed physician or licensed chiropractor while engaged in licensed activities;
  - (d) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live model(s); or
  - (e) A class that satisfies all of the following requirements:
    - 1. The class is conducted or sponsored by a school licensed by the State of Wisconsin, a college, junior college or university supported entirely or partly by taxation, or a private college or university that maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
    - 2. The class is, at all times, situated in a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude or partially nude person is available for viewing;
    - 3. In order to participate in such class, a student must enroll at least three (3) days in advance of the class; and
    - 4. No more than one (1) nude or partially nude model is on, depicted, or displayed at any one time.
- (9) ENFORCEMENT.
- (a) LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION
    - 1. CAUSES FOR LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION. The Town Board 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 Town shall notify the licensee in writing by certified mail, return receipt requested, of the alleged violation or cause and the intent of the Town to seek a non-renewal, suspension or revocation of the license.
      - B. The licensee shall be entitled to a public hearing before the Town Board regarding the license non-renewal, suspension or revocation, upon written request to the Town 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.
      - D. At the hearing both the Town 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 Town Chairperson 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 Board shall cause the proceedings to be recorded by a stenographer, the expense thereof to be paid by the Town. 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 Town Board shall determine if cause for non-renewal, suspension or revocation exists. If no public hearing is requested, the Town Board shall make a determination within 20 days of the notification date.
- H. The Town Board 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 Town Board. The non-renewal, suspension or revocation of a license shall become effective thirty days following the issuance of a decision by the Town Board, if judicial review is not commenced as provided in this Section.
- J. If judicial review of such determination by the Town Board 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 Town Board shall be entitled to immediately appeal the Board'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 Board. The Town 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 plus the costs of prosecution for each violation. Each day that each 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 Town.
- 3. NON-EXCLUSIVITY. The imposition of any penalty under this Section or the seeking of an injunction shall not impair the right of the Town to seek a non-renewal, suspension or revocation of a license as provided in this Section.

**12.09 LICENSE FOR KEEPING CHICKENS.** (created 2012-04)

- (1) LICENSE REQUIRED. The keeping of chickens in residential districts is subject to Section 17.06 5. of this code, as and to the extent described therein and within the zoning regulations of the Zoning

Code. Such use is subject to payment of a fee as described in Section 12.01, the general provisions as to licenses as described in Section 12.02 and the additional and different license regulations of this section.

- (2) **APPLICATION OF GENERAL PROVISIONS.** The general provisions as to licenses described in Section 12.02 of this Code shall apply, except as follows. No bond or insurance shall be required for a license to keep chickens. The term of this license shall be for one calendar year, to end on December 31 of each year, rather than June 30<sup>th</sup>.
- (3) **LICENSE APPROVAL OR DENIAL.** Upon receipt of a completed license application and upon payment of the required fee, the Town Clerk shall place the license application on an upcoming agenda of the Town board for consideration and possible action. The Town Board shall have discretion to determine whether issuance of the license, and/or renewal of a license that has previously been issued, is in the best interests of the Town of Delafield and in particular the neighborhood where the use is located. The Town Board may approve, deny or conditionally approve the issuance of license subject to reasonable conditions.
- (4) **RENEWAL.** The license may be renewed for a subsequent year upon petition to the Town Clerk and approval of the Town Board. Such application and accompanying fee must be filed prior to the expiration of the license. To avoid a lapse in the license term, the licensee must apply for renewal at least sixty (60) days prior to the expiration of the license.
- (5) **OBLIGATIONS UPON EXPIRATION/TERMINATION.** No chicken shall be kept on the property following the expiration or termination of the license, unless and until a new license is obtained for the keeping of chickens. All chicken coops, fences, chicken runs, and other structures and facilities associated with the keeping of chickens shall be removed from the property no later than twelve (12) months after the expiration or termination of the license or cessation of the use, whichever shall occur first.
- (6) **DISCLAIMER.** The grant of a license for keeping of chickens by the Town of Delafield does not supersede or abrogate any private deed restrictions, homeowner's association regulations or bylaws, or other private restrictions that may apply and may be more restrictive. Persons requesting a license to keep chickens are solely responsible to know and to comply with any such private limitations.
- (7) **PUBLIC NUISANCE.** Keeping of chickens in violation of chapter 12 and/or chapter 17 of the Town of Delafield Municipal Code shall constitute a public nuisance.

#### **12.095 TOWN HALL PRIVATE USE.**

##### **SECTION 1:**

- (a) **Regulation of Use.** Use of the Town Hall may be made available to: (i) Owners' Associations for residential subdivisions and condominiums located in the Town of Delafield, and (ii) Non-profit organizations that operate in the Town of Delafield that provide programs that teach leadership, citizenship and life skills to youth in the Town of Delafield and its environs, such as 4-H. All such use is subject to rules and regulations established by the Town Board from time-to-time, which shall be on file with the Town Clerk. No other private use of the Town of Delafield Town Hall is permitted.
- (b) **Private Use Application and Agreement, Required.**
  1. A resident of the Town of Delafield, personally and on behalf of a qualifying organization, desiring to use the Town Hall shall, submit an application for such use in the form provided by the Town Clerk.
  2. No use of the Town Hall shall be authorized under this Section until the applicant has entered into a private use agreement in the form supplied by the Town Clerk. The Town Clerk or designee shall have the authority to enter into and execute such private use agreement on behalf of the Town.

**12.10 PENALTY.**

In addition to the suspension, revocation or renewal of any license issued under this chapter, any person found to be in violation of any provision of this chapter shall be subject to a penalty as provided in § 25.04 of this General Code.